Judgment 14, 1971

appeal 8 OF 1970

14, 1971

IN THE PRIVY COUNCIL 8 OF 1970

****

ON APPEAL

FROM THE COURT OF APPEAL OF THE

SUPREME COURT OF JUDICATURE

GUYANA

****

BETWEEN:

ROSALINE ANTIGUA,

Appellant
(Defendant),

- and -

ISAAC BOXWILL,

Respondent
(Plaintiff).

****

RECORD OF PROCEEDINGS

IN THE PRIVY COUNCIL 8 OF 1970

ON APPEAL

FROM THE COURT OF APPEAL OF THE

SUPREME COURT OF JUDICATURE

B E T W E E N :

ROSALINE ANTIGUA,

Appellant
(Defendant),

- and -

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(Plaintiff).

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF THE

SUPREME COURT OF

JUDICATURE

GUYANA

B E T W E E N

ROSALINE ANTIGUA,
Appellant (Defendant)

- and -

ISAAC BOXWILL,
Respondent (Plaintiff)

RECORD OF PROCEEDINGS

NO. 1

WRIT OF SUMMONS

In the High Court of the Supreme Court of Judicature

1966 No. 593 DEMERARA

No. 1

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

Writ of Summons 5th March, 1966.

BETWEEN:

ISAAC BOXWILL, Plaintiff,

- and -

ROSALINE ANTIGUA, Defendant.

In the High Court of the Supreme Court of Judicature

No. 1

Writ of Summons 5th March, 1966. Cont'd.

ELIZABETH THE SECOND BY THE GRACE OF GOD OF THE UNITED KINGDOM OF GREAT BRITAIN NORTHERN IRELAND AND OF HER OTHER REALMS AND TERRITORIES: QUEEN: HEAD OF THE COMMONWEALTH DEFENDER OF THE FAITH.

TO: ROSALINE ANTIGUA,
Lot 28, Princess Street,
Lodge,
East Coast Demerara.

WE COMMAND YOU that within (10) ten days after the service of this Writ on you inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of ISAAC BOXWILL.

AND TAKE NOTICE that in default of your so doing the plaintiff may proceed therein and judgment may be given against you in your absence.

WITNESS THE HONOURABLE SIR JOSEPH ALEXANDER LUCKHOO, KNIGHT CHIEF JUSTICE OF BRITISH GUIANA, this 5th day of March, 1966, in the year of our Lord one thousand nine hundred and sixty six.

N.B. The defendant may appear hereto by entering an appearance either personally or by solicitor at the Registry at Georgetown, Demerara.

INDORSEMENT OF CLAIM:

The plaintiff's claim is against the defendant for the following:-

1. A declaration that the plaintiff being the owner of sublot A of 28, Princess Street, Lodge, East Coast, Demerara, in the country of Guyana, whereof you are lessee of the

front portion, that he is entitled to a right of way of necessity over and along the said land on to Princess Street, Lodge.

2. An injunction restraining the defendant, her servants, and otherwise from in any manner preventing the plaintiff in exercising his right of ingress and egress along the front portion of sublot A 28, Princess Street, Lodge, from the back portion on to the Public Road namely Princess Street, aforesaid, and from in any manner interfering with the plaintiff or his agents in the exercise of his said right of way.

3. Damages in excess of the sum of $500: for trespass to the plaintiff's land situate at sublot A, 28, Princess Street, Lodge, East Coast, Demerara, in the country of Guyana.

4. An injunction restraining the defendant her servants and agents from occupying and trespassing on the plaintiff's said land at sublot A, lot 28, Princess Street, Lodge, aforesaid, being 18 feet of land by the whole width thereof.

5. Such further or other Order as to the Court may seem just.

6. Costs.

(Sgd.) Dabi Dial
Solicitor to Plaintiff.

Dated this 4th day of March, 1966.

This Writ was issued by DABI DIAL, of and whose address for service and place of business is at his office lot 5, Croal Street, Georgetown, Demerara, Solicitor, for the plaintiff who resides at 28, Princess Street, Lodge, East Coast, Demerara.

(Sgd.) Dabi Dial
Solicitor to Plaintiff.

Dated this 4th day of March, 1966.

AUTHORITY TO SOLICITOR FILED HEREWITH.

In the High Court of the Supreme Court of Judicature

No. 1
Writ of Summons 5th March, 1966. Cont'd.

In the High Court of the Supreme Court of Judicature

No. 2

Statement of Claim, 2nd August, 1966.

NO. 2

STATEMENT OF CLAIM

1. The plaintiff is the owner of sublot A, of lot 28, Princess Street, Lodge, East Coast, Demerara, by transport number 960, passed and executed on 24th May, 1965.

2. The defendant was a tenant from year to year of a house spot of land situate on the front portion of the said sublot A, with a facade on to Princess Street, and the defendant remained as such under the Rent Restriction Ordinance after the plaintiff purchased same, the said house spot being 82 ft. in length by the width of the land.

3. The defendant's tenement consists of land so situate that the plaintiff and his servants and agents who occupy the back portion of the said sublot A, are cut off and excluded from access to the Public Road to wit Princess Street, Lodge. There is no other means of access to the Public Road than through the front portion of the said sublot A, which is occupied by the defendant.

4. The defendant has refused to allow the plaintiff and/or his servants and agents access from and to the Public Road, to and from his premises at the back portion of the said sublot A.

5. The plaintiff and his servants and agents are entitled as of necessity to a right of ingress and egress through and over the front portion of sublot A, aforesaid on to Princess Street, Lodge, aforesaid.

6. The plaintiff caused his Solicitor to write the defendant on the 27th July, 1965 in the following terms:

DABI DIAL, LL.B.(Lond.)
Solicitor

"Somerset House"
5, Croal Street,
Georgetown,
Demerara.

27th July, 1965.

In the High Court of the Supreme Court of Judicature

Mrs. Rosaline Antigua,
28, Princess Street,
Lodge Village,
East Coast Demerara.

No. 2
Statement of Claim
2nd August, 1966.
Continued.

Dear Madam,

I have been consulted by Mr. Isaac Boxwill, who has instructed me that he is now the owner of sublot A, of 28, Princess Street, Lodge, whereon you have a building.

I am instructed that my client has no way to get to the back of his premises and you are requested to so arrange your occupation as to give to my client and his licencees to have access to their premises at the back of your house.

If you cannot or will not do so, I am instructed that my client will be advised by counsel as to his rights on an application to the Supreme Court against you.

Yours faithfully,

Dabi Dial.

7. The defendant ignored the said letter and took no steps to comply with same.

8. Further the defendant's tenement consists of 82 feet from the southern boundary of the said sublot A.

9. During and about the year 1961, when the defendant was rebuilding

In the High Court of the Supreme Court of Judicature

No. 2

Statement of Claim, 2nd August, 1966. Continued.

her house on the said premises she encroached without authority 18 ft. north from the original paling delimiting her premises.

10. The defendant continues to trespass and encroached on the plaintiff's land for the said 18 ft. by the width of the said sublot A, and has, since the said 24th May, 1965, excluded the plaintiff from the said land and has existed thereon fences right across the width of the said sublot A.

11. In consequence thereof, the plaintiff has been put to much inconvenience and has suffered loss and damage:

PARTICULARS AS OF DAMAGE:

To arrangements with neighbouring owners to pass over their land from 24th May, 1965:

(making up passage) $50:

12. The defendant has refused to vacate the said area of land to wit: 18 feet north to south by the width of sublot A, despite several demands of the plaintiff so to do and the defendant has shown an intention not to vacate same unless compelled to do so by the Court.

13. The plaintiff therefore claims against the defendant the following:

(a) A declaration that the plaintiff being the owner of sublot A, of 28, Princess Street, Lodge, East Coast, Demerara, in the country of Guyana, whereof she is a lessee of the front portion, that he is entitled to a right of ingress and egress over and along the said land to Princess Street, Lodge.

(b) An injunction restraining the defendant, her servants and

agents from in any manner preventing the plaintiff in exercising his right of ingress and egress along the front portion of sublot A, of 28, Princess Street, Lodge, from the back portion on to the Public Road namely Princess Street, aforesaid, and from in any manner interfering with the plaintiff or his agents in the exercise of his said right of passage.

(c) Damages in excess of the sum of $500: for trespass to the plaintiff's land being 18 feet of land in length by the whole width north from the true northern boundary of defendant's premises, situate at sublot A, 28, Princess Street, Lodge, East Coast, Demerara, in the country of Guyana.

(d) An injunction restraining the defendant her servants and agents from occupying and trespassing on the plaintiff's said land at sublot A, lot 28, Princess Street, Lodge, aforesaid, being 18 feet of land by the whole width thereof.

(e) Such further or other Order as to the Court may seem just.

(f) Costs.

(Sgd.) Dabi Dial
SOLICITOR TO PLAINTIFF.

Ronald H. Luckhoo
OF COUNSEL.

Georgetown, Demerara.
Dated this 2nd day of August, 1966.

NO. 3.

D E F E N C E

In the High Court of the Supreme Court of Judicature.

No. 3

Defence 13th September, 1966.

1. Save as hereinafter expressly admitted the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out herein verbatim and traversed seriatim.

2. The defendant makes no admission as to paragraph 1.

3. As to paragraph 2 the defendant has been in occupation since 1939 of the front portion of sublot A, Princess Street, measuring 38 feet in width by 96 feet in depth.

4. The defendant denies that the plaintiff is cut off from access to Princess Street. There is a passageway six feet in width running outside of the plaintiff's eastern paling which is part of the said lot 28 Princess Street. This is used by the plaintiff and was used by previous occupants of the said back lot as a means of ingress and egress from and to Princess Street, and is perfectly adequate for that purpose.

5. The defendant rebuilt her house in 1961, but did not alter the position of the existing palings. She did not take in more land at the back nor did she reduce the said passageway to Princess Street. She denies that she encroached 18 feet or at all in the back lot.

6. The defendant denies that the plaintiff has suffered any loss or inconvenience. He is using the same right of way that was there when he bought the lot and the defendant has not interfered with this in any way.

Dated the 13th day of September, 1966.

(Sgd.) D. deCaires
Solicitor for the Defendant.

NO. 4

OPENING ADDRESS BY
PLAINTIFF'S COUNSEL

Mr. R.H. Luckhoo instructed by Mr. Dial for Plaintiff.

Mr. M. Fitzpatrick instructed by Mr. de Caires for Defendant.

In the High Court of the Supreme Court of Judicature

No. 4

Opening Address by Plaintiff's Counsel 13th January, 1967.

Mr. Luckhoo addresses:

Two remedies claimed (a) damages for trespass to a portion of land; (b) right of ingress and egress from dwelling house on to the Public Road i.e. Princess Street.

Both parties live at 28 Princess Street, Lodge. Plaintiff lives north of defendant. Prior to May, 1965 both parties were tenants of owner of S½ lot 28; the houses belong to them. Since May, plaintiff became owner by Transport of portion of S½. Defendant claims land leased from original owner was 35 ft. in width by 96 ft. in depth. Plaintiff says width is correct but depth is 82 feet.

Legal point surrounds right of ingress and egress. Plaintiff owns sublot A which is 32.24 ft. in width by 174.46 ft. in depth.

Sublot B the remainder of S½ belongs to a minor and is north of sublot A. This sublot is 119.7 ft. length by 38 ft. width together with a strip of land 174.46 ft. Sublot A has no servitude over sublot B. The strip of land leads to Princess Street. Plaintiff now uses strip by permission of owner of sublot B. Plaintiff asks defendant for right of way. Defendant has refused.

In the High Court of the Supreme Court of Judicature

No. 5

Evidence of Plaintiff, 13th January, 1967. Examination.

NO. 5

EVIDENCE OF PLAINTIFF (1ST WITNESS)

Isaac Boxwill sworn states:

I am plaintiff and I live at 28 Princess Street, Lodge Village and I am the owner by Transport No. 960 of 1965 of sublot A part of the south ½ of lot 28 South Section, Lodge. The S½ of lot 28 South Section, Lodge is known as lot 28 Princess Street, Lodge. This is my Transport, tendered, admitted and marked Exhibit "A". Before I purchased sublot A I was a tenant of a portion of the land from 1943. Ellen Joseph was my landlord and owned the land. This portion of land commenced 82 ft. north of Princess Street. It was 38 ft. wide by 82 ft. in length. I was a yearly tenant.

The defendant was a tenant of the portion of land between the Public Road and the southern boundary of my land. My land commenced 82 ft. from the southern boundary of the S½ lot 28 Princess Street. I did have a right of ingress and egress over and along a strip 4ft. in width running along and within the eastern boundary of the lot leading to Princess Street. In 1943 I erected a building on the portion of land which I rented. I live there. I was a yearly tenant until 1955 when I entered into a written agreement with the landlord Ellen Joseph dated 28/2/55 to rent the portion of land I occupied for a period of five years with a right of renewal. This is a certified copy of the lease, tendered, admitted and marked Ex. "B".

No. 5

Evidence of Plaintiff, 13th January, 1967. Examination Continued.

Messrs. Cameron & Shepherd prepared the lease. I had at that time been paying rent in respect of the land to Messrs. Cameron & Shepherd on behalf of the landlord.

In 1956 I sought permission of Ellen Joseph to extend my building. She gave permission and I extended. By extension I mean I converted my existing one-flat building into a two-flat building. After the extension but in the said year I paled the northern, western and eastern sides of the area I occupied. The southern side was left open. Before I put up my palings there were no palings on the land i.e., S½ lot 28 Princess Street, Lodge. Ellen Joseph the landlord died in 1956 or 1957. One Margaret Kingston was her executrix.

On the 16th December, 1960 I paid to Cameron & Shepherd $300: for the purchase of a portion of the S½ of lot 28 Princess Street. This is my receipt, tendered, admitted and marked Exhibit "C".

In 1957 the defendant put up palings on the southern, eastern and northern sides of the portion of land occupied by her. My eastern paling was on the eastern boundary of the land leased by me. I now say that my eastern paling was put up at a distance of 4ft. from the eastern boundary of the land leased by me thus leaving a passageway of 4 ft. When defendant put up her eastern paling she also left a passageway. It was more than 4 ft. wide. In 1961 the defendant put up another paling north of her northern paling which had been erected in 1957. Thus taking away about 13 to 14 ft. of land leased by me. I reported to the executrix Margaret Kingston. She told me something in reply.

In 1963 Transport of sublot A was advertised to me. The south ½ of lot 28 Princess Street has been divided and surveyed into two portions viz., sublots A and B sometime between 1961 and 1963.

In the High Court of the Supreme Court of Judicature

No. 5

Evidence of Plaintiff, 13th January, 1967. Examination continued.

When transport was advertised to me the defendant opposed and filed an opposition suit No. 216 of 1963 Demerara.

On 27th February, 1965 my Solicitors, Messrs. Cameron & Shepherd wrote to Mr. D. de Caires, Solicitor for the defendant on my instructions, tendered, admitted and marked Exhibit "D" by consent. A reply was sent by Mr. de Caires. I received Transport in 1965.

The width of sublot A is somewhat over 32 ft. It was the intention to divide the S½ lot 28 Princess Street into two equal portions. However if I had taken the width of the lot the dividing line would be passed through my building.

I did write to the defendant after I obtained transport. The letter was posted by registered mail. This is the acceptance receipt, tendered, admitted and marked Exhibit "E".

On 22/7/65 I instructed my solicitor Mr. D. Dial to write the defendant. This is the letter out of the custody of the defendant, tendered, admitted and marked Exhibit "F". The defendant has not complied with the request contained in Exhibit "F". I have therefore been compelled to request the owner of sublot B to allow me to use her means of ingress and egress to the Public Road and she has given me permission. I had to build up the passageway in order to use it. It cost me $50:

In 1965 the defendant removed the paling which she had erected in 1957.

During 1966 I took a carpenter one Alstrom to measure the defendant's land as enclosed by her paling. He measured along the eastern paling between the northern i.e. the 1961 paling and the southern paling of defendant. It measured about 97 ft.

There is a surveyor's paal on the southern boundary of S½ of lot 28 Princess Street.

Defendant's southern paling is about 2 ft. south of the paal. She, defendant has taken in about 13 ft. by the width of the land. She is not entitled to this portion of land. The carpenter took other measurements.

In the High Court of the Supreme Court of Judicature

No. 5

Evidence of Plaintiff 13th January, 1967. Examination Continued.

I am claiming a declaration that I as owner of sublot A am entitled to a right of ingress and egress over and along the land in the occupation of the defendant and belonging to me. There is no other way which I have a right to get out onto the road. I am also asking for an injunction in terms of para. 13 (b) of the Statement of Claim.

I claim damages in excess of $500: for trespass and an injunction restraining defendant from trespassing on the portion of land. I have surrendered my tenancy in respect of the land I occupied by lease when I purchased sublot A. I also claim costs.

Cross-examination.

Cross-examination by Mr. Fitzpatrick:

I first went on the land in 1943. I know Miss Hodge. This is the maiden name of my wife. My wife's mother is dead. She died about 1961 to 1962. I married Miss Hodge in 1951.

I never lived at S½ of lot 28 Princess Street before 1951 when I got married.

Before this time my wife and her mother lived in a house on the land. This house was owned by my wife and mother. This is the house which I extended in which I now live.

I knew my wife and mother since 1928. They occupied the portion of land on which my house now stand by way of a yearly tenancy. I took over this tenancy in 1951. I bought the house later in 1951 from my

In the High Court of the Supreme Court of Judicature

No. 6

Evidence of Plaintiff, 13th January, 1967. Cross-examination. Continued.

wife and her mother. I obtained a registered lease in 1955. I bought the building for $1,000.00.

I took over the tenancy by paying the rent and receiving receipt in my name. My wife and mother consented to this. My mother-in-law erected the building in 1943. I bought it in 1951.

In 1943 there were no palings to demarcate the boundaries of my mother-in-law's tenancy. My mother-in-law lived with me up to the time of her death.

After becoming owner I never entered into any agreement of lease with the defendant. The offer of the tenancy contained in Exhibit "D" was not accepted by defendant. She did not offer to enter into any agreement of lease.

I was not living at lot 28 Princess Street in 1943. I first lived there in 1951. I do not know when the defendant first occupied the southern portion of lot 28 Princess Street. She was there in 1943 and also when I moved in in 1951.

I would know when my mother-in-law carried out any work on the land occupied by her as I would be consulted. I am 63 years old. When my mother-in-law moved in she did not dig a drain so as to divide the portion of land occupied by my mother-in-law from that occupied by defendant.

The land used to flood very quickly. The drain was dug in 1948. The drain is silted up. Some evidence of a drain being there, can be seen. When I took over tenancy drain was in existence. The distance between the southern boundary of lot 28 and the drain is about 97 ft. The drain was

dug on my instruction by my mother-in-law. The drain is about 2 ft. north of the paling erected by defendant in 1961. The drain has never been re-dug. The drain dug in 1948 was dug along the southern boundary of the land occupied by my mother-in-law.

In the High Court of the Supreme Court of Judicature

No. 5

Adjournment to 1 p.m.

Evidence of Plaintiff 13th January, 1967. Cross-examination Continued.

Isaac Boxwill sworn further states:

The drain was not dug in 1943. It was dug to prevent flooding. It was not dug to define the southern boundary of my mother-in-law's portion of land. It was just a coincidence that drain happened to be dug along the southern boundary of my mother-in law's place. The drain was dug on my advice.

I was close to my mother-in-law in 1943. The lot 28 floods every year from the time I knew the lot in 1943. It was dug after a very severe flooding. This was not the first time the land had flooded. The land had been flooded 2 or 3 times before the drain was dug. I cannot remember any flooding in 1943.

In 1944 there was a flooding of the land. 1948 was the first year in which I advised my mother-in-law to dig a drain on the land. The drain was not dug as an inter sublot drain. After the drain was dug it was never cleaned out or serviced. I raised the level of the land after 1948 and before 1951. Both before and after 1957 I was engaged in raising the level of the land. I completed this task sometime in 1952.

Between 1948 and 1952 the drain dug by my mother-in-law was cleaned once. I

In the High Court of the Supreme Court of Judicature

saw defendant put up the palings in 1957. The defendant did not have a barbed wire fence around the portion of land occupied by her at any time since 1943. The paling which defendant erected in 1957 was not in lieu of a barbed wire fence as there was no such fence.

No. 5

Evidence of Plaintiff 13th January, 1967. Cross-examination. Cont'd.

The defendant did put a new fence in 1961 some distance north of the then existing fence. The fence now there is not the one erected in 1957. In 1965 defendant removed 1957 fence and set it up on the western boundary of the portion of land occupied by her.

The western fence is owned by the adjoining landlord. There has always been a western fence. The defendant removed the 1957 fence and re-erected it to form an enclosure to the north western corner where the 1961 paling meets the western paling. She has not since taken down part of the enclosure.

From 1961 defendant did erect an enclosure at north western corner to accommodate some plants. She did not erect this enclosure in 1957 but rather in 1961. It is still there. The plant enclosure is the same enclosure to which I referred earlier. The enclosure was there in 1961. The 1957 paling was used to build the enclosure in 1965. I took no action with regard to the encroachment by the defendant until the letter in 1965. I took no action because I was not the owner. I did however, speak to the owner in 1961 about

the encroachment. I had registered lease at that time.

I did go to my lawyer in 1965 for the first time. I entered into an agreement to purchase the land in 1960 from the Estate of Ellen Joseph.

There was a piece of land to the east of sublot A measuring 6 ft. by about 174 ft. which formed part of sublot B. The owner ofsublot B is a Mrs. Johnson. She got transport during last year (1966).

The piece of land to the east of sublot A was used by my mother-in-law as a means of egress and ingress and subsequently by me in capacity as tenant in substitution for my mother-in-law.

It has also been used since 1942 by the tenant of the portion of land to the north of sublot A and is used by a tenant of the present owner of that portion of the land. When I bought sublot A I knew that defendant was tenant of the southern portion of the sublot.

It was the intention that S½ lot 28 Princess Street should be divided into two portions. I did not ask the Estate of Ellen Joseph for a right of way along the strip of land east of mine because there was sufficient land for ingress and egress on the portion bought by me. There has been a bridge connecting lot 28 Princess Street since 1957. This bridge is built to connect the strip of land on the eastern side of the lot which had been used as a means of ingress and egress.

Re-examination by Mr. Luckhoo:

There is another bridge from the

In the High Court of the Supreme Court of Judicature

No. 5

Evidence of Plaintiff 13th January, 1967. Cross-examination. Continued.

Re-examination.

In the High Court of the Supreme Court of Judicature

No. 5

Evidence of Plaintiff, 13th January, 1967. Re-examination. Continued.

defendant's holding to Princess Street. I was a regular visitor to my mother-in-law and my future wife, her daughter, before 1951. My wife bore me two children, one in 1935 and the other in 1937. She was my common law wife even before she and her mother went to live in Princess Street in 1943. I visited my wife in Princess Street about four times per week before I took up permanent residence in 1951. I used to sleep there.

NO. 6

EVIDENCE OF HUGH ANGUS HOWARD

2nd Witness.

Hugh Angus Howard sworn states:

I am a Sworn Surveyor attached to the Lands & Mines Department. I have a copy of a plan of S½ lot 28 south section Lodge which was lodged in the Department of Lands & Mines on 25.10.65 by M.S. Ali, Sworn Land Surveyor, and recorded as plan No. 10,074. This is a print of plan No. 10,074, tendered, admitted and marked "G" (by consent). (Mr. Luckhoo undertakes to lay over a certified copy of plan No. 10,074. Mr. Fitzpatrick has no objection to this course of action).

Cross-examination:
Declined.

NO. 7

In the High Court of the Supreme Court of Judicature

EVIDENCE OF CHARLES ALSTROM

3rd Witness.

Plaintiff's Evidence

No. 7

Evidence of 3rd witness - Charles Alstrom 13th January, 1967, Examination.

Charles Alstrom sworn states:

I am a carpenter. I know the plaintiff. He lives in Princess Street, Lodge. Between 1943 and 1944 I paled with wooden palings the western, northern and eastern sides of the portion of land which he was occupying at lot 28 Princess Street, Lodge.

I built a house at Princess Street in 1943 to 1944. I built the paling referred to earlier in my evidence in about 1956. It was the house which I built in 1943-44.

There was no other paling on the land. The southern side in front of the building which I constructed was left open. I am 67 years old.

Cross-examination.

Cross-examination:

It took a considerable time to complete the house. I cannot remember how long it took me to complete the house. I took over one year . I did not work continuously on the house. It took me less than 6 years to complete.

