

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION
2013/CLE/QUI/88**

IN THE MATTER OF ALL THAT piece parcel or tract of land containing 222.39 acres situate in the Settlement of Lower Deadman's Cay of the Island of Long Island one of the Islands of the Commonwealth of The Bahamas bounded WESTWARDLY by the Main Public Road and the Original Crown Grants to Edwin Burrows and the Old Bonaventure Roman Catholic Church and running thereon Five Hundred and Thirty-four and Ten Hundredths (534.10) feet NORTHWARDLY by a portion of the Original Crown Grant to William Burrows, which property is now occupied by the descendants of Ezekiel Burrows and also by the Original Crown Grant D-41 to John Morley and running thereon Twelve Thousand Five Hundred and Sixty-seven and forty-five hundredths (12,567.45) feet NORTHEASTWARDLY by the Sea and running thereon One Thousand Eight Hundred and Ninety-five and Seventy thence SOUTHEASTWARDLY by Lot of land being the Original Crown Grant D-51 to Mary Major and running thereon Three Thousand Eight Hundred and Ninety and Ninety-six Hundredths (3,890.96) feet and by Vacant Crown Land and running thereon Four Thousand Eight Hundred Twenty-seven and Forty-three Hundredths (4827.43) feet and by land being the Original Crown Grant D-149 to Roger Bowe and running thereon Two Thousand Eight Hundred and Two and Sixty-nine (2802.69) thence

AND

IN THE MATTER of The Quieting Titles Act, 1959

AND

IN THE MATTER of the Petition of H.M.I. Holdings Company Limited

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Mrs. Hope Strachan for the Petitioner

**Mr. Anthony Mckinney KC along with Mr. Owen Wells for
Mr. Norris Carroll**

**Mr. Norwood Rolle for The Adverse Claimants Ms. Jacqueline
Turnquest, Ms. Margaret Turnquest, David Taylor, Herbert Taylor,
Monzel Turnquest and Alburn Newman**

Ms. Kenria Smith for the Crown

Judgment Date: 28th April, 2023

JUDGMENT

1. By an amended Petition filed 5th December 2013, "the Petition" the Petitioner, H.M.I. Holdings Company Limited, a company incorporated in the Commonwealth of The

Bahamas on 23rd December 2009 (the "Petitioner") prayed that its title to certain property on the island of Long Island, be investigated pursuant to the Quieting Titles Act, 1959 and that a Certificate of Title granted to them.

2. The property is described in the amended Petition as: -

ALL THAT piece parcel or tract of land containing 222.39 acres situate in the Settlement of Lower Deadman's Cay of the Island of Long Island one of the Islands of the Commonwealth of The Bahamas bounded WESTWARDLY by the Main Public Road and the Original Crown Grants to Edwin Burrows and the Old Bonaventure Roman Catholic Church and running thereon Five Hundred and Thirty-four and Ten Hundredths (534.10) feet NORTHWARDLY by a portion of the Original Crown Grant to William Burrows, which property is now occupied by the descendants of Ezekiel Burrows and also by the Original Crown Grant D-41 to John Morley and running thereon Twelve Thousand Five Hundred and Sixty-seven and forty-five hundredths (12,567.45) feet NORTHEASTWARDLY by the Sea and running thereon One Thousand Eight Hundred and Ninety-five and Seventy thence SOUTHEASTWARDLY by Lot of land being the Original Crown Grant D-51 to Mary Major and running thereon Three Thousand Eight Hundred and Ninety and Ninety-six Hundredths (3,890.96) feet and by Vacant Crown Land and running thereon Four Thousand Eight Hundred Twenty-seven and Forty-three Hundredths (4827.43) feet and by land being the Original Crown Grant D-149 to Roger Bowe and running thereon Two Thousand Eight Hundred and Two and Sixty-nine (2802.69) thence (the "Property")

3. The Petition was supported by the "Amended" Affidavit of Milton Treco, the amended Plan and amended Abstract of the Title all filed 5th December 2013. .

4. The Notice of Petition and accompanying documents were duly advertised and served on the relevant parties as ordered in conformity with the Order the Court made 6th January 2014 and filed 27th January 2014, such service being confirmed by the Affidavit of Compliance filed 27th February 2016.

5. Thereafter, a sign with the Notice of the hearing of the amended Petition with the trial date endorsed thereon was posted on the Property on its boundary on the highway on 11th October 2017. This was done in conformity with the Order of the Court made 2nd October 2017 and filed 6th December 2017 as confirmed by the Affidavit of Compliance filed 11th July 2018.

6. The following adverse claims were filed in opposition to this petition:-

- i. Mr. Norris Rexford Carroll as Executor of the Estate of Joseph Carroll, Clarence Carroll, Norris Rexford Carroll, Harrison Carroll, The Beneficiaries of the Estate of Lorenzo Burrows filed his Adverse Claim on 14th July 2014 **(the "Carroll Claimant")**.
- ii. The Treasurer of the Commonwealth of The Bahamas filed its Adverse Claim on 15th October 2018 **(the "Treasurer Claimant")**.

- iii. Ms. Albertha Wright filed her Adverse Claim on 8th August 2018 (**the “Wright Claimant”**).
- iv. Mrs. Jacqueline Victoria Ritchie-Turnquest filed her Adverse Claim on 14th July 2014 (**the “Jacquelyn Turnquest Claimant”**).
- v. Ms. Maragret Maria Turnquest filed her Adverse Claim on 3rd August 2019 (**the “Margaret Turnquest Claimant”**).
- vi. David Taylor and Herbert Taylor filed their joint Adverse Claim on 3rd August 2018 (**the “Taylor Claimants”**).
- vii. The Adverse Claim of Mozel McLagon Turnquest filed his Adverse Claim on 3rd August 2018 (**the “Monzel Turnquest Claimant”**).
- viii. Alburn Newman filed his Adverse Claim on 7th August 2018 (**the Newman Claimant”**).

The Petitioner’s Case

7. In the Abstract of Title of HMI, they aver:-

| Petitioner’s Abstract of Title | |
|---------------------------------------|--|
| No. | Document |
| 1. | In or about 1794 – Arthur Newman took possession of the Property |
| 2. | <p>4th January 1858 – Arthur Newman executed his Last Will and Testament – He devised, inter alia – <u>“All just debts being paid, I give and bequeath one hundred</u> acres of tract granted to John Dowland with the building and improvements thereon to my beloved daughter Grace Elizabeth Beckford, the said buildings and improvements to until at her demise to my grand-daughter Elizabeth Cartwright the remaining part of aforesaid tract containing one hundred acres to my grand-daughter Elizabeth Cartwright her heirs and assigns to revert together with sixty acres part of tract granted to James Clement and sixty acres part of Duke Wright Cay, sixty acres being part of tract granted to Philip Fry to my grandson, Arthur Knowles, his heirs and assigns, the remaining part of the said tract containing forty acres to my godson, James Pritchard his heirs and assigns</p> <p>One Hundred acres being tract granted to William Symmery to Melvina Matilda my granddaughter, her heirs and assigns, Fifty Acres part of tract granted to George Calveras to my daughter Mary Cartwright her heirs and assigns, fifty acres part of same tract to my granddaughter Mabel Darville, heirs and assigns, fifty acres of said tract to my daughter Eleanor Knowles for her natural life to revert at her death to her daughter Isabel Knowles her heirs and assigns forever.</p> |
| 3. | 15 th April 1858 – Arthur Newman died. Grace Elizabeth Beckford took possession of the Property |
| 4. | 7 th December 1861 – Grace Elizabeth Beckford died. Elizabeth Cartwright took possession of the Property |

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| 5. | 12 th September 1891 – Elizabeth Cartwright died. Her daughter Frederica Maude Cartwright-Adderley and son-in-law George Augusts Adderley, took possession of the Property |
| 6. | In or about 1920 - Frederica Maude Cartwright-Adderley and George Augusts Adderley died survived by their nephew Herbert Milton Treco who took possession of the Property |
| 7. | In 1994 – Herbert Milton Treco died survived by his nephew Milton Rupert Treco who took possession of the Property |
| 8. | 23 rd December 2009 – H.M.I. Holdings was incorporated – Milton Rupert Treco as President, Herbert Leon Treco as Vice-President, Patricia Anne Knowles as Treasurer/Secretary and Charrah Hall Rolle as Assistant Secretary |
| 9. | 24 th December 2009 – H.M.I. Holdings took possession of the Property together with Milton Rupert Treco through documentary and possessory title |
| 10. | 29 th January 2012 and 25 th October 2013 – Affidavits of Alice Burrows, Claudius Burrows and Marjorie Treco were sworn attesting to the possession of the property and the use of the property. |

8. The Petitioner claims documentary and possessory title to the Property devised to the lineage of John Newman who was granted by the Crown 160 acres of land in Deadman's Cay Long Island.
9. The John Newman Grant was commuted to Arthur Newman in 1897. The Commutation Deed had a plan attached to it which reflected that its northern and southern boundaries were the sea.
10. The Petitioner HMI stands for Herbert Treco, Milton Treco and Ivan Cartwright who each represent branches of the family entitled to the property. Both Herbert t and Ivan are deceased.
11. Twenty acres of the original grant was sold to John Darville. Upon Mr. Arthur Newman's death, his third daughter Grace Beckford inherited the land. Mr. Treco traced through various birth and death certificates the claim of HMI to the property.
12. He claimed that Elizabeth Cartwright was his great grandmother and was a planter. She was also known as Grace Cartwright. Herbert Milton Treco was his uncle and the son of Georgianna Treco and the grandson of Elizabeth Beckford.
13. Grace Elizabeth Cartwright was the granddaughter of Arthur Newman.
14. When Herbert Treco died in 1994 his shareholding in HMI was transferred to his son Thomas Treco.
15. The previous Company, Newmans Company Limited was initially incorporated to conduct the quieting. The share structure and shareholders were the same members of the Newman branches with the exception of Shirley Cartwright and Meryl Knowles.
16. He had a conflict with the Adverse Claimant Jacqueline Turnquest prior to the commencement of the quieting action in 2008. He discovered that there were coconut

trees planted on the northern part of the land. He discovered that J. Turnquest started to build a house and put a water meter on the property. When he attempted to contact her, she came to his home and said that she saw the property was vacant so she decided to start building on it. Even after his lawyer wrote to her she did not heed the request in the letter and continued to say that she owned the property. She had a tractor clear the land to the boundary wall which had been erected by John Newman.

17. When he started visiting Long Island periodically he would pass by the property and noticed the small coconut trees. Ms. Turnquest did not proceed past the foundation after she received the letter from the lawyer.
18. They decided to survey the land and hired Donald Thompson to conduct the survey. The survey started in 2009. He took a tractor to the land to clear along the boundary wall. They started at the south east boundary. While clearing the land, he came to a cross-wall. He knew that the land did not have any cross-walls. He was approached by Everette Turnquest's wife who asked him what he was doing. Her husband came and told her to get off Mr. Treco's land. Her name was Betty Turnquest.
19. The demand letter to Jacqueline Ritchie-Turnquest was sent on behalf of Newman Holdings Ltd. and not HMI Holdings Company Limited.
20. There were no other persons on the land except for Mrs. Jacqueline Ritchie-Turnquest.
21. When attempting to clear the boundaries, he met the cross wall which went from one boundary line to the other as shown on the plan 347 L.I. The total area of 10.627 acres had walls around it.
22. He did not know how the persons got on the land. He only knew the property to have boundaries at the ends and the lengths of the property.
23. When he went back to Long Island, the walls had been destroyed.
24. He did not know anything about "BOSUN". He disclaimed knowing personally any of the adverse claimants except for having heard of them or their relatives.
25. When shown the courts colored Compilation plan which reflected in different colors the claims of the Petitioner and each of the Adverse Claimants, he accepted that the area colored green was where he saw Jacqueline Ritchie Turnquest on the land.
26. He was approached by Ms. Florence Tiny Taylor who had been married to Clever Taylor who was deceased. She told him that she through her husband was claiming the property which her husband had been farming. It was the property with the walls. He did not accept that the Taylors had undisturbed possession since 1800. The Taylor claim is colored light blue on the plan. The Taylor property is walled in and still is. There was a road from the south west of the land to access the Taylor property.

27. The walls surrounding the Taylor land was new, maybe 30 years old at most. He walked through this parcel and saw some coconut trees, and some sheep but the rest was bush and grass. Mrs. Florence Taylor stated that they had purchased the land that they were occupying. On a review of the deed Mr. Cleveland Taylor had purchased, 2 ¾ acres from a Margaret Taylor but he had enclosed nearly 11 acres. The property in the deed is in a different location for the Newman Tract.
28. He did not know Monzel Turnquest or Arnold or Ormond Turnquest.
29. He never saw any markers when he conducted the survey. None of the parcels of land being claimed had any walls around them except for the Taylor parcel.
30. He met Alburn Newman on the property when the court conducted its physical inspection of the land. He is unaware of any ancestral relationship between Alburn Newman and John Newman.
31. Milton Treco, President of the Petitioner Company ("Mr. Treco") averred that Arthur Newman was his great great great grandfather who was the owner of the Property which included 222.39 acres of land in Lower Deadman's Cay, Long Island. His claim to the Property was based on the evidence as set out in the Abstract of Title.
32. He accepted that the Crown Grant D-101 on plan 347 L.I. depicted only 160 acres and reflected the size of the land granted first to John Newman on 22nd February 1791 and which was then later commutated to Arthur Newman. Arthur Newman sold 20 acres of the Property to John G. Darville on 6th August 1856 and the remaining 140 acres was never sold and therefore became the property of Arthur Newman's heirs and assigns.
33. Upon a survey being conducted of the Property it was discovered that the land referred to in the grant was in fact 222.39 acres of land. The surveyor utilized not only his usual measuring tools and a copy of the said grant but he also showed him the boundary walls and the demarcations in the land indicating where the walls had been but were obviously removed. Mr. Treco stated that he knew where the boundary walls had been erected all of his life and that they had remained intact until recently.
34. After making certain enquiries, he discovered that the boundary walls adjacent to the Queens Highway on the boundary with Ezekiel Burrows were allegedly destroyed by Jacquelyn Turnquest, the Turnquest Claimants. Walls which existed on the Southeast of the Property were also removed. These portions removed were situate where Mr. Cleward Taylor, the father of the Taylor Claimants, claimed to own ten acres. Walls by the ocean running Southeast and Southwest were still intact.
35. The plan attached to the grant stated that the size of the grant is 160 acres but the measurements were hardly ever precise and the balance of the land after the sale to John G Darville was in fact 222.39 acres.
36. In 2009 they commenced legal proceedings against the Turnquest Claimant, to cease and desist her trespass on the Property after her trespass came to their attention. While

they had initially obtained an ex-parte injunction against her, it was later dismissed on the basis that the ownership of the Property had yet to be determined. The Turnquest Claimant nor any of the Adverse Claimants, were ever in undisturbed possession of the Property.

37. Mr. Thomas Treco, an eighty two year old resident of New Providence stated that he was born on Long Island and had lived in the settlement of Hamiltons in Deadman's Cay, Long Island. He was familiar with the Petitioner as it was a company formed for the purpose of looking after his family's interest in generation property in Long Island. He was also familiar with Milton Treco and his family and the Property. Milton was his cousin and Herbert was his brother.
38. When he was growing up he often heard his parents refer to the Property which is family land as belonging to the descendants of Arthur Newman. He was familiar with many of Arthur Newman's descendants, in particular Milton Treco and Herbert Leon Treco. The descendants of Arthur Newman were in possession of the Property for many generations to the exclusion of all others.
39. Theresa Margaret Treco-Turnquest, a seventy-six year old resident of Hamilton's Long Island and the sister of Milton Treco, stated that she was very familiar with the Property as it was not far from the settlement in which she grew up. She lived there for most of her life except for an eighteen year period up to the year 2000. When she was growing up she would often hear her parents refer to the Property as belonging to the descendants of Arthur Newman; of whom she was familiar with particularly Milton Treco and Herbert Leon Treco.
40. The descendants were in possession of the Property for many generations, to the exclusion of everyone else. During her fifty-eight years of living on Long Island she did not know of any other person who was in undisturbed possession of the Property. In recent times she became aware of a dispute after Jacquelyn Turnquest began erecting a structure on some of the Property but she was challenged by Milton and Herbert Treco.
41. Some of the Property was used from time to time for farming by various family members. At one point, she and her brother Joseph Treco, during their adolescence, raised sheep, goat and chicken on the Property.
42. Mr. Donald Thompson, a Land Surveyor, was engaged by the Petitioner in 2013 to conduct a survey of the Property. He was shown a copy of the Will of Arthur Newman dated 4th January 1858 and observed the position and dimensions of the Property. He travelled to Long Island and surveyed the Property in the presence of Milton and Herbert Treco and determined that the dimensions of the Property were as stated. As a result of his field work he prepared a survey plan of the area numbered 347 L.I.

The Jacqueline Turnquest Claimant's Case ("JT")

43. The JT Claimant filed an Abstract of Title on 18th July 2018 on which she sought to rely.

| Turnquest Claimant's Abstract of Title – Possessory Title | |
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| No. | Document |
| 1. | 1800's – Washington Wells, great grandfather of the Turnquest Claimant entered into adverse possession of the Property known as Bosun which was part of a larger tract occupied by him Washington Wells died and daughter Lillian Wells entered into possession of the Property which she farmed growing the usual Bahamian seasonal crops until her death. |
| 2. | Circa 1967 – Lillian Wells died and her lawful son Ullin Ritchie who was married to Carmen Wihelmina Ritchie entered into physical possession of the Property which he farmed until his death. After Ullin Ritchie's death his daughter Jacqueline Ritchie entered into physical possession of the Property and commenced construction of a home on a portion and leased another portion to her cousin Marcus Thompson who raised cattle thereon. |
| 4. | 26 th January 2018 – Affidavit of Richard McHardy – Born in Lower Deadman's Cay, Long Island. Knew the JT Claimant all of her life as the daughter of the late 22 nd February 2018 and 26 th January 2018 – Affidavits of Jordan Ritchie and Florence Taylor - Knew the JT Claimant who was the daughter of Ullin Ritchie. From an early age he was aware of the tract of land known as Bosun in the area of Lower Deadman's Cay, Long Island. In the early 1960's as a boy he recalled Ormond Turnquest and Arnold Turnquest farming the land on a regular basis to sustain their families. The two brothers were the son of Rebecca Turnquest nee Wells who was the sister of his grandmother the late Lillian Ritchie nee Wells. Around the year 2000 he became aware of the JT Claimant constructing a home and commencing a farming project on the land. The land on the registered plan No. 347 L.I. is the same land occupied by the JT Claimant. He knew of no other person who had a proprietary interest in the land and that the JT Claimant was in sole undisturbed possession for over seventeen years. |

44. Mrs. JT, who was sixty eight at the time of her evidence stated that she had been permanently residing in Deadman's Cay since 1980 after her return from New Providence and Abaco in the early 1970's. Since her return she had occupied the portion of the Property known as Bosun which was located at or near the settlement of Lower Deadman's Cay and the nearby airport of Long Island.
45. In or around 1985 she farmed the Property and grew many vegetable crops and citrus trees including pigeon peas, beans, watermelon and okra. Before she took possession, she knew that her late grandmother, Lillian Ritchie, was in possession until her death in 1967. She also knew that her late grandaunt Rebecca Turnquest and her children possessed and farmed a portion of the Property.
46. It was her grandmother's claim to the Property and her father's interest therein that led her to enter into possession. Since 1985 she enjoyed undisturbed occupation until she was served with court papers by the Petitioner claiming ownership. Around the year

2007, she commenced construction of a dwelling home and was issued permit no. 95/02 by the Town Planning Committee of Long Island.

47. She acknowledged receiving the 26th March 2008 letter from Mr. Treco after she had laid the foundation. She continued to farm the property after receipt of the letters but did not finish the dwelling house.
48. She had her property surveyed after the filing of the Petition and had stakes put down. Her father Ullin Ritchie did not have it surveyed. Her father was still alive when she worked the property. He had told her that the property was their property. Douglas McHardy lived on the opposite of her property. She had never seen Mr. Treco on the property until she started working it. There was never anyone else on the Property and her father had never told her that they were on the land with the permission of Mr. David Cartwright until he told them to get off the land in 1950.
49. After she received the letters from Mr. Treco she continued to farm the land. There was a separate court action between them but she could not speak to its status.
50. As far as she was aware, the Petitioner was not the documentary owner of the Property and did not qualify for a possessory claim of the Property. She had and still has crops and trees thereon which she uses to support her family.
51. Jordan Ritchie, a seventy year old native of Deadman's Cay, Long Island and resident from the year 2000 averred that he knew Mrs. JT all of her life as she was the daughter of his late uncle Ullin Ritchie. From an early age he became aware of a tract of land known as Bosun in Lower Deadman's Cay, Long Island, particularly during the early 1960's. During that time he remembered Ormond Turnquest and his brother Arnold Turnquest regularly farming the land to sustain their families.
52. He knew that they were the sons of the late Rebecca Turnquest nee Wells who was the sister of his grandmother the late Lillian Ritchie nee Wells. In 2000 he became aware of the Turnquest Claimant commencing construction of a home on the Property in addition to a farming project around the home. She farmed and continued to farm such crops as bananas, watermelons, sweet potatoes, pumpkins and cassava.
53. He saw the 347 L.I. Plan and was satisfied that the land adjoining the Queen's Highway is the land currently occupied by the JT Claimant. He did not know of any other person who had a proprietary interest in the Property occupied by the JT Claimant.
54. Richard McHardy, an eighty-one year old native and resident of Lower Deadman's Cay, Long Island averred that he knew the JT Claimant for all of her life; she being the daughter of the late Ullin Ritchie who was a contemporary of his. He knew that Mrs. JT occupied a tract of land known as Bosun from or about the early 1980's when she returned to Long Island after living in Abaco.
55. Before her return her father and his late mother Lillian Ritchie had an interest in the Property and farmed along with other family members from or about the early 1940's

continuously. Upon her return she too started farming to sustain herself and her family. He saw the 347 L.I. Plan and was satisfied that the land adjoining the Queen's Highway is the property occupied by the JT Claimant and her family members for well over thirty years. He did not know of any other person who had any proprietary interest therein.

56. Florence Taylor, an eighty-seven year old resident of Deadman's Cay, Long Island since 1984 stated that she knew the JT Claimant and her late father Ullin, around the time she commenced farming on a parcel of land with her late husband in an area known as Bosun. The JT Claimant was farming a tract of land in the same area for a variety of crops. Her late husband had advised her that the JT Claimant and her family, particularly her late father Ullin, were the owners of the land she was occupying and which she is still in possession of to date.
57. She saw the 347 L.I. Plan and was satisfied that the land particularly that adjoining the Queen's Highway to be the land currently occupied by the JT Claimant and her family. The JT Claimant was in the sole, undisturbed possession of the Property for well over thirty years.
58. Richard Wells, a sixty-four year old native of Deadman's Cay, Long Island and resident until 1971 averred that he knew the JT Claimant for almost all of his adult life. She was the daughter of the late Ullin and Carmen Ritchie who both lived in the Deadman's Cay. He was also familiar with the other adverse claimants and their involvement and activities or those of their predecessors in title on the Property.
59. From an early age, he became aware of the tract of land known as Bosun. During the 1960's as a boy he remembered the late Ormond Turnquest and his brother Arnold Turnquest farming the land on a regular basis to sustain their families. He knew the two brothers to be the sons of the late Rebecca Turnquest nee Wells who was the sister of the late Lillian Ritchie nee Wells.
60. During his frequent visits to Long Island in the 1990's and thereafter he became aware of the JT Claimant commencing construction of a home on part of the Property. He was able to observe from the public road as he drove by during his many visits to the island over the many years since then. He saw the 347 L.I. Plan and was satisfied that the land particularly that adjoining the Queen's Highway to be the land which was in the possession of the JT Claimant's father and was currently occupied by the JT Claimant and he knew of no other person who had any proprietary interest in the Property. The JT Claimant was in the sole, undisturbed possession of the Property for well over fifty years.
61. Under cross-examination he admitted that he represented Jacqueline Turnquest on other legal matters, particularly a matter relating to the same land. Mr. Treco had obtained an ex-parte injunction against Mrs. Turnquest to have her removed from the land which was not maintained. He stated that he knew all of the adverse claimants very well and had represented the Taylors and the Turnquests.
62. The property referred to by Ms. Wright in question was not where Mrs. Turnquest resided. He knew of farming being done on the property where she did reside. She lived

there all of her life and he did not know about any other person living there. There were presently fruit trees on the land. He recalled seeing her farming the land since the 1990. Her father was possessed of the property by way of his mother Lillian Ritchie. He could not speak to any member from the Wright family being on the farm referred to as Norriss Carroll's piece of land but he knew that some of them lived to the southeast of the Property but not on the Property.

63. He knew Norris Carroll all of his adult life. Mr. Carroll had lived in Lower Deadman's Cay for some period of time. He also knew his parents. He did not understand Bosun to go as far as to the sea. The JT Claimant occupied the property adjoining the public road. OrmondOrmond Turnquest' property was next to the JT Claimant'. Monzel Turnquest occupied land next to OrmondOrmond. He was aware of a deed in favor of Cleverd Taylor conveyed to him by Marguerite Taylor. He could not say if Norris or JB Carroll or Lorenzo Burrows were on the property or in its vicinity. He could not say if Vincent Burrows occupied Bosun. From 1954 to 1971 he had never seen Mr. Treco in the vicinity of the Property.
64. He admitted to being a distant relative of Jacqueline Turnquest, Margaret Turnquest and Monzel Turnquest but not Alburn Newman. He was not familiar with the John William Newman tract. The family of Gilbert Burrows was the owner of the property north of Jacqueline Turnquest. He was not sure of who the owners were to the east of her. He saw the JT Claimant on the Property around 1997 but knew of the Bosun property from the 1960's. He did not know an older gentleman by the name of David Cartwright.

The Carroll Claimant's Case

65. The Carroll Claimant filed his Abstract of Title on 14th July 2014.

| The Carroll Claimant's Abstract of Title | |
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| No. | Document |
| 1. | <p>16th May 1967 – Last Will and Testament of Lorenzo McLellan Burrows of Lower Deadman's Cay, Long Island naming Joseph Benjamin Carroll as his executor and making the following devises: -</p> <p>2. I hereby give and devise unto my beloved children namely: - Hinton Lenhard, Roy Macfarlane, Virginia Jestepha Carroll, Vernetta Naomi Burrows, Trixie Wilhelmina Hanna and Dillis Storr ALL my Claim, possessions, rights, titles and interest in the tract of land called William Burrows commonly known as Jumba Bill; also ALL my claim possessions, rights, titles and interest in the parcel or lot of land known as Yellow Corn Hill being part of a tract known as Sam Griffin Also ALL my claim, possessions, rights, titles and interest in that piece, parcel or lot of land known as Big Hill being part of the said tract known as Sam Griffin, to be equally divided among htem.</p> <p>3. I hereby give and devise unto my beloved children namely: - Hinton Lenhard, Roy Macfarlane, Virgina Jestepha Carroll, Vernetta Naomi Burrows, Trixie Wilhelmina Hanna and Dillis Storr my yard comprising one-and-a-half acres</p> |

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| | <p>together with all the appurtenances thereunto belonging, to be equally divided among them.</p> <p>4. I hereby give and devise unto my beloved son-in-law, Joseph B. Carroll, and my beloved three grandsons, Clarence Carroll, Norris Carroll and Forrester Carroll ALL that tract of land known as John Newman's bounded on the South by land the property of David Turnquest; on the West, by land the property of Clevard Taylor; on the North by land the property of George Burrows; and on the East by land the property of Major Burrows, to be divided equally among them.</p> <p>5. I hereby give and devise unto my beloved children aforementioned ALL the remainder and residue of my Real property whatsoever the same might be and wheresoever it might be found.</p> |
| 2. | 11 th September 1967 – Lorenzo McLellan Burrows died. |
| 3. | 9 th April 1985 – Grant of Probate to Joseph B. Carroll in the estate of Lorenzo McLellan Burrows |
| 4. | 6 th February 2007 – Last Will and Testament of Joseph Benjamin Carroll naming Norris Rexford Carroll as his executor and making the following devise: "All the rest residue and remainder of any property of which I shall die possessed, or be entitled to, of whatever nature the same might be and wheresoever situate I Give Devise and Bequeath to all my said Beloved children in equal shares. [Such property is to include my interest in the Carroll Family Estates (those of my grandfather, Charles and my great grandfather, Charles and any earlier ancestor(s) as might have left estates) in Lower Deadman's Cay or on Joel's Cay or wheresoever otherwise]. |
| 5. | 18 th September 2010 – Joseph Benjamin Carroll died. |
| 6. | 10 th June 2013 – Grant of Probate to Norris Rexford Carroll in the Estate of Joseph Benjamin Carroll |

66. Mr. Norris Rexford Carroll, the Carroll Claimant, averred that he knew the settlement of Lower Deadman's Cay and other settlements of Long Island very well. He knew of the Property and of everyone who worked on it from the 1950's to present. He knew Milton Treco and Herbert Treco whom he called Brother Herbert, as they were his cousins. He also knew Milton as the husband of his cousin.

67. Milton, Herbert nor anyone who might be a descendant of Arthur Newman were ever in possession of the Property for the past sixty years. The Petitioner's claim was out of the blue as they were strangers to the Property. He set out a list of names of people he knew worked the Property over the last sixty years. His mother Mrs. Virgie Carroll was born to Lorenzo McLellan Burrows and Ellen Rebecca Turnquest-Burrows on 22nd July 1924 in Lower Deadman's Cay and lived there virtually all of her life.

68. She often told him that her grand-aunt Margarita Taylor worked on the Property with her husband King Taylor. In addition, his cousin Elgin (Senior) Turnquest, David Turnquest

and Garnett Turnquest worked on the Property. She also recalled on old woman named Olivia Burrows who worked the fields on the Property. She also thought that the home of Mr. Jim Taylor and his wife Phoebe might have still been on the Property. While he did not remember the said Taylor he recalled seeing his home on the Property which had a large mango and sapodilla trees close by and walled in.

69. His mother was often told that her grandfather, Major Burrows, owned land in the Property. By a deed dated 24th October 1960 and recorded in the Record of Registry of Records in Volume 4024 at pages 181 to 183, Margarita Taylor sold 2 3/4 quarter acres of the Property to Lorenzo McLellan Burrows. She also gave him a tract of the Property which his mother and her brother understood to be sixteen acres. Therefore Major Burrows was the owner of eighteen and three quarter acres in the Property.
70. There was an official road reservation which ran along the southern boundary of the William Burrows estate. He believed it was called Bosun Bush Road and that it led to a settlement on the property called Newman Pond just beyond the pond.
71. On Plan 347, he explained that the road was really the northern boundary of the tract which ran from the main road in Deadman's Cay through the settlement in Newman's Pond, all along that boundary wall of the Burrows estate. The Crown Grant was on the western border and there was no main road when it was made. The road ran parallel with the stone wall between the property and the Williams Burrows estate.
72. He stated that next to Jacqueline Turnquest was Ormond Turnquest to the east whose property was now being claimed by Howard. Next to that was Mr. Arnold Turnquest and next to him was Mr. Clevard Taylor. To his east was Lorenzo Burrows. Mr. Clevard Taylor's property was enclosed by a stone wall.
73. At the suggestion of Major Burrows, Margarita Taylor gave some of the Property to Mr. Clevard Taylor who was taking care of her and who farmed it and raised sheep in a wire fenced pasture thereon. The earlier farmers who worked on the Property grew the usual subsistence crops and from 1960 onwards, farmers hired tractors to farm more commercially. Sometime in the mid-seventies his father, Joseph Benjamin Carroll hired a tractor to make two huge pits and allowed his first cousin Vincent Burrows to work as a share cropper. Vincent also grew banana, watermelon and lots of tomatoes which his father would collect to process and bottle to sell to the local packing houses.
74. The land Vincent farmed was a part of the Property and was bequeathed by Major Burrows in his Last Will and Testament to his father, his brother Clarence, his brother Forrester and himself. The bequests in the said Will were not quantified but he told him more than once that he had left two and a half acres for each of them in the Property. There was no clear nexus in the Last Will and Testament of Arthur Newman between the land bequeathed and the Property.
75. The 4.92 miles of boundaries, 12,567.45 (2.38) miles on one side alone appeared to be much more land than that mentioned in the Arthur Newman Will. It was an untruth by Claudius Burrows and Marjorie Treco that Marjorie or Alice Burrows grew up in the

settlement where the Property is located. He understood and verily believed that Marjorie grew up in Perry's, Long Island which was about 4.8 miles south of the Property. He also understood and very believed that Alice Burrows grew up in Hamiltons, Long Island which was about 5.9 miles from the Property. There are about seven named settlements between the Property and Hamiltons and Perrys.

76. When he was a teenager he traversed the subject property. He was not sure of whether 'Mona' lived on the property but he did know that she died living with Cleward Taylor.
77. On the Compilation coloured plan he pointed out that the green area running parallel to the main road was Jacqueline's property, yellow was Ormond Turnquest which Margaret was claiming, the red was Monzel Turnquest and the light blue was the walled in yard of Jim Taylor given to Cleward Taylor. The darker blue was his grandfather's property.
78. The property Jacqueline Turnquest claimed was the only one he knew as Bosun and was owned by her grandfather William Wells Ritchie. He knew Mr. Milton Treco but never recalled seeing him or any of the beneficial owners on the Property. He was never instructed by any of them to cease and desist occupation of the Property.
79. During cross-examination, Mr. Carroll stated that durin his time as a teacher on Long Island he passed through several settlements on his bicycle including Big Gate, Ritchies, Turnquest. He did not know if Ms. Wright lived in Big Gate but he know of some Wrights who lived by the airport. No Wrights worked the Property and Ms. Wright's claim was out of the blue. He knew a Priscilla Burrows who lived on the Williams Burrows tract which was north of the Property. He did not know who was Ida Wright. Jeremiah Smith lived about half a mile south of the Property.
80. Both the William Burrows' tract and the John Newman Tract went west of what was shown as a main road. The Roman Catholic Church which Mr. Treco referred to was not operated in the homestead of Mr. Michael and his partner which was on the Property. He did not know about a tract of land called Manuel. The Newman Pond was within the John Newman tract. He did not consider that Alburn Newman was a stranger to the Property but he did not specifically know where his fields were. The property in the Will of Arthur Newman was not connected to the Property.
81. His claim has no connection to John Newman. His Aunt Mona conveyed 2 $\frac{3}{4}$ acres to Lorenzo Burrows.
82. Garnet Turnquest, Mrs. Lillian Wells-Ritchie, Virginius Burrows and Ritchie Burrows did not live on the Property. Virginius Burrows was a part of the William-Burrows tract which was located on the western boundary of the Property. He knew that Ormond Turnquest and Arnold Taylor were on the Property in the 1950's, when he himself was about thirteen. David and Herbert Taylor work on the only part of the Property which was enclosed with a rock wall. It was no surprise to him that they had worked with their father. He was not aware of whether a David Turnquest resided on the Property but he did farm it. He was also not aware of whether a George Burrows lived or farmed the Property.

83. He did not know if his grandfather lived on or farmed the Property. The Will did not mention the Property by name but it did mention the description and scenery.
84. It was not true that Mr. Milton Treco or Herbert Treco or any of their ancestors or descendants were in undisturbed possession of the Property to the exclusion of everyone else. Nor were they ever in possession of any part of the Property during the past sixty years.
85. It was his understanding that there has not been a Crown Grant to either his cousin, Edwin Burrows or to the Roman Catholic Church. He often heard his parents, his mother's parents and other older people in the community say that the church bought the land on which St. Bonaventure Roman Catholic Church was situate from the late Palestine Michael and that Edwin Burrows bought his land from George Gray Darville. The will of the late Joseph Benjamin Carroll was probated and a grant of Letters Probate was issued to him on 11th June 2013.
86. Mr. Kevin Carroll, the brother of Norris Carroll stated that he had never met Milton Treco or Herbert Treco but he did know Ivan Cartwright. He did not know them to have any interest in the Property or to be in possession of the Property.
87. He explained that the main road was the only road he knew about in Long Island. The Property, was one that was on the opposite of the road from the old Catholic Church ruins. He remembered driving north with his father and seeing the agricultural pits. They lived north of the Property on the other side of the airport and their home was not included in the area of the Williams-Burrows Crown Grant.
88. It was known to the family growing up that his father, brothers Norris, Forrester and Clarence had land. He never worked the land himself as he was a young boy but he would go to the land with his father. His father never worked the land as he allowed his cousin's son to work the land. His father would only take produce to the packing house and they would help him bottle tomatoes at cousin Vincent's house. He knew Alburn Newman but not very well and did not know if he worked the Property.

The Margaret Turnquest Claimant's Case ("MT Claimant")

89. The MT Claimant filed her Abstract of Title on 3rd August 2018 which stated: -

| The Margaret Turnquest Claimant's Abstract of Title | |
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| No. | Document |
| 1. | 3 rd October 1789 – Crown grant recorded in Book D at page 101 – tract of land comprising 160 acres on Long Island to John Newman. By a recent survey the tract was determined to be 220 acres. |
| 2. | Circa 1800's – Grandfather Washington Wells entered into adverse possession of the Property known as Bosuns, which was included in a larger tract occupied by |

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| | <p>him.</p> <p>Washington Wells and his wife Eliza Wells had the following children:-</p> <ul style="list-style-type: none"> a) John Wells (Alpheua) 18th October 1866 b) Lennox Wells 18th October 1868 – 14th January 1938 c) Melbourne Wells 25th September 1872 d) Frederick Wells 8th October 1974 e) Etheldreda Wells 22nd February 1878 f) Rebecca Jane Wells 25th May 1880 g) Herbert Wells 14th September 1882 h) Theodora Wells 26th January 1885 i) Female 28th September 1887 |
| 3. | 28 th February 1932 – Washington Wells died. His daughter Rebecca Jane Wells entered into possession of a portion of the Property and farmed and grew the usual Bahamian seasonal crops until her death. |
| 4. | <p>14th March 1911 – Rebecca Wells married Eldridge Turnquest Ritchie and had two children: -</p> <ul style="list-style-type: none"> a) Arnold Turnquest born 15th December 1915 b) Ormond Turnquest born 18th April 1922 |
| 5. | 15 th February 1963 – Rebecca Turnquest (nee Wells) died. Her lawful son Ormond Turnquest entered into physical possession of the Property which he farmed until his death in 1995. |
| 6. | <p>Ormond Turnquest married Patricia Alfreda Dean and had the following children: -</p> <ul style="list-style-type: none"> a) Margaret Maria 16th October 1952 b) Clayton Nathaniel 24th August 1954 – 30th October 2004 c) Marcia 6th May 1951 d) Andrea Veronica 7th October 1956 – 14th April 2004 e) Janelle Patricia 24th May 1963 f) Mark Copeland Anthony 15th June 1965 g) Evet Alexander 19th December 1970 h) Thomas Eugene 2nd March 1959 i) Philip Augusts 8th May 1961 – 10th July 1989 |

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| 7. | 17 th February 1995 – Ormond Turnquest made his Last Will and Testament and appointed the MT Claimant as Executrix. He devised, inter alia, “all the rest residue and remainder of all real and personal property belonging to [him]....unto [his] and Executrix, Margaret to dispose of at her discretion.” |
| 8. | 1 st March 1995 – Ormond Turnquest died. |
| 9. | Grant of Probate in the Estate of Ormond Turnquest granted to the MT Claimant |
| 10. | After Ormond Turnquest’s death, the MT Claimant gave Marcus Turnquest, the grandson of Arnold Turnquest, permission to run cattle on the Property which was still being carried on to date. |

90. Her evidence confirmed the content of her abstract.
91. The MT Claimant is a retired primary school teacher, having taught for twenty-nine years and retired in 2000.
92. She maintained that she only knows about Bosun on the Property and nothing else. She was the daughter of Ormond who farmed the land that she is claiming.
93. Her father grew hot peppers, bananas, plantains, watermelons, onions, pumpkins and pigeon peas.
94. Her father did not have any papers for Bosun.
95. The Property was only surveyed after the various claims became an issue. Nobody had bothered them before and they did not place any stakes because they all knew the land belonged to them.
96. They also raised sheep on the farm and there was cattle wire on the fences to keep the sheep in.
97. The sheep rearing stopped in 2012 when the tractor tore down the fences.
98. She did not know or hear of David Cartwright.
99. She was not familiar with Mr. Milton Treco and did not know that the land was being surveyed.
100. Mark Turnquest, fifty-three years old, recalled that during his early years his father Ormond Turnquest would farm and run sheep on the Property. He and his other brothers and sisters would work the land with their parents. At the time of his father’s death in 1995 he still had his farm and cattle on the Property. After his father’s death his cousin Marcus Turnquest was allowed to keep cattle and sheep on the Property which he still did to date.

101. The Property was fenced in on the Western and Southern sides and walled in on the other sides. The smooth stones which his father collected were on the south side of the Property. He was able to identify the boundaries of the Property and he had never heard of or seen anyone disturbing his father or his sister during their occupation of the Property.

The Taylor Claimants' Case

102. The Taylor Claimants filed their Abstract of Title on 3rd August 2018.

| The Taylor Claimants Abstract of Title – Possessory Title | |
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| No. | Document |
| 1. | <p>1800's – In or about this year the Adverse Claimant's predecessor in title, King Taylor and his wife Mona Taylor, entered into adverse possession of a portion of the Property known as Bosuns</p> <p>King Taylor died survived by his wife Mona Taylor. The pair had no offspring. Mona Taylor was taken in by Clevard Taylor and his wife Bloneva Taylor and they entered into possession of the tract of land and farmed the usual seasonal Bahamian crops.</p> |
| 2. | 26 th December 1943 – Clevard Taylor married Everlin Loretta Taylor |
| 3. | Upon the death of Mona Taylor, Clevard Taylor and his wife Bloneva Taylor continued in their uninterrupted and undisturbed occupation of the tract of land and together with their children farmed and reared sheep thereon. The land was and is enclosed on all sides by Clevard Taylor |
| 4. | <p>15th July 2004 – Clevard Taylor made his Last Will and Testament and appointed his sons David Sinclair Taylor and Herbert Wellington Taylor as Executors. He devised, inter alia: -</p> <p>"I GIVE AND DEVISE my tract of land containing Ten (10) acres more or less situate Settlement of Deadman's Cay and bounded NORTHEASTWARDLY by land now or formerly the property of the Estate of Lorenzo Burrows deceased SOUTHEASTWARDLY my land now or formerly the property of the Estate of Garnet Turnquest deceased SOUTHWESTWARDLY by land now or formerly the property of the Estate of Lily Ritchie deceased and NORTHWESTWARDLY by land now or formerly the property of the Estate of Virginius Burrows deceased to me Ten (10) children namely ALFRED LORENZO TAYLOR, SHIRLEY LOUISE POITIER AND SIMEON RANDOLPH TAYLOR all of the City of Freeport in the Island of Grand BAHAMA ANOTHER OF THE Islands of the said Commonwealth of The Bahamas DAVID SANIT CLAIT TAYLOR, ANNA MAE OUTTEN, JOHN TAYLOR AND RICHARD HILTON TAYLOR all of the Southern District of the said Island of New Providence CAROLYN ELIZABETH FERGUSON of the City of Fort Lauderdale in the State of Florida one of the States of the United States of America HENRY ALLAN TAYLOR of the City of Baltimore in the State of Maryland another of the State of the United States of America and HERBERT</p> |

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| | WELLINGTON TAYLOR of the said Settlement of Governor's Harbour in the Island of Eleuthera aforesaid in equal shares as Tenants-in-common absolutely" |
| 5. | 14 th January 2005 – Cleward Taylor died survived by then ten persons names in his will, namely: - a. Alfred Lorenzo Taylor 6 th January 1945 b. Carolyn Elizabeth Ferguson 31 st March 1946 c. Anna Mae Outten 25 th June 1947 d. Herbert Wellington Taylor 21 st August 1949 e. David Sinclair Taylor 19 th August 1951 f. Simeon Randolph Taylor 30 th July 1957 g. John Alexander Taylor 4 th March 1959 h. Richard Hilton Taylor 29 th February 1960 i. Shirley Louise Poitier j. Henry Allan Taylor |
| 6. | 4 th November 2014 - Grant of Probate issued to Executors. Executors entered into possession of the Property in undisturbed possession until about 2013 by Milton Treco and Herbert Treco |

103. By his Affidavit filed 21st August 2018, David Sinclair Taylor, sixty-seven, averred that he along with his siblings grew up on the Property. He could not say how his father came into possession of the Property but he remembered him farming the land and rearing animals until shortly before his death on 14th January 2005. He and his siblings would help his father farm and raise cattle. They had never been disturbed during his father's lifetime. His father had used loose stones to wall-in their part of the Property which was enclosed on all sides.

104. He had cleared the Property before his father's death. After his father's death the farming of the Property had diminished but there was no one else in occupation of it other than his family members. Not until 2013 did he become aware that Milton Treco was making enquiries about the Property and requesting persons in possession to submit deeds to either him or his Attorneys.

The Monzel Turnquest Claimant's Case ("Monzel T Claimant")

105. Mr. Monzel Turnquest filed his Abstract of Title on 3rd August 2018.

| The Monzel T Claimant's Abstract of Tile – Possessory Title | |
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| No. | Document |
| 1. | 3 rd October 1789 – Crown Grant comprising 160 acres to John Newman – recently surveyed as 220 acres. Recorded in Book D at page 101. |
| 2. | Circa 1800's – Great grandfather Washington Wells entered into adverse possession of the Property, known as Bosuns which was included in a large tract occupied by him. |

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| | <p>After his death his daughter Rebecca Wells entered into possession of a portion of the Property which she farmed and grew the usual seasonal Bahamian crops until her death.</p> <p>Rebecca Wells married Eldridge Turnquest Ritchie and had two children, namely: -</p> <ul style="list-style-type: none"> a. Arnold Turnquest born on 15th December 1915 b. Ormond Turnquest born on 18th April 1922 |
| 3. | 15 th February 1963 – Rebecca Turnquest nee Wells died. Her lawful sons, Arnold and Ormond Turnquest entered into physical possession of the Property which they farmed until their deaths in 1993 and 1995. |
| 4. | 1980 – Arnold Turnquest made his Last Will and Testament and devised, inter alia, the rest, residue and remainder of his real property to Monzel Turnquest Sr. |
| 5. | 21 st January 1981 – Monzel Marcus Turnquest was born to Monzel Turnquest and Gloria Burrows |
| 6. | 3 rd February 1993 – Arnold Turnquest died without revoking his Last Will and Testament |

106. The Monzel T Claimant, a sixty-eight year old native of Long Island lived and worked in Long Island for most of his adult life. He knew and was well acquainted with the Property. His father, the late Arnold Turnquest farmed a tract of land located on the western portion of the Property which they called Bosun in Lower Deadman's Cay, Long Island. He understood that the Property belonged to his grandmother, the late Rebecca Turnquest. After her death, his father took possession around 1965 and continued to farm the land.

107. His claim was not for the 166 acres but just a portion of it and he provided a plan with respect to the area called Bosuns for which he was claiming. His property was bounded by Cleward Taylor on the east and Ormond Turnquest on the south. From 1968, his father farmed the land. His father raised cattle, grew bananas, mangoes, sweet peppers, hot peppers, watermelons, pumpkins, potatoes and mango trees. He also dug a well on the property for the cattle to get water and had an agricultural pit placed thereon. Jacqueline Turnquest was to the front of the land, Ormond was next to her and his father Arnold was next to her and then Cleward Taylor. He also saw Mr. Joseph and Benjamin Carroll. The first time he saw Milton Treco was in 2009 when they walked the land. No one had ever approached him about the land on behalf of Mr. Treco.

108. After his father's death in 1993, he continued in undisturbed possession of the land. In or about the year 1999m he gave permission to his son Monzell Marcus Turnquest, to occupy the land on his behalf. He had chickens and goats on the land and continued to occupy and maintain his presence on the land.

109. During cross-examination he stated that before he retired, he worked for the Ministry of Education and farmed. He worked for several airlines as a porter. His father farmed and raised cattle and his mother was a housewife.
110. The farm he referred to was Bosuns located in Lower Deadman's Cay, Long Island. The property near to the building occupied by the Health Environment was a different piece of property but one land. The farm was worked up to the 2000's. he had stopped in 2012 when Mr. Milton Treco used cattle wire to break away the parts of the wall when his son and his cousin were raising goat and other things. Before 1968 his grandmother Rebecca Turnquest and Lillian Wells-Ritchie worked the land. He did not know about Richard Wright having a farm.
111. He confirmed that he was relying on the John Newman grant. His great grandfather Washington Wells was connected to John Newman through Rebecca Wells. He could not say if Bosuns was a location on the map of Long Island. Rebecca farmed the property he was claiming prior to his birth. No one worked on another person's farm. They all had a portion of the land and there were no arguments. Throughout his childhood, he had spent nine weeks in Nassau in 1981. Thereafter, he only left Long Island to attend court in 2019. His job with the airlines was a part-time job. He left the Ministry of Education in 1993 and landscaped thereafter.
112. From 1993 to 2013 he farmed the land and after that he gave possession to his son to do the same. His son had left Long Island for about two years to work in Exuma but would be back and forth. He did not know anyone by the name of David Cartwright. The property referred to in his father's Will which his father had devised to him was not the same property being claimed in the instant action. The livestock left to him and Ellsworth were situate on that property. His father did not mention the property in the Will as it was an estate between a certain amount of people. He did not have documentary title for it. It was incorrect for Mr. Treco to state that David Cartwright had allowed persons to work the land. Mr. Treco did not have any documentary title which was why he was trying to obtain it through the quieting action. A tractor had removed the fence from the property and not Mr. Treco. He did not start any court action to gain title to the red portion of the land.
113. He knew that property he was seeking to claim was 14.77 acres after he saw it on the plan filed by Mr. Ferguson. He did not recall whether any stakes were put down on the portion he was claiming. He did not know about the Susan Hewitt crown grant. He did know that the land Ullin Ritchie worked with Jacqueline Radcliff Ritchie was on the other side of Cleward Taylor's house.
114. He confirmed that there was also a plan obtained by his son Monzel Turnquest.
115. Mr. Monzel Marcus Turnquest Junior stated that he was living in Palmetto Point where he was working but that he was originally from Deadman's Cay, Long Island. He would walk through Jacqueline Turnquest's property to get to his property which he used as a banana farm. His banana farm was next to Ormond Turnquest's property. Ormond

was his granduncle who had passed away. After he passed, he did not see anyone else working the property but Margaret and Mark gave him permission to use the farm.

116. His granduncle's farm had sapodilla trees, a few agricultural pits, banana farms. As a little boy he recalled that his grandfather's property had agricultural pits, mango trees, soursop trees and lime trees although the lime trees eventually died out. There were also pastures for sheep. There were no more sheep on the property since 2012 when Mr. Treco's tractor destroyed the fence forcing them to remove the sheep and place them on a different section of the Property. His cousin Donald Burrows helped him raise the sheep. Right next to his uncle's property there were agricultural pits which were more towards the Burrow's side of the property but was also later separated into a pasture where the mango trees were. East of the mango trees was a gate separating the other little farm and pasture. East of that was a well dug by the tractor where the sheep got water from and where his father got water from to water his vegetation. East of his grandfather's land was Mr. Clevard Taylor's property. East of Clevard Taylor was Ms. Virgie Carroll and Mr. Joseph Carroll's land.
117. In cross-examination he admitted that he knew of Clevard Taylor's farm in the late 1980's as he would pass their property every Saturday morning. The property was on the eastern boundary by Arnold Turnquest, all part of the same land in the action.
118. He moved to Palmetto Point in 2018. Around 2005, he had worked in Exuma for a few months but on weekends he would return to Long Island. He worked in Exuma and other places for about two years after and later returned hme and collected scrap metal until 2012. After 2012 he worked in the construction industry.
119. Orlando Turnquest, a seventy-nine year old native of Long Island who lived and worked on the island for most of his adult life stated that he knew and was well acquainted with the late Arnold Turnquest and his son Monzel Turnquest Sr. He knew of the Property which was situated in the settlement of Lower Deadman's Cay which he visited many times with Arnold Turnquest, Monzell Turnquest Sr. and Ormond Turnquest who were all relatives of his.
120. The late Arnold Turnquest had uninterrupted, undisturbed and quiet physical possession of a portion of the Property as far back as he could recall. He farmed crops such as peas, corn, beans and potatoes and reared livestock such as goats. He planted fruit trees and dug a well to provide water for the animals. The portion of the Property Arnold Turnquest occupied was immediately west of the property owned and farmed by Clevard Taylor.
121. After the death of Arnold Turnquest in 1993, his son Monzell Turnquest Sr. continued in undisturbed possession of the portion of the Property which was once farmed by his father. He had never heard of any person or persons making and adverse claim against the late Arnold Turnquest or his son Monzell Turnquest at any time, in relation to their title or occupation of a portion of the land known as Bosun.

The Newburn Claimant's Case

122. Mr. Alburn Newman Claimant ("The Newman Claimant") filed his Abstract of Title on 7th August 2018.

| The Newman Claimant Abstract of Title | |
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| No. | Document |
| 1. | 3 rd October 1789 - Crown Grant to John Newman – 220 acres of a tract of land in Long Island. Recorded in Book D at page 101 |
| 2. | Circa 1900 – On or about this year William Henry Newman, who was married to Rose Newman nee Miller (his first wife) entered into possession of a portion of the Property. |
| 3. | 23 rd January 1915 – William B. Newman was born to William Henry and Rose Newman. |
| 4. | 13 th January 1925 – William Henry Newman died intestate – no evidence of a Will |
| 5. | 1936 – On or about this year William B. Newman entered into possession of the Eastern portion of the Property and farmed the usual staple Bahamian crops. Share croppers were on the portion of the Property and gave him a share of the produce. William B. Newman was married to Ethelyn Newman nee Burrows. |
| 6. | 15 th January 1950 – Alburn K. Newman was born to William B. Newman and Ethelyn Newman. |
| 7. | 28 th January 1991 – William B. Newman died. |
| 8. | 1991 – After William B. Newman's death, Alburn Newbold entered into possession of the portion of the Property which was occupied by his father and grandfather. He continued the farming and maintained a presence on the land. |
| 9. | Alburn Newbold never saw Milton Treco, Herbert Treco or any of their family on any portion of the Property. |

123. The Newman Claimant, a sixty-eight year old native of Long Island, lived on the island for most of his adult life. He was well acquainted with the Property which he visited many times with his father when he was a young child and would help him farm. His father had several farms and grew corn, peas, fruits and potatoes. He also raised sheep on the land. The eastern portion of the Property was known as the Newman Land. They had to cut across a portion of the Property daily to gain access to their other farms located nearby and to the rear of the Property. The property which his father occupied extended to the ocean on the eastern coastline.

124. In the late 1960's, he worked as a heavy equipment operator and helped to construct a roadway in 1965 which extended from the main public road to the boundary of the land used for farming at the rear of the Property. His father and other persons

would drive vehicles on the road to gain access to their farms. Prior to the construction of the road, there was only a tract road or foot path.

125. When his father stopped farming, he had another man called Davey