3/85

IN THE PRIVY COUNCIL No.20 of 1983

ON APPEAL

FROM THE COURT OF APPEAL OF THE COMMONWEALTH OF THE BAHAMAS

BETWEEN:-

BILL WALLACE ENTERPRISES LTD Appellant

- AND -

STANLEY ROLLE and CATHERINE ROLLE Respondents

CASE FOR THE APPELLANT

RECORD

1. This is an appeal from a judgment of the Court of Appeal of the Commonwealth of the Bahamas (Georges JA, Blair-Kerr P and Jasmin J.A.) dated 19 June 1981 allowing with costs the Respondents' appeal from a judgment of the Supreme Court (Blake J) dated 26 June 1980 whereby it was ordered pp 83-95 pp 53-75

(i) that the Respondents give to the Appellant possession of the plot of land described in a Conveyance dated 19 November 1976 and made between the Respondents and Emmie Grant.

(ii) that the Respondents pay to the Appellant mesne profits of $50 per month from 19 November 1976 until they give up possession to the Appellant and

(iii) declaring that the Appellant was the owner of the two adjoining plots of land described in two conveyances dated 13 June 1964 and 18 September 1964 and made between the Appellant and Rufus Grant. The two plots claimed and their relation to the plot in the possession of the Respondents are shown on Exhibit 1 annexed to this Case. pp 75,117

RECORD

2. In allowing the Respondents' appeal the Court of Justice held that the trial judge had misdirected himself as to the
pp 85-86 burden of proof and had approached the evidence of the parties in the wrong way.
p94 11.9-24 Accordingly the Court of Appeal reviewed the evidence afresh as it appeared from the judge's note of the evidence, and decided that the Appellant had not made out a case sufficient to displace the Respondents' possession of the disputed land.

3. The issues to be decided in this appeal are primarily

(i) Whether the Court of Appeal were right to conclude that the learned trial judge had misdirected himself as to the burden of proof or otherwise approached the evidence in the wrong way.

(ii) Whether the Court of Appeal were entitled to interfere with the judge's findings of fact and his assessment of the witness

(iii) Whether on the evidence the Court of Appeal were right to overturn the judgment of the Supreme Court.

THE FACTUAL BACKGROUND

4. In 1964 Mr William Wallace was negotiating the purchase of various properties in the Bahamas on behalf of the Appellant Company. He agreed with Mr Rufus Grant to purchase part of the latter's property on the North of and fronting the main West End - Freeport Road at Eight Mile Rock. The Appellant Company purchased two plots by Conveyances made between itself
pp 98,102 and Rufus Grant and dated 13 June 1964 and 18 September 1964 respectively. As a result the Appellant became owner in fee simple of the plots described in the Conveyances, which were lodged in the Registry of Records (Book 802 at pp.408-410 and Book 792 at pp.142-144).

5. Title to much of the land on the Bahamas is undocumented. Accordingly the

ownership and boundaries of properties is frequently in dispute. Rufus Grant's title was from long possession and was evidenced at trial by an abstract of title dated 6 June 1979 with supporting Affidavits sworn in 1959, lodged in the Registry of Records (Book 242 at pp.39-77). Insofar as that abstract relates to land North of the main road the Schedules to the Affidavits described Rufus Grant's land as being bounded: pp 53-54 pp 118-125

> "on the SOUTH by the said Main Public Road and running thereon two Hundred and Fifty (250) feet on the NORTH by Crown land and running thereon ... 250 feet on the EAST by land the property of Henry Grant and running thereon .... 1500 feet and on the WEST by the properties of Allan Hanna, Ural Smith and Reginald Grant and running thereon ... 1500 feet."

6. The Conveyances made between the Appellant Company and Rufus Grant in 1964 conveyed the following adjoining parcels of land ("the 1964 land"):

(i) 13 June 1964

> "ALL THAT piece, parcel or lot of land situate at Eight Mile Rock in the Island of Grand Bahama being bounded on the NORTH by land the property of the Vendor and running thereon ... (100) feet and on the EAST by land the property of the Vendor and running thereon ... (100) feet on the SOUTH by the Main Public Road and running thereon ... (100) feet and on the WEST by land the property of the Vendor and running thereon ... (100) feet." pp 97-99

(ii) 18 September 1964

> "ALL THAT piece, parcel or lot of land situate at Eight Mile Rock on the Island of Grand Bahama being bounded on the NORTH by land the property of the Vendor and running thereon ... (50) feet on the EAST by land the property of the Vendor and running thereon ... (100) feet on the SOUTH by the Public Road

and running thereon ... (50) feet on the WEST by land the property of the Purchaser and running thereon ... (100) feet.

pp 100-101 (iii) On 15 June 1964 Adline Grant renounced all rights to Dower in respect of the land conveyed on 13 June 1964 described above.

pp 110-112 On 27 April 1965 the Appellant conveyed the 1964 land to Lorenzo Flowers as security for a loan. The land was reconveyed

pp 106-107 to the Appellant on 6 May 1967 and on 15 May 1967 Gloria

pp 108-109 Flowers renounced all rights to Dower in respect of the land reconveyed to her husband.

7. Rufus Grant died on 4 February 1966 and on 27 July 1966 Letters of

p 105 Administration of his estate were granted to his widow Emmie Grant. On 19 November 1976 Emmie Grant as administratrix purported to convey to the Respondents the following plot

p 113-115 of land ("the 1976 land") at Eight Mile Rock bounded:

"On the North and running thereon 80 feet by land the property of the said estate on the East and running thereon 70 feet by land the property of the said estate on the South and running thereon 80 feet by the said Eight Mile Rock Road leading to Freeport on the West and running thereon 70 feet by a 25 foot wide pathway also situate on land the property of the said estate."

It appears that the Respondents failed to search the Register of Records but instead relied on the assurances of

p 33 ll 25-33 Mrs Grant and her attorneys that the Estate had good title to the plot precisely defined in the 1976 Conveyance and which is shown on Exhibit 1. The

p 117 Respondents entered on to the 1976 land and built a shop now used for their business. William Wallace visited the area in 1978 and saw the shop on what

p18 ll 23-41 p19 ll 38-45 he believed was the Appellant's land.

RECORD

He spoke to the Respondents. The witnesses versions of what took place when they met were different. On 17 February 1978 the Appellant's attorneys sent a letter to the Respondents requiring them to vacate the Appellant's land. On their refusal to give up possession the instant litigation began.

p32 ll 22-33
p35 ll 6-20
p.116

8. In the Statement of Claim the Appellant claimed possession, mesne profits and a declaration that the land occupied by the Respondents was part of the 1964 land. In their Defence the Respondents

pp 1-3
pp 4-5

(i) put the Appellant to strict proof

(ii) denied that their land was part of the 1964 land

and

(iii) denied that their land was or had been in the Appellant's possession prior to 19 November 1976.

The Respondents did not make any specific allegation as to where the 1964 land was, although Emmie Grant had apparently told Stanley Rolle that it was the land containing a barber shop to the West of the 1976 land.

pp 33 ll 34-43
p 34 ll 1-4

9. The trial commenced on 18 April 1979 in the Supreme Court before Blake J. The Respondents did not actively dispute the formal validity of the 1964 Conveyance as they appeared from the Registry of Records. In 1976 it seems that the Respondents had been unaware of the existence of the 1964 Conveyances or of the Plaintiff's claim to the 1976 land. Had a search been made it would have been apparent that Rufus Grant's estate did not have an undisputed title to the land. The Respondents were therefore subject in 1976 to constructive notice of the Appellant's title to the 1976 land or at the least of a potential dispute between the estate and the Appellant as to what was sold in 1964. The main issue at the trial was whether the 80' x 70' plot purportedly conveyed in 1976 was part of the 150' x 100' plot conveyed in

1964. The distance of the Northern boundary of the 1964 plot from the road in its present, apparently widened, condition was never satisfactorily resolved but did not affect the dispute
p 104,117 as between the parties since the maximum loss from possible road widening since 1964 was 20 feet and the Northern boundary of the 1976 plot was described as 80 feet from the Road. It was accepted at trial that if on a proper interpretation of the 1964 Conveyances and the relevant evidence the Appellant could show that the land conveyed in 1964 included that occupied after 1976 by the Respondents then the Appellant must succeed. The allegation that the Appellant had not been 'in possession' before the Respondents entered onto the 1976 land was not actively pursued at the trial. In the light of Ocean Estates v Pinder [1969] 2 AC 19, 25 and the Appellant's and Mr
p17-27 Wallace's acts between 1964 and 1967
p18-20 such an argument could not have assisted the Respondents' defence.

10. Whilst the case largely turned on the trial judge's view of the evidence and the witnesses the Appellant makes the following preliminary submissions of law:-

(i) The Appellant's case is that the 1964 Conveyances clearly evinced an intention by Rufus Grant to convey two particular plots of land then belonging to him, of specific dimensions. It is a reasonable inference that Rufus Grant knew where his boundaries were and would not have derogated from his grant to the Appellant by 'conveying' land claimed and occupied by others.
p18 1.5 (cf. Mellor v Walmesley [1905] 2 Ch.
p117 164). Wallace knew there might be a dispute as to title to the land near his Western boundary as a building had been built by Allan Hanna Snr. It is submitted that this does not make it likely that Rufus Grant in fact conveyed or intended to convey a plot 150' x 100' all of which was claimed and occupied by Allan Hanna

Snr, bounded to the West by Leazar Grant's land and a large part of which would have been outside his property as described in 1959.

(ii) It is submitted that the evidence made it possible to identify a 100' x 150' plot that was consistent with the abuttals described in the 1964 Conveyances. If however the description of the owner of the land abutting a particular boundary was wrong or was inconsistent with the situation in 1964 then such a misdescription would not be fatal to the Appellant - the error being a "falsa demonstratio" eg Francis v. Heyward (1882) 22 Ch.D. 177 CA. This submission is strengthened by the situation prevalent in the Bahamas where title to land is often not documented and in dispute. As Rufus Grant's property apparently fronted the Main road along 250 feet there are limited possibilities where a plot fronting it by 150' could be.

(iii) As the language of the descriptions in the 1964 Conveyances does not precisely identify on the ground the land conveyed extrinsic evidence may be relied on to interpret the words of the deeds and identify the land intended to be conveyed. Such evidence, which should be otherwise admissible, may be of any facts or circumstances surrounding the vendor and purchase when the deeds were executed. (In re the Goods of de Rosaz (1877) 2 P.D. 66, 69-70 and Jervey v. Styring (1874) 29 L.T. 847). Both parties called witnesses in an attempt to establish what land was conveyed in 1964. The only evidence of significance was that regarding the boundaries of Rufus Grant's property in 1964, the intention of the grantor and the circumstances surrounding him and the grantee at that time. pp98,102

11. BURDEN OF PROOF

The Court of Appeal concluded that the judge approached the evidence in the wrong way having put the onus of proof on to the Respondents. It is accepted that the burden of proof was on the Appellant to prove that

it had title to the land in the possession of the Respondents. This would be the usual common law position which in the Bahamas derives from the Evidence Act (Cap 42, 1965 Laws of the Bahamas), Sections 73, 74, 75 and 79. Each of these sections would put the legal burden of proof on the Appellant.

p71-34

12. In the event the judge did not accept the Respondents' positive case and decided that the Appellant had satisfied him on a balance of probabilities that the 1976 land was part of the 1964 land. The same argument and evidence were applicable to each party's case. Clearly if the judge disbelieved or would not rely on the Respondents' version of the facts, the Appellant's case was strengthened. There is nothing in the judgment to show that the judge reversed the onus of proof. Further the Appellant's evidence, if accepted, was sufficient to establish that Rufus Grant intended to convey the land shown on Exhibit 1 and did in fact do so by the 1964 Conveyances. The Respondents' evidence, much of which was not accepted, could only show that Rufus Grant may have considered his boundaries to extend further West in 1964 than the Appellant contended.

p86 22
p94 11.9.24

13. While the burden of proof was clearly on the Appellant, the standard of proof was the usual civil standard. Section 79 of the Evidence Act does not import a higher or different standard. If in their judgment the Court of Appeal suggested that a different standard applied then it is respectfully submitted that they were wrong. Emmie Grant, in apparent ignorance of the 1964 Conveyances purportedly conveyed a precisely described plot of land to the Respondents in 1976. This fact, however, is of no evidential value in deciding what Rufus Grant conveyed to the Plaintiff in 1964. The Appellant was not under any obligation to prove its claim with the same precision and could not have done so once it was accepted that extrinsic evidence was required to interpret the 1964 Deeds. What the Appellant had to do was establish its case on a balance of probabilities and it

is submitted that the judge rightly concluded that it had done so.

14. The Court of Appeal relied on a number of passages from the Supreme Court judgment to show how the judge had reversed the burden of proof. It is respectfully submitted that that judgment does not reveal such an error. It can be seen from the closing speeches how the respective cases were put before the judge. The formal validity of the 1964 conveyances was not actively disputed and the Defence elected to advance a positive case that Rufus Grant 'conveyed' land to the West of that shown in Exhibit 1, in addition to the argument that the Appellant could not establish their case to the necessary standard because the words of the 1964 Conveyances were too vague. The Respondents' evidence and argument was directed to both of these ends. In his judgment Blake J set out the relevant extracts from the documents, summarised the dispute, described the plans and their significance, set out the evidence on each side and his views on it, found various facts proved and concluded that the Plaintiff had made out his case. In particular he considered Noel Grant and Albert Grant unreliable and the evidence of Hubert Williams as too tenuous and speculative.

p85 1.30
p85-86
p31
p53-54
p55 38-
p56 1.16
pp56-58
pp58-68
pp69-70

15. The Appellant makes the following submissions in relation to the particular points on which the Court of Appeal relied to form their view that the judge assumed that the burden of proof was on the Respondents:-

p88 12-13

(1) It is submitted that the passage quoted at page 85 line 32 of the Record does not suggest a reversal of the burden of proof. The Respondents chose to advance a positive case at the trial and the judge was entitled to consider it on its merits. The Judge properly drew attention to the fact that the Respondents positive case appeared as an after thought. This is not surprising since in 1978 the Respondents, and perhaps Emmie Grant, were unaware of the 1964 Conveyances at all. The judge took the view that the late

p63 1.48
p85 1.32

suggestion that the 1964 Conveyances in fact conveyed a wholly different plot to that claimed by the Appellant, not in reliance on any rule of pleading, but because the argument was new to the Respondent. It appears to have been based largely on the evidence of Noel Grant, who the judge considered unreliable. If the evidence supporting it was weak there would be less reason to accept it as a serious possibility. It is not apparent that the judge drew any particular conclusions from the matters referred to in a passage which, in context, was concerned mainly with the Respondents' ill-advised behaviour since 1976, which had accentuated the dangers to them if they lost the case.

p86 11.8-20 (2) The Court of Appeal's second criticism was also misplaced. The passage quoted at page 86 line 15 of the Record appears in the judge's review of the
p61 oral evidence. Taken in context he was merely drawing attention to the fact that the suggestion might have taken Wallace by surprise. In particular the question of pleading was not dealt with expressly by the judge, nor did he consider the matter as at all decisive. In the Bahamas a general plea of possession puts all facts in issue, as was the case in England before the former R.S.C. Order 21, rule 21 was abolished and subsequently replaced by R.S.C. Order 18 r8(2). As a matter of strict pleading, 'possession' in an ejectment action is a sufficient defence to allow the Defendant to raise any specific defence. The rule is a relic of the old form of pleading and sits uncomfortably with the rules of natural justice that a party is entitled to know in advance the substance of the others' allegations of facts. It is submitted that the judge was not suggesting that the Respondents were under a duty to plead the suggestion in their Defence or that any particular significance attached to a failure to
p48 do so. The conclusion at page 86 lines 27-31 was misplaced. If the judge disbelieved the Respondents' case

as argued before him he might be less likely to disbelieve the Appellant's case. The fact that the positive case may have taken Wallace by surprise or was an after thought was a factor the judge was entitled to consider, especially when assessing the effect of his poor view of the Defence witnesses. There is no suggestion in the judgment that Blake J considered it a "significant criticism" that the Respondents' had not set out to show what the Appellant had purchased. However when the Respondents chose to do so the judge was entitled to take all factors into consideration in assessing the strength of that case. It is clear from his judgment that the judge did consider the evidence and argument put forward by the Respondents in some depth. p86 1.27

(3) By advancing their positive case the Respondents were under the difficulty that it was harder, if their main case was not believed, for them to say that the 1964 Conveyances and the extrinsic evidence was too vague. The Appellant produced evidence which, if believed, supported the claim to the land shown in Exhibit 1. Virtually none of their evidence related to June-September 1964, and their case based largely on the evidence of Noel Grant that Rufus Grant conveyed land occupied by Allan Hanna required positive evidence in support. The learned judge did not consider much of that evidence reliable.

16. The Court of Appeal made further specific criticisms of the judge's approach to the evidence. It is respectfully submitted that these criticisms are unfounded because, p86 1.42-p88 1.10

(1) It is not clear why the Court of Appeal took such exception to the judge's view that their 'positive case' was an after-thought. There was no reason for the Defence to hold back a specific case relating to the Appellant's title (rather than their own). If the judge did not accept such direct evidence as could be put forward in support of that line of defence, the fact that it had not p86 1.42

been raised before the trial might suggest that it did not constitute an obvious interpretation of the 1964 Conveyances and the surrounding evidence. Further, certain asspects of the Respondents' case were not properly put to the Appellant's witnesses.

p85 11.23-29 (2) Having accepted that the trial judge's
p87 11.8-22 assessment of the witnesses' demeanour, intelligence and evidence was crucial where as in the instant case, issues of credibility and conflicting
p87 1.26-pp88 1.10 evidence were important, the Court of Appeal later seemed to treat the judge's assessment of Noel and Albert Grant lightly. The usual rule is well established: Khoo Sit Holi v. Lim Thean Tong [1912] A.C. 323, 325. The trial judge considered Noel Grant's
p38 11.27-33 evidence to be unreliable and he gave cogent reasons for so finding. Examples of that witness' unreliability as to dates and time are apparent from
p39 11.26-37 the Record. He was unable to tell his age at the date of trial and in 1964. He stated variously that Adline
p100 Grant died between 1955-1960 even though she signed the Renunciation of Dower in 1964. He might have been expected to show more accuracy than a 5/6 year margin of error as to the date of his Stepmother's death, if only because it allowed Rufus Grant to marry Emmie Grant shortly before he died. Also Albert Grant was, as heir-in-law of
p36 1.31 the estate, interested in the outcome of the action. Blake J clearly doubted
p36 1.19 whether Noel Grant had been told by his father in 1964 that the Appellant had bought the Westerly plot of land. Having decided that Noel Grant's evidence was unreliable the judge was entitled to consider that that evidence cast no significant doubt on Wallace's evidence.

p88 11.4-10 (3) The trial judge does not appear to have treated the plan - Exhibit 1 as evidence. Early in his judgment Blake J explained the history of the plans
p56 1.25-p.57 1.30 and acknowledged that Exhibit 1 derived from a topographical survey in 1978 together with instructions from

RECORD

Mr Wallace. Clearly any attribution of ownership in the various plans is both suspect, given the self-interest of those instructing the makers and of no evidential value as being hearsay, evidence of reputation etc. The judge said: p70 11.16-28

> "The land purchased by the Plaintiff in 1964 ... is as shown on the plan ... Exhibit 1 ... At the time of the 1978 Survey he [Wallace] correctly identified to the Chee-a-Tows what his Company had bought."

It is clear from this passage that in reaching this conclusion the plan itself was not treated as evidence of ownership. In fact the Court of Appeal itself appear to treat some of the attributions of title or of boundaries on the plans as evidence later on in their judgment. It is respectfully submitted they were incorrect to do so. p88 11.18-47 p91 11.37-39 p92 l. 1 p92 l. 19 p93 l. 41-p94 l.8

17. Accordingly it is submitted that the Judge did not approach the case in the way described by the Court of Appeal. Furthermore the Court of Appeal should have been reluctant to reverse a trial judge's findings of fact in a case turning on conflicting oral evidence.

THE FINDINGS OF FACT

18. The Appellant's case is that the Court of Appeal were not entitled to review the evidence afresh, as it appeared from the Record, in a case which turns largely on conflicting oral evidence because (1) the judge's approach was not wrong and (2) because they should not have ignored the judge's view of the Respondents' witnesses. p88 11.11-18 It is submitted that they were wrong to do so: Khoo Sit Hoh v. Lim Thean Tong [1912] AC 325 P.C.. The onus was on the Respondents to show the judge was wrong or had made the wrong inferences from primary facts. The judge clearly considered much of the Respondents' evidence to be unreliable, as well as insufficient, and even if his approach was wrong, the Court of Appeal should have paid more attention to his findings of fact, especially those

regarding witnesses' credibility. Furthermore even if the Respondents could show that the judge identified inconsistencies in the Appellant's case or that he must have accepted some of their evidence that is insufficient for interfering with his reasoned judgment on all the evidence: Higgs v. Nassauvian Ltd. [1975] AC 464, 475 B-E. Where a case turns on the credibility of witnesses the judge's findings of primary fact should not lightly be disturbed: Akerheilm v. de More [1959] AC 789.

19. The following submissions are made regarding specific points made by the Court of Appeal:

p88 11.18-47 (1) 'Allan Grant' is presumably a reference to Allan Hanna Snr. The surveys and plans do not constitute evidence of legal boundaries per se. There was ample evidence that Allan Hanna had occupied land West of the 6-8 foot path for some time before 1964. The 1959 Affidavits provide good independent and contemporary evidence that Rufus Grant was prepared to accept that Allan Hanna and others claimed land to the West of his, and presumably between his land and Leazer Grant's. The plans - Exhibits 2 and 4 were apparently prepared for Rufus and Emmie Grant, on their instructions so that attributions and legal boundaries would be both inadmissible and of little weight given the maker's self-interest.

pp121, 123, 125
p29-30

(2) The Appellant does not accept that it is likely that Rufus Grant would convey 150,000 sq. feet of land all of which was occupied or claimed by Allan Hanna. It is unlikely that the Appellant would have agreed to buy the land and also that Rufus Grant was more likely then not intending to convey the land contended for by the Respondents. Wallace identified the building to the S.W. of his claim (Exhibit 1) as having been pointed out as a building put up by Allan Hanna Sr. who had strayed

p88 1.48-
p89 1.7

p18 11.5-7
p117

RECORD

over his boundary. While the exact Hanna/Grant boundary might have been open to dispute it is more likely that a few feet in dispute were comprised in the 1964 land then the full 15,000 sq. ft. It is reasonably likely that the old 6-8 foot 'path' was in fact the boundary. For the full 15,000 sq. ft. area to be outside that shown in Exhibit 1 would have necessarily involved some of Leazer Grant's land as Allan Hanna does not appear to have had a 150' frontage. Also the identification of the 'South West' structure, if believed, by Wallace supports the view that some of the 1964 land is shown on Exhibit 1, contrary to the Respondents' case.

pp121, 123, 125

p89 1.7

(3) The identification of the 'family residence' was a major, but not the only, part of the Appellant's case. The Judge accepted Wallace's evidence rather than that of Albert Grant, The significance of the building was its existence in mid-1964. It is not apparent from the Record that it was seriously put to Wallace that there was no such building in 1964 or that it was new. It is respectfully submitted that the conclusion at page 90 line 7 of the Record is wrong and that even if it were true the judge clearly accepted Wallace's answers in preference to Albert and Noel Grant. The judge also believed that the family residence was there in 1964. Leazar Grant did not support Albert Grant's story of being given the house when aged 10 in 1952 or of building the house in 1964.

p89 1.8-
p90 1.11
p46-47
p66 1.42
p69 1.28

p18 11.1-4
p19 11.1-4

p90 11.7-11
p70 11.11-15
p19 11.3-5

(4) In any event it is not of central importance who owned the residence in 1964 or before since Wallace's understanding would derive from what Rufus Grant told him. The land on which it was built might have been claimed by Rufus and Henry Grant. Even if the judge were wrong to find that it had belonged to Rufus Grant the description in the September 1964 Conveyance of the Eastern Abuttal would be accurate if a narrow strip of

p90 11.28-37

p119

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Rufus Grant's land lay between the Eastern Boundary of the second plot and the house. Otherwise the Appellant would invite the Court to find the description as a 'falsa demonstradio' - the 'area' being the most precise part of the description.

p90 ll.38-50 (5) If the Court of Appeal inferred from Leazar Grant's evidence, that Allan
p18 l.5 Hanna only moved North of the land in 1962-63 then the 1959 Affidavits would be wrong. The age of the buildints in 1964 would not be of much significance assuming they were standing then and also in 1978-1979. The age of the 'South Western'
p19 ll.9-11 building was not put to Wallace in cross-examination nor was it raised in Counsel's closing speeches.

(6) The judge did not 'reject' the evidence
p91 ll.1-28 of Bowleg and Mallory. He merely
p60 ll.1-8 considered their evidence inadmissible and of little weight (i.e.insofar as
pp 22-24 what Wallace told them in 1964, where consistent with his evidence at trial). Furthermore the Court of
p22 Appeal should not have relied on Bowleg's evidence which can be seen
p91 ll.16-24 to have been insignificant even where admissible. If the 'Stuccoed' house was the barber shop (which was not put to the witness) then it would have been described as 'West' of Rufus Grant's land and not treated as a land mark which was said to be just to the East of the 1964 land. Both Bowleg and Mallory referred to a house on the 'East' of Rufus Grant's and Wallace's land.

p91 l.28 (7) Leazer Grant said that Billy Cat Hanna
p26 ll.41-48 moved North of the road in about 1962. The 1959 Affidavits suggest he claimed land much earlier, even if he had moved there later. Wallace's evidence was that there were buildings to the West of the 6-8 foot path. It may have encroached onto the land shown on
p18 l.6 Exhibit 1 to the East of the path before
p91 l.47 1964, as Rufus Grant apparently told
p26 ll.26-35 Wallace. Exhibit 2 is not evidence. The part of Leazer Grant's evidence relied on by the Court of Appeal is consistent with the Plaintiff's case regarding land bordering the 6-8 foot path on the East.

(8) Wallace could not have told who had or had had title to the family residence and the land around it. The judge accepted his identification of the family residence, the building in the South West corner of the plot claimed by the Appellant and the path. Allan Hanna Jr. gave evidence of his father's activities West of the 6-8 ft. path consistent with it being the 1959 boundary. The judge believed the Appellant's witnesses as giving a more coherent picture, and accordingly the Respondents' case that Rufus Grant's lands in fact bordered on Leazer Grant's was more credible.

p92 11.3-19
p88 11.4-8
p92 11.20-27
p63 11.1-20

21. The judge noted that some aspects of the Appellant's evidence were inconsistent but having considered all the evidence did not think they were significant. He clearly accepted Wallace's identification of the plot and certain landmarks and that Rufus Grant's boundaries as at the time of the 1964 transactions were not as far West as the Respondents argued. Having refused to rely on the Respondents evidence to support their positive case it was appropriate for the learned Judge to conclude that the Appellant had satisfied the Civil Standard of proof. It is submitted that in the circumstances the Respondents could not have showed that the judge's findings were unjustified.

22. It is not accepted that any of the points relied on by the Court of Appeal had escaped the judge. As set out above it is respectfully submitted a number of the points taken by the Court of Appeal were misplaced. The intention of the grantor in comparing a deed executed pursuant to an estate contract (which would have given the grantee a Constructive trust) is significant. The point that the sale to the Appellant was to prevent encroachment is in the Appellant's favour as it tends to support the 6-8 ft. pathway as the natural boundary between Rufus Grant and Allan Hanna before 1964. The Judge was entitled to reject Hubert Williams's evidence based on aerial photographs taken in 1967, and which evidence appears to have come as a surprise to the Appellant and was not put to its witnesses. By 1967 Rufus Grant had died, and his

p92 1.46
p93 11.18-22
p93 11.23-4

p94 1.41-
p951.8

administratrix does not appear to have warned about the 1964 transactions when ordering land clearance and when aerial photographs were taken. As already submitted the plans are of little or no evidential value of ownership and the suggestion that Allan Hanna only occupied 'generation land' north of the road in 1964 is flatly contradicted by the 1959 Affidavits, Allan Hanna Jr and Wallace.

p96

23. On 11 December 1981 the Court of Appeal of the Commonwealth of the Bahamas made an order granting the Appellant final leave to appeal to Her Majesty the Queen - in - Council. The Appellant respectfully submits that the appeal should be allowed with costs and the judgment and orders of Blake J restored for the following, amongst other,

REASONS

(i) BECAUSE the Court of Appeal were incorrect to infer that Blake J put the legal burden of proof on to the Respondents

(ii) BECAUSE the Court of Appeal ought not to have reviewed the evidence afresh and simply substituted their own view for that of the judge

(iii) BECAUSE the Respondents cannot show that Blake J made erroneous findings of fact

(iv) BECAUSE Blake J dealt properly with the evidence before him and came to the right decision

and

(v) BECAUSE Blake J was best equipped to assess the credibility and reliability of the witnesses.

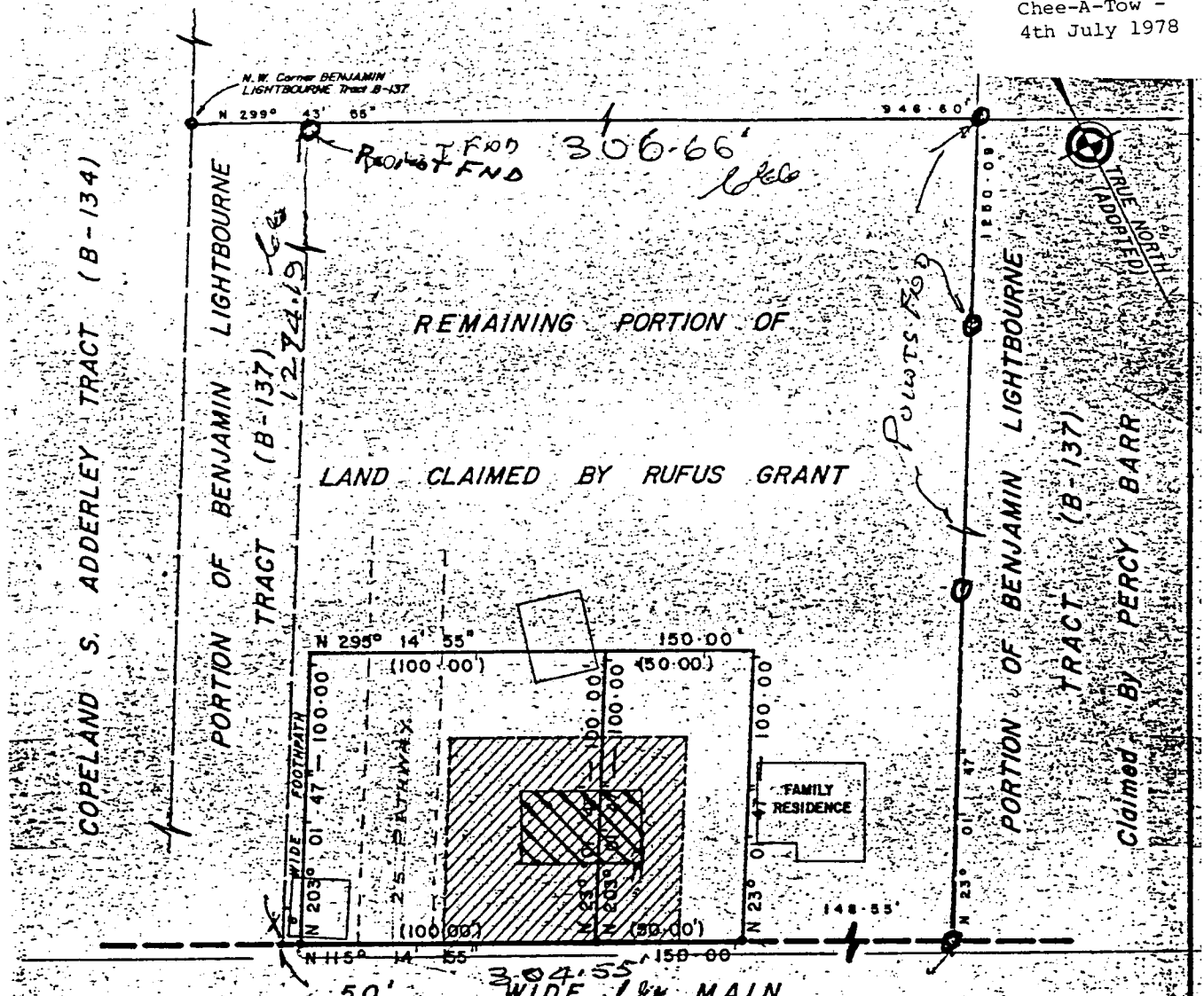
JONATHAN HARVIE

EXHIBIT 1

PLAN DRAWN BY CHEE-A-TOW

IN THE COURT OF APPEAL

Exhibit 1
Plan Drawn by
Chee-A-Tow -
4th July 1978



Recorded in The Department of Lands & Surveys in accordance with Section 3 of The Land Surveyors Act, 1975 as Plan Nº GRAND BAHAMA, This Day of 1978.

Surveyor General

CERTIFICATE:—

I, LEONARD V. CHEE-A-TOW OF NASSAU, A SURVEYOR REGISTERED AND LICENSED IN THE BAHAMAS, HEREBY CERTIFY THAT THIS PLAN HAS BEEN MADE FROM SURVEYS EXECUTED BY ME, OR UNDER MY PERSONAL SUPERVISION, THAT BOTH THE PLAN AND THE SURVEY ARE CORRECT, AND HAVE BEEN MADE IN ACCORDANCE WITH THE LAND SURVEYORS ACT, 1975, AND THE LAND SURVEYORS REGULATIONS, 1975, MADE THEREUNDER.

L.V. Chee-a-Tow

REGISTRATION Nº 011

H·R· WASON

DEPUTY DIRECTOR
SURVEYING & MAPPING SECTION

SURVEYOR'S NOTES :-

Reference - R. Warren & Associates Ltd. - Plan Job 18/65

Denotes survey executed for Emmie Dorothy Grant

Denotes a steel rod or galvanize pipe in concrete base set

Denotes a steel rod or galvanize pipe in concrete base found.

PLAN SHOWING

TWO LOTS OF LAND CONTAINING A TOTAL OF 14,988·75 SQ. FT. BEING A PORTION OF THE TRACT OF LAND ORIGINALLY GRANTED TO BENJAMIN LIGHTBOURNE B-137.

SITUATE

NORTHWARD OF THE MAIN PUBLIC ROAD AT 'HANNA HILL' ON THE ISLAND OF GRAND BAHAMA ISLAND WEALTH OF THE BAHAMAS.

SURVEYED AT THE INSTANCE OF

BILL WALLACE ENTERPRISES LTD.

CHEE-A-TOW & CO. LTD.
Land Planners & Surveyors,
P.O. Box F-108 Freeport,
Grand Bahama Island.

DATE :- JULY 4th, 1978	
SURVEYED BY :- C.E. CHEE-A-TOW	
DRAWN BY :- K.M. C-A-T.	
SCALE :- 1 INCH TO 50 FEET	
JOB Nº :- 168/78	PLAN Nº :- S-1517

IN THE PRIVY COUNCIL No.20 of 1984

ON APPEAL

FROM THE COURT OF APPEAL OF THE COMMONWEALTH OF THE BAHAMAS

BETWEEN:

BILL WALLACE ENTERPRISES LTD
Appellant

- AND -

STANLEY ROLLE AND CATHERINE ROLLE
Respondents

CASE FOR THE APPELLANT

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL
Your ref: R/JA/18485

Solicitors for the Appellant