I cannot remember when I first saw plaintiff and Miss Hodge and her mother living in the house.

The first palings were put up by me in 1956 on the western, northern and eastern side of the land. It took less than 3 months to construct the paling.

When I commenced building the house there was a house south of the one under construction. There was no barbed wire fence dividing the two houses. I did not take notice of any drain. I did not see any drain in 1956

In the High Court of the Supreme Court of Judicature

when I erected the palings. I have not at any time seen a drain running east to west between the plaintiff's house and the one to the south of it.

Re-examination:

Declined.

Plaintiff's Evidence

No. 7

Evidence of witness - Charles Alstrom, 13th January, 1967. Cross-examination continued.

No. 8

NO. 8

Evidence of 4th witness - Doris Johnson, 13th January, 1967, Examination.

EVIDENCE OF DORIS JOHNSON

4th Witness.

Doris Johnson sworn states:

I live at 22 Robb Street, Bourda. I am the mother and guardian of Hazel Johnson who is the owner of a portion of land situate at lot 28 Princess Street, Lodge.

She got this land by inheritance from one Ellen Joseph, deceased. This is the Transport No. 312 of 1966 in respect of the portion transported to my daughter, tendered, admitted and marked Exhibit "H".

Cross-examination.

Cross-examination by Mr. Fitzpatrick:

Hazel Johnson is now 12 years old.

The plaintiff asked me permission to use the strip of land to the east of his land as a right of way. I have allowed him to do so. This was after transport was passed to my daughter. I had no discussions with plaintiff prior to the passing of transport to my daughter.

In the High Court of the Supreme Court of Judicature

Plaintiff's Evidence

No. 8

Evidence of 4th witness - Doris Johnson, 13th January, 1967. Cross-examination, Cont'd.

Re-examination:

Declined.

Adjourned to 24/1/67 at 10 a.m.

Tuesday, 24th January, 1967.

Court resumes.
Mr. R.H. Luckhoo instructed by Mr. Dial for plaintiff.

Mr. M. Fitzpatrick instructed by Mr. de Caires for Defendant.

By consent of Counsel for plaintiff and defendant a certified copy of plan No. 10,074, tendered admitted and marked "J".

NO. 9

No. 9

EVIDENCE OF MARGARET KINGSTON

5th Witness.

Evidence of 5th witness- Margaret Kingston, 24th January, 1967. Examination.

Margaret Kingston sworn states:

I live at Beterverwagting, East Coast Demerara. I am the executrix

In the High Court of the Supreme Court of Judicature

Plaintiff's Evidence

No. 9

Evidence of 5th witness - Margaret Kingston, 24th January, 1967, Examination, Cont'd.

under the will of Ellen Joseph, deceased and of the Estate of Louis Joseph, deceased. This is the probate of the Estate of Ellen Joseph, tendered, admitted and marked Exhibit "K1" and this is probate in re the Estate of Louis Joseph, deceased, tendered, admitted and marked "K2". By virtue of Exhibit "K1" the S½ lot 28 Princess Street, Lodge was devised to Hazel Johnson and Joyce Rodney in equal shares. Joyce Rodney is my neice.

Messrs. Cameron & Shepherd, Solicitors were collecting rents from the tenants on S½ lot 28 at the death of Ellen Joseph and continued to do so after I became executrix. Cameron & Shepherd also issued receipts of the rent collected. They acted as my agents. I collected no rent. I know the plaintiff and defendant.

About 1957 defendant came to me at Beterverwagting and she asked me to give her a written contract in respect of the land she was renting as she did not have one. I told her that she should speak to one Rodrigues, a clerk to Messrs. Cameron & Shepherd.

The plaintiff purchased my niece's interest in lot 28 Princess Street and paid a deposit in December 1960.

Some months after I saw defendant who came to me at Beterverwagting and told me that she had heard that plaintiff had bought the land i.e. part of S½ lot 28 Princess Street. I said yes. Defendant said she was sorry to hear of this as she was the oldest tenant on the land. I told her that she had never made an offer to purchase. She appeared

very flurried.

About a few months after the plaintiff came to me at Beterverwagting and told me something and I told him something in reply. Transport was advertised in respect of the portion of land which the plaintiff bought in 1963.

The defendant entered an opposition followed up by an opposition action. The action was dismissed with costs. I at no time gave the defendant permission to extend her building and to take any more land. I am 80 years old.

Cross-examination by Mr. Fitzpatrick:

In 1965 I passed transport to plaintiff in respect of sublot A part of S½ lot 28 Princess Street. The S½ was surveyed and divided into sublots A and B. I do not know the S½ lot 28 Princess Street. I never went there. I did agree to the survey being carried out. Messrs. Cameron & Shepherd were my lawyers for the purpose of passing transport. The surveyor's plan was shown to me.

Re-examination:
Declined.

In the High Court of the Supreme Court of Judicature

Plaintiff's Evidence

No. 9
Evidence of 5th witness, Margaret Kingston, 24/1/67.
Cross-examination.

NO. 9A

NOTES OF TRIAL JUDGE

No. 9A

Notes of Trial Judge, 24th Jan., 1967, 4th Feb., 1967, 15th & 27th April, 1967.

At this stage Mr. Luckhoo informs court that an important witness, Victor Rodgigues, is very ill. He submits a letter from Rodrigues to this effect. Matter adjourned to 1 p.m. for report as to earliest possible time that Rodrigues can attend

In the High Court of the Supreme Court of Judicature

No. 9A

Notes of Trial Judge, 24th January, 1967, 4th February, 1967, 15th & 27th April, 1967.

court to give evidence.

1.05 p.m.

Mr. Luckhoo informs court that he has spoken to Rodrigues who has expressed his willingness but cannot tell before Friday 3/2/67 when he has an appointment with his doctor re an electrocardiograph examination.

Adjourned to 4/2/67 for report.

Mr. R.H. Luckhoo informs the court that Mr. Rodrigues is now permitted light work and requests one further adjournment.

Mr. Fitzpatrick offers no further objection.

Adjourned to 15/4/67 at 9.00 a.m. (In Chambers),

Mr. Luckhoo informs court that he has received information that the witness to be called, Rodrigues, has lost 6 lbs. in weight and his doctor thinks it unadvisable for him to attend court. In the circumstances he asks that the matter be further adjourned to a date for mention.

Fixed for Monday, 13th March, 1967 at 9 a.m. for mention.

Mr. R.H. Luckhoo informs court that Mr. Rodrigues is now permitted light work and request one month's adjournment.

Adjourned to 15/4/67.

Thursday, 27th April, 1967

Mr. Luckhoo requests that

before he closes case for plaintiff he be permitted to amend the Statement of Claim in respect of paras. 10, 12, and 13 (d) where figures and words 18 ft. appear to read 13 ft. Mr. Fitzpatrick offers no objection.

Amendments granted.

Case for Plaintiff.

In the High Court of the Supreme Court of Judicature

No. 9A

Notes of Trial Judge, 24th January, 4th February & 15th & 27th April, 1967.

Continued.

DEFENDANT'S EVIDENCE

NO. 10

EVIDENCE OF ROSALINE ANTIGUA

Defendant's Evidence

No. 10

Evidence of 1st Witness - Rosaline Antigua, 27th April, 1967.

Examination.

1st Witness.

Rosaline Antigua sworn states:

I am the defendant. I know lot 28 Princess Street, Lodge.

On the 4th November, 1939 I first rented a piece of land situate at the above lot. I rented the front portion of the land. This was nearest to Princess Street. It measured 96 ft. from north to south and 34 ft. in width from east to west. The full width I rented in 1939 was 38 ft. not 34 ft.

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 10

Evidence of 1st Witness - Rosaline Antigua, 27th April, 1967.

Examination Cont'd.

I rented the land leased for one year and personally went into occupation in 1940. When I first leased the land in November 1939 it had no fences at all and had bush growing on it. I cleared away the bush during 1939 to 1940 and put up barbed wire fencing along the northern, southern and eastern boundaries.

One Mrs. Hope gave me the barbed wire. I put no other fence along the eastern boundary. I rented the land from one Ellen Joseph at $6.00 per year. The present rent is $30.00 per year.

I put up the eastern barbed wire fence about 4ft. west of the eastern boundary of the land I leased.

Before I went into actual occupancy and during 1940 I removed a house with the land. The northern barbed wire fence as well as the southern barbed wire fence were laid on the boundaries of the land I leased.

When I leased in 1939 the land behind the portion leased by me was in bush.

In 1943 one Mrs. Hodge erected a house on a portion of land comprising lot 28 Lodge behind the land rented by me. At that time my northern piece was still standing. A drain was dug by Miss Joseph the owner of lot 28 from east to west about 8 inches north of my barbed wire fence. This was done in 1943.

After Mrs. Hodge completed the erection of her house she went to live in it. Mrs. Hodge got access to Princess Street by walking through the portion of land fenced by me. My husband gave her permission and in order to give her access a gap was made in the eastern fence towards its southern end. She would then pass through the gap and then walk on my bridge on to Princess Street.

The bridge used was about 4 ft. east of my eastern barbed wire fence. To get to the gap in the fence Mrs. Hodge used to walk along the 4 ft. strip of land between my eastern fence and the eastern boundary of the land leased by me. She could not walk along the whole length of this strip because there was no bridge connecting it with the road.

In 1939 there was and still is today an inter-lot drain between lot 28 and lot 29 Princess Street lot 27 is east of lot 28. I first saw a bridge leading from the 4 ft. strip of land to Princess Street in 1957.

I had left Princess Street for McKenzie in 1949 and returned in 1957. Mrs. Hodge was still living north of me in 1957. She was then using the new bridge leading from the strip of land to Princess Street.

In 1957 July when I returned from McKenzie I erected a wooden paling fence on the northern boundary of my land as the barbed wire fence had fallen. The wooden fence was erected about 1 ft. south of the old barbed wire fence. I removed the barbed

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 10

Evidence of 1st Witness - Rosaline Antigua, 27th April, 1967.

Examination, Cont'd.

wire. I at the same time erected wooden palings in place of the barbed wire fence on the east and south. These palings were put up along the same lines as the existing barbed wire fences.

After I put up my eastern fence the width of the strip was widened by 2 ft. 5 inches as I had constructed the new fence about 2 ft. 5 inches west of the eastern barbed wire fence.

Since erecting the eastern paling it fell into disrepair and I erected new ones, about 2 weeks ago. This new eastern paling is 2 ft. west of the previous wooden paling thus leaving a strip of land approximately 8 ft. wide leading to Princess Street.

Since erecting the northern and southern wooden palings in 1957 I have not removed them. I have only repaired them. The drain dug by Miss Joseph in 1943 is silted up but the depression can still be seen.

My northern paling is about 8 or 10 inches south of the southern edge of the drain.

Since 1957 persons living to the north of me on lot 28 Princess Street have used the eastern passageway and the eastern bridge as a means of ingress and egress to Princess Street.

The plaintiff and his wife now lived in the house erected by Mrs. Hodge. There is a house to

the north of the plaintiff's house. It is occupied by a Mr. and Mrs. Thomas. They also use the passage-way on the eastern side of my eastern palings.

When I returned from McKenzie in 1957 I met the Thomases living in this third house. Since then they have been using the passage to the east of my eastern paling. I also saw that the plaintiff was living in Mrs. Hodge's house.

Since 1957 no one to my knowledge has used any portion of the land enclosed by me as a means of access to Princess Street.

In 1961 I rebuilt my house at lot 28 Princess Street. I did not remove any of the palings.

In 1965 I opposed the passing of transport in respect of sublot A part of lot 28 Princess Street from the estate of Ellen Joseph to the plaintiff.

The land rented by me is situate on the southern portion of sublot A. I opposed because Ellen Joseph had orally promised to grant me a long lease. I was advised not to pursue the opposition. My lawyer had followed up the opposition by a writ.

I did not proceed with the matter because of advice tendered to me by another lawyer.

I last paid rent in 1965 to Messrs. Cameron & Shepherd for the estate of Ellen Joseph. This is my receipt, tendered, admitted and marked Exhibit "L".

During 1966 I entered into negotiations with the plaintiff

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 10

Evidence of 1st Witness - Rosaline Antigua, 27th April, 1967.

Examination, Continued.

In the High Court of the Supreme Court of Judicature.

Defendant's Evidence

No. 10

Evidence of 1st Witness - Rosaline Antigua, 27th April, 1967,

Examination Cont'd.

about the rental of the land I hold under lease. He required that I pay $60.00, per year. I refused to do so.

The witness Doris Johnson had never spoken to me concerning the passageway to the east of my eastern fence. So far as I am aware no one has ever prevented me or anyone else from using this passageway as a means of ingress and egress to Princess Street.

I know that lots 26 and 25 which are on the western side of lot 28 Princess Street also have right of way to accommodate the persons who live on the northern portions of the land. These are between 6 and 8 ft. wide. Lot 27 also has a similar right of way. I first learnt that the plaintiff had obtained Transport from sources other than the plaintiff. I learnt this in 1965. I have not encroached on the plaintiff's land. I oppose the grant to the plaintiff of a passageway through the land leased by me.

4.15 p.m.

Adjourned to Saturday at 10 a.m.

29th April, 1967

Cross-examination on 29th April, 1967.

Rosaline Antigua sworn states: (under cross-examination by Mr. Luckhoo).

I was married in 1940. My husband is dead. He died on the 13/7/55.

I was the original tenant of the land I now occupy. I am sure the measurement of my tenancy was 38 ft. x 96 ft. I have no doubt about it. I gave my receipts for payment in respect to my tenancy to Mr. Weithers my lawyer in the opposition suit.

I had a contract for six years in respect of the area I leased. It is misplaced. I discovered it was lost around 1953. I last saw this contract - in 1949 - when I left for McKenzie; I left the contract with one Pearlie Brown.

If my tenancy was two feet less in width by the length this area would constitute a fairly large portion of my tenancy. My 6 years contract was executed in 1939. It was not registered.

My husband was not a party to the contract. My husband was present when I signed the contract. It was executed at the home of one Mrs. De Harte. After I became a tenant my first act was to clean the bushes. I clear the whole area leased. I purchased a house in Victor Street, Lodge and transferred it to the land leased.. The house measured 20 ft. x 18 ft. I then fenced the land on three sides. The western side already had palings put up by the adjoining occupier. I did not only fence my land in 1957. I fenced it with three rows of barbed wire. I left my barbed wire fence standing when I went to McKenzie. My eastern paling was placed 2 ft. west of my eastern boundary when I first paled the yard. The gap which was opened in the eastern fence was about 5 or 6 ft. from my southern boundary. At that time my bridge consisted

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 10

Evidence of 1st Witness - Rosaline Antigua, 29th April, 1967. Cross-examination continued.

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 10

Evidence of 1st Witness, Rosaline Antigua, 29th April, 1967. Cross-examination Cont'd.

of a 3 ft. wide plank. It was about 15 ft. west of the eastern paling. At that time there was no ill-will between Hodges and me.

The plaintiff used to visit the Hodges regularly. He used to sleep there sometimes. The plaintiff was occupying an area measuring 82 ft. x 38 ft. We all paid the same rental. The drain was dug about one month after the Hodges leased. This is the drain at the back of my lease. Miss Joseph did cause the drain to be dug. I did hear my counsel suggest to the plaintiff that his mother-in-law caused the drain to be dug. I did not remember to correct him. My land was not open.

Up to 1953 when I paid a visit from McKenzie the Hodges were still using my bridge. When I came down in 1957 I saw that a bridge leading to the road from the passage had been constructed.

In 1957 I took in my eastern paling by 2ft. 5 inches so as to widen the passageway. I did shift my palings 1 ft. south from the portion of the barbed wire fence in 1957. I asked Mrs. Kingston, the witness for permission to enlarge my house. I extended my house to 36 ft. x 25 ft. and constructed a bottom flat. This was done in 1961. I did sign an application. I cannot remember whether I stated in my application that the measurement of my land was 90 ft. x 38 ft. The house as enlarged measured 36 ft. from north to south. I am not annoyed because I was not given

the first option to purchase the land.

I did consult Mr. Ramprashad, Barrister-at-Law with a view to his writing Mrs. Kingston about the land.

I also went to Messrs. Cameron & Shepherd to this end. These are two letters written on my behalf, tendered, admitted and marked Exhibit "M1" and "M2" (by consent). I took in no more land.

I cannot remember what time of the year in 1961 I commenced construction. I commenced construction before I consulted Mr. Ramprashad. In November 1961 I consulted Mr. Manraj, Barrister-at-law with a view to writing Mrs. Kingston about the land. This is the letter written by Mr. Manraj, tendered by consent, admitted and marked Exhibit "N". After reading Exhibit "N" I say I did tell Mr. Manraj that I discovered that the place was sold to the plaintiff in February, 1961.

In 1963 I entered opposition to the passing of Transport to the plaintiff. This is a copy of the writ and endorsement of claim prepared and filed by my lawyers as a follow up to the opposition. Tendered and admitted by consent and marked Exhibit "O".

3.45 p.m. adjourned to a date to be notified.

4/1/68

Appearances as before.

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 10

Evidence of 1st Witness, Rosaline Antigua, 4th January, 1968. Cross-examination. Continued.

Rosaline Antigua sworn further states in cross-examination:

My husband was not the first tenant of the land occupied by me nor were receipts ever issued in his name. I was always the tenant.

I paid Ellen Joseph. I also paid rents to Cameron & Shepherd, Solicitors, in 1957. I also paid to other persons on behalf of Ellen Joseph. She was also called Sissy Joseph. I know her handwriting.

When I returned from Mc Kenzie in 1953 I did search for my document of lease. I did not find it. I was married on the 17th August, 1940.

I did give my lawyers writ concerning the filing of action No. 2163 of 1963 Demerara and the preparation of pleadings. My lawyers did read through to me the pleadings they subsequently filed in the matter.

Paragraph 4 of the Endorsement of Claim is not correct. The length of the land leased by me is 96 ft. and not 95 ft. Para 9 repeats the length as being 95 ft.

Paragraph 5 of my Statement of Claim repeats the area as being 95 ft. x 36 ft. Paras. 10 and 11 also give the same measurements. My lawyer made a mistake in recording 95 ft. I did have a lease. It is not true that the land rented by me only measured 82 feet in

length.

With regard to paragraph 6 of the Statement of Claim an application was made by summons to the Court for the production of the lease referred to for the purpose of inspecting and making a copy. I cannot say whether an order for the production of the lease was made by consent. I told my lawyers that the documents of lease had been lost since 1953.

Mr. Luckhoo asks leave to recall witness at a later stage when the documents referred to in the application for subpoena duces tecum are available.

Mr. Fitzpatrick offers no objection to this application.

Re-examination:
Declined.

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 10

Evidence of 1st Witness, Rosaline Antigua, 4th January, 1968. Cross-examination continued.

NO. 11

No. 11

EVIDENCE OF STANLEY DORIS

2nd Witness.

Evidence of 2nd Witness, Stanley Doris, 4th January, 1968. Examination.

Stanley Doris sworn states:

I am a carpenter. I know the defendant. I did some carpentry work for her around 1945 to 1947. It was about 20 years ago that I did the work. I rebuilt the palings. There was broken-down barbed wire fence on the eastern, northern and southern sides. I rebuilt these three sides by placing wooden palings. The barbed wire

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 11

Evidence of 2nd Witness, Stanley Doris, 4th January, 1968.
Examination Continued.

was removed. On the eastern side the new paling was erected about 1 or 2 feet. West of the existing barbed wire paling. I placed the palings on the southern side in the same position as the existing palings.

There was a house north of the defendant's premises. The northern barbed wire paling was south of this house. There was a drain running from east to west across the land and the barbed wire paling was south of this drain. I built the new wallaba palings in the same position as the old barbed wire paling was.

Besides the paling I repaired the bridge. I did no other work than the palings and the bridge at that time. Sometime between 1953 and 1955, the actual year I cannot remember. A new and larger building was erected for the defendant around the old building. I worked for one Ceres on the building. I cannot remember the year when the building was reconstructed but I can remember that the palings were constructed between 1945 and 1947.

When I left the job of enlarging the building it was not complete. I have never since worked there. When I worked on the building I did no work on the palings. Since replacing the barbed wire palings by the wallaba palings I have not done any work to the defendant's palings.

Cross-examination.

Cross-examination by Mr. Luckhoo:

I am speaking the truth. I

I have not come to assist the defendant. When I constructed the palings the land to the north of the defendant's land did have an extra paling made of wood. The barbed wire paling on all sides was flat on the ground. I noticed no other palings in the area behind the defendant's holding. The drain north of the barbed wire paling was about 4 to 5 inches deep and 7 to 9 inches wide. The wooden paling was built about 6 inches south of this drain.

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 11

Evidence of 2nd Witness, Stanley Doris, 4th January, 1968. Cross-examination continued.

Re-examination:
Declined.

10.20 a.m. Adjournment for 5 minutes.

10.35 a.m. Resumed.

NO. 12

No. 12

EVIDENCE OF NEBERT THOMAS

Evidence of 3rd Witness, Nebert Thomas, 4th January, 1968. Examination.

3rd Witness.

Nebert Thomas sworn states:

I live at 28 Princess Street, Lodge and I have lived there since 1953. I know the plaintiff and the defendant. The plaintiff lives in the front house on lot 28. The defendant lives in the house north of the defendant and I live in the house north of the plaintiff's house.

When I first went in the

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 12

Evidence of 3rd Witness, Nebert Thomas, 4th January, 1968. Examination continued.

house in 1953, one Hodge, a woman, lived in the house now occupied by the plaintiff. Ellen Joseph also known as Sissy Joseph was my landlord. I had leased a piece of land from Joseph and erected on it a house the one in which I live in 1953.

This is the lease tendered, admitted and marked Exhibit "P". Under Exhibit "P" I am entitled to a right of way 4 ft. in width on the eastern side of the lot leading to Princess Street. I did use and am still using that right of way. I used to walk along the right of way to a part near to the front or the southern side of the defendant's land, walk westward onto her land and onto a plank across a trench. This plank led to Princess Street. The right of way led to the trench but there was no bridge across it.

This was my reason for going onto the defendant's land. The woman Hodge used the same means of ingress and egress. I later constructed a bridge i.e. around 1955. Thereafter I used the bridge and ceased walking through the defendant's land.

I cannot remember whether Hodge was still living there. The plaintiff was not there when I went to live on the lot in 1953. The occupants in Hodge's house also used the bridge I built after it was constructed.

In 1953 there was some old fencing on the eastern side, the

northern side, and the southern side of the defendant's land. These fences were later replaced by wood and zinc. The zinc paling is on the northern side. This paling is partly of wood and partly of zinc. It was after I built the bridge that the new paling was put up.

When the defendant put up the new eastern paling it was placed about 2 ft. west of the old eastern paling. This made the right of way in the vicinity of her land about 6 ft. wide.

From my observations it appears that the northern paling of the defendant's land was built about 1 ft. south of the old palings. There is an east to west drain which is about 10 to 18 inches north of the palings. The old palings were nearer to the drain than the new palings.

In 1953 the drain was north of the paling. The old paling was south of the drain. The new zinc and wood paling is still there in the same position.

I know the plaintiff was living in Hodge's house some time in 1955. He also used the bridge put up by me. The bridge I built was destroyed but the plaintiff built a better bridge which is still in existence. This is the bridge now used by the plaintiff and me. No one has asked me nor have I ever paid any money to use the right of way.

The plaintiff and I had a case during 1966 in the Magistrate's Court. He brought an action against me for damages for destroying his eastern paling. I had

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 12

Evidence of 3rd Witness, Nebert Thomas, 4th January, 1968. Cross-examination.

broken down this paling during 1966 because it was built on the right of way. This paling had been built around 1955 and only left a 2 ft. right of way. After sending several notices to him to no avail I broke it down. The case was struck out.

Cross-examined by Mr. Luckhoo:

I and the plaintiff's family are on friendly terms. The plaintiff's wife did file a writ of slander against my wife. I am speaking the truth. I never saw the plaintiff before 1955. The 146 ft. refered to in Exhibit "P" could be a mistake. The palings built by the plaintiff are all still in existence and in the same position as when they were first built by her.

I do not know that the plaintiff is a carpenter by trade.

There was a paling dividing the plaintiff's land from the defendant's land in 1953.

The paling on the eastern side of the defendant's land was in a bad state of disrepair. About 3 ft. before the Princess Street boundary the eastern paling ends.

The plank from the defendant's land to Princess Street was about midway along the southern boundary. I now say it was 8 ft. west from the eastern paling.

The whole of the back paling is zinc. It has been zinc from the time it was put up.

Re-examination.

Re-examination:

The northern paling was

completely zinc when it was put up. The eastern paling when put up was partly of zinc and partly of wood.

In 1966 I noticed some work being done to the northern paling of the defendant's land. The paling was strengthened by putting in wallaba beans and posts. It was not moved. I have not noticed any evidence of an old northern paling. By consent, paragraphs 9, 10, 12 and 13 of the Statement of Claim amended to read 13 ft.

11.37 a.m. Adjourned to 1.15 p.m.
1.20 p.m. resumed.
1.25 p.m. adjourned for 15 minutes.
1.43 p.m. resumed.

Case for Defence.

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

No. 12

Evidence of 3rd Witness, Nebert Thomas, 4th January, 1968. Re-examination continued.

NO. 13

No. 13

DEFENDANT'S COUNSEL'S ADDRESS TO COURT

Defendant's Counsel's Address to Court. 4th, 8th & 10th January, 1968.

Mr. Fitzpatrick:

(1) Right of way of necessity.
(2) Damages of Trespass.

Trespass:
Question of fact.

Evidence of encroachment entirely conflicting; encroachment effected in 1961 when house was being re-built.

Evidence of defendant and her witnesses is that there was an old barbed wire paling.

In the High Court of the Supreme Court of Judicature

No. 13

Defendant's Counsel's Address to Court continued 4th, 8th, & 10th January, 1968.

Evidence of supporting witnesses for the defendant the same except that of Thomas.

Conflicts are secondary. Evidence of Thomas is that he went there in 1953.

Central contention of defendant supported by her witnesses by plaintiff's evidence enclosure with plants south of drain and drain dug along the southern boundary of land occupied by mother-in-law.

Drain according to Boxwill was dug in 1948. Seventeen years defendant's northern fence accepted as delineating the boundary.

Not proved that defendant not entitled to 97 ft.

No evidence that plaintiff entitled to 82 ft. commencing from a certain point. Plaintiff not proven a better title.

No evidence that the defendant was illegally occupying difference between 82 and 97 ft. To do so plaintiff must prove that defendant's agreement gave her 82 ft. Nothing to show that Antigua did not lease 97 ft.

Plaintiff first places himself as tenant in 1943. In cross-examination it comes out that he was not tenant until later after his mother-in-law died.

If in 1951 Antigua was in fact occupying 96 ft. strong evidence that she was in fact leased 96 ft. 82 ft. mentioned in Exhibit "B" must be an

error.

Right of way of necessity passes through land of his tenant. Plaintiff became purchaser in 1965.

Evidence of user of a right of way. If no provision in Transport, plaintiff is entitled to a way of necessity from previous owner and all subsequent owners.

Had right of way prior to taking up Transport. Estate of Joseph passes transport with full knowledge of lease in favour of defendant. Plaintiff did not create defendant's lease.

Is it tenant or previous owner and successors in title who must grant right of way of the tenant contends that the statutory tenant protected defendant in same position as neighbouring owner.

Courts are reluctant to adversely affect the interests of innocent third parties.

Original division between Joseph and Boxwill.

Both estate of Joseph and plaintiff knew that land was being sold subject to defendant's tenancy and therefore the plaintiff's house would be landlocked.

Refers to Bail on Easements, 13th Ed. page 98.

Refers to Chappel v. Mason, vol. 10 T.L.R. (1894).

Adjourned to Monday 8/1/68 at 2 p.m.

In the High Court of the Supreme Court of Judicature

No. 13

Defendant's Counsel's Address to Court continued 4th, 8th & 10th January, 1968.

In the High Court of the Supreme Court of Judicature

No. 13

Defendant's Counsel's Address to Court. Continued 4th, 8th & 10th January, 1968.

8/1/68: Resumed.

Mr. Fitzpatrick continues his address:

Contends that while plaintiff has a way to Public Road, which he is at present using and which is extremely inconvenient then he cannot succeed before Court in claim for way of necessity.

English authority seems to consider that way of necessity results from implied grant. Gale seems to say that time of disposition of land is important. Refers to page 98.

Roman-Dutch Law basically different. Refers to page 66 Hall and Kellaway, para. (a) 68, para. (c) reasonable and sufficient way.

No doctrine of implied grant seems to be applicable.

Lentz v. Mullin (1921) D.D.L. page 268. Referred to at page 68 (Hall v. Kellaway).

Van Schalkwyk v. Du Plessis 17 S.C.C. 464. Inconvenience must be grave before it can be considered necessary.

Gray v. Gray and Estcourt v. Road Board; Vol. 123 Natal L.R. 151. Access during pleasure. Rent Restriction Laws:

Dhanpaul v. Demba (1959) 1 W.I.R., 257, 264. Defendant statutory tenant pleaded.

Evelyn v. Latchmansingh.

In the High Court of the Supreme Court of Judicature

No. 14

Plaintiff's Counsel's Reply to Court, 8th & 10th January, 1968.

NO. 14

PLAINTIFF'S COUNSEL'S REPLY TO COURT

Mr. R.H. Luckhoo:

Trespass.

(1) Admission in evidence that drain was along boundary.
(2) Defendant's evidence uncontradicted.

Admission must not be taken in isolation. Court should look at whole of plaintiff's evidence. Admission was a mistake. Whole tenor of evidence shows that this is so.

Defendant says drain was dug by Miss Joseph. Her lawyer suggests that drain dug by plaintiff's mother-in-law.

Uncontradicted evidence of measurements. Court can disbelieve.

Refers to opposition proceeding 95 x 36. Onus can be discharged on a balance of probabilities.

Refers to evidence of defendant 1st tenant in 1939. Excluded 96 x 4 ft., or x 2 ft. Would she deprive herself of use of land for no good reason - no other tenant on land. Hodges used defendant's plank. No obstruction to get on to plank i.e. no palings. Defendant said he left a gap. No palings before 1956.

One witness gave evidence of

In the High Court of the Supreme Court of Judicature

No. 14

Plaintiff's Counsel's Reply to Court, continued 8th & 10th January, 1968.

putting up palings in 1947. Another speaks of zinc palings.

No necessity to exclude land for any passageway.

Leases tendered in evidence.

Lease prepared by same lawyers who were looking after interest of all leases and intention must have been to decide equally.

Wednesday, 10th January, 1968.

Mr. Luckhoo continues:

Uniform rent - same area?

Question of fact for Court.

When tenancies created query whether surveyor's measurements were known to landlord. Cumulative effect is to weigh balance of probabilities in his favour.

(1) Lease
(2) Evidence of dimensions
(3) Same size
(4) Uniformity of rent
(5) Thomas's lease
(6) Different measurements.

Mr. Fitzpatrick:

Page 412, Halsbury 3rd Ed. Vol. 23 - Land or any part thereof - interest in land. Would not be holding over as a statutory tenant.

If right of way is not appurtenant to existing tenancy it would fall outside definition of building land. If however, it is appurtenant it may very well be assessable.

Mr. Luckhoo:

Jurisdiction:

Saul v. Small not applicable.

Interference by landlord of tenant's use. Defendant is not a statutory tenant. Plaintiff did not seek to bring loan evidence of defendant's tenancy. Could by serving notice and thereafter she would have been a statutory tenant. Dhanpaul's case is good law. If Rent Restriction Ordinance did not apply to lot 28 Princess Street, plaintiff would have been able to have defendant off land as he could have treated her as a trespasser. With Rent Restriction Laws, landlord/plaintiff could not have done so as tenant/defendant is protected. Contractual tenancy has arisen as landlord was willing to have her as tenant. Tenant does not disagree. Relationship of landlord and tenant either continued or was created. Tenant continues in possession as tenant of new landlord. If landlord had served notice to quit tenant would then become statutory tenant. Sufficient evidence on record of this.

A statutory tenancy in the circumstances can be created by any act of the landlord incompatible with the relationship of tenant. Institution of proceedings for possession is sufficient to make tenant statutory. An attempt to interfere with the tenancy would make tenant a statutory one. Assuming a statutory tenancy claims

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declaration and injunction.

3 Damages for trespass.

Little v. Williams (1961) L.R.B.G., 100.

Declaration cannot be made by Magistrate's Court.

Right of way of necessity is a servitude which only Supreme Court can deal with but plaintiff is not asking for a servitude. He is asking for a right, as an occupier of the back portion of sublot A, i.e., right to pass and re-pass to and from the Public Road i.e., to gain access to the Public Road over the front portion of the land of which defendant was tenant.

Adjourned to 1 p.m.

1.05 p.m. Resumed.

Mr. Luckhoo continues:

Rose v. Hanoman L.R.B.G. (1951) 135 at page 144 - 145. Must be two owners of contiguous land. Servitude is in nature of immovable property which one cannot acquire except by conveyance or inheritance.

Hall and Kellaway, 2nd Ed. page 2(e) page 71.

Ross v. White (1906) E.D.C. 313, pages 317-318.

Position before 1965 - 1939 First tenant - Defendant who has the whole width of the land she left out a portion i.e., gave up a portion to allow a passage-way.

If lessor had lived at back, she could have asked lessee for a right of ingress and egress and tenant had refused. No Court would turn its face on lessor but would grant a licence necessary and incidental to the beneficial occupation.

1943-Hodge became tenant and began to use portion excepted by first tenant. This right was incidental and necessary for beneficial occupation of land and house. (Hodge get tenancy of whole width).

1953-3rd tenant got right to pass and repass.

In 1965 Boxwill purchased half of property. It makes no difference whether plaintiff waited until land transported in two separate portions before purchasing or purchasing before transport.

Both sublots had frontage to road. No court could have compelled servitude in respect of sublot A or B. No necessity as lands not landlocked. Boxwill surrendered lease i.e. 6ft. by 82 ft. on his purchase and surrendered plaintiff's right to use front portion as a means of passing and repassing the licence to do so automatically ceased.

Could only use sublot B with permission. Sublots must be treated as two separate properties.

No contractual relationship. Rights in respect of each sublot must be considered separately,

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as two portions of land are separate and distinct.

Even if plaintiff had retained his tenancy in respect of the 6ft. Strip and the right of ingress and egress in Sublot B he would still be entitled to claim a right over the front portion of sublot A, as the two sublots are separate and distinct entities.

Evidence of Servitude:

Plaintiff ask defendant but defendant refused. It was only then that he sought permission. Permission only sought for purposes of convenience, until right determined. Barry v. Hazeline (1952) 2 A.E.R. Interest in land. Magistrate's Court has no power.

If treated as a right necessary to landlord then it does not arise out of her tenancy but his occupation.

Right does not arise out of tenancy.

Mr. Fitzpatrick:

If right of passage is neither a servitude nor easement page 176.

If defendant is statutory tenant and it is urged that licence is a term and condition of tenancy what plaintiff is alleging is that defendant is in breach of implied term to allow him to pass.

If all plaintiff did was hold over there could be no grant.

Arises by implication of law after title passed but as implied term of statutory tenancy in view of Exhibit "D" could not have arisen after transport unless new contract of letting entered into. Attempt to do so failed.

Gravamen of claim not within Court's jurisdiction.

K.M. George
Puisne Judge.

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NO. 15

JUDGMENT DELIVERED BY GEORGE, J.

No. 15

Judgment delivered by George, J. 23rd February, 1968.

1967: January 13, 24; February 4,; March 13,; April 22, 27, 29.

1968: January 10,; February 23.

In 1931 Louis and Ellen Joseph, both deceased, became the owners of the south half of 28 Princess Street, South Section Lodge Village, East Coast Demerara, otherwise known as lot 28 Princess Street, Lodge Village, and in 1939 the latter rented a portion of this lot which abutts Princess Street to the defendant. In 1943 she rented another portion of the lot situate immediately behind that rented to the defendant a Mrs. Hodge, whose daughter was later married to the plaintiff. In 1951 the plaintiff, with consent of Mrs. Hodge and the landlord, was accepted by the latter as tenant in substitution for the former.

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In 1953 Ellen Joseph rented a third portion of the lot situate behind the portion rented to the plaintiff to one Nebert Thomas. It is conceded by both counsel that the portions of land rented to the plaintiff and defendant comprise "building land" as defined by section 2 of the Rent Restriction Ordinance, Chapter 186.

On the 16th April, 1956, Ellen Joseph died and between 1961 and 1963, Margaret Kingston, the executive of her estate as well as administratrix of the estate of Louis Joseph caused the lot to be equally divided into sublots A and B. She sold and transported sublot A to the plaintiff in May 1965 and vested title to sublot B in Hazel Johnson, a minor, aged 12 years. Sublot B consists of the third portion of land leased (in 1953) together with a strip of land 6 ft. wide running within and along the eastern side of the lot leading from this portion to Princess Street. This 6 feet wide portion had, subject to certain observations, which I will later make, being used by Nebert Thomas, the third lessee, and the plaintiff as a means of ingress and egress to Princess Street and is still so used. Since the plaintiff became legal owner the defendant has continued to occupy the land she leased from Ellen Joseph.

The plaintiff in his evidence states that from 1943 to 1965 he was a tenant from year to year of Ellen Joseph in respect of a piece of land 38ft. by 82 ft. commencing 82 ft. from the southern boundary of the lot with a right of ingress and egress

over a piece of land four feet wide running in and along the eastern boundary of the lot leading to Princess Street. He erected a building on the portion of land leased in the former year. In cross-examination, however, he admits that Mrs. Hodge was the tenant from 1943 to 1951 and that she it was, who built the house. It was, he states, in 1951 that he took over the tenancy and purchased the building situate thereon from Mrs. Hodge. He also married her daughter in that year. On the 28th February, 1955, he obtained from the landlord a lease of this portion of land together with the right of ingress and egress for a period of five years with a right of renewal for a similar period which was duly registered. The next year he converted the building which was then a cottage into two flats and also paled the northern, western and eastern sides of the land leased. One Charles Alstrom, a carpenter, was called and he at first states that he constructed these palings between the years 1943 and 1944. He later states however, that he built the house during this period but constructed the palings about the year 1956. He corroborates the plaintiff, who states that when the palings were constructed, there were no other palings on the lot, and more specifically, that there was no barbed wire or other paling in the vicinity of the southern side of the plaintiff's holding.

According to the plaintiff the defendant in the following year, that is, 1957, for the first time put up palings on the southern, northern and eastern sides of her holding. This eastern paling was constructed a distance somewhat more than 4 feet west of the eastern boundary of the

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lot thus leaving a passageway which he used as his means of access to Princess Street. In 1961, he states, she removed her northern paling northwards for a distance of 13 to 14 feet and it is this encroachment about which he complains and seeks his remedy of trespass and injunction against further acts of trespass by the defendant and/or her servants.

Soon after this encroachment he made a complaint to the landlord and in February 1965 caused his Solicitors to write a letter about it to the defendant's Solicitor. He further states that during 1966 he caused the defendant's holding to be measured and it then was and still is 97 ft. long. This distance includes a portion of land 2 ft. southward from the southern boundary of the lot. In 1963, transport of sublot A, which includes the defendant's holding, was advertised to him and the defendant entered an opposition which was followed up by the usual Writ of Summons (action No. 216 of 1963 Demerara). This opposition was later withdrawn and transport passed to him on the 24th May, 1965.

In July 1965 he caused his Solicitor to write to the defendant requesting a means of ingress and egress over her holding to Princess Street but she has refused this request. It is on account of this refusal that he seeks declaration that he is entitled to such a right of way and an injunction restraining her from preventing him from exercising such a right.

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He admits that Mrs. Hodge dug an east to west drain in 1948, along the southern boundary of the land occupied by her. This drain he states was not dug to define the boundary but rather to relieve the flooding of her holding which had previously occurred on two or three occasions. With regard to the drain he further states that "it was just coincidence that the (it) happened to be dug along the southern boundary of (his) mother-in-law's place".

In many regards the defendant's evidence differs substantially from the foregoing. She states that before she went to live on the land in 1940 the whole of lot 28 Princess Street was under bush. She cleared the bush from the area which she leased and put up a barbed wire fence along the eastern, northern, and southern boundaries and erected on it a building. According to her there was already in existence a fence along the western boundary of the lot. The boundaries of the land leased were 96 feet by 38 feet, the whole width of the lot. She further states that at some time during her tenancy she had entered into a written contract of tenancy with her landlord but this document cannot be found. Except for the eastern side the fence was erected on the boundaries of the land she leased. The fence on the eastern side was erected either two or four feet west of the eastern boundary of the lot.

She goes on to say that the land behind her holding remained under bush until 1943 when Mr. Hodge erected a building on it and, in that same year the landlord dug an east to west drain about 8 inches north of the northern barbed wire fence which she the defendant had

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erected. The Hodge family got access to Princess Street by walking along the passage between her eastern paling and the eastern boundary of the lot and but towards its southern end they walked through a gap made in the eastern fence for this purpose unto the bridge leading from her fenced in area to Princess Street. Her husband permitted this at the request of Mrs. Hodge because there was no bridge leading from the passage to the road.

Between 1949 and 1957 she lived at McKenzie, Demerara River and on her return she found the barbed wire fences broken down. She, therefore, constructed wooden fences in their place. She also changed the eastern fence to a position two feet further westward, and the northern fence, about 1 foot south of the previous one. One Stanley Doris a carpenter was called in support of this part of her evidence but he states that he constructed the wooden palings between the years 1945 and 1947.

It would appear, that she left no gap in the new eastern fence for she states that, on her return to the premises in 1957, she saw that a bridge had been constructed opposite the southern end of the passage thus giving direct access to the road. Since the erection of these fences, she has done repairs to them, except that some time in April, 1967 she replaced the eastern wooden paling by a new one built about two feet west of the then existing one.

The defendant called another witness, viz., Nebert Thomas, the tenant on sublot B. He corroborates the defendant that the Hodge family as well as the plaintiff used the southern portion of her land as a means of ingress and egress to the street. In 1955, he states, he erected a bridge from the southern end of the passageway to the street. He further says that there was an old fence around the defendant's holding which was some time after 1955 replaced by wood and zinc. The new northern fence is completely of zinc and was constructed about 1 foot south of the old palings which in turn was south of an east to west drain, which he says is about 10 to 12 inches south of the drain, while the new eastern fence, was built about 2 feet west of the old one. Although he states that he and the plaintiff's family are on friendly terms he admits the plaintiff did file an action against him for damages to his palings and the former's wife has instituted proceedings for slander against his wife.

The only other bit of evidence to which I think I should advert attention is that relating to the opposition suit filed by the defendant, she gives as her reason for filing it - and this is stated in the pleadings in action No. 216 of 1963 - the fact, which I do not believe, that the deceased, Ellen Joseph, had agreed to grant to her a lease for 999 years in respect of the land she occupied. Nor do I accept the truth of the additional reason given viz., that it was expressly stated in her written agreement that she should have a right of pre-emption. The executrix of Joseph's estate on the other hand states that the defendant went to see her in 1960 and expressed

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regret that she, as the oldest tenant, was not offered the sublot sold to the plaintiff. According to her no reference was made to any right of pre-emption referred to in the defendant's pleadings. It should be noted also that a letter dealing with the sale of the sublot, and written by Mr. Manraj, Barrister-at-law on her behalf on the 11th November, 1961 only makes reference to the fact that the defendant was the oldest lessee.

With regard to the claim for trespass it was submitted by counsel for the defendant that the plaintiff must be relying primarily on his lease No. 61 of 1955 which states that his holding commenced 82 feet from the southern end of the lot and even in this fact is admissible as evidence, and he argues that it is not, little if any weight should be given to it because no evidence has been led by the plaintiff that he ever measured the defendant's holding at the time of his grant. As against this the defendant has positively stated that her holding measured 96 feet in length. He further points out that the plaintiff has admitted that Mrs. Hodge, his predecessor, had dug a drain along the boundary dividing her lot from the defendant's.

Counsel for the plaintiff on the other hand submits that the latter's admission must have been an error. He draws attention to the fact that in both the plaintiff's lease and that of the other tenant Thomas the length of the holdings leased is stated to be 82 feet each. This he contends, together with the fact that the leases were prepared by the same Solicitor lends weight to the statement contained in the plaintiff's lease that the 82 feet

distance from the southern boundary must have been the portion leased to the defendant. However, when one examines the plan of the lot which has been admitted in evidence, sublot B in respect of which Thomas has his holding measures 84.7 feet. There is no evidence that there was a re-adjustment of the boundary dividing Thomas' holding and the plaintiff's when the lot was divided. I must, therefore, assure that it remained the same. The plaintiff's sublot measures 172.84 and 174.46 feet in length, along its western and eastern boundaries. If the length of the defendant's sublot is in fact 82 feet then that of the plaintiff's would be not 82 but 90 feet depending upon along which boundary the measurements are taken. Besides, I do not get the impression that the plaintiff made a mistake when he said that Mrs. Hodge dug the drain along the boundary dividing the two holdings. In addition, the fact that in 1951 he paled his holding on three sides viz., the northern, eastern and western sides should not be overlooked. I feel that the reason why he did not pale the southern side was because there was then in existence, as the defendant states, her northern paling. It appears somewhat strange that the plaintiff would pale the eastern and western sides as well as the back of his holding and leave the front portion unfenced. If, at all, it is more likely that he would want to pale the front portion at the sacrifice of one of the other boundaries of the holding. On a balance of probabilities I accordingly accept the evidence of the defendant in preference to that of the plaintiff and find that she has not encroached upon his holding. In coming to this conclusion I do

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not place any reliance on the evidence of the witnesses, Alstrom or Thomas. With regard to the former I get the impression that his recollection is quite hazy; and in so far as the latter is concerned, besides the fact that he mentioned both zinc and wooden palings, about which nothing has been said by either the plaintiff or the defendant, there is no doubt that there exists some animosity between him and the plaintiff. Further I have not overlooked the fact that, in her opposition suit, although the plaintiff states that she gave instructions to her legal advisers to the effect that the length of her holding measured 96 ft. both the opposition and the endorsement of claim give the length as 95 feet. I feel the latter measurement is an error.

The second limb of this suit unlike the first is one purely of law. Counsel for the defendant drew attention to proviso (b) to section 3 (d) of the Civil Law of Guyana Ordinance, Chapter 2, which provides as follows:

> "The law and practice relating to conventional mortgages and hypothesis of movable or immovable property, and to easements, profits à prendre, or real servitudes, and the right of opposition in the case of both transports and mortgages shall be the law and practice now administered in those matters by the Supreme Court".

He submits that, that as the law and practice administered on the 2nd September, 1916, when this

Ordinance, was enacted was Roman-Dutch, it must follow that the proper law to govern the relationship of the plaintiff and defendant on this aspect of the matter is Roman-Dutch. If this view is correct then the principle of Law governing a right of way of necessity as enunciated in Van Schalkwky v. du Plessis 7 & C 454; Gray v. Gray & Estcourt 28 N.L.R. 151 and Lents v. Mullin (1921) E.D.L. 268 would apply. These cases all decide that if a claimant to a right of way of necessity has the use of an alternative route to the public road although less convenient, then, despite the fact that he uses such alternative route on sufference his claim is premature until he is debarred from the use of such alternative route. In the present case the plaintiff does have the use of an alternative way over the six foot passageway part of sublot B, which he has been using since 1965 with the consent of the guardian of the new owner of this sublot. Indeed the plaintiff has led evidence to the effect that he has since built it up. No evidence has been led to show, or from which it can be inferred, that there is any justifiable fear of the imminent loss of such user or that it is in any way less convenient than the one he now claims. Accordingly, it is submitted, he is debarred under the Roman-Dutch law from claiming a right of way over the defendant's land, as of necessity.

In the present case, but for the Rent Restriction Ordinance, when the plaintiff bought sublot A and received transport, he would have been entitled to dispossess the defendant because of the fact that her lease had not been registered. For, by virtue of section 23 (1) (d) of

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the Deeds Registry Ordinance, Chapter 32, the plaintiff on obtaining transport would have acquired full and absolute title subject only to certain registered encumbrances, including registered leases. In this latter regard, in the case of Dhanpaul v. Demerara Bauxite Company Limited (1959) L.R.B.G., 84, Luckhoo, J., at page 96 had this to say in relation to an unregistered lease:

> "On the passing of transport to the defendants in January 1958 by operation of s. 23(1) of the Deeds Registry Ordinance, the plaintiff did not become the tenant of the defendants even though he continued in occupation of the land. As between the defendants and the plaintiff the relationship of landlord and tenant never existed."

And this is so despite section 16(1) of the Landlord and Tenant Ordinance, Chapter 185, unless the property is conveyed subject to the lease (supra) page 94.

However, by virtue of the definitions of "landlord" and "building land" in section 2 of the Rent Restriction Ordinance, the provisions of section 3(1)(a), and the restrictions placed on a landlord seeking to recover possession contained in section 16, the defendant is entitled to, and I find did hold over, after transport was passed to the plaintiff by virtue of section 21 of the Rent Restriction Ordinance, Chapter 186. It should be noted that the plaintiff had unsuccessfully attempted to negotiate a new lease with her (Exhibit "D").

In analysing whether what the plaintiff seeks is a servitude, and so governed by Roman-Dutch Law, counsel for the defendant draws attention to the observation contained in Hall and Kellaway on Servitudes 2nd Ed., at page 2, para.(e) which reads as follows:

> "No praedium can be the subject of a servitude in favour of itself (Voet 8.4.14), and it is the application of this principle which operates against the creation of a servitude of way by a reservation in a lease of a right of way for the lessor over the land leased. A right of this kind is a personal right analogous to a servitude".

Support for this view is to be had in the case of Ross v. White, (1906) E.D.C., 313. At page 317 to 318, Kotze, J.P., had this to say -

> "Strictly speaking there can be question of a servitude reserved to the lessor over his own property .....".

Counsel concedes however, that his contention that the plaintiff's permissive user is a bar to his claim can only be correct if the words "servitude" and "easement" in the proviso include rights and analogous to servitudes or easements, as the same principles are applicable to both. The case of Quail v. Pollard, (1948) L.R.B.G. 173 appears to deny such a wide meaning to these words for, at page 177 of the judgment, the Full

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Court held that the right of a tenant to pass or repass over a portion of land owned by the landlord and which is appurtenant to another portion leased to the tenant, is in no sense an easement as the whole of the property remained in the landlord. Such a right was held to be an irrevocable licence ex necessitate so long as the tenancy subsists.

In the view which I have taken however, there is no need to pronounce on this aspect of the matter, because of sections 3 and 4 of the Landlord and Tenant Ordinance, Chapter 185. Section 3 deals with the various types of tenancies, including tenancies from year to year, while section 4 provides as follows:

"(1) It is hereby declared that the tenancies defined in section 3 of this Ordinance comprise, and has always since the 1st January, 1917, comprised the relationship between landlord and tenant in this Colony, and that every such tenancy, as the case may be, had and, subject to the provisions of this Ordinance, shall continue to have in the Colony such and the same qualities and incidents as it has by the common law of England.

(2) It is further declared that the common law of England relating to the said

"respective tenancies has, since the 1st January, 1917, applied to this Colony, and subject to the provisions of this Ordinance shall continue to apply to and govern the said tenancies".

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It is clear from the foregoing provisions that the common law of England as it relates to a landlord and his tenant is the proper law to be considered in the present case. It would appear that even before the enactment of the Landlord and Tenant Ordinance in 1947, consistently applied the English common law of landlord and tenant to such a relationship. Howard v. Gaskin (1919) L.R.B.G., 23, Heyliger v. Savory (1919) L.R.B.G., 258, and Ford v. Nurse (1921) L.R.B.G., 1. In the British Colonial Film Exchange Ltd. v. S.S. De Freitas (1938) L.R.B.G., 35 the extent of the application of the English common law of landlord and tenant was considered by Verity, C.J., at page 40 he had this to say:

"It may be difficult to determine in this particular connection the precise limits of the application in this colony of the English common law of landlord and tenant bearing in mind that the common law of real property is not to be applied and that full ownership of immovable property is not to be subject to the incidents attached to land tenure in England but I do not think that it would be right to conclude that there is in this colony no law of landlord and tenant distinguishable from

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"the law relating to contracts for the hiring of chattels. I can find no reported case in this colony subsequent to 1917 in which such a conclusion is indicated ....."

After going on to point out that the relationship of landlord and tenant at common law is essentially one of contract, although by the nature of the subject matter it confers upon the tenant an interest in the land thus attracting to itself certain incidents attached to the English system of land tenure the learned Chief Justice had this to say:

"....yet this personal contractual relationship remains as a characteristic of the law relating thereto and the dual nature of the relationship was recognised by the term "chattels real" applied to leaseholds which were nevertheless classed as personal property. By section 2(1) of the Civil Law Ordinance, it is true that "chattels real" are now classed as immovable property, and as such are subject to certain incidents of local statute law. It is only, however, by a certain confusion of thought that this provision could be related back so as to consider them to fall within the common law of real property excluded

"by section 3(c) of the Ordinance. As I indicated it would appear that the English common law relating thereto (i.e. to landlord and tenant) is applicable in this colony insofar as it does not subject full ownership to any incidents of land tenure attached to land in England and not attached to personal property there."

It was in my opinion to remove any doubt as to the applicability of the English common law of landlord and tenant that section 4 of the Landlord and Tenant Ordinance was included in the legislation. It does not, however, appear that the legislature intended that any of the incidents of the English system of land tenure, specifically excluded by proviso (a) to sec. 3(D) of the Civil Law of Guyana Ordinance should attach to such a relationship, but it is not necessary for me to decide this point.

In so far as ways of necessity are concerned the English common law applies the same principles whether in relation to a grant in fee for a term of years. 1 Wms. Saund (1871 Ed,) 570, Pinnington v. Galland (1853) 9 Exch 1, at pg. 12.

The facts and legal issues in the case of Barry v. Hazeldine (1952) 2 A.E.R. 317 have much in common with those of the present one. The facts were as follows:

The defendant sold the northermost portion of his land which was separated from the rest of it by a concrete roadway to the plaintiff's predecessor in

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title. The roadway was on land belonging to the defendant and gave access to a disused aircraft runway which was constructed on land not in the ownership of the defendant and in turn gave access to the public road to the east. Another public road ran along the southern boundary of the defendant's property. The plaintiff's land could be approached from the public road either by way of the defendant's land or over the runway, the remainder of the adjoining land being owned by persons other than the defendant but the plaintiff had no right of way over the runway. He accordingly sued the defendant claiming a right of way over the latter's land from the southern public road.

Danckwerts, J., in holding that the plaintiff was entitled by implication to a way of necessity over the defendant's land had this to say at pg. 319.

> ".....but is seems to me that, if the grantee has no access to the property which is sold and conveyed to him except over the grantor's land or over the land of such other person or persons being a person or persons whom he cannot compel to give my legal right of way, commonsense demands that the grant of a way of necessity should be implied, for the purposes for which the land is conveyed over the land of the grantor. It is no answer to say that at the time of the grant, a permissive method of approach

"was in fact enjoyed over the land of some other person, because that permissive method of approach may be determined the day after the grant and the grantee may thus be rendered entirely incapable of approaching the land which he purchased".

In the present case the position is in the reverse in that it is the landlord rather than the tenant who claims a right of way of necessity. It is well settled law that a landlord cannot derogate from his grant. Wheeldon v. Burrowes (1879) 12 Ch. D. 31. In this regard Thesiger, L.J., had this to say at pg. 49:

" The first of these rules is, that on the grant by the owner of a tenement or part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean quasi-easements), or, in other words all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owner of the entirety for the benefit of the part granted. The second proposition is that if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant ....., but the second of these rules is subject to certain exceptions. One of those exceptions is the well-known exception which attaches to cases of what are called ways of necessity; and I do not dispute for a moment that

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"there may be, and probably are, certain other exceptions, ... Both of the general rules which I have mentioned are founded upon a maxim which is as well established by authority as it is consonant to reason and commonsense viz., that a grantor shall not derogate from his grant".

Before considering whether the plaintiff, as grantor, can derogate from his grant and claim a way of necessity over his tenant's holding, it will be necessary to consider what, if any, rights or user he has over the six foot passageway now owned by the owner of the sublot B. The plaintiff claims it is a permissive way. He states that despite the fact that he was entitled by virtue of his agreement of lease to a right of way over this passage before the lot was divided, he gave up this right when he bought sublot A. If, however, he was, in law, still entitled to use this way even after the lot was divided then, he cannot, in my opinion, pray the fact of his own default in giving it up in aid of his claim to a right of way of necessity over his tenant's holding.

In arriving at a conclusion on this aspect of the matter in case of Dhanpaul v. Demerara Bauxite Company Limited (supra) is of some assistance. Excluding any consideration of the Rent Restriction laws for the moment, as the right of way was not registered as an encumbrance as envisaged by section 23 of the Deeds Registry Ordinance, the plaintiff's legal right to it was lost when sublot B was transported to its present

owner or at best he retained a bare licence, revocable at any time by the owner of the sublot. Has it been saved by the Rent Restriction Ordinance? The answer to this question lies in the extent of the meaning of "building land" in section 2 of that Ordinance. It is defined as follows:

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Judgment delivered by George, J., 23rd February, 1968. Continued.

> " **'building land'** means land let to a tenant for the purpose of the erection thereon by the tenant of a building used, or to be used, as a dwelling or for the public service or for business, trade or professional purposes or for any combination of such purposes, or land on which the tenant has unlawfully erected such a building but does not include any such land when let with agricultural land."

I do not think that this definition includes a right of way, which the tenant would be entitled to either by virtue of section 19 of the Landlord and Tenant Ordinance, or as a way of necessity, for the use and enjoyment of his holding. It is, in my opinion, only the area of land leased as distinct from any right of way or other easement appurtenant thereto which is covered by the definition of the words "building land". It follows that, despite the fact that the plaintiff says that he gave up his right of user when the lot was divided and transported, in law, he lets this right unless it was specifically reserved. And I do not agree with the contention advanced that his omission to insist on the inclusion of such a servitude in his transport is a bar to his present claim. I, accordingly, hold the view that the right of user now enjoyed by the plaintiff over sublot B is a permissive one.

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No. 15

Judgment delivered by George, J. 23rd February, 1968, Continued.

Despite the general principle that a landlord cannot derogate from his grant, I do not think that the fact that the plaintiff has the permissive way is any serious bar to the application of the principle enunciated in Barry v. Hazeldine (supra). It is only if he had a legal right to the use of the right of way on sublot B that I would feel myself constrained to the view that he cannot claim a right of way of necessity. This view accords with that of the author of Gale on Easements 2nd Ed. at pg. 99.

Counsel for the defendant has argued, however, that even if the plaintiff may ordinarily be so entitled the decision in Chappel v. Mason (1894) 10 T.L.R. 404 is a bar to such a right. In this case the tenants rented lot No. 12 in a street and afterwards the second and third floors of lot No. 13 belonging to a different landlord. By leave of both landlords a hole was bored through the wall dividing the lots and access was gained to both premises by the staircase of No. 12 and communication by the staircase of No. 12 was cut off. Afterwards a fresh tenancy was granted of the floors in No. 13 for a term which continued after the determination of the tenancy of No. 12. It was held that the second lease did not increase the right to use the staircase of No. 13 for access to the rooms in No. 13 notwithstanding such use, in the events which arose, the tenant could not have any enjoyment of the rooms. The court held at page 405 that "it was necessary to look at the state of things which existed at the time when the lease was granted" and further that it was clear that at the time when the lease was granted it was not the intention of the parties that they (the tenants) should use the stairs to No. 13.

I am of the view that Chappel v.

Mason is distinguishable from the present case. Unlike the latter, Chappel v. Mason dealt with a situation which ought reasonably to have been within the contemplation of the parties. Here, however, at the time when the lease to the plaintiff and defendant were entered into, the question of their intention as to a way over the latter's holding was not a relevant factor because they both held of the same landlord and a right of way was reserved to the former. In addition, and besides the fact that the plaintiff was not a party to the agreement with the defendant, it could not at any material time, have been reasonably contemplated that the land would have been sub-divided in its present form.

There is, however, another aspect of the matter to be considered. As I have already pointed out in the absence of some evidence that he had accepted her as his tenant, it is only by virtue of the provisions of the Rent Restriction Ordinance that the defendant could have lawfully held over after the plaintiff became legal owner of the sublot. (Dhanpaul v. Demerara Bauxite Company Limited) (supra). Section 21 of the Ordinance provides that a tenant who retains possession by virtue of the Ordinance, shall observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy. Notwithstanding this provision it does not, in my opinion, follow that the common law principle of a way of necessity is by implication revoked. "Statutes", said the Court of Common Pleas in Arthur v. Bokenham (1708) 11 Mod, 148 at page 150, "are not presumed to make any alteration in the common law further or otherwise than the Act does expressly declare." The cases of Minet v. Lemon (1855) 20 Beav 269; Rolfe v. Flower (1866) L.R. 1 P.C. 27 and R. v. Leach (1912) A.C. 305 are also to the

In the High Court of the Supreme Court of Judicature

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Judgment delivered by George, J. 23rd February, 1968. Continued.

same effect. Section 21 is, therefore, in my opinion, no barrier to the plaintiff's claim.

The defendant has given evidence that her holding is now 30 feet wide thus leaving a passageway of 2 feet from the western boundary of the passageway on sublot B. This I feel is too narrow a way and it should be at lease 3 feet wide in order to allow for proper access.

The only remaining question is whether in virtue of the provisions of section 26 of the Rent Restriction Ordinance, which provides as follows:

> " Subject to the provisions of subsection (3) of section 3 of the Summary Jurisdiction (Petty Debt) Ordinance, and any claim or other proceedings (not being proceedings under the Summary Jurisdiction Ordinance or proceedings before the Rent Assessor as such) arising out of this Ordinance shall be made or instituted in a Magistrate's Court"

the plaintiff has instituted this aspect of his claim in the proper form. The extent of jurisdiction given to the Magistrate's Court by this section, and its counterpart in the Rice Farmers (Security of Tenure) Ordinance, 1956 No. of 1956, has been the subject matter of much litigation. Evelyn v. Latchman Singh (1961) 3 W.I.R., 107 and Saul v. Small (1965) 8 W.I.R., 351.

In the latter case it was held that a Magistrate's jurisdiction does not include power to grant a declaration or injunction and that in matters arising out of the rent Restriction Ordinance, proceedings in respect of which must be taken in a Magistrate's Court, such remedies can only be

sought in the High Court. But it would appear that no such remedy can be sustained or properly instituted until a decision has been reached on the measure which gives it life. It may be argued that what in effect the plaintiff's claims, is that the implied reservation of a right of way has, since he obtained title, become part of the contractual relationship between him and the defendant, this claim, in substance, therefore, ought to be for damages for a breach of this implied term and accordingly he cannot, at lease before taking appropriate steps in the Magistrate's Court, successfully prosecute this aspect of his suit in the High Courts. As against this however, it should be noted that section 21 only encompasses the terms and conditions of the original contract of tenancy. Here, the right of way claimed does not form part of the original contract of tenancy. It only arises by virtue of, and simultaneously with, the passing of title to the plaintiff. In my opinion this distinguishes the present case from that of Saul v. Small for I do not think that it can be said that the plaintiff's claim is based on any term or condition carried over from the contractual relationship. It is based on his common law right to a way of necessity, which in the peculiar circumstances of this case is de hors the previous contractual relationship.

I therefore, hold that this Court has jurisdiction to grant the reliefs sought and accordingly I declare that the plaintiff is entitled to a way of necessity at least three feet wide over and along the defendant's holding leading to Princess Street and enjoin the latter from preventing him from using such a way.

In the High Court of the Supreme Court of Judicature

The plaintiff is awarded half the costs of this action certified fit for counsel.

K.M. GEORGE
PUISNE JUDGE.

No. 15

Judgment delivered by George, J. 23rd February, 1968. Continued.

Dated this 23rd day of February, 1968.

Solicitors:

Dabi Dial for Plaintiff.

David de Caires for Defendant.

NO. 16

No. 16

Order on Judgment - 23rd February, 1968.

ORDER ON JUDGMENT BEFORE THE HONOURABLE MR. JUSTICE GEORGE - DATED THE 23RD DAY OF FEBRUARY, 1968 - ENTERED THE 16TH DAY OF AUGUST, 1968.

This action having come for hearing on the 13th, 24th January, 1967, the 13th March, 1967, the 27th and 29th days of April, 1967, the 4th, 8th and 10th days of January, 1968 and on this day AND UPON HEARING Counsel for the plaintiff and for the defendant and the evidence adduced AND the Court having ordered that judgment be entered for the plaintiff as set out herein with half of his costs THEREFORE IT IS ADJUDGED AND DECLARED that the plaintiff be and is hereby entitled to a way of necessity of at least three (3)

feet wide over the front portion of his property described in the schedule hereunder which said front portion is now being tenanted by the defendant AND IT IS ORDERED that an injunction be and is hereby granted restraining the defendant, Rosaline Antigua by herself, her servants and/or agents from preventing the plaintiff Isaac Boxwill from using the aforesaid way of necessity AND IT IS FURTHER ORDERED that the defendant pay to the plaintiff one half of his costs of this action to be taxed certified fit for counsel.

In the High Court of the Supreme Court of Judicature

No. 16

Order on Judgment - 23rd February, 1968. Continued.

BY THE COURT

H. MARAJ
SWORN CLERK & NOTARY PUBLIC
for REGISTRAR.

S C H E D U L E

Sublot A, of lot 28 Princess Street, Lodge, East Coast Demerara held by transport number 960, passed and executed on the 24th day of May, 1965.

NO. 17

NOTICE OF APPEAL

In the Court of Appeal of the Supreme Court of Judicature

No. 17

Notice of Appeal - 5th March, 1968.

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE - CIVIL APPEAL NO. 15 OF 1968

BETWEEN:

ROSALINE ANTIGUA,
Appellant (Defendant)
-and-
ISAAC BOXWILL,
Respondent (Plaintiff).

In the Court of Appeal of the Supreme Court of Judicature

No. 17

Notice of Appeal - 5th March, 1968.

NOTICE OF APPEAL

TAKE NOTICE that the (Defendant) Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of the Supreme Court of Judicature of Guyana contained in the Judgment of the Honourable Mr. Justice George dated the 23rd February, 1968 doth hereby appeal to the Court of Appeal of the Supreme Court of Judicature upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND the (Defendant) Appellant further states that the names and addresses including her own of the persons affected by the Appeal are those set out in paragraph 5.

2. That part of the decision in which the Judge held that:

> "this Court has jurisdiction to grant the reliefs sought accordingly I declare that the Plaintiff is entitled to a way of necessity at least 3 feet wide over and along the defendant's holding leading to Princess Street and enjoin the latter from preventing him from using such a way.
>
> The Plaintiff shall be entitled to half the costs of this action certified fit for counsel."

3. GROUNDS OF APPEAL

(1) The learned trial judge erred in holding that the (Plaintiff) Respondent's claim for a right of way was governed by the English common law and not Roman-Dutch law.

(ii) The learned trial judge erred in holding that the English Common Law of landlord and tenant applied to the relationship between the (Plaintiff) Respondent and the (Defendant) Appellant.

(iii) The learned trial judge erred in failing to consider that the Respondent was entitled to a right of way of necessity, if any, over the adjacent sublot B as a result of his purchase of sublot A 28 Princess Street, Lodge, more fully described in the Statement of Claim and in holding that under the English Common Law the Respondent was entitled to a way of necessity over the land rented by and in the possession of the Appellant.

(iv) The learned trial judge erred in holding that the Respondent did not already have sufficient right of way to Princess Street.

(v) The learned trial judge erred in holding that he had jurisdiction to entertain the Respondent's claim.

4. The relief sought from the Court of Appeal is that part of the judgment of the Honourable Mr. Justice George referred to in paragraph 2 herein be reversed and that the case against the (Plaintiff) Appellant be dismissed and costs of the matter in the court below and of this appeal be awarded in favour of the (Defendant) Appellant.

5. Persons directly affected by the Appeal:

Rosaline Antigua - 28 Princess Street, Lodge.
Isaac Boxwill - 28 Princess Street, Lodge.

Dated the 5th day of March, 1968.

D. de Caires
Solicitor for the (Defendant) Appellant.

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment - 14th October, 1969.

Persaud & Cummings, JJ.A.

Crane, J.A. dissenting.

NO. 18

JUDGMENT OF THE COURT OF APPEAL

BEFORE: The Honourable Mr. G.L.B. Persaud - Justice of Appeal

The Honourable Mr. P.A. Cummings - Justice of Appeal

The Honourable Mr. V.E. Crane - Justice of Appeal.

1968: November 20, 21.

1969: October 14.

Mr. M.G. Fitzpatrick for the appellant.
Mr. R.H. Luckhoo for the respondent.

PERSAUD, J.A.:

This appeal concerns the south half of Lot 28, Lodge Village. Lot 28 is divided into a north half and a south half. The former has its entrance in D'Urban Street, while the latter faces Princess Street and leads thereto.

In 1939 the whole of the south half of Lot 28 was owned by one Ellen Joseph. In November of that year, Ellen Joseph let to the appellant what has been described as a house-spot at the southermost end of the lot on which she erected a house which she still occupies with her entrance on Princess Street. She proceeded to fence her lot, leaving a strip of land about four feet wide along the eastern boundary of the lot which led to the lands at the back. She later re-fenced her house-lot, but left a somewhat wider strip of about six feet.

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment - 14th October, 1969.
Continued.

Persaud & Cummings, J.J.A.

Crane, J.A. dissenting.

In 1943 one Hodge rented the portion of the lot immediately north of the appellant and built a house thereon.

In 1951 the respondent took over Hodge's tenancy of the house-spot, and occupied Hodge's house.

In 1953 one Thomas rented the remaining portion of land north of Hodge on which he also constructed a house and which he still occupies. Both Hodge and Thomas and then the respondent gained access to Princess Street by means of the strip of land which had been excluded by the appellant's fence.

In 1955 there was executed a lease with Ellen Joseph as lessor and the respondent as lessee of that parcel of land on which the latter's house then stood, more accurately described as:

> " A piece of land commencing 82 feet from the southern boundary and extending 82 feet north by 38 feet in facade, situate at the said south half lot 28 south section portion of Lodge Village, in the county of Demerara, with a right of ingress and egress thereto along a strip of land 4 feet in width extending towards Princess Street, along the eastern boundary of the lot."

The lease was executed in February 1955 to run for five years.

In April 1956, Ellen Joseph died leaving one Margaret Kingston as her executrix.

On December 16, 1960 - after the expiration of the lease, but with the respondent still occupying the area of land he held under the lease, and no doubt holding over on the same terms and conditions - the respondent paid

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment - 14th October, 1969. Continued.

Persaud & Cummings, JJ. A.

Crane, J.A. dissenting.

$300: to Ellen Joseph's solicitors by way of a deposit on account of the purchase price of "south half lot 28 Lodge by Est. Ellen Joseph". As events turned out, the deposit was paid in relation to what is now sub-lot A of the S½ lot 28.

In 1961, at the respondent's request and that of one Doris Johnson (who, it would appear, was interested by virtue of the heirs of the Estate of Ellen Joseph), the lot was surveyed and a plan prepared. That plan discloses that south half lot 28 has been sub-divided into sublot A and sublot B. Sublot A measures 172.84 feet in depth and has its façade which measures 32.28 feet on Princess Street. Excluding a reserve of 32 feet on which it is intended to build a street, sublot B has a depth of only 84.7 feet, but includes a strip of land measuring 174.46 feet long and 6.007 feet wide which also leads on to Princess Street. This would include the strip of land which runs immediately east of and along the appellant's palings.

On May 24, 1965, transport of sub-lot A was passed by the estate of Ellen Joseph to the respondent in accordance with the plan mentioned above; and in February 1966 title to sublot B was vested in Hazel Adams, the heir of Ellen Joseph, again in accordance with the aforementioned plan.

It is worth noting that no mention is made in the respondent's transport, as was the case in his lease, of a right of way over what is now sublot B, although the evidence is that the respondent had always used the strip for this purpose.

The result is that at the time of the launching of this action the various parties occupied as follows: A third person occupied sublot B which this appeal really does not concern, except that the respondent uses a portion of it for purposes of ingress and egress to the public road; the respondent occupies the northern portion of sublot A in his capacity as owner; the appellant occupies as tenant of the respondent the southern portion of sublot A. Her area of land is completely fenced with a gate on to Princess Street. The respondent does not have access to any portion of land which the appellant occupies. He contends that he is entitled to a right of way of necessity over the respondent's premises.

Although in the Court below the respondent as plaintiff claimed damages for trespass, and a right of way across the land occupied by the appellant, this appeal concerns the latter only.

In the Court below, the learned Judge held that the right of user which the respondent enjoyed over sublot B was a permissive one, and expressed himself thus. Referring to the respondent, the Judge said:

> "It is only if he had a legal right to the use of the right of way on sublot B that I would feel myself constrained to the view that he cannot claim a right of way of necessity";

and held that there was no need to pronounce on the question whether or not the right claimed by the respondent to pass over the premises occupied by the appellant is a servitude or a right analogous to a servitude so as to bring it within the ambit of proviso (b) of s. 3(D) of

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the Civil Law of British Guiana Ordinance, Cap. 2. Rather, said the learned Judge, the matter fell to be governed by ss. 3 and 4 of the Landlord and Tenant Ordinance, Cap. 185, and he held that the respondent was entitled to a way of necessity of at least three feet over the premises occupied by the appellant.

To appreciate the points raised in this appeal, it will be necessary to set down the provisions mentioned above.

S. 3(D) of Cap. 2 provides as follows:

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

And proviso (b) is in the following terms:

> "The law and practice relating to conventional mortgages or hypothecs of movable or immovable property, and to easements, profits a prendre, or real servitudes, and the right of opposition in the case of both transports and mortgages, shall be the law and practice now administered in those matters by the Supreme Court."

S 3. of Cap. 185 defines the various types of tenancies to which s. 4 of the Ordinance applies, and s. 4 enacts the following:

"(1) It is hereby declared that the tenancies defined in section 3 of this Ordinance comprise, and have always since the 1st January, 1917, comprised, the relationships between landlord and tenant in this Colony and that every such tenancy, as the case may be, had and, subject to the provisions of this Ordinance, shall continue to have in this Colony such and the same qualities and incidents as it has by the common law of England.

(2) It is further declared that the common law of England relating to the said respective tenancies has, since the 1st January, 1917, applied to this Colony, and subject to the provisions of this Ordinance, shall continue to apply to and to govern the said tenancies."

It is necessary, I think, to state that the relevance of the date 1st January, 1917, prescribed in s. 4 above is that the Civil Law Ordinance came into force on that date.

As I apprehend the situation, the appellant's submissions went this way: The appellant held over as a statutory tenant upon the expiration of her lease, and the effect was to exclude the application of the English Common Law by virtue of the fact that s. 3 of Cap. 185 does not include statutory tenancies, with the result that s. 4 does not apply. Even if, argues the appellant, it can be said that the English Common Law terms can be imported into a statutory tenancy by virtue of s. 21 of the

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Judgment-14th October, 1969. Continued.

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Rent Restriction Ordinance, Cap. 186, at no time was a right of way of necessity or otherwise a term or an incidence of the tenancy as originally created, as the respondent made such a claim only after the common law tenancy came to an end and the statutory tenancy arose. If the appellant's contention is so far correct, then, argues Counsel, the question of the nature of the right which the respondent claims arises for consideration, and he submits, that right is either a right analogous to a real servitude, or an easement, in either of which cases, proviso (b) of s. 3(D) of Cap. 2 would apply. And, continues the argument to its logical conclusion, if the proviso applies, then the law affecting the right is Roman-Dutch Law - the law and practice which was being administered on January 1, 1917 - in which case, when it is remembered that the respondent enjoyed a permissive right of way over sublot B, at the time of the commencement of this action, he would not be entitled to a way of necessity which he claims. /See Hall & Kellaway on Servitudes (2nd Ed.) p. 68/.

The respondent concedes that if the right claimed is an easement or a real servitude, then the Roman -Dutch Law would apply, but contends for the proposition that the right claimed by him is more in the nature of a licence which is a necessary incident to his occupation of the northern portion of sublot B, and therefore is by virtue of s. 3(A) and (D) of Cap. 3 governed by the common law of England.

So it is all important to determine the nature of the right, and then to see what legal principles should be applied.

However, there is one other aspect of this matter to which I would wish to devote a few words. The learned

trial Judge seemed to have been of the view that after the appellant became a statutory tenant, she held on a year to year tenancy, and that being so, s. 4 of Cap. 185 applied introducing the principles of the common law of England.

S. 21(1) of the Rent Restriction Ordinance, Cap. 186, prescribes the conditions of a statutory tenancy and is in the same terms as s. 15(1) of the Increase of Rent and Mortgage (Restrictions) Act, 1920 (U.K.), that is to say, that a tenant who, by virtue of the provisions of the Ordinance, retains possession of any premises to which the Ordinance applies (and this would include building land) shall, so long as he does so, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as they are consistent with the provisions of the Ordinance.

S. 15(1) of the United Kingdom Act was considered in Morrison v. Jacobs, (1945) 2 All E.R. 430, where it was held that the mere acceptance of rent by the landlord because the tenant continues in occupation after the expiry of the agreement of tenancy did not justify the inference that a new tenancy from year to year had been created.

I therefore do not accept the proposition that, if the appellant's position was that of a statutory tenant (and this is agreed upon by both sides, and the Judge so held) there was a tenancy from year to year. And it would as a result follow that s. 4 of Cap. 185 would be inapplicable to the case in hand.

Now to the nature of the right to which the respondent says he is entitled, that is, a right of way over the premises occupied by the appellant as his tenant.

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No. 18

Judgment--
14th, October,
1969.
Continued.

Persaud &
Cummings, JJ.A.

Crane, J.A.
dissenting.

It has been settled that the right to pass and re-pass over land in certain circumstances is in no sense an easement. / See Quail v. Pollard, (1948) L.R.B.G. 174 /. In Brown v. Alabaster, (1888) 37 Ch. D. 490, Kay, J., expressed the view that where a conveyance has been made by one common owner of three separate parcels of land to separate persons, it could not be said that an existing right of way was in any sense an easement, because all three properties belonged to the same person. And in Gayford v. Moffatt, (1869) J.P. 212, it was said that the possession of the tenant of a demised close was the possession of his landlord, "and it seems to be an utter violation of the first principles of the relation of landlord and tenant to suppose that the tenant whose occupation of close A was the occupation of his landlord, could by that occupation acquire an easement of close B, also belonging to his landlord".

It seems to me that the converse must also be true, that is, that a landlord may not enjoy an easement over lands occupied by his tenant, unless such a right is expressly reserved, and even in that event, it is doubtful whether the right could be classified as an easement.

It is well known that it is an essential characteristic of every easement that there must be both a servient and a dominant tenement, and the owner of the dominant tenement and the owner of the servient tenement must be different persons. As it has been put by Russell, J., in Hansford v. Jagoo, (1920) All E.R. Rep., at p. 587:

> "..... where the owner of tenements grants one of them, there can be no easement at

> "the moment of the grant over the other tenement, the two tenements having belonged to one and the same person, and an easement being the right over the land of somebody else."

In Wheeldon v. Burrows, 12 Ch. D. 31, Thesiger, L.J., uses the terms "apparent easements" and "quasi-easements" to describe "all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted".

It is equally doubtful whether such a right can be described as a servitude, as this term also implies a dominant and a servient tenement in the case of a real servitude. "A servitude is a real right enjoyed by one person over or in respect of the property of another, whereby the latter is required to suffer the former to do, or himself abstains from doing something upon such property for the former's advantage." / Lee's Introduction to Roman-Dutch Law, 4th Ed., p. 167 /. And in Hall & Kellaway on Servitudes, 2nd Ed., at p. 71, there is this statement of the law:

> "Where a lessor reserves for himself a right of way over the property he has let, this does not constitute a servitude, for no one can have a servitude over his own land. The right is merely a personal one, and it is analogous to a servitude."

But such a right is not a servitude in the true word, nor is it an easement, and therefore proviso (b) of s. 3(D) of Cap. 2 would not, in my view, be applicable. Kitty Village Council v.

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Judgment - 14th October, 1969. Continued.

Persaud & Cummings, JJ.A.

Crane, J.A. dissenting.

Vieira, (1961) 3 W.I.R. 249, in which it was held that by virtue of proviso (b) of s. 3(D) of Cap. 2, the law and practice relating to easements or to real servitudes is the Roman-Dutch Law would therefore not be applicable to the instant case. I therefore, would, in the result, support the finding of the learned Judge that the principles of Roman-Dutch Law would not apply to the instant case.

I have already referred to the decision in Morrison v. Jacobs (supra) and I have already expressed the view that s. 4 of the Landlord and Tenant Ordinance, Cap. 185, would not apply. The learned trial Judge held that it did, but Counsel for the respondent does not appear to support the judgment on this basis; rather, he has urged that the right which the respondent is seeking to enforce is a "necessary right of way or a licence" in which case, he argues, the English Common Law would apply.

The right here claimed seems to me to be in the nature of a right of way of necessity. Such a right of way arises either by express grant, or by implication of law. No question of an express grant, or by implication of law. No question of an express grant arises here, and so the second proposition expounded by Thesiger, L.J., in Wheeldon v. Burrows, (1879) 12 L.R. Ch. D., at p. 49, to the effect that if a grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant, will not be apposite. But, it is important to note that Thesiger, L.J., excepts from his second proposition cases of ways of necessity; and this is the general theme which is found running through subsequent cases.

Admittedly, as has been argued by Counsel for the appellant, when the

lease was executed in favour of the appellant, there was no contractual relationship existing between her and the respondent, and it could not therefore be said that the latter was the grantor. If this is so, argues Counsel, then there could not be a grant express or implied. But this argument seems to me to have missed the main point, and that is, when the respondent purchased and secured title to his portion he stepped into the shoes of the original owner (or grantor) in so far as that portion was concerned and therefore assumed the role of the grantor. As from that time he was land-locked, and I cannot, for myself, accept the proposition that a landlord, not himself the original grantor, but who has acquired title to property a tenancy of which had been created before he became landlord, and who has become land-locked as a result of such a tenancy, cannot avail himself of a right of way of necessity over the tenant's premises.

A look at the authorities may assist to clarify the point. Halsbury's Laws, Vol. 12 (3rd Ed.) p. 574 states:

> "A way of necessity is a right of way which the law implies in favour of a grantee of land over the land of the grantor, where there is no other way by which the grantee can get to the land so granted to him, or over the land of the grantee where the land retained by the grantor is land-locked."

In Lush v. Duprey, (1966) 10 W.I.R. at p. 392, Fraser, J.A., referring to Gale on Easements, 13th Ed., at p. 98, said:

> "A way of necessity arises where, on a disposition by a common owner of part of his

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"land, either the part disposed of or the part retained is left without any legally enforceable means of access. In such a case the part so left inaccessible is entitled, as of necessity, to a way over the other part ....Where, as in this case, the relationship of landlord and tenant subsists, a right to an easement over the land cannot arise because an easement is a right 'which the owner of one neighbouring tenement hath over another.' In cases where land is held on a tenancy the occupation of the tenant is, in law, the occupation of the landlord and it for this reason that no prescriptive interest in a way of necessity can be acquired by a tenant against his landlord during the subsistence of his tenancy - see Gayford v. Moffat. The only interest kindred to easement which a tenant may acquire over the adjoining land of his landlord and limited by the duration of the tenancy is such a way as is necessary for the use of the land as it is at the commencement of the tenancy, or for such use as is then contemplated by both parties ....."

I would wish, for my part, to draw what appears to be a distinction between the situation 'where there is no necessity for the right claimed, but where the tenement is so constructed as that parts of it involve a necessary dependence, in order to its enjoyment in the state it is in when demised, upon the adjoining tenement' / Pearson v. Spencer, (1863) 3 B & S. 761 /, and that of an implied grant as a result of a necessity. In my opinion, in the former case, there is an implication arising out of the act of the

parties, while in the latter the law implies the necessity.

To illustrate the point I seek to make above, I would refer to the case of Brown v. Alabaster, (1889) 37 L.R. Ch. D. 490. In that case, the question was whether the defendant was entitled to a right of way over the plaintiff's land, the former having taken on an assignment which did not contain any reservations in terms of a right of way for the owners or occupiers of the defendant's property. A private way had been created by the original owner from the defendant's premises, but behind and across the plaintiff's premises, and led to the street.

Kay, J., held that when the conveyance was made, the right of way was in no sense an easement, because all three properties belonged to the same person, and he posed two questions for determination - firstly: Was it a way of necessity? And, secondly: If it was not, could it be held to pass by implied grant? He continued (at page 500):

> "A way of necessity is not a defined way. A way of necessity is a way which is the more convenient access to a land-locked tenement over other property belonging to the grantor; and it is quite clear that the grantor has a right himself to elect in which line, in which course, the way of necessity should go."

The learned Judge, then, having held that this was not a case of way of necessity, went on to examine the question whether the right of way might not pass under the doctrine of an implied grant of a continuous and apparent

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easement. He referred to Wheeldon v. Burrows (supra) and Ford v. Metropolitan Rly. Companies, (17 Q.B.D. 12). In the latter case, a house was divided into a front and a back block, and the plaintiffs were the lessees of three rooms on the first floor in the back block. The lease did not expressly grant any mode of access. Access to the rooms demised to the plaintiffs was gained from the street by passing through a hall or vestibule, and then up some stairs to the plaintiff's rooms. The defendants, in the exercise of compulsory powers under the Railway Clauses Consolidation Act, took down the front block of the house and removed the hall. The interference with the hall and the injury to the access to the rooms of which the plaintiffs were lessees, lessened their value. An award of compensation was made to the plaintiffs. It was held that the access through the hall was not a way of necessity, but was in the nature of a continuous and apparent easement which passed under the demise of the rooms, and that an interference with this quasi-easement was sufficient to give rise to a valid claim for compensation.

Kay, J., continued his judgment in these words (at p. 507 ibid):

> ".....it seems to me that the law is this - that a particular formed way to an entrance to premises like these ..... which leads to gates in a wall, part of those demised premises, and without which those gates would be perfectly useless, may pass, although in some sense it is not an apparent and continuous easement; or rather, may

pass - because, being a formed road, it is considered by the authorities, in cases like this, to be a continuous and apparent easement - by implied grant without any large general words, or indeed without any general words at all."

And again -

"Then although I agree that it is not for all purposes a way of necessity, do I want any express grant? It seems to me clear on the authorities that an express grant is not wanted in such a case as this.

Therefore I hold that the right to use this backway in the same mode as it was usable by the occupiers ..... at the time of the grant of those properties did pass by implied grant, and accordingly this case must be decided on that footing."

The distinction I seek to draw can be gathered from the dictum of Kay, L.J., and in the instant case, it is my opinion, that a way of necessity, as distinct from an easement, arises.

I wish to refer to one other case - Barry v. Hasseldine, (1952) 2 All E.R. 317 - where it was held that notwithstanding that the vendor's land did not enclose land he had sold, but was merely adjacent to one side of it, yet the purchaser's successor in title was entitled by way of implication to a way of necessity over

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the defendant's land.

The head-note in that case reads thus:

"The defendant sold to A, the northernmost part of his land which was separated from the rest by a concrete roadway. The roadway was on land belonging to the defendant and gave access to a disused aircraft runway which was constructed on land not in the ownership of the defendant and in turn gave access to a public road to the east. Another public road ran along the southern boundary of the defendant's property. The land sold to A could be approached from the public roads either by way of the defendant's land or over the runway, the remainder of the adjoining land being owned by persons other than the defendant, but A had no right of way over the runway. A's successor in title, B, claimed to be entitled to a right of way over the defendant's land from the southern public road."

And in the course of his judgment, Danckwerts, J., said (at p. 318 ibid):

"In those circumstances ..... the law would clearly have implied in favour of the grantee of the triangular piece of land a way of necessity ..... the law would have im-

"plied such a right notwithstanding that the piece of land granted by the conveyance of 1947 was not completely surrounded by the grantor's land, but on three sides abutted on to land which belonged to other persons."

And again (at p. 319 ibid):

"So there is really no very clear and express authority on the point, but it seems to me that, if the grantee has no access to the property which is sold and conveyed to him except over the grantor's land or over the land of some other person or persons being a person or persons whom he cannot compel to give him any legal right of way, common sense demands that the grant of a way of necessity should be implied, for the purposes for which the land is conveyed, over the land of the grantor. It is no answer to say that at the time of the grant, a permissive method of approach was in fact enjoyed over the land of some other person, because that permissive method of approach may be determined the day after the grant and the grantee may thus be rendered entirely incapable of approaching the land which he has purchased."

It is true that the Hasseldine case concerns the right to a way of necessity of a grantee, but the reasoning of Danckwerts, J., can with equal

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reason be applied to a grantor or a person standing in the place of the grantor.

My conclusion in this matter therefore is that a right of way of necessity is implied in favour of the respondent (landlord) and the fact that he is (or was at the time of the filing of the claim) permitted to use a pathway over sublot B is no answer to his claim.

I would affirm the decision of the Court below for the reasons given, and dismiss this appeal with costs to the respondent.

G.L.B. PERSAUD,
Justice of Appeal.
October 14, 1969.

SOLICITORS:

David de Caires for appellant.
Dabi Dial for respondent.

I have been authorised by Mr. Justice Cummings to say that he concurs with this judgment.

G.L.B. PERSAUD,
Justice of Appeal.
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Though this is a dissenting opinion, my only regret is the absence of a third decision in writing which may perhaps have achieved the ideal of unanimity, the desiratum of the judicial function.

This appeal concerns an important and point of principle in property law. It may be stated in this way: Can a landowner lease a house-spot, then subsequently divide the land on which it is into two sublots and transport them to others in such a way as to create a right of way ex necessitate over the tenant's house-spot? In principle, it would appear there is every good reason why the landowner ought not to be allowed to do so. First, there is the rule that a lessor will not be permitted to derogate from his own grant; and, secondly, another of no less importance, that he must not commit a breach of his implied covenant for quiet enjoyment.

Both prior to and in the year 1931, house-lots in the south section of Lodge Village District extended, just as they do today, from D'Urban Street in the north to Princess Street in the south. The survey of the late James T. Seymour, Sworn Land Surveyor, deposited in the Deeds Registry, will bear testimony to this fact. In that year one Mrs. Ellen Joseph became owner of S½ lot 28, south section, which has a façade of 38.28 feet on Princess Street. In 1939 she leased to the appellant a portion of this half-lot abutting on Princess Street. It measured 96' in length x 32.28' in façade from the western boundary to its eastern extremity and excepted a passageway about 6' between the said eastern extremity of

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the leased portion and the eastern boundary of S½ lot 28. The appellant immediately entered possession, cleared the land of bush, built on and paled around the house-spot. But neither her lease nor its terms have been formally proved since the appellant claims to have misplaced it. Its existence has, however, been acknowledged, though the original six-year term for which the appellant claims it was to enure has not been accepted by the respondent. What has been accepted is that it is a yearly lease with the appellant paying her rent with reference to a year.

In 1943 Ellen Joseph rented another house-spot on the half-lot to one Hodge. This was situate north of and immediately behind that let to the appellant, Antigua, and Hodge also built a house on the spot. In 1951, the respondent, Isaac Boxwill, entered the picture when he bought out Hodge's interest and attorned tenant to Ellen Joseph by paying her the rent formerly paid by Hodge. Yet again in 1953, one Neibert Thomas rented another house-spot from Ellen Joseph. He, too, built on it. Thomas' house-spot was north of Boxwill's and, like the latter's, enjoyed ingress and egress by means of the same narrow 6' reserve to the east of the appellant's close. There were then in 1953 three house-spots on the S½ lot 28 - first, the appellant's, which abutted on Princess Street and was completely paled around; secondly, the respondent's, and, thirdly, Neibert Thomas' situate north and immediately behind the respondent's.

Such was the state of affairs on S½ lot 28 in 1955 when the respondent Boxwill took a five-year lease of his holding with a right of renewal. The terms of that lease secured him on

payment of a yearly rent of $30: "a right of ingress and egress thereto along a strip of land four feet in width extending towards Princess Street, along the eastern boundary of the lot".

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Paramount among the next events of importance was the death of Mrs. Joseph in 1956 and the administration of her estate by her executrix, Margaret Kingston, according to the tenor of the will. In 1961, Boxwill intimated to Kingston his ambition to own the property leased to him by Ellen Joseph, together with that leased to the appellant, which lay in front of his abutting on Princess Street. To achieve this object, S½ lot 28 was accordingly surveyed and subdivided into sublots A and B - sublot A comprising the house-spots belonging to the appellant and the respondent, and sublot B comprising Neibert Thomas' house-spot, together with the 6' passageway leading to Princess Street.

In 1965 transport of sublot A was passed to the respondent, the appellant attorning tenant to him, followed by transport of sublot B a year later to a minor, one Hazel Johnson, a devisee under the will of the late Ellen Joseph.

According to the plan of Moorsaline S. Ali, Sworn Land Surveyor, by reference to which both sublots were transported, the position was that on October 21, 1961, sublot A comprised a rectangular strip of land whose western and eastern boundaries respectively, measured 172.84' and 174.46' with a frontage of 32.28'; while sublot B comprised the 6' reserve together with all the rest

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of the area in S½ lot 28 to the north of and behind sublot A, save a portion shaded dark, allocated and reserved for a street.

The trouble in this case has arisen because of the respondent's fear - so he says, at any rate - that now he is owner by transport of sublot A, he no longer enjoys the right of way to his close by legal right, although he does so by licence or permission of the owner of sublot B. He fears that with the withdrawal of this permission which may take place at any time, he will be deprived of any passage to and from his property. This is so, he says, because the right of way, not having been reserved to him in his transport as it formerly was in the 1955 lease, it is lost to him.

In explaining his reason for his not asking for a like reservation in the transport, the respondent said he did not so ask because he considered there was sufficient land for ingress and egress on sublot A. In other words, he was assuming the law should grant him on the strength of his transport a right of passage through the appellant's close to Princess Street. He contends he is landlocked now, and that his only means of obtaining ingress and egress is through property he now owns, i.e., that now in the possession and continued occupation of Mrs. Antigua immediately in front of him. Mrs. Antigua has always, ever since the time of her lease from Ellen Joseph in 1939, had her house-spot paled, but the respondent now demands that she opens a way to him in the circumstances, and that he be permitted to pass right through to Princess Street by that means.

The appellant is appalled by the respondent's demand. She contends she has always had her house-spot paled, and that she enjoys a written lease which was lost for some years now. As I have already observed, the fact that she did have a lease cannot be doubted, for it is acknowledged in correspondence by the solicitors of the Estate of Ellen Joseph, who have been accepting rent from the appellant on its behalf, and at the same time demanding a 100% increase of rent from the appellant in consideration of the respondent's granting her a yearly tenancy, which has an ugly look, to say the least. (See Exs. "D" and "L"). The appellant's position as a statutory tenant holding over under the Rent Restriction Ordinance, s. 21, Cap. 186, has been conceded.

The Judge who heard the case agreed with the submissions made on behalf of the respondent, to the effect that he is in a landlocked state because he is no longer entitled to the benefit of the reservation of the right of way in the 1955 lease. The Judge held this state exists because of the respondent's neglect to have registered the right of way as an encumbrance, as required by s. 23(1)(b) of the Deeds Registry Ordinance, Cap. 32. He therefore held, following Dhanpaul v. Demerara Bauxite Co., Ltd., (1959) L.R.B.G. 84, that his legal right to the reserve was "lost" when sublot B was transported to the minor, Hazel Johnson, by the executrix of the Estate of Ellen Joseph, deceased. It is only, said the Judge, if the respondent has a legal right to the use of the right of way on sublot B would he have felt himself constrained to the view that the

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respondent cannot claim a right of way of necessity over the appellant's close; and, after considering the definition of "building land", and the decision in Barry v. Hasseldine, (1952) 2 All E.R. 317, the Judge considered the right of user now enjoyed by the respondent over sublot "B" only a permissive one.

In Dhanpaul's case, the facts were, that the plaintiff rented land from one Allicock under an oral agreement at $3.00 per month and erected a building thereon. The tenancy was never registered under the Deeds Registry Ordinance, Cap. 32, s. 14. Without the plaintiff's knowledge, Allicock transport the land to the defendants who then gave plaintiff notice to quit. On his failure to vacate the premises, the defendants removed the building. When plaintiff sued for a declaration that he was a tenant of the defendants and for damages for trespass, it was held by Luckhoo, J., at page 93, that -

(i) "unless reserved by the conveyance itself interests in immovable property which are required to be registered, if not registered are void against a purchaser even if he has actual notice of these interests";

(ii) that the defendant company took the property free from tenancies which were not registered leases by virtue of sec. 23(1) of Cap. 32, and that the plaintiff became a trespasser

or at the most a licensee on the passing of transport to the defendants.

Supposing the decision is right and that a monthly tenancy is indeed a registrable interest, Dhanpaul v. Demerara Bauxite Co. Ltd. (above) is easily distinguished from the case in hand in this respect: the interest over sublot B is not capable of registration as was Danpaul's, because as will be shown later on, it is an easement of necessity and is therefore neither registrable nor required to be annotated or inserted in any transport. /See Jaigopaul v. Clement, (1960) 2 W.I.R. 203 at page 206/.

To us a great volume of authorities was cited, and much argument addressed by Counsel on the point of whether the law of the cause is Roman-Dutch or English Common Law of Landlord and Tenant. That Roman-Dutch is the lex causae was pressed by Counsel for the appellant because of the prominence of the contention that the right of way ex necessitate arises from the fact that the respondent had received transport of sublot A. There thus arose quasi-dominant and quasi-servient tenements from the severence of the half lot into two distincts ownerships, one of which had formerly enjoyed the right of way over the other. Therefore it is argued, the servitude, a Roman-Dutch concept, which has been saved by proviso (b) to s. 3(D) of the Civil Law Ordinance, Cap. 2, must be applied. The situation will then be governed, says Counsel, by Lentz v. Mullin, (1921) E.D.L. 268, in which it was held that a person may not claim a road ex necessitate over his neighbour's land on the ground that

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property alone intervenes between his land and a public road, whereas he has the use of a road giving access to another public road, only that it passes over a number of intervening properties whose owners may "in the future" (just as the respondent fears) object to his using it. / See "Servitudes" by Hall & Kellaway, 2nd Ed., 1956, at page 68 /. But, as I will show later, whichever one of the two systems is applied, the respondent's claim must fail.

S. 3(D) and proviso (b) are in the following terms:

> "(D) there shall be as heretofore one common law for both immovable and movable property, and all questions relating to immovable property within the Colony and to movable property subject to the law of the Colony shall be adjudged, determined, construed and enforced, as far as possible, according to the principles of the common law of England applicable to personal property:
>
> Provided that -
>
> .. .. ..
>
> (b) the law and practice relating to conventional mortgages or hypothecs of movable or immovable property, and to easements, profits a prendre, or real servitudes, and the right of opposition in the case of both transports and mortgates, shall be the law and practice now administered in those matters by the Supreme Court."

The trial Judge, however, considered it was unnecessary to say whether the concept of servitude applies, since he was of the opinion, and in my view quite rightly, that ss. 3 and 4 of the Landlord and Tenant Ordinance, Cap. 185, was the law governing the relations between the parties. But surely this finding is the negation of Roman-Dutch as the proper law, it being highly improbable that both systems are intended to apply! Certainly it must be either one or the other! The Judge's acceptance of the applicability of the law of Landlord and Tenant and its incidents, according to the common law of England must, therefore, be considered to have ruled out Roman-Dutch as the governing law. Thus, there is no room for the consideration of whether the alleged way of necessity was in the nature of a servitude, a strictly Roman-Dutch concept having its roots in Roman law, as against an easement which has its origins in Anglo-Saxon antiquity even though the two concepts are analogous in nature. The application of the law of Landlord and Tenant in Guyana necessarily involves the incidents of the common law of England to tenancies, and one of such incidents is the easement. Once we decide that the Landlord and Tenant Ordinance is applicable to the relationship, we must not get our concepts mixed; we must consider the term 'easement' since it is known to and developed by the law of England. In such a case, 'servitude' is not relevant, notwithstanding its analogy to easement. In fact, Cheshire in his "Modern Real Property", 6th Ed., page 213, tells us that the easement is only one species of the genus

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servitude. He does so in the following words:

"As we have seen the jura in re aliena which are known to English law cover a very wide field and include such diverse subjects as advowsons, tithes, rent charges and so on, but our present concern is solely with what Roman lawyers called servitudes. Though 'servitude' is a word which is occasionally adopted by the judges, it is not admitted as a term of art in English law, and yet it is a suitable expression to denote the particular legal interests which form the subject of this chapter.

"A servitude in Roman Law meant a right in rem, vested in a particular person or annexed to a piece of land, which extended over some property belonging to another person, and placed a restriction upon the latter's enjoyment of his property. These words describe with sufficient accuracy the analogous two great classes of servitudes, 1, easements and 2, profits."

While s. 3 of the Landlord and Tenant Ordinance defines the nature of the various tenancies, viz., for years, from year to year, for less than a year, at will, and on sufferance, s. 4(1) declares them to have always ---since January 1, 1917, comprised the relationship between landlord and tenant in Guyana, "and that every such tenancy, as the case may be, had

and subject to the provisions of this Ordinance, shall continue to have in this Colony such and the same qualities and incidents as it has by the common law of England". And by s. 4(2):

.. .. ..

" (2) It is further declared that the common law of England relating to the said respective tenancies has, since the 1st January, 1917, applied in this Colony, and subject to the provisions of this Ordinance, shall continue to apply to and to govern the said tenancies."

I believe s. 4(2) is quite meaningful, for when considered in the light of proviso (b) to s. 3(D) of the Civil Law of British Guiana Ordinance, Cap. 2 above, the fact that Cap. 2 was enacted on January 1, 1917, is, I think, of particular relevance. The significance of this is that while as from that very same day, s. 4 of the Landlord & Tenant Ordinance, Cap. 185, had declared the common law of England with "the same qualities and incidents" to be applicable to certain tenancies under that Ordinance, proviso (b) to s. 3(D) had also declared that the law and (conveyancing) practice "now administered" (i.e., on January 1, 1917) with respect to the concepts detailed therein to be the law and practice in British Guiana. It seems to me that here was the introduction into our law of the English concept of the easement which, as I have pointed out above, was alien just as was the profit à prendre, to the Civil Law. From the following excerpt of Dr. Ramsahoye's excellent treatise on

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"The development of Land Law in British Guiana" (1966), at p. 158, the existence of such English concepts as there are in proviso (b) are readily explained:

> " 'All legislation,' wrote Ilbert, 'is obviously referential in the widest sense; no statute is completely intelligible as an isolated enactment; every statute is a chapter, or a fragment of a chapter of a body of law.' This relationship between statute law and the remaining body of law influences considerably the judicial approach to the problems of construction arising as a result of the change of common law. The legislation of the nineteenth and early twentieth centuries was usually based on English ideas, was sometimes modelled on English statutes and was always enacted in the English Language. Every creation by the legislature, whether it took the form of an Ordinance or of subsidiary legislation, was engrafted upon an alien common law the texts of which were written in Dutch and medieval Latin. A serious consideration of the legal position with regard to the construction of statutes under this hybrid legal system was, in the circumstances, certain to be fraught with difficulties which were as certain to be increased when the common law was changed."

The decision of the learned trial Judge to accept the English common law as the law to apply cannot therefore be

faulted. In my opinion, the evidence fully justifies this course when one regards the nature of the three tenancies which were created on S½ lot 28, and s. 19 of the Landlord and Tenant Ordinance, Cap. 185, which is in the following terms:

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"19. (1) A lease of land shall be deemed to include and shall by virtue of this Ordinance operate to grant with the land all servitudes, easements, rights and advantages whatsoever appertaining, reputed to appertain to the land, or any part thereof, or at the time of the lease occupied or enjoyed with or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the grant gives to him to the land expressed to be granted, or as granting to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been granted to him by the lessor.

(3) This section applies only if and so far as a contrary intention is not expressed in the lease, and has effect subject to the terms of the lease and to the provisions therein contained."

First, there is the appellant's

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tenancy. She now holds over as a statutory tenant after her common law yearly tenancy has ended. Then, there is the five-year lease which the respondent procured from Ellen Joseph in 1955; and also that given to Lillian Thomas, the wife of Neibert Thomas, for a period of five years with a right of renewal, just like the respondent's. It is surprising, however, that despite this finding, there was a failure to consider that a lease of land for building purposes, such as comprised those relating to S½ lot 28, could include either a right of way or way of necessity. The Judge said in this connection:

> "I do not think that this definition includes a right of way, which the tenant would be entitled to either by virtue of sect. 19 of the Landlord and Tenant Ordinance, or as a way of necessity, for the use and enjoyment of his holding. It is, in my opinion, only the area of land leased as distinct from any right of way or other easement appurtenant thereto which is covered by the definition of the words 'building land'. It follows that, despite the fact that the plaintiff says that he gave up his right of user when the lot was divided and transported, in law, he lost this right unless it was specifically reserved. And I do not agree with the contention advanced that his omission to insist on the inclusion of such a servitude in his transport is a bar to his present claim. I, accordingly, hold the view that the right of user now enjoyed by the plaintiff over sublot B is a permissive one."

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In my opinion, it was wrong to consider that "only the area of the land leased as distinct from any right of way or other easement appurtenant thereto" falls within the definition of building land. (See below). If a right of way or other easement appurtenant thereto can never so fall, then it means that s. 19 of Cap. 185 can never apply to building land, i.e., there can never be an easement over building land. It appears to me, however, this is too narrow a view to take of the phrase "building land". How can one enjoy land leased without being granted a right of way appurtenant to it? I can see nothing in the definition of "building land" to sustain this view. In s. 2 of the Rent Restriction Ordinance, Cap. 186, the definition runs as follows:

> "'Building land' means land let to a tenant for the purpose of the erection thereon by the tenant of a building used, or to be used, as a dwelling or for the public service or for business, trade or professional purposes, or for any combination of such purposes, or land on which the tenant has lawfully erected such a building, but does not include any such land when let with agricultural land."

Surely s. 19 of the Landlord and Tenant Ordinance, Cap. 185, means what it says! I think the phrase "lease of land" therein, is wide enough to include any kind of land leased and so cause the incidents of the common law of England to be visited thereupon. I believe the learned Judged erred here for having, quite rightly, in my view, come to the conclusion that the English Common Law of Landlord and Tenant applied, the next and obvious

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step was for him to have considered the legal effect of merger of the rights and incidents in the respondent's lease of 1955 in his transport of sublot A in 1965. I have already related what he thought about the matter and his fears for the future. It seems to me that had attention been adverted to this situation, it would have been seen that immediately prior to the passing of transport to the respondent, the Estate of Ellen Joseph, deceased, was in the position of a common owner of what subsequently became sublots A and B. The situation which occurred immediately after transport likewise ought not to have escaped attention. It is obvious that a quasi-easement arose in the respondent from the fact that during the unity of ownership of sublots A and B the respondent had been accustomed to make use of the passageway as a means of ingress and egress to his close. The raison d'etre for the creation of this kind of easement is the doctrine of implied grant based on the presumed intention of the parties. In the words of Thesiger, L.J., in Wheeldon v. Burrows, (1879) 12 Ch. D. 31 at pp. 49, 59:

> "..... on the grant by the owner of a tenement or part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean quasi easements), or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit

"of the part granted ..... in the case of a grant you may imply a grant of such continuous and apparent easements or such easements as are necessary to the reasonable enjoyment of the property conveyed and have in fact been enjoyed during the unity of ownership, but that, with the exception which I have referred to of easements of necessity, you cannot imply a similar reservation in favour of the grantor of land."

See also Pearson v. Spencer, (1861) 121 E.R. 827.

I think the words, "and have in fact been enjoyed during the unity of ownership", quite meaningful; they are perhaps the most important words in that case, and cannot be over-emphasized in the case under review, seeing that the situation envisaged in the above passage actually occurred when both sublots A and B were in the common ownership of the Estate of Ellen Joseph, for ever since 1943 Mr. Hodge, the respondent's predecessor, was wont to use the passage-way, and when he departed from the scene, the respondent continued to exercise that right and still, in fact, does so. It was then a continuous and apparent quasi-easement which could blossom into a fully-fledged easement or severance of the unity of ownership and acquisition of the separate parts by different owners. It seems to me that, in keeping with s. 19 of the Landlord and Tenant Ordinance, those "servitudes, easements, rights and advantages .... appertaining or

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment - 14th October, 1969. Continued.

Crane, J.A.

reputed to appertain" to that part of the S½ lot 28, now in the possession of the respondent, and enjoyed by him during the unity of possession of the sublots in the Estate of Ellen Joseph, deceased, passed by implication as an easement of necessity in the transport of sublot A to the respondent, though not mentioned therein by virtue of the common law of England as expounded by Lord Justice Thesiger above. There was no need to reserve them specifically in the transport. But the learned Judge considered that it is only if the respondent's right to the use of the way were a legal one would he be compelled to hold there was no right of way open to him through the appellant's close. As I said, the Judge held the right was permissive merely and considered himself fortified in this view by a passage from "Gale on Easements", 13th Ed., pp. 98, 99, in which the writer states:

> " A way of necessity arises where, on a disposition by a common owner of part of his land, either the part disposed of or the part retained is left without any legally enforceable means of access .... Clearly no way of necessity arises if, at the time of the grant, the claiming party owned other land which gave access but merely permissive user of other land as a means of access is disregarded."

There are two criticisms which I level at the Judge's finding. The first is that the respondent's right to the use of the passageway being "lost" by failure to register it as an encumbrance, he had no legally enforceable

means of access.

Immediately on the passing of transport to the respondent, there was a severance by the common owner of the unity of ownership; there were from that time two properties on the S½ lot 28 - sublot A owned by the respondent, and sublot B owned by the Estate of Ellen Joseph, deceased. In these circumstances, the correct approach to a solution of the problem was to find out what quasi-easements were to be implied in favour of that part of sublot A which had hitherto been enjoyed over sublot B before, and when under the common ownership of the Estate of Ellen Joseph, deceased.

It is suggested that had this line been adopted in the light of the foregoing, especially in view of the fact that the respondent's part of sublot A had ever since the time of Hodge's tenancy in 1943 enjoyed the use of the passageway, and also the fact that the appellant is still a tenant in exclusive possession of the other part, it would have been clear that the respondent still possessed a legal, as distinct from a permissive right to use the passageway; that is to say, a common law right to do so which is implied from the presumed intention of the parties. I say with confidence it must have been the intention of the parties at the time of the passing of transport, although not expressed therein, that a passageway which was clearly defined, continuous and apparent, would continue to be used by the respondent with respect to the tenement enjoyed by him, particularly as that passageway remained the

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment - 14th October, 1969. Continued.

Crane, J.A.

property of the grantor, and in view of the principle that it is for him to grant the means of ingress and egress. This presumed intention may well have been impossible had there been simultaneous transports by the Estate of Ellen Joseph, deceased, instead of one preceding the other by an interval of a year.

The authorities are quite clear that it is the duty of the party conveying to ensure a means of ingress and egress to property which he conveys. In so doing, regard must be paid to all existing rights of surrounding proprietors and occupiers. In this case, the grantor having formerly and at all times recognised the appellant's peaceful and quiet occupation of her lease, cannot now, in my judgment, seek to disturb it by subdividing and incorporating the house-spots into two sublots and transport them in breach of her tenant's rights. Ellen Joseph in her lifetime was obliged to recognise and respect the appellant's rights. Her executrix, it is confidently submitted, is in no better position; she, too, must do so, and in my view she cannot, by subdividing S½ lot 28, thereby subject the appellant's holding, merely because it is now situate in sublot A, to the burden of providing the means of ingress and egress to the respondent's tenement. The executrix must have regard to Mrs. Antigua's rights in the same manner as her testatrix respected them in her lifetime. The approach, I say with respect, was the wrong one. The Judge only considered the respondent's rights to the right of way which he found to have been "lost" by reason of its non-registration or non-reservation in the transport; and though he rightly said that the English Common Law of Land-

lord and Tenant was applicable, he never really applied its incidents to the facts of the case. It is suggested his correct line was to have also considered the appellant's rights as a statutory tenant as she was admitted and found to be. These rights which are contained in s. 21 of the Rent Restriction Ordinance, Cap. 186, are that so long as she retains possession as tenant of the respondent, she is to observe and be entitled to the benefit of all the terms and conditions of her original contract of tenancy, so long as they are consistent with the provisions of that Ordinance; yet, it was found that those rights were "no barrier to the respondent's claim" when he ordered the appellant to concede a three-foot way of necessity over her premises from the respondent's west of the western boundary of the passageway on sublot B.

Enough has been said, I think, to show that the respondent is possessed of an implied common law right in the nature of an easement of necessity to use the passageway in circumstances where, as here, he would otherwise become landlocked. This right accrued to him over sublot B which remained in the estate of Ellen Joseph, deceased, at the time he took transport of sublot A.

As I have said, the respondent has no right of passage over the appellant's close in front of his; he has none either over adjoining lots 27 and 29 to the left and right of him; his only passageway is over the narrow strip of land leading to Princess Street which he and his predecessor, Mr. Hodge, have always made use of. In my judgment, thereon

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment - 14th October, 1969. Continued.

Crane, J.A.

lies his legal right to pass and repass to his close. That right existed both in fact and in law before and after sublot B was created; being one in rem ever since that time, it had become attached to the northern tenement in sublot A and will burden sublot B even in the hands of successive owners.

The second criticism is the corrolary of the first. It concerns the finding that the respondent's right of way over sublot B was permissive. If my view that the respondent has a legal right to the use of the reserve in sublot B is correct, then it must follow that it cannot be permissive at the same time. Thus, when it was said that the fact that the respondent's permissive right of way posed no serious bar to the application of the principle enunciated in Barry v. Hasseldine, (1952) 2 All E.R. 317, I consider that the learned Judge was adjudicating on false premises, and, as a result, misdirected himself. He thought Barry's case had much in common with the present, and for that reason applied to the circumstances of this case.

In Barry's case, the account of which is taken from the headnote, the defendant sold to A, the northermost part of his land which was separated from the rest by a concrete roadway. The roadway was on land belonging to the defendant and gave access to a disused aircraft runway which was constructed on land not in the ownership of the defendant and in turn gave access to a public road to the east. Another public road ran along the southern boundary of the defendant's property. The land sold to A could be approached from the public

roads either by way of the defendant's land or over the runway, the remainder of the adjoining land being owned by persons other than the defendant, but A had no right of way over the runway. A's successor in title, B, claimed to be entitled to a right of way over the defendant's land from the southern public road. It was held that, notwithstanding that the defendant's land did not enclose the land sold, but was merely adjacent to one side of it, B was entitled by implication to a way of necessity over the defendant's land. The trial Judge, Mr. Justice Danckwerts, said at page 319:

In the Court of Appeal of the Supreme Court of Judicature

No. 18

Judgment - 14th October, 1969. Continued.

Crane, J.A.

> ".....but it seems to me that, if the grantee has no access to the property which is sold and conveyed to him except over the grantor's land or over the land of some other person or persons being a person or persons whom he cannot compel to give him any legal right of way, common sense demands that the grant of a way of necessity should be implied, for the purposes for which the land is conveyed, over the land of the grantor. It is no answer to say that at the time of the grant, a permissive method of approach was in fact enjoyed over the land of some other person, because that permissive method of approach may be determined the day after the grant and the grantee may thus be rendered entirely incapable of approaching the land which he has purchased."

In the Court of Appeal of the Supreme Court of Judicature

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Judgment - 14th October, 1969.

Crane, J.A.

Barry's case was one in which the successor in title to an original grantee claimed a right of way of necessity against the grantor, whereas the present is not a case where the grantee is claiming against his grantor, but against a former lessee of his grantor. But it is clear from the passage from Danckwerts, J., in the above case, that before the respondent could validly lay claim to a right of passage ex necessitate over his grantor's land, he must not have the right to compel a legal right of way over land belonging to another person or persons. If he has that right, then he cannot claim to be landlocked.

In the present case, at the time of transport the respondent owned no other land nearby which gave him access to Princess Street. But it is evident that the Judge thought, just as it was in Barry's case, that if permission were withdrawn the respondent would find himself in a landlocked state. That was why he considered there was no barrier to the application of the principle of that case. Both in law and fact, however, the respondent was never landlocked; he was always, as I have endeavoured to show, entitled to a legal right of way over the reserve in sublot B he was always entitled to that right ever since the time when there was unity of ownership in the Estate of Ellen Joseph of what now constitutes the two properties. He has ever since then been continuously enjoying it as a quasi-easement, and it has now since transport of the property to him ripened into an easement.

For the above reasons, I would allow the appeal and set aside the order of the learned trial Judge with costs.

DATED this 14th day of October, 1969.

V.E. CRANE,
Justice of Appeal.

NO. 19

In the Court of Appeal of the Supreme Court of Judicature

No. 19

Order on Judgment - 14th October, 1969.

ORDER ON JUDGMENT

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

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

THE HONOURABLE MR. V.E. CRANE, JUSTICE OF APPEAL

DATED THE 14TH DAY OF OCTOBER, 1969

ENTERED THE 27TH DAY OF OCTOBER, 1969

UPON READING the notice of appeal on behalf of the abovenamed appellant (defendant) dated the 5th day of March, 1968 and the record of appeal filed herein on the 22nd day of October, 1968:

AND UPON HEARING Mr. M.G. Fitzpatrick, of counsel for the appellant (defendant) and Mr. R.H. Luckhoo, of counsel for the respondent (plaintiff):

AND MATURE DELIBERATION THEREUPON HAD:

IT IS ORDERED that the judgment of the Honourable Mr. Justice George dated the 23rd day of February, 1968 in favour of the respondent (plaintiff) be affirmed and this appeal dismissed with costs to be taxed and paid by the appellant (defendant) to the respondent (plaintiff). Stay of execution granted to three (3) weeks from the date hereof.

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

In the Court of Appeal of the Supreme Court of Judicature

No. 20

Order granting conditional leave to appeal to Her Majesty in Council - 22nd November, 1969.

NO. 20

ORDER GRANTING CONDITIONING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

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

(IN CHAMBERS)

DATED THE 22ND DAY OF NOVEMBER, 1969

ENTERED THE 25TH DAY OF NOVEMBER, 1969

UPON the Petition of the above-named appellant (defendant) dated the 30th day of October, 1969 for leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal of the Supreme Court of Judicature delivered herein on the 14th day of October, 1969 and for a stay of execution of the said judgment pending the determination of this appeal to Her Majesty in Council:

AND UPON READING the said Petition and the affidavit of the appellant (defendant) dated the 29th day of October, 1969, in support thereof:

AND UPON HEARING Mr. M.G. Fitzpatrick of counsel for the appellant (defendant) and Mrs. P. Roach of counsel for the respondent (plaintiff):

THIS COURT DOTH ORDER that subject to the performance by the said (defendant) appellant of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions leave

No. 20

Order granting conditional leave to Her Majesty in Council - 22nd November, 1969. Continued.

to appeal to Her Majesty in Council against the said judgment of the Court of Appeal of the Supreme Court of Judicature be and the same is hereby granted to the appellant (defendant):

AND THIS COURT DOTH FURTHER ORDER that the appellant (defendant) do within ninety (90) days from the date of this Order enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of $2,400: (two thousand four hundred dollars) with one surety or deposit into Court the said sum of $2,400: for the due prosecution of the said appeal and for the payment of all such costs as may become payable to the respondent (plaintiff) in the event of the appellant (defendant) not obtaining an order granting her final leave to appeal or of the appeal being dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the respondent (plaintiff) in such appeal:

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

AND THIS COURT DOTH FURTHER ORDER that the appellant (defendant) do within four (4) months from the date of this Order in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Registrar of this Court to certify that the said record has been settled and that the provisions of this Order

In the Court of Appeal of the Supreme Court of Judicature

No. 20

Order granting conditional leave to appeal to Her Majesty in Council - 22nd November, 1969. Continued.

on the part of the appellant (defendant) have been complied with:

AND THIS COURT DOTH FURTHER ORDER that the appellant (defendant) be at liberty to apply at any time within five (5) months from the date of this order for final leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of this Court of due compliance on her part with the conditions of this order:

AND THIS COURT DOTH FURTHER ORDER that a stay of execution of the judgment of this Court dated the 14th day of October, 1969 be and is hereby granted until the final determination of the appeal herein to Her Majesty's Privy Council.

BY THE COURT

H. Maraj,

Sworn Clerk & Notary Public,
for REGISTRAR.

E X H I B I T S

"A"

960

No. J 03395
Fee $20.00

No. J 03395
Duty $18.00

T R A N S P O R T
31

16. 11. 63.

BRITISH GUIANA

COUNTY OF DEMERARA

BEFORE KENNETH MONTAGUE GEORGE, Acting Registrar of Deeds of British Guiana aforesaid:

Be it known that on this day the 24th day of May in the Year One Thousand Nine Hundred and Sixty-five appeared Margaret Kingston, of Beterverwagting, East Coast Demerara, widow, in her capacity as the sole executrix under the will of ELLEN JOSEPH, deceased, Probate whereof having been granted to her by the Supreme Court of British Guiana, on 24th July, 1957, No. 271; and also in her capacity as the Administratrix of the estate of LOUIS JOSEPH, deceased, Letters of Administration whereof having been granted to her by the Supreme Court of British Guiana, on 19th August, 1961, and duly authorised hereto by an Order of the Supreme Court of British Guiana, dated 28th May, 1963, made in

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"A"
Transport No. 960 of 1963, by Margaret Kingston executrix of Ellen Joseph, (dec'd) to Isaac Boxwill. 24th May, 1965.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"A"

Transport No. 960 of 1963, byMargaret Kingston, executrix of Ellen Joseph (dec'd) to Isaac Boxwill, 24th May, 1965. Continued.

application No. 366 of 1963 which appeared declared by these presents to Cede Transport, and in full and free property to make over to and in favour of ISAAC BOXWILL, of lot 28 Princess Street, Lodge, Demerara, his heirs, executors, administrators and assigns, - - - - - - - - - - - - - -

Sub-lot "A" being part of the south half of lot number 28 (twenty-eight), south section, portion of Lodge Village, in the county of Demerara and colony of British Guiana, the said lot being laid down and defined on a plan by James T. Seymour, Sworn Land Surveyor, dated the 3rd November, 1928, and duly deposited in the Deeds Registry of British Guiana, on the 28th day of May, 1929, and the said sub-lot "A" being laid down and defined on a plan by Morsalene S. Ali, Sworn Land Surveyor, dated 21st October, 1961, and deposited in the Deeds Registry on the 19th day of September, 1963, without the buildings and erections thereon, - - - - - - - - - --

Being of the value of ONE THOUSAND EIGHT HUNDRED DOLLARS of the current money of British Guiana aforesaid transported on 9th February, 1931, No. 143, the appearer acknowledging to be fully paid and satisfied for the same.

And appeared at the said time the said Isaac Boxwill who declared to accept the foregoing Transport and to be satisfied therewith.

In testimony whereof the parties have hereunto set their hands and I, the said Registrar of Deeds, together with the Transport Clerk, have countersigned the same, the day and year first above written.

The Seal of the Court being affixed hereto.

The original of which this is a true copy is duly signed.

QUOD ATTESTOR

L.P. KERRY
L.S. SWORN CLERK & NOTARY PUBLIC.

SUPREME COURT.
No. 17. C.G.P. & S. 555 63.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"A"
Transport No. 960 of 1963, by Margaret Kingston, executrix of Ellen Joseph (dec'd) to Isaac Boxwill, 24th May, 1965. Continued.

"B"

48¢ stamps cancelled.

No. 61/1955

Sch. A 1955
No. 235.

Sch. B. 1955
No. 7606
Fee $2.00
Copy .50¢

$2.50

BRITISH GUIANA
County of Demerara

THIS LEASE is made the 28th day of February, 1955, between ELLEN JOSEPH of NN D'Urban Street, Wortmanville,

"B"
Lease between Ellen Joseph and Plaintiff, 28th. Feb., 1955.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"B"
Lease between Ellen Joseph and Plaintiff, 28th February, 1955.
Continued.

Georgetown, hereinafter called "The Lessor" of the one part and ISAAC BOXWILL, of lot 7 D'Urban Street, Lodge Village, Demerara, hereinafter called "The Lessee" of the other part.

WHEREAS the Lessor is the owner by transport of South half of lot 28 (twenty eight) south section portion of the Lodge Village and is desirous of leasing a portion of the said premises to the Lessee on the following terms and conditions:

NOW THIS AGREEMENT WITNESSETH as follows:

1. The Lessor will let to the Lessee and the Lessee will take on lease:

"A piece of land commencing 82 ft. from the southern boundary and extending 82 feet north, by 38 ft. in façade, situate at the said S½ lot 28 South section portion of Lodge Village, in the county of Demerara, with a right of ingress and egress thereto along a strip of land 4 ft. in width extending towards Princess Street, along the eastern boundary of the lot.

(hereinafter called the demised premises) for the sole purpose of erecting a building for residential purposes to be occupied by the Lessee and TO HOLD the same unto the Lessee as from the ____day of February, 1955 for a period of five years with a right of renewal for a further period of five years. The Lessees paying

therefore during the said term an annual rental of thirty dollars ($30.00) payable in advance. The Lessor hereby acknowledge the receipt of the sum of $30.00 (thirty dollars) on account of the said rental for the first year, and all subsequent rents on the 28th day of February, in each and every year during the existence of this lease.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"B"

Lease between Ellen Joseph and Plaintiff, 28th February, 1955.

Continued.

2. The Lessee covenants to observe and perform the following stipulations, namely:

(a) To erect on the demised premises one building only, which shall be occupied as a residence by the Lessee.

(b) To pay the reserved rent on the days and in the manner aforesaid.

(c) To pay all rates, taxes, assessments and charges imposed upon the demised premises, or any part thereof or upon the owners or occupiers in respect thereof.

(d) Not to assign, sublet, charge or part with the possession of the whole or part of the demised premises without the written consent of the Lessor.

(e) Not to erect any further building on the demised premises without the consent in writing of the Lessor.

(f) The building being the property of the Lessee, she will do all work required to keep the said building in good and tenantable repair and condition and will further keep the land and drains

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"B"

Lease between Ellen Joseph and Plaintiff, 28th February, 1955. Continued.

clean and weeded in compliance with the Sanitary Regulations and all existing and future Regulations issued by the Central board of Health or by any other public or statutory body.

(g) To allow the Lessor, her servants or agents to enter the demised premises at any time for the purpose of inspecting the building after erection or in the course of erection.

3. The Lessor hereby covenants with the Lessee as follows:

That the paying the rent reserved and performing and observing the stipulations and agreements on her part herein contained shall peaceably enjoy the demised premises without any interruption by the Lessor or any person lawfully claiming under them.

4. PROVIDED ALWAYS and it is hereby agreed and declared as follows:

IF the Lessee shall make default in the payment of the said rent as the times herein provided or shall fail to perform any of the covenants and conditions herein contained it shall be lawful for the Lessor to determine that Lease and re-enter the demised premises and retake possession thereof by giving to the Lessee or to their servant or agent in charge of the premises notice of their intention to determine the same without prejudice to the Lessor's right to recover any rent then due or damages in respect of any anterior breach hereof.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals at Georgetown, in the County of Demerara and colony of British Guiana the day and year first above written in the presence of the subscribing witnesses.

Witnesses to the Execution) by the Lessor .....)Ellen Joseph

1. Victor Rodrigues

2. Lilian Thomas.

Witnesses to the Execution) Isaac by the Lessee.....) Boxwill

1. Victor Rodrigues

2. Lilian Thomas.

AND IN MY PRESENCE

QUOD ATTESTOR

H.W. de Freitas
NOTARY PUBLIC.

A TRUE COPY of the original which was duly registered in the Deeds Registry of British Guiana, at Georgetown, on the 2nd day of March, 1955.

Winifred Glasgow
Assistant Sworn Clerk.

Seal affixed.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"B"
Lease between Ellen Joseph and Plaintiff- 28th February, 1955.
Continued.

"C"

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"C"
Receipt a/c re Sale of southern portion of S½ lot 28.
16th December, 1960.

CAMERON & SHEPHERD
2, High Street,
Newtown,
Georgetown,
16. 12. 60.

C No. 6548.

Received from Mr. Isaac Boxwill the sum of Three Hundred 00 dollars by deposit on a/c/ purchasel00 price re Sale of S½ Lot 28 Lodge by Est. Ellen Joseph.

$300.00

4¢ Stamps cancelled.

WITH THANKS

CAMERON & SHEPHERD

? Cashier.

"D"
Letter from Cameron & Shepherd, Solicitors, to Solicitor for Defendant.
27th February, 1965.

"D"

CAMERON & SHEPHERD
SOLICITORS

Patent & Trade Mark Agents.

JOSEPH EDWARD DE FREITAS
C.B.E.
HERMAN WILLIAM DE FREITAS

NOTARIES PUBLIC & COMMISSIONER FOR OATHS

WITH

JOSEPH ARTHUR KING
BARRISTER-AT-LAW.

CABLE ADDRESS: "NOREMAC"
GEORGETOWN, B.G.
TELEPHONE - 2671-2673.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"D"

Letter from Cameron & Shepherd, Solicitors, to Solicitor for Defendant. 27th February, 1965. Continued.

2, HIGH STREET,
GEORGETOWN,
DEMERARA,
BRITISH
GUIANA.

27th February, 1965.

David de Caires Esq.,
Solicitor,
215 King Street,
Georgetown.

Dear Sir,

Rosalyne Antigua - Tenancy at Lot 28 Princess Street, Lodge.

With reference to the telephone conversation with our Mr. Rodrigues we have now had an opportunity of discussing the matter with the purchaser, Mr. I. Boxwill.

Mr. Boxwill informs us that your client has recently encroached on a portion of land measuring approximately 14 feet and north of her northern boundary and a new fence has been erected. Extensive additions have also been carried out to her building. Mr. Boxwill would be prepared to grant her a tenancy from year to year at a rental of $60.00 per annum provided

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"D"
Letter from Cameron & Shepherd, Solicitors to Solicitor for Defendant.
27th February, 1965.
Continued.

she removes her northern fence to its original position and make provision for a right of way along the eastern boundary. Your client would appreciate that the present rental of $30: is inadequate in view of similar rentals in Lodge.

Mr. Boxwill informs us that the Police have had to intervene as a result of the behaviour of persons who frequent weekend dances and picnics which are held at your client's premises, and he expects that some steps will be taken to remedy this situation.

Yours faithfully,

Cameron & Shepherd.

"E"

"E"

Registration Slip.

593/66 2 pieces

Re: Isaac Boxwill

v.

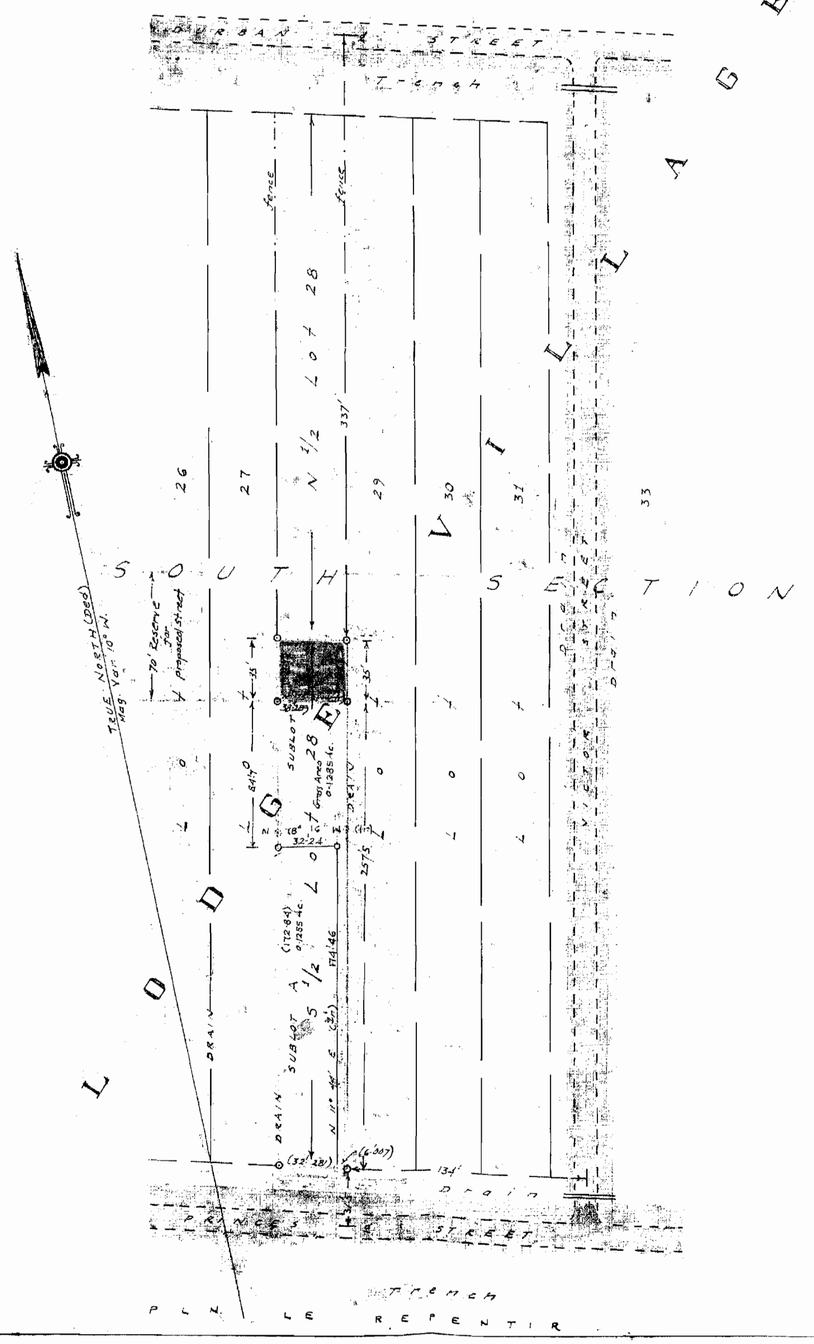
Rosaline Antigua

Pl. Ex.

REGISTRATION SLIP

Q 016783

d/d. 8. 7. 65.



Scale

-30 0 60 120 180 240 300

1 Inch = 60 Eng. Ft.

PLAN

SHOWING

The South Half of Lot 28, South Section, Lodge, situate in the Lodge Village District, in the County of Demerara and Colony of British Guiana

Surveyed, sub-divided and paged off at the request of Isaac Boxwill and Doris Johnson

By

Date- 21st October 1961

Moorahmed N. Ali
Sworn Land Surveyor

Memorandum

The South Half of Lot 28, South Section, Lodge Village is shown on a plan by J. T. Seymour, S.L.S., d/d 3.11.1928 on record in the Deeds Registry, Georgetown.

Notices of the intended survey were served on the Chairman of Lodge Village District, C.U. Walton, Randolph Cameron and D. G. Johnson and the survey was commenced and completed on the 19th October 1961.

Mr. Randolph Cameron attended the survey. No objection was made.

⊙ indicates a concrete peal MSA
O " " wooden " MSA

Note- The boundaries of S½ Lot 28, South Section, Lodge are shown in firm red lines in the plan hereon.

Moorahmed N. Ali

Gross Area of Sublot B	0.1285 Ac	
Less reserve for proposed street	0.0307 ±	(coloured yellow in plan)
Net Area of Sublot B	0.0978 Ac	

25th October 61

45/61/47

Certified to be a duplicate copy of the original
Moorahmed N. Ali

"F"

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"F"

Letter from Dabi Dial, Solicitor, to Defendant. 27th July, 1965.

DABI DIAL, LL.B. (LOND.)
SOLICITOR

"SOMERSET HOUSE"
5, Croal Street,
Georgetown,
Demerara.

DIAL: 5660.

27th July, 1965.

Mrs. Rosaline Antigua,
28 Princess Street,
Lodge Village,
East Coast Demerara.

Dear Madam,

I have been consulted by Mr. Isaac Boxwill who has instructed me that he is now the owner of sublot A of 28 Princess Street, Lodge, whereon you have a building.

I am instructed that my client has no way to get to the back of his premises and you are requested to so arrange your occupation as to give to my client and his licences to have access to their premises at the back of your house.

If you cannot or will not do so I am instructed that my client will be advised by Counsel as to his rights on an application to the Supreme Court against you.

Yours faithfully,

Dabi Dial.

DD: ls.

In the High Court of the Supreme Court of Judicature

"H"

Receipt No. T 91735
Fee $10.00

Plaintiff's Exhibits

"H"

T R A N S P O R T

17
22. 1. 66.

Transport No. 312 of 1966 by Margaret Kingston, executrix of Ellen Joseph, (dec'd) to Hazel Johnson.
14th February, 1966.

BRITISH GUIANA

COUNTY OF DEMERARA

Before KENNETH MONTAGUE GEORGE, Acting Registrar of Deeds of British Guiana aforesaid:

Be it known that on this day the 14th day of February in the year One Thousand Nine Hundred and Sixty-Six appeared Margaret Kingston, of Beterverwagting, East Coast Demerara, widow, in her capacity as executrix named in the last Will and Testament of ELLEN JOSEPH also known as Sissy Joseph, deceased, Probate whereof was granted to her by the Supreme Court of British Guiana, on the 24th day of July, 1957 and in her capacity as the administratrix of LOUIS JOSEPH, deceased Letters of Administration having been granted to her by the Supreme Court of British Guiana on the 19th day of August, 1961, which appearer declared by these presents to Cede, Transport, and in full and free property to make over to and in favour of HAZEL JOHNSON, a minor, of lot 72 Robb Street, Bourda, Georgetown, Demerara, her heirs, executors, administrators and assigns, - - - - - - - - - - - - - - -

Sublot B being a part of the south half of lot number 28 (twenty-eight) south section, Lodge, in the Lodge Village District, in the county of Demerara, British Guiana, the said lot being laid down and defined on a plan by James T. Seymour, Sworn Land Surveyor, dated the 3rd November, 1928, and duly deposited in the Deeds Registry of British Guiana on the 28th May, 1929, and the said sublot "B" being land down and defined on a plan by Moorsalene S. Ali, Sworn Land Surveyor, dated the 21st October, 1961, and deposited in the Deeds Registry of British Guiana on the 19th September, 1963, without the buildings thereon, - - - - -

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"H"

Transport No. 312 of 1966 by Margaret Kingston, executrix of Ellen Joseph, (dec'd) to Hazel Johnson. 14th February, 1966.

Being of the value of TWO THOUSAND FOUR HUNDRED DOLLARS of the current money of British Guiana aforesaid transported on the 9th February, 1931, No. 143, the appearer acknowledging to be fully paid and satisfied for the same.

And appeared at the same time Doris Johnson, as mother and guardian of the said minor Hazel Johnson who declared to accept of the foregoing Transport and to be satisfied therewith.

In testimony whereof the parties have hereunto set their hands and

I, the said Registrar of Deeds, together with the Transport Clerk, have countersigned the same, the day and year first above written. The original of which this is a true copy is duly signed.

(L.S.) QUOD ATTESTOR
L.P. KERRY
SWORN CLERK & NOTARY PUBLIC.
Supreme Court. No. 17 C.G.P. & S 555/63.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"J"
Copy of Plan of S½ section, Lodge - 21st October, 1961. (same as "G").

"J"

Copy of Plan of S½ lot 28, South Section, Lodge.

(Same as Exhibit "G" page 137 (a)).

"K1"

Probate & Administration with Will annexed re: Estate of Ellen Joseph No. 271 of 1957. 24th July, 1957.

"K1"

PROBATE AND ADMINISTRATION NO. 271 OF 1957

IN THE SUPREME COURT OF BRITISH GUIANA

PROBATE

Sch. B. 19
No. 14653
Fee $12.50

IN the Estate of ELLEN JOSEPH, also known as SISSY JOSEPH, Spinster, deceased.

SWORN AT $3,500.00.

The 24th day of July, 1957.

BE IT KNOWN that the abovenamed ELLEN JOSEPH, also known as SISSY

JOSEPH, Spinster, died on the 16th day of April, 1956 at the Public Hospital, Georgetown, Demerara,

AND THAT on the 20th day of JUNE, 1957 the last will (a copy whereof is hereuntc annexed) of the said deceased was deposited with proof of due execution in the Registry of Court:

AND BE IT FURTHER KNOWN that on the 24th day of July 1957 administration of the estate which by law devolves on and vests in the personal representative of the said deceased was granted by the abovementioned Court to MARGARET KINGSTON, widow, of Beterverwagting, East Coast Demerara, the Executrix named in the said Will she having been first sworn faithfully to administer the same.

L.P. Kerry
Sworn Clerk & Notary
Public
for Registrar.

CERTIFIED A TRUE COPY
P.F. Killikelly
Assistant Sworn Clerk
17.9.63

Extracted by H.C.B. HUMPHRYS, Esq., Solicitor for Applicant.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"K1"

Probate & Administration with Will annexed re: Estate of Ellen Joseph, No. 271 of 1957. 24th July, 1957. Continued.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"K1"
Probate & Administration with Will annexed re: Estate of Ellen Joseph, No. 271 of 1957.
24th July, 1957.
Continued.

"K1" (cont'd).

I, ELLEN JOSEPH also known as Sissy Joseph of NN, D'Urban Street, Wortmanville, Georgetown, Demerara, presently at Public Hospital, Georgetown, HEREBY REVOKE all former Wills and Testamentary dispositions heretofore made by me and declare this to be my LAST WILL AND TESTAMENT.

I Appoint MARGARET KINGSTON of Beterverwagting, East Coast Demerara to be the sole Executrix of this my Last Will.

I direct that my Funeral Expenses be paid as soon as possible after my death.

I GIVE and bequeath to Nazel Adams, the daughter of Doris Adams, of NN, D'Urban Street, Wortmanville, Georgetown, and JOYCE EVELYN RODNEY also called Baby of Beterverwagting, East Coast Demerara, my property situate at South half of lot 28 (twenty-eight) South Section Lodge in equal shares. All the rest of my estate whether real, personal, movable or immovable, whatsoever and wheresoever situate I GIVE and Bequeath to the said HAZEL ADAMS and JOYCE EVELYN RODNEY in equal shares.

Dated this 11th day of April, 1956.

Signed by the said ELLEN JOSEPH as and for her Last Will and Testament in the joint presence of us both present at the same time to in her presence,) Ellen Joseph Testator.

and in the presence of each other, at her request, have hereunto subscribed our names as witnesses.

1. Victor Rodrigues,
58, Lime Street,
Georgetown.

Solicitor's Clerk.

2. Enid A. Lowe (Nurse WDC)
44 D'Urban Street,
W'Rust, G.T.

CERTIFIED A TRUE COPY
G.A.G. Craigen
SWORN CLERK
25.9.1965.

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"K1"

Probate and Administration with Will annexed re: Estate of Ellen Joseph, No. 271 of 1957.
24th July, 1957.
Continued.

"K2"

"K2"

PROBATE AND ADMINISTRATION NO. 157 OF 1961

IN THE SUPREME COURT OF BRITISH GUIANA

LETTERS OF ADMINISTRATION

Letters of Administration re: Est. of Louis Joseph (dec'd) No. 157 of 1961.
6th August, 1941.

In the Estate of LOUIS JOSEPH, deceased.
Sworn at
$1,775.00

BE IT KNOWN that the abovenamed Louis Joseph, late of this colony, died on the 6th day of August, 1941

In the High Court of the Supreme Court of Judicature

Plaintiff's Exhibits

"K2"

Letters of Administration re: Est. of Louis Joseph, (dec'd). No. 157 of 1961. 6th August, 1941. Continued.

at Georgetown, Demerara, intestate:

AND BE IT FURTHER KNOWN on the____ day of August, 1961, Letters of Administration of all the estate which by law devolves on and vests in the personal representative of the said deceased were granted by the Supreme Court aforesaid to MARGARET KINGSTON, widow, of Beterverwagting, East Coast Demerara, having been first sworn well and faithfully to administer the same.

Dated this 19th day of August, 1961.

Seal affixed.

John W. Romao
Sworn Clerk & Notary Public
for Registrar.

Extracted by David de Caires, Esq., Solicitor for the applicant.

SUPREME COURT NO. 60.

Defendant's Exhibits

"L"

Receipt from Cameron & Shepherd, Solicitors, re: payment on arrears of lease at lot 28 Princess Street, Lodge. 6th May, 1965.

"L"

CAMERON & SHEPHERD
2 High Street,
Newtown,
Georgetown.

6th May, 1965.

Received from R. Antigua the sum of Thirty 00/100 dollars being payment of arrears on lease re Est. Cissy Joseph 28 Princess Street, Lodge.
$30.00.
5¢ stamp cancelled.

CAMERON & SHEPHERD
B. Correia,
Cashier.

WITH THANKS.

"M1"

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"M1"

F. RAMPRASHAD
BARRISTER-AT-LAW

TELEPHONE
C. 851.

"SOMERSET HOUSE"
5 Croal Street,
Georgetown,
Demerara,
British
Guiana.

16th March, 1961.

Letter from F. Ramprashad, Barrister-at-law. 16th March, 1961.

Mrs. Margaret Kingston,
Beterverwagting,
East Coast Demerara.

Dear Madam,

I am acting on behalf of Mrs. Rosalene Antigua of lot 28, Princess Street, Lodge Village, East Coast Demerara.

I am informed that you are the executrix of the estate of Mr. C. Joseph, deceased.

I am instructed that my client is a lessee of a portion of lot 28, Princess Street from the late Mr. C. Joseph and that it was agreed that my client would have the option of purchasing lot 28, if and when the lessor desired to sell.

It appears that you have agreed to sell to the other lessee, Mr. Isaac Boxwill, without offering to sell my client the property.

I am instructed by my client to inform you that she is in a position to purchase the property and if an offer and the amount required are forthcoming she will purchase either the whole property or the

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"M1"
Letter from F. Ramprashad, Barrister-at-law.
16th March, 1961.
Continued.

half on which the house is situate.

She feels that it is only fair that the option which was granted to her be implemented now in order to protect her house.

Hoping I shall hear from you as early as possible.

Yours faithfully,

F. Ramprashad.

"M2"

Letter from F. Ramprashad, Barrister-at-law.
14th April, 1961.

"M2"

F. RAMPRASHAD
BARRISTER-AT-LAW

TELEPHONE
C. 851.

"SOMERSET HOUSE"
5 Croal Street,
Georgetown,
Demerara,
British Guiana.
14th April, 1961.

Messrs. Cameron & Shepherd,
Solicitors,
High Street,
Georgetown, Demerara.

Sir,

I am acting on behalf of my client Mrs. Rosalene Antigua of lot 28, Princess Street, Lodge Village, East Coast Demerara.

I am instructed that you are acting on behalf of Mrs. Margaret Kingston, of Beterverwagting, East Coast Demerara.

My client is a "Lessee" of a portion of lot 28 Princess Street, from the late Mr. C. Joseph, and my client was given an option to purchase the said property if and when the landlord desired to sell.

My client has been informed that your client Mrs. Margaret Kingston has sold the said property without offering the property to my client. My client is in a position to purchase, and it seems unfair that she should be denied her rights.

My client was informed that Mr. Isaac Boxwill purchased the property.

Kindly verify if this is so.

Yours faithfully,

F. Ramprashad.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"M2"

Letter from F. Ramprashad, Barrister-at-law. 14th April, 1961. Continued.

"N"

A.S. MANRAJ, B.A. (Hons.)
OF THE MIDDLE TEMPLE
Barrister-at-law.

TELEPHONE No.
Dial 5232.

Chambers:
15 & 16 Croal Street,
Georgetown,
Demerara,
British Guiana.

11th November, 1961.

"N"

Letter from A.S. Manraj, Barrister-at-law. 11th November, 1961.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"N"

Letter from A.S. Manraj, Barrister-at-law. 11th November, 1961. Continued.

Mrs. Margaret Kingston,
Beterverwagting,
East Coast Demerara.

Dear Madam,

In re: Purchase of Land at lot 28, Princess Street, Lodge, East Coast Demerara.

I am instructed by my client Mrs. Rosalyne Antigua, of Lot 28, Princess Street, Lodge, East Coast Demerara, to write to you regarding the above-mentioned matter.

My client instructs me that for twenty-two years she was a lessee of one Mrs. Ellen Joseph, now deceased, of a piece or parcel of land situate at Lot 28, Princess Street, Lodge, East Coast Demerara, at a yearly rental of $30.00. The original rent was $6.00 per year. The lease which my client had for the aforementioned piece of land has expired, and due to the sudden death of Mrs. Ellen Joseph, the said lease was not renewed for a similar period.

My client further instructs me that one Boxwell is also a lessee of an adjoining portion of land, and that in February 1961, when she went to pay her lease rent to Mr. H.C.B. Humphrys of Cameron and Shepherd, she was informed that you in your capacity as Executrix of the estate of Mrs. Ellen Joseph, deceased, accepted a deposit from Mr. Boxwell towards the purchase price of the piece of land she now occupies. My client is the oldest lessee on the land, and preference should be given to her. She is willing to pay to you the sum of $3,500.00 for the land she now occupies. If you are not disposed to grant my client's request

regarding the purchase of this land, my client would be happy if you could give her a lease instead.

Thanking you for your help and co-operation, and an early reply.

Sincerely yours,

A.S. MANRAJ.

ASM/wmr.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"N"
Letter from A.S. Manraj, Barrister-at-law.
11th November, 1961.
Continued.

"O"

"O"

Copy of Writ of Summons and Statement of Claim in Action No. 2163 of 1963.
23rd November, 1963.

1963 No. 2163 Demerara

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:

ROSALYNE ANTIGUA,
Plaintiff,

- and -

MARGARET KINGSTON, individually and in her capacity as the sole executrix under the will of ELLEN JOSEPH, deceased, and also in her capacity as the Administratrix of the estate of Louis Joseph, deceased,
Defendant.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Copy of Writ of Summons and Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

ELIZABETH THE SECOND, BY THE GRACE OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN, NORTHERN IRELAND, AND OF HER OTHER REALMS AND TERRITORIES, QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH.

To: Margaret Kingston,
Beterverwagting,
East Coast Demerara.

WE COMMAND YOU, that within ten (10) days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of ROSALYNE ANTIGUA; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS, THE HONOURABLE WILLIAM ADRAIN DATE, Chief Justice of British Guiana, acting, this 23rd day of November, in the year of Our Lord, one thousand nine hundred and sixty three.

N.B. The defendant may appear hereto by entering an appearance either personally or by solicitor at the Registry at Georgetown.

INDORSEMENT OF CLAIM:

The Plaintiff's claim against the defendant for -

1. A declaration that the opposition entered on the 14th day of November, 1963 to the passing of a conveyance by way of transport by the defendant to Isaac Boxwill advertised in the Official Gazette of the 2nd day of November, 1963,

and numbered 31 (thirty-one) therein for the counties of Demerara and Essequibo in respect of property sublot "A" being part of the south half of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerara and Colony of British Guiana, is just legal and well founded.

2. An Order of Court declaring that it is not competent for the defendant to transport the said property to Isaac Boxwill.

3. An injunction restraining the passing of the said conveyance by way of transport by the defendant to Isaac Boxwill advertised in the Official Gazette of the 2nd November, 1963 and numbered 31 therein for the counties of Demerara and Essequibo.

4. That the Plaintiff is a Lessee from the Estate of Ellen Joseph, deceased of a piece or parcel of land measuring 95 (ninety-five) feet in length by 36 (thirty-six) feet in width situate at the southern portion and being a part of the said sublot "A" being part of the south half of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerara and Colony of British Guiana.

5. The said lease was first in writing for a period of 6 (six) years commencing from the 4th day of November, 1940, and thereafter from year to year for which the Plaintiff paid to the defendant a yearly sum of $6.00 increasing from time to time to a yearly sum of $30.00 (thirty dollars).

6. That it was an express term of the said agreement of lease that

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Copy of Writ of Summons and Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Copy of Writ of Summons and Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

should the said Ellen Joseph or her heirs, executors, administrators and assigns be desirous of selling or disposing of the said sublot "A" being part of the south of lot number 28 (twenty-eight) south section, portion of Lodge Village in the county of Demerara and Colony of British Guiana aforesaid she will give to the Plaintiff the first option of purchasing the same or the said portion the Plaintiff now occupies for the price the said Ellen Joseph is willing to sell same to any other person. No such option has ever been given by the Defendant to the Plaintiff.

7. That during the year 1956 December the said Ellen Joseph, deceased, during her lifetime for her sale and assigns covenanted with the opponent to give the opponents a 999 (nine hundred and ninety-nine years) lease in respect of the portion of land leased to the Plaintiff as aforesaid but the said Ellen Joseph died before putting that covenant into effect.

8. That on the 25th day of July, 1957 the Plaintiff called upon the defendant in her capacity aforesaid to pass a lease for 999 years in favour of the Plaintiff in respect of the demised premises occupied by the Plaintiff in pursuance of the aforesaid agreement between the Plaintiff and Ellen Joseph, deceased, but the defendant has failed and/ or neglected to do so.

9. That the defendant in her aforesaid capacity is seeking to pass the hereinbefore described property to the exclusion of the aforesaid lease in respect of a

piece or parcel of land measuring 95 feet in length by 36 feet in width situate at the southern portion and being part of the property hereinbefore described leased to the Plaintiff from Ellen Joseph, deceased, and it is not competent to do so.

10. The plaintiff therefore claims:

(a) That it is not competent for the Defendant to pass transport of the said sub-lot "A" aforesaid without passing the said transport subject to the said lease;

(b) passing to the Plaintiff a lease for 999 (nine hundred and ninety-nine) years of the premises demised under the said yearly lease to the opponent;

(c) that the Defendant do pass in favour of the Plaintiff a lease for 999 years of the said piece or parcel of land demised to the Plaintiff as aforesaid;

(d) that the transport hereby sought to be passed be conveyed to the said Isaac Boxwill subject to the said 999 years lease in favour of the Plaintiff;

(e) Such further or other order as the Court may deem just and expedient;

(f) costs.

A.Vanier
Solicitor for the Plaintiff.

In the High Court of the Supreme Court of Judicature

Defendant's Evidence

"O"

Copy of Writ of Summons and Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Copy of Writ of Summons and Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

D.A. Weithers
OF COUNSEL.

Georgetown, Demerara,
this 23rd day of November, 1963.

This writ was issued by Abraham Vanier, Esq., Solicitor of and whose address for service and place of business is at his office lot 215 South Street, Georgetown, Demerara, Solicitor for the Plaintiff who resides at lot 28 Princess Street, Lodge Village, Demerara.

The defendant is sued herein individually and in her capacity as the sole executrix under the Will of Ellen Joseph, deceased, Probate whereof having been granted to her by the Supreme Court of British Guiana on 24th day of July, 1957, No. 271; and also in her capacity as the Administratrix of the Estate of Louis Joseph, deceased, Letters of Administration whereof having been granted to her by the Supreme Court of British Guiana on 19th August, 1961, and duly authorised hereto by an Order of the Supreme Court of British Guiana dated 28th May, 1963 made in application No. 366 of 1963.

A. Vanier
Solicitor for the Plaintiff.

Georgetown, Demerara,
this 23rd day of November, 1963.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits.

"O"

Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963.

IN THE SUPREME COURT OF BRITISH GUIANA

CIVIL JURISDICTION

BETWEEN:

ROSALYNE ANTIGUA,

Plaintiff,

and

MARGARET KINGSTON, individually and in her capacity as the sole executrix under the will of ELLEN JOSEPH, deceased, and also in her capacity as the administratrix of the estate of LOUIS JOSEPH, deceased,

Defendant.

STATEMENT OF CLAIM:

The Plaintiff's claim is against the defendant for a declaration that the opposition entered on the 14th day of November, 1963 to the passing of a conveyance by way of transport by the defendant to Isaac Boxwill advertised in the Official Gazette of the 2nd November, 1963, and numbered 31 (thirty-one) therein for the counties of Demerara and Essequibo in respect of property of Sublot "A" being part of the south half of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerara and Colony of British Guiana, is just legal and well-founded.

2. The defendant instructed the Registrar of Deeds of British Guiana to advertise, and thereby caused to the advertised in the Official Gazette

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

of the Colony of British Guiana on the 2nd day of November, 1963, and numbered 31 (thirty-one) therein for the counties of Demerara and Essequibo a conveyance by way of transport of the property therein described by her in favour of Isaac Boxwill of sublot "A" being part of the south half of lot numbered 28 (twenty-eight) south section, portion of Lodge Village, Demerara.

3. An Order of Court declaring that it is not competent for the defendant to transport the said property to Isaac Boxwill.

4. An injunction restraining the passing of the said conveyance by way of transport by the defendant to Isaac Boxwill advertised in the Official Gazette of the 2nd November, 1963 and numbered 31 therein for the counties of Demerara and Essequibo.

5. That the Plaintiff is a Lessee from the Estate of Ellen Joseph, deceased, of a piece or parcel of land measuring 95 (ninety-five) feet in length by 36 (thirty--six) feet in width situate at the southern portion and being a part of the said sublot "A" being part of the south of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerara and Colony of British Guiana with the building and erections thereon.

6. The said lease was first in writing for a period of 6 (six) years commencing from the 4th day of November, 1940, and thereafter from year to year for which the Plaintiff paid to the defendant a yearly sum of $6.00 (six dollars) increasing from time to time to a yearly sum of

$30.00 (thirty dollars).

7. That it was an express term of the said agreement of lease that should the said Ellen Joseph or her heirs, executors, administrators, and assigns be desirous of selling or disposing of the said sublot "A" being part of the south half of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerara and Colony of British Guiana, she will give to the Plaintiff the first option of purchasing the same or the said portion the Plaintiff now occupies for the price the said Ellen Joseph is willing to sell same to any other person. No such option has ever been given by the Defendant to the Plaintiff.

8. That during the year 1956 December, the said Ellen Joseph, deceased, during her lifetime for herself and assigns covenanted with the opponent to give the opponent a 999 (nine hundred and ninety-nine) years lease in respect of the portion of land leased to the Plaintiff as aforesaid but the said Ellen Joseph died before putting that covenant into effect.

9. That on the 25th day of July, 1957 the Plaintiff called upon the defendant in her capacity aforesaid to pass a lease for 999 years in favour of the Plaintiff in respect of the demised premises occupied by the Plaintiff in pursuance of the aforesaid agreement between the Plaintiff and Ellen Joseph, deceased, but the defendant has failed and/or neglected to do so.

10. That the Defendant in her

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

aforesaid capacity is seeking to pass the hereinbefore described property to the exclusion of the aforesaid lease in respect of a piece or parcel of land measuring 95 feet in length by 36 feet in width situate at the southern portion and being part of the property hereinbefore described leased to the Plaintiff from Ellen Joseph, deceased, and it is not competent to do so.

11. On the 14th day of November, 1963, the plaintiff entered an opposition to the passing of the transport, such opposition being as follows:

"BRITISH GUIANA

COUNTY OF DEMERARA

Transport No. 31 of the 16th November, 1963.

NOTICE AND REASONS FOR OPPOSITION.

In the matter of the Deeds Registry Ordinance, Chapter 32.

TO: MARGARET KINGSTON,
Beterverwagting,
East Coast Demerara, and

TO: THE REGISTRAR OF DEEDS,
Deeds Registry, Georgetown.

TAKE NOTICE, that Rosalyne Antigua of lot 28 Princess Street, Lodge Village, in the county of Demerara and Colony of British Guiana, do hereby oppose the passing of a certain conveyance by way of Transport advertised in the Official Gazette of the 2nd day of November, 1963, and numbered 31 (thirty-one) therein for the counties of Demerara and

Essequibo by Margaret Kingston, of Beterverwagting, East Coast Demerara, widow, in her capacity as the sole executrix under the will of ELLEN JOSEPH, deceased, probate whereof having been granted to her by the Supreme Court of British Guiana on the 24th July, 1957, No. 271; and also in her capacity as the Administratrix of the Estate of LOUIS JOSEPH, deceased, Letters of Administration whereof having been granted to her by the Supreme Court of British Guiana on the 19th August, 1961, and duly authorised hereto by an Order of the Supreme Court of British Guiana dated 28th May, 1963, made in application No. 306 of 1963 -

Sublot "A" being part of the south half of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerara and colony of British Guiana, the said lot being laid down and defined on a plan by James T. Seymour, Sworn Land Surveyor, dated the 3rd November, 1928, and duly deposited in the Deeds Registry of British Guiana on the 28th day of May, 1929, and the said sublot "A" being laid down and defined on a plan by Moraselene S. Ali, Sworn Land Surveyor, dated 21st October, 1961, and deposited in the Deeds Registry on the 19th day of September, 1953, sought

to be transported by the Transportor MARGARET KINGSTON to ISAAC BOXWILL.

1. That the opponent Rosalyne

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

Antigua (hereinafter referred to as the "opponent") is a lessee from the estate of Ellen Joseph, deceased of a piece or parcel of land measuring 95 (ninety-five) feet in length by 36 (thirty-six) feet in width situate at the southern portion and being a part of the said sublot "A" being part of the south half of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerata and Colony of British Guiana.

2. That the said lease was first in writing for a period of 6 (six) years commencing from the 4th day of November, 1940, and thereafter from year to year for which the opponent paid to the transportor a yearly sum of $6.00 increasing from time to time to a yearly sum of $30.00.

3. That the opponent paid to the said transportor the sum of $30.00 for the year ending 31st December, 1963.

4. That it was an expressed term of the said agreement of lease that should the said Ellen Joseph or her heirs, executors, administrators and assigns be desirous of selling or disposing of the said sublot "A" being part of the south half of lot number 28 (twenty-eight) south section, portion of Lodge Village, in the county of Demerara and Colony of British Guiana aforesaid, she will give to the opponent the first option of purchasing the same or the portion she now occupies for the price she is willing to sell same to any other person. No such option has ever been given by the transportor to the opponent.

5. That during the year 1956 December the said Ellen Joseph, deceased, during her lifetime for herself and assigns covenanted with the opponent to give the opponent a 999 (nine hundred and ninety-nine) years lease in respect of the portion of land leased to her as aforesaid but the said Ellen Joseph died before putting that covenant into effect.

6. That the transportor in her aforesaid capacity is seeking to pass the hereinbefore described property to the exclusion of the aforesaid lease in respect of a piece or parcel of land measuring 95 feet in length by 36 feet in width situate at the southern portion and being part of the property hereinbefore described leased to the opponent from Ellen Joseph, deceased and it is not competent to do so.

7. The opponent therefore claims:

(a) that it is not competent for the transportor to pass transport of the said sublot "A" to anyone without passing the said transport subject to the said lease; or

(b) passing to the opponent a lease for 999 (nine hundred and ninety-nine) years of the premises demised under the said year to year lease to the opponent;

(c) that the transportor do pass in favour of the opponent a lease for 999 years of the said piece or parcel of land demised

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"

Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"
Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

to the opponent as aforesaid;

(d) that the transport hereby sought to be passed be conveyed to the said Isaac Boxwill subject to the said lease in favour of the opponent;

(e) such further or other order as the Court may deem just;

(f) costs.

Georgetown, Demerara.
Dated this 14th day of November, 1963.

D.A. Weithers
COUNSEL FOR THE OPPONENT.

12. That notice of opposition has been duly given.

13. The plaintiff repeats and relies on each and every of the several allegations and statements made and contained in the said Notice and Reasons for opposition.

THE PLAINTIFF THEREFORE CLAIMS:

(a) That it is not competent for the Defendant to pass transport of the said sublot "A" aforesaid without passing the said transport subject to the said lease;

(b) passing to the plaintiff a lease for 999 (nine hundred and ninety-nine years) of the premises demised under the said yearly lease to the opponent;.

(c) that the Defendant do pass in favour of the Plaintiff a lease for 999 years of the said piece or parcel of land demised to the Plaintiff as aforesaid;

(d) an injunction restraining the defendant from passing the said transport of the property to Isaac Boxwill;

(e) that the transport hereby sought to be passed be conveyed to the said Isaac Boxwill subject to the said 999 years in favour of the Plaintiff;

(f) Such further or other order as the Court may deem just and expedient.

(g) costs.

Georgetown, Demerara.
Dated this 15th day of January, 1964.

A. Vanier
Solicitor for the Plaintiff.

D.A. Weithers
OF COUNSEL.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"O"
Statement of Claim in Action No. 2163 of 1963. 23rd November, 1963. Continued.

"P"

No. 98/1953

Sch. B 1953 No. 8960 Fee $2.00 Copy .50

Sch. A 1953 No. 504

"P"
Lease between Ellen Joseph and Lilian Thomas. 23rd June, 1953.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"P"

Lease between Ellen Joseph and Lilian Thomas. 23rd June, 1953. Continued.

BRITISH GUIANA

COUNTY OF DEMERARA

THIS LEASE is made the 23rd day of June, 1953, between ELLEN JOSEPH of lot NN D'Urban Street, Lodge Village, (hereinafter called "The Lessor") of the one part and LILIAN THOMAS, the wife of Nebert Thomas of lot 7, D'Urban Street, Lodge Village, (hereinafter called "The Lessee") of the other part.

WHEREAS the Lessor is the owner by Transport of south half of lot 28 (twenty-eight) south section portion of the Lodge Village, and is desirous of leasing a portion of the said premises to the Lessee on the following terms and conditions:

NOW THIS AGREEMENT WITNESSETH as follows:

1. The Lessor will let to the Lessee and the Lessee will take on lease -

"A piece of land commencing 146 ft. from the southern boundary and extending 82 feet north, by 38 feet in façade, situate at the said S½ lot 28 South Section portion of Lodge Village in the county of Demerara" with a right of ingress and egress thereto along a strip of land 4 feet in width extending towards Princess Street along the eastern boundary of the lot.

hereinafter called "the demised premises" for the sole purpose of erecting a building for residential purposes to be occupied by the Lessee and TO HOLD the same unto the Lessee as

from the 23rd day of June, 1953, for a period of five years only. The Lessee paying therefor during the said term an equal rent of thirty dollars ($30.00) payable in advance. The Lessor hereby acknowledges the receipt of the sum of $15.00 on account of the said rental for the the first year, the balance being payable on or before the 31st day of December, 1953, and all subsequent rents on the 23rd day of June, in each and every year during the existence of this lease.

2. The Lessee covenants to observe and perform the following stipulations, namely:

(a) To erect on the demised premises one building only, which shall be occupied as a residence by the Lessee.

(b) To pay the reserved rent on the days and in the manner aforesaid.

(c) To pay all rates, taxes, assessments and charges imposed upon the demised premises or any part thereof or upon the owners or occupiers in respect thereof.

(d) Not to assign, sublet, charge or part with the possession of the whole or part of the demised premises without the written consent of the Lessor.

(e) Not to erect any further building on the demised premises without the consent in writing of the

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"P"
Lease between Ellen Joseph and Lilian Thomas. 23rd June, 1953. Continued.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"P"
Lease between Ellen Joseph and Lilian Thomas.
23rd June, 1953.
Continued.

Lessor.

(f) The building being the property of the Lessee, she will do all work required to keep the said building in good and tenantable repair and condition, and will further keep the land and drains clean and weeded in compliance with the Sanitary Regulations and all existing and future Regulations issued by the Central Board of Health or by any other Public or Statutory Body.

(g) To allow the Lessor, her servants or agents, to enter the demised premises at any time for the purpose of inspecting the building after erection or in the course of erection.

3. The Lessor hereby covenants with the Lessee as follows:

That he paying the rent reserved and performing and observing the stipulations and agreements on her part herein contained shall peaceably enjoy the demised premises without any interruption by the Lessor or any person lawfully claiming under them.

4. PROVIDED ALWAYS and it is hereby agreed and declared as follows:

IF the Lessee shall make default in the payment of the said rent at the the times herein provided or shall fail to perform any of the covenants

and conditions herein contained it shall be lawful for the Lessor to determine the Lease and re-enter the demised premises and re-take possession thereof by giving to the Lessee or to her servant or agent in charge of the premises Notice of their intention to determine the same without prejudice to the Lessor's right to recover any rent then due or damages in respect of any anterior breach hereof.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals at Georgetown, in the county of Demerara and colony of British Guiana the day and year first above written in the presence of the subscribing witnesses.

In the High Court of the Supreme Court of Judicature

Defendant's Exhibits

"P"
Lease between Ellen Joseph and Lilian Thomas, 23rd June, 1953.
Continued.

WITNESSES to the Execution by the Lessor.

1. C. McKenzie
2. M.F. Singh.

Ellen Joseph
L.S.

WITNESSES to the Execution by the Lessee.

1. C. McKenzie
2. M.F. Singh.

Lilian Thomas
L.S.

AND IN MY PRESENCE
B.B. Mc G. Gaskin.
S.C.& N.P.

Stamps cancelled
48¢

A TRUE COPY of the original which was executed and registered in the Deeds Registry of British Guiana, at Georgetown, on the 23rd day of June, 1953.

Assistant Sworn Clerk.
24th June, 1953.

IN THE PRIVY COUNCIL

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ON APPEAL

FROM THE COURT OF APPEAL OF THE

SUPREME COURT OF JUDICATURE

GUYANA

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BETWEEN:

ROSALINE ANTIGUA,

Appellant
(Defendant),

- and -

ISAAC BOXWILL,

Respondent
(Plaintiff).

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RECORD OF PROCEEDINGS