

No. 16 of 1971

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL FOR THE BAHAMA ISLANDS

B E T W E E N:

TEXACO ANTILLES LIMITED

(Defendants)
Appellants

AND

DOROTHY KERNOCHAN and
CLIFFORD LOUIS KERNOCHAN

(Plaintiffs)
Respondents.

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
28 MAY 1974
25 RUSSELL SQUARE
LONDON W.C.1

10

CASE FOR THE APPELLANTS

RECORD

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1. This is an appeal by special leave from the judgment of the Court of Appeal for the Bahama Islands (Sinclair P. Archer J.A. and Bourke J.A.) dated 3rd July 1969 affirming a judgment of the Supreme Court of the Bahama Islands, Equity Side (Cunningham Smith J.) dated 20th May 1968, which granted an injunction, more particularly referred to below, to the Respondents against the Appellants.

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pp.36-40

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2. The action was brought by the Respondents as Plaintiffs, the amended Writ being dated 22nd March 1968, to obtain an injunction restraining the Appellants from building or permitting to be built a gas station or public garage on Lots 13 to 18 inclusive of Block 3 in the sub-division known as Westward Villas in the western district of the Island of New Providence (hereinafter referred to as "the Appellants' Land") in alleged breach of certain restrictive covenants

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3. The Appellants' Land formed part of an area which belonged in the year 1925 to one W. E. Brown an engineer. The said W. E. Brown in February 1925 filed in the office of the Surveyor-General of the Colony a map of the said sub-division and two other areas known as the First and Second Addition Westward Villas. Such map was produced in evidence at the trial of this action by one Francis Garroway, the Surveyor of the Crown Lands Office Nassau, and is Exhibit C in these proceedings. 10

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4. The said W. E. Brown appears to have conveyed the land shown in Exhibit C to a company known as W. E. Brown & Company Limited (hereinafter called "the Company") but no evidence as to such conveyance has been adduced. On 5th May 1927 the Company conveyed Lots 15 and 16 in the said sub-division to one Albury. This conveyance is hereinafter referred to as "the Albury Conveyance". It was apparently in the same form mutatis mutandis as a Conveyance dated 22nd March 1928 (Exhibit L in these proceedings) made between the Company and one Herman Ferguson Butler. This Conveyance is hereinafter referred to as "the Butler Conveyance". There is no evidence as to any other conveyance made by the Company in respect of land shown in Exhibit C save and except the two Conveyances next mentioned. First a Conveyance in the year 1933 which was referred to in evidence by the witness Newton Higgs but was never produced in these proceedings by which Lots 39 and 40 of the said Block 3 were stated by such witness to have been conveyed by the Company to one T. S. Hilton. This Conveyance is hereinafter referred to as "the Hilton Conveyance". The said witness stated that the Hilton Conveyance was in the same form mutatis mutandis as the Albury and Butler Conveyances. Second, by a Conveyance dated 3rd April 1935, (Exhibit K in these proceedings) made between the Company and another company known as Ocean and Lake View Company Limited (hereinafter called "Ocean") a very large amount of land at Nassau aforesaid including, among many other items, the greater part of the land shown in Exhibit C was conveyed by the Company to Ocean. This Conveyance is hereinafter referred to as 40

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"the Ocean Conveyance". It contains no reference whatever to any restrictive covenants either imposed by it or already existing. Of the four Conveyances mentioned in this paragraph only one, namely the Butler Conveyance, was registered before the trial of this action under the Registration of Records Act (Chapter 193) of the Bahama Islands. The Butler Conveyance was so registered on 19th June 1934.

10 5. The Appellants' Land consists of Lots 15 and 16 in the said Block 3 (which Lots were comprised in the Albury Conveyance) together with Lots 13, 14, 17 and 18 which were part of the extensive area comprised in the Ocean Conveyance. The Respondents' Land consists of Lot 39 and part of Lot 40, both of which were comprised in the Hilton Conveyance.

20 6. The action was brought to enforce certain restrictions which were contained in the Albury Conveyance and which it was alleged by the Plaintiffs were also binding upon the Appellants in respect of Lots 13, 14, 17 and 18 because they were, so it was alleged, binding in equity upon Ocean when Ocean acquired those Lots and others. At the hearing of the Appeal leave was given to the Respondents to claim in the alternative that they were entitled to enforce the covenants in respect of Lots 13, 14
30 Hilton Conveyance

pp.45-46

7. The restrictive stipulation upon which the Respondents rely in this action is paragraph 4 of the Schedule in both the Hilton Conveyance and the Albury Conveyance. It was in the following terms:

40 "4. No more than one private residence and one garage or one combined garage and servants' quarters shall be built on any lot except on the lots in Blocks Two (2) to Five (5), inclusive. The Company reserves the right, however, to remove the restrictions from any or all of the lots of the said Blocks Two (2) to Five (5), inclusive, to allow the building upon them of hotels or

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apartment houses or stores for the sale of provisions or other merchandise, but said stores shall be permitted to be built only on the northern half of Blocks Three (3) and Four (4). No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid!

Effect was given to this Schedule by covenants comprised in Clauses 2 and 3 of the Hilton Conveyance and the Albury Conveyance which were in the following terms: 10

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"2. The Purchaser as to the lot or parcel of land intended to be hereby granted and conveyed (and with intent to bind all persons in whom the said lot or parcel of land shall for the time being be vested but so as not to be personally liable under this covenant after he has parted with the same) doth hereby covenant with the Company, their successors and assigns AND the Company as to those lots or portions of Westward Villas Sub-Division and First and Second Addition Westward Villas aforesaid which now remain unsold (and with intent to bind all persons in whom the same shall for the time being be vested, but so as not to be liable under this covenant as to any lot or lots of land after they have parted with the same) do hereby covenant with the Purchaser his heirs and assigns that they, the Company and the Purchaser respectively and all persons deriving title under them respectively, will at all times hereafter observe in respect of the lots of land vested in them respectively all the conditions and restrictions set forth in the Schedule hereto it being the intention of the parties hereto that the said conditions and restrictions shall be mutually enforceable by and against all owners for the time being of the said lots of land respectively. 20 30 40

3. The Purchaser for himself his heirs and assigns, hereby covenants with the Company, their successors and assigns (and so that this covenant shall, so far as practicable,

10 be enforceable by the owners occupiers and
tenants for the time being of the said tract
of land known as Westward Villas Subdivision
and First and Second Addition Westward Villas
which has been laid out as aforesaid), that
all and singular the conditions and
restrictions set forth in the Schedule
hereto shall run with the land and shall
bind the said lot or parcel of land intended
to be hereby granted and conveyed and all
subsequent owners, occupiers and tenants
thereof; AND ALSO that he, the Purchaser
and the persons deriving title under him,
will henceforth and at all times hereafter
observe and perform the said conditions and
restrictions."

20 8. On 1st April 1968 the action came on for
trial before Cunningham Smith J. in the Supreme
Court, and after hearing the evidence of the
witnesses and considering a number of documents
His Lordship gave judgment for the Plaintiffs.
He granted them an injunction in the following
terms namely:

30 "THIS COURT DOTH ORDER that the Defendant be
restrained whether by itself or its
servants or agents or otherwise from doing
the following acts that is to say building
or permitting to be built on lots 13, 14,
15, 16, 17 and 18 of Block 3 of the
Subdivision known as Westward Villas First
and Second Addition Westward Villas situate
in the Western District of the Island of New
Providence the property of the Defendant a
gas station or public garage or from
carrying on or permitting to be carried on
on the said lots the business of a gas
station or public garage or any other trade
or business in breach of the Restrictive
covenants imposed on the owners or occupiers
of the said lots by the W. E. Brown Land
40 Company Limited and referred to in a Deed
of Conveyance dated the 12th day of
February 1968 and made between Anjask
Company Limited of the one part and the
Defendant of the other part"

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- pp.42-45. 9. By a Notice of Appeal dated 27th June 1968 and amended on 23rd October 1968 the Appellants appealed to the Court of Appeal for the Bahama Islands. The said Court of Appeal gave judgment on 3rd July 1969 dismissing the Appeal by a majority of 2 to 1 (Archer J.A. dissenting).
- pp.46-72 10. It was proved in evidence at the trial that the Appellants desired to construct on the Appellants' Land a gas station or filling station, being a building in which petrol and oil would be sold to members of the public for use in motor cars and where very minor repairs to motor cars (such as the fixing of new windscreen wipers) could be effected. The arrangements contemplated were fully stated in the evidence given at the trial by Francis von Schilling. 10
- pp.25-28 incl. 11. It was alleged by the Respondents that a building used for these purposes would be a public garage within the meaning of the stipulation above set out, and both Courts in the Bahama Islands have accepted this view of the matter. 20
12. As to the enforceability of the covenants both Courts have held that the whole area shown in Exhibit C was comprised in a building scheme within the doctrine of Elliston v. Reacher (1908) 2 Ch.374, being a scheme initiated either by the said W. E. Brown or by the Company as Common Vendor.
- pp.97-102 13. It appeared in evidence at the trial that the whole of the Appellants' Land and the whole of the Respondents' Land had been held by Chapmans Limited from 12th January 1942 until 12th December 1951 in unity of scisin. Summaries of the Appellants' and Respondents' titles prepared by Counsel for the Appellants were handed in during the hearing of the appeal and were accepted by the Respondents' Counsel as correct. 30
14. The Appellants contended, and intend to contend in the Privy Council, that if the said covenants are binding on them as owners of any of the said Lots 13 to 18 inclusive they will not be guilty of any breach of the stipulations to 40

10 which effect is given by the said covenants because the building which they intend to construct and use will not be a public garage or anything else prohibited by the stipulation above set forth. In this connection they rely upon the evidence given before Cunningham Smith J. by Alfred Bruce Malcolm and upon the Garages Licensing Act 1925 (Chapter 287) of the Bahama Islands. It is the contention of the Appellants that in the context of the Albury Conveyance, and at the date of that Conveyance, a "garage" meant in the Bahama Islands a building where vehicles were repaired or alternatively were stored and did not extend to a building where vehicles only received services of the sort that the Appellants intend to give. The Appellants further contend that the said stipulation has not changed its meaning in the ensuing years. In his
20 dissenting judgment Archer J.A. held that the proposed building would not be a public garage for the purposes of the restriction.

30 15. Further the Appellants contend that in so far as Lots 15 and 16 are concerned the covenants are not binding on the Appellants because such covenants were annexed to the land retained by the Company at the time of the Albury Conveyance of which Lots 39 and 40 at that date formed part, and that being annexed covenants they were extinguished as covenants annexed to Lots 39 and 40 when those Lots and Lots 15 and 16, came into the same ownership as mentioned in paragraph 13 above.

40 16. Similarly they say that in so far as the said covenants were imposed upon Lots 13, 14, 17 and 18 by the Hilton Conveyance (as contended by the Respondents in the Court of Appeal) and were by such Conveyance annexed to Lots 39 and 40 the said covenants were extinguished as covenants annexed to Lots 39 and 40 when those Lots came into the same ownership as Lots 13, 14, 17 and 18, as stated in paragraph 13 above.

17. In so far as it is claimed by the Respondents that Lots 15 and 16 or Lots 13, 14 17 and 18 were burdened by restrictions imposed

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under a scheme of development created by the said W. E. Brown or by the Company, the Appellants contend that there is no sufficient evidence that any such scheme was ever created. The only evidence adduced by the Respondents in support of a Scheme consists of Exhibit C and the Butler Albury and Hilton Conveyances.

18. If, contrary to the contentions of the Appellants, it is held that such a scheme was created and did exist at the date of the Ocean Conveyance, the Appellants contend that the restrictions comprised in such scheme ceased to be binding upon any of the Lots conveyed to Ocean because Ocean was a purchaser for value without notice. It was admitted by the Respondents at the hearing of the Appeal that Ocean did not in fact have actual notice. The Appellants contend that Ocean did not have constructive notice. There were no documents supporting a Scheme directly on the title to the land comprised in the Ocean Conveyance. The only document of possible relevance which was at the date of the Ocean Conveyance registered under the Registration of Records Act (Chapter 193) was the Butler Conveyance. The Appellants contend that the registration under the said Act does not amount to notice of the contents of the document registered. They rely on the analogy of the similar legislation formerly in force in Yorkshire and Middlesex and such cases as Morecock v. Dickins Amb. 678 decided under such legislation.

19. The Appellants further contend that the case is not in any event one for relief by injunction. They say that if their proposed building or its user would infringe the provisions of any of the said stipulations then it would be inequitable to enforce the same by injunction if it is held that the said stipulations are binding only upon Lots 15 and 16 but not on Lots 13, 14, 17 and 18 or upon any of the other numerous Lots comprised in the Ocean Conveyance. The effect of the Ocean Conveyance was in practice to destroy any scheme of development which may have existed before it.

20. Accordingly the Appellants contend that the Appeal should be allowed and that the action should be dismissed for the following among other

R E A S O N S

- (1) That their intended building will not be a public garage within the meaning of the stipulation relied upon by the Respondents
- 10 (2) That the restrictions made binding upon Lots 15 and 16 by the Albury Conveyance were extinguished as covenants annexed to the Respondents' Land when the Respondents' Land and Lots 15 and 16 came into one ownership
- (3) That any restrictions that were made binding upon Lots 13, 14, 17 and 18 by the Hilton Conveyance and were annexed to Lots 39 and 40 so as to benefit the latter Lots were extinguished when Lots 13, 14, 17 and 18 and Lots 39 and 40 came into one ownership
- 20 (4) That there is no sufficient evidence that any scheme of development affecting the Appellants' Land and the Respondents' Land within Elliston v. Reacher was ever created
- (5) That if any such scheme existed immediately before the Ocean Conveyance Ocean took all the Lots which were conveyed to them by that Conveyance free of such scheme because Ocean was a purchaser for value without notice
- 30 (6) That so many Lots were comprised in the Ocean Conveyance and were by such Conveyance freed from the scheme (if scheme there was) that the scheme was at that date in practice destroyed and that it would not thereafter and would not now be appropriate to enforce it in equity
- 40 (7) That in any event it would not be appropriate to grant equitable relief to the Respondents and the Respondents are not on any view entitled to damages at the present stage of the matter since no building has been erected on their land. They have no claim therefore to any relief.

G. H. NEWSOM

J. M. HENTY

APPENDIX

The Garage Licensing Act (Chapter 287)

Section 2.

2. In this Act, unless the context otherwise requires -

"garage" means any premises used for the repair of vehicles for profit;

"Minister" means the Minister charged with the responsibility for the administration of this Act:

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"operate" means to keep, manage or work, or to cause to be kept, managed or worked;

"vehicle" means a motor vehicle, as defined by The Road Traffic Act, and includes a carriage, cart, dray, waggon, bicycle, tricycle, velocipede or other vehicle of two or more wheels.

3. No person shall operate any garage without first obtaining a licence under this Act: Provided that a person operating a garage in existence at the coming into operation of this Act shall be entitled to a licence as of right.

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4. The Minister may grant licences under this Act in the form of the Schedule to this Act.

5. (1) Every person intending to operate a garage shall apply to the Commissioners of Police for a permit therefor, specifying in such application the premises where such garage is to be situated.

(2) Upon receipt of such application the Commissioner of Police shall inspect the premises referred to, and shall either grant a permit or refuse to do so upon any of the following grounds:

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(a) that such garage is likely to become a public nuisance;

(b) that such garage is likely to cause undue obstruction to traffic

- (c) that the premises are unsuitable;
- (d) any other good and sufficient reason.

6. (1) Upon the granting of a permit under this Act the Commissioner of Police shall forward the application therefor, together with his permit, to the Minister.

10 (2) Upon the refusal to grant a permit under this Act the Commissioner of Police shall forward the application therefor, together with his reasons for such refusal, to the Minister.

7. Upon receipt of such permit or refusal of a permit as in section 6 of this Act mentioned the Minister may, in his absolute discretion, grant or refuse a licence to the applicant

20 8. Every licence issued under this Act shall remain in force so long as a garage is operated by the licensee, or except in the case of garages in existence at the coming into operation of this Act, until revoked by the Minister after giving three months' notice of his intention to revoke the same.

9. Any person who shall operate a garage without first obtaining a licence under this Act shall be liable on summary conviction to a fine of ten pounds for each day or part of a day during which the same is operated.

10. This Act shall apply to New Providence only.

The Registration of Records Act (Chapter 193)

30 2. In this Act, unless the context otherwise requires -

"book" or "book of record" means -

- (a) a book in which deeds, documents, or other writings accepted for record are copied; or
- (b) a roll of film upon which deeds, documents or other writings accepted for record are reproduced by means of micro-photography;

"deed" means documents of title to land under seal not otherwise specifically mentioned in section 3 of this Act;

"document" means any document other than a deed or promissory notes and bills of exchange not under seal, and which is not otherwise specifically mentioned in section 3 of this Act;

"Registrar" means the Registrar General and includes the Assistant Registrar General;

"Registry" means the Registrar General's Department. 10

3. (1) The following deeds, documents and other writings may be recorded upon authentication thereof being first made as provided by this Act:-

- Class A. Deeds.
- Class B. Documents.
- Class C. Freehold and leasehold grants from the Crown, certificates of naturalization, letters patent, poor settlers licences and any document under the Public Seal or the Seal-at-Arms. 20
- Class D. Wills or other testamentary papers on which probate may be granted together with the probate.
- Class E. Wills, which by reason of the law existing prior to the coming into operation of The Real Estate Devolution Act, cannot be admitted to probate. 30
- Class F. All writings under the Royal Sign Manual and renunciations of dower.

(2) Whenever any deed, document or other writing has a plan or diagram attached thereto or incorporated therein a true copy of such plan or diagram shall be provided by the person submitting such deed, document or other writing for record.

4. Deeds, documents and other writings submitted for record shall be authenticated in the manner following :- 40

Class A. and Class B. By the oath of one of the subscribing witnesses to, or by the acknowledgment of the person executing the same, or if they are absent from the Colony or dead or not easily accessible or they have declined to attend to prove the execution thereof, and there shall be

nothing on the face of the deed or document or otherwise to raise a reasonable suspicion of its not being genuine or that its execution was otherwise than bona fide, by the oath of any person as to the handwriting of any of the signatures thereto

10 Provided that in New Providence or the Out Islands in the case of documents in Class B executed or signed in the presence of a person empowered by this Act to administer oaths or take acknowledgments and attested by such person no further proof shall be required;

Class C. By the Public Seal or the Seal-at-Arms;

Class D. By the signature of a Judge of the Supreme Court and the seal of the Supreme Court affixed to the probate;

20 Class E. By the oath of one of the subscribing witnesses to such will or if they are absent from the Colony or dead or not easily accessible or they have declined to attend to attest the execution thereof, and there shall be nothing on the face of the will or otherwise to raise a reasonable suspicion of its not being genuine or that its execution was otherwise than bona fide, by the oath of any person as to the handwriting of any of the signatures
30 thereto;

Class F. By the Royal Sign Manual, or the certificate or verification under the seal of any of the courts of the Colony or of any other country of the Commonwealth or by the signature of any commissioner appointed by a Judge to take a renunciation of dower:

40 Provided that where any Act or rule authorizes the registration of any deed, document or other writing the same may be accepted for record without further proof than that required by the Act or rule authorizing the registration of the same.

5. (1) The Registrar shall not receive for record or enter in any of the books of record in the Registry any deed executed on or after the first day of January nineteen hundred and ten which he is by any Act required to enter or record unless such deed bears in the margin of the first sheet thereof the signature, address and occupation of the person drawing or preparing it.

(2) This section shall not apply to any deed in connection with or relating to the Crown or any department of the public service of the Colony or, after the coming into operation of this Act, to deeds drawn or prepared out of the Colony. 10

6. All oaths and acknowledgements required to be made by this Act shall be in writing endorsed on the deed, document or other writing to which it relates, or securely attached thereto. 20

7. The following persons are empowered to administer oaths or take acknowledgements for the purpose of this Act:-

(a) In New Providence -

the Registrar, the chief clerk in the Registry, justices of the peace and notaries public;

(b) In the Out Islands -

commissioners, justices of the peace and notaries public; 30

(c) Places without the Colony -

British consuls, judges, justices of the peace, notaries public or other persons legally authorized to administer oaths or take acknowledgements:

Provided that when such oath or acknowledgement is taken or made in a foreign country (except in the case of a British consul) the official character of the officer before whom the same was taken or made or the official standing of the person who attests or certifies the official character of such officer shall be verified by a British consul. 40

8. (1) The Registrar shall cause to be endorsed on every deed, document or other writing accepted for record the name of the person lodging the same and the date on which the same was lodged, and all deeds, documents or other writings so lodged shall be numbered and recorded in the order in which they are received.

10 (2) When a deed, document or other writing is recorded the Registrar shall cause to be endorsed thereon a certificate showing the book in which the same is recorded and the pages containing such record, and that such deed, document or other writing has been authenticated in conformity with the provisions of this Act, which certificate shall be dated, signed by the Registrar and bear his seal of office.

20 9. All deeds, documents and other writings which have a certificate thereon in accordance with the provisions of any Act; the records thereof; and all copies of such records certified by the Registrar to be true copies, shall be admitted as evidence in any court of law or equity in the Colony without any further proof:

Provided that in the case of wills referred to in Class E in section 3 of this Act the certificate on any such document shall specify the fact that the same has not been admitted to probate.

30 10. If any person after having made and executed any conveyance, assignment, grant, lease, bargain sale or mortgage of any lands or of any goods or other effects within the Colony, or of any estate, right or interest therein, shall afterwards make and execute any other conveyance, assignment, grant, release, bargain, sale or mortgage of the same, or any part thereof, or any estate, right or interest therein; such of the said
40 conveyances, assignments, grants, releases, bargains, sales or mortgages, as shall be first lodged and accepted for record in the Registry shall have priority or preference; and the estate, right, title or interest of the vendee, grantee or mortgagee claiming under such conveyance, assignment, grant, release, bargain, sale or mortgage, so first lodged and accepted

for record shall be deemed and taken to be good and valid and shall in no wise be defeated or affected by reason of priority in time of execution of any other such documents:

Provided that this section shall not apply to any disposition of property made with intent to defraud.

11. (1) The person executing and every witness to any deed, document or other writing which may be recorded under this Act shall, upon reasonable request in writing personally served upon him by or on behalf of any persons requiring any such deed, document or other writing to be recorded, forthwith attend such person (being a person authorized under this Act to take oaths and acknowledgements) as shall be named in the request and prove the execution of such deed document or other writing in the manner provided by this Act. 10

(2) Any person who shall neglect or refuse within forty-eight hours after the request made in accordance with this section unless prevented by sickness, disability or other sufficient cause, to attend and prove any deed, document or other writing shall be liable on summary conviction to a penalty of fifty pounds; and shall also be liable to an action by the person aggrieved for any damage sustained in consequence of such neglect or refusal: 20

Provided that the provisions of this section shall not apply where the person required to prove a deed, document or other writing is resident more than ten miles from the person he is requested to attend for the purpose of effecting such proof: 30

Provided also that any out of pocket expenses incurred by reason of any such attendance shall be borne by the person making the request

12. All Acts, the memorandum and articles of association of companies, registers of births and deaths, marriage duplicate registers and other writings shall be returned to and kept on record in the Registry in accordance with the provisions of any Act for the time before in force relating thereto. 40

10 13. The Registrar, in addition to keeping the records of the Registry in books, may record all or any of the deeds, documents or other writings specified in section 3 of this Act by having the same microphotographed; the microphotographs shall be kept on record and shall form as much a part of the records as the books in which the present records are kept and whenever feasible may replace any books or set of books now containing the records of the Registry.

14. The Registrar shall from time to time procure all the necessary books to be of the same uniform size, binding and lettering, and all the necessary film, which shall be used as books of record under this Act, the cost of which shall be defrayed out of the Treasury by warrant in the usual manner

20 15. Whenever any person shall lodge any deed, document or other writing for record, the Registrar shall, if required by the party lodging the same, give a receipt therefor, in which the names of the parties to such deed, document or other writing shall be inserted, as also the date and nature thereof.

16. The Registrar shall, as heretofore, have an official embossing seal with the words "Registrar General, Bahamas" upon the same.

30 17. Any act performed or anything done or purporting to have been done in respect of the registration of any deed, document or other writing previous to the coming into operation of this Act shall be deemed to be and to have been validly and properly done.

40 18. All books heretofore in use for the purpose of registration under the authority of any Act and all indexes prepared in connection therewith shall remain as of record and continue to be used under the provisions of this Act, unless replaced by microphotographs as provided under section 13 of this Act:

Provided that such books which may have been replaced shall be preserved for the archives of the Colony.

19. No fee shall be chargeable in respect of the registration or issue of any deed, document or other writing in connection with or relating to any department of the public service but in respect of all other deeds, documents or other writings the fees set forth in the Schedule to this Act shall be payable at the Registry before the deed document or other writing in respect of which the same are receivable shall be accepted or issued.

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The Crown Lands Officer Act (Chapter 8)

2. It shall be lawful for the Crown Lands Officer and his successors in office, or any surveyor duly certified by a Crown Lands Officer, when surveying lands, to go upon any adjacent soil, whether public or private accompanied by assistants or necessary attendants for the purpose of enabling the person so surveying either to verify old lines or to lay out his line and perfect his survey.

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3. No action for trespass shall lie against a Crown Lands Officer or surveyor, or his assistants or attendants as aforesaid, for any entry on land in pursuance of the authority conferred by this Act, unless the plaintiff shall prove that the person surveying, his assistants or attendants have committed any wilful, wanton and unnecessary injury.

4. In any action of trespass brought against a Crown Lands Officer or a surveyor, or any assistants or attendants, the general issue may be pleaded in any such action, and this Act given in evidence thereunder.

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5. The powers given to the Crown Lands Officer and surveyors by this Act shall only be exercised

(a) upon the written consent of all of the parties interested in the lands upon which it may be necessary to enter in order to make a survey or perform the other acts mentioned in such section; such consent to be made in writing and signed by the said parties or their agent or attorney in the presence of a justice of the peace, who shall attest such writing; or

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(b) in case of the refusal of any of the parties interested as aforesaid to give such consent or where such parties may be absent from the Colony, then upon an order in writing issued by a justice of the peace directing the survey and other acts to be performed; such order to be granted by any justice of the peace upon the application of any party interested as aforesaid his or her agent or attorney

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6. Such order may be ex parte, and shall only be granted upon the production of an affidavit or declaration made before a justice of the peace setting forth the necessity for the survey and the refusal of some one or other of the parties interested as aforesaid to consent to the same, or that there is no person interested in such lands then resident in the Colony by whom such consent can be given.

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7. This Act shall not apply to any survey to be made by the Crown Lands Officer, or by surveyors acting under his direction, for the purpose of verifying old lines or laying out lines and perfecting the survey of lands belonging to the Crown, or the Colonial Government, anything in this Act to the contrary notwithstanding.

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8. In any case in which the Legislature shall have authorised the construction of a public road, or in which the Governor by Order shall have directed a survey to be made with a view to the construction of a public road, it shall be lawful for the Crown Lands Officer and any person acting under his direction for the purpose of making a survey of the said road, to enter upon private lands, and to do all things that may be necessary for selecting the course of the said road, or may be otherwise incidental to the carrying out of the survey:

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Provided that in any Out Island a magistrate shall have made an order authorising the Crown Lands Officer or some person acting under his directions to make a survey under this Act, and that such order shall have been publicly exhibited at the office of the magistrate for a period of three days from the making thereof:

Provided also that nothing herein contained shall

be deemed to justify any wilful, wanton or unnecessary trespass.

9. Wherever any title among those specified in the first column of the Schedule to this Act appears in any Act, rules, regulations, orders or notices in force on the sixteenth day of October 1940 it shall be deemed to be replaced by the corresponding title specified in the second column of the Schedule to this Act.

SCHEDULE

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First Column	Second Column
Surveyor General	Crown Lands Officer
Deputy Surveyor	Surveyor.

The Public Survey Protection Act (Chapter 204)

2. In this Act, unless the context otherwise requires -

"survey" includes any geodetic, trigonometrical, topographic or cadastral survey and the establishment of any framework for any such survey;

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"public survey" means a survey certified by the Crown Lands Officer to be a public survey.

3. (1) For the purposes of any public survey the Crown Lands Officer or any surveyor authorised in writing by him, together with such assistants as may be required, may enter upon or traverse any land, public or private, and may affix or set up or place thereon or therein, trigonometrical stations, survey beacons, marks or poles and do all things necessary for such public survey.

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(2) Every person acting in pursuance of the powers conferred by subsection (1) of this section shall, when practicable give reasonable notice to the owner or occupier of the land of his intention to enter thereon.

(3) The owner of any crops or trees, cut or damaged in the exercise of any of the powers

conferred by this Act shall be entitled to compensation therefor, which compensation shall be assessed and paid by the Crown Lands Officer:

Provided that any dispute concerning the sufficiency of compensation so paid shall be finally determined by a justice of the peace upon application made to him for that purpose by the Crown Lands Officer or disputing party.

10 (4) Notwithstanding subsection (1) of this section, no permanent survey beacon or mark shall be affixed or placed in any garden or yard attached to any dwelling house.

4. The locality, description and position of all permanent survey beacons or marks whether above or below ground, put down to mark any public survey, shall be registered and recorded in a suitable manner by the Crown Lands Officer in his office.

20 5. The Crown Lands Officer shall cause to be published in the Gazette and in two newspapers in the Colony a notice giving the locality, description and position of all survey beacons put down to mark a public survey, as soon as is conveniently possible after such beacons have been registered and recorded in his office.

30 6. (1) Any person acting without the authority of the Crown Lands Officer, who shall wilfully obliterate, remove or injure any trigonometrical stations, survey beacon, mark or pole, affixed, set up or placed for the purposes of a public survey, shall on summary conviction be liable to a penalty of twenty pounds, or to imprisonment for three months or to both; and in addition may be ordered to pay the cost of repairing or replacing the thing obliterated, removed or damaged, and of making any survey rendered necessary by the act for which the conviction is had.

40 (2) Any person who wilfully obstructs, hinders, resists or threatens any surveyor authorised as above in the execution of his duty in or about the conduct of any public survey, or any workman or other person acting in aid of such surveyor, shall be liable on summary conviction to a penalty of ten pounds.

7. Any informer on whose information a conviction is secured against any person of an offence under section 6 of this Act may, with the approval of the Governor, be paid a reward not exceeding five pounds.

8. The Governor may make regulations -

- (a) prescribing the manner in which surveys are to be made, the records to be kept by licensed surveyors and the manner of keeping the same; 10
- (b) prescribing the manner of the demarcation of surveys;
- (c) with regard to plans of surveys and their preparation and the matters to be shown thereon;
- (d) with regard to the publication, issue, service and form of notices to be published, issued or served under this Act or regulations made thereunder; 20
- (e) for securing the maintenance of boundary marks in their correct position and the preservation of the same;
- (f) generally for giving effect to the purposes of this Act.

No. 16 of 1971

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL FOR THE
BAHAMA ISLANDS

B E T W E E N

TEXACO ANTILLES LIMITED (Defendants)
Appellants

AND

KERNOCHAN & ANOTHER (Plaintiffs)
Respondents

CASE FOR THE APPELLANTS

CLIFFORD TURNER & CO.,
11 Old Jewry,
LONDON E.C.2.

Solicitors for the Appellants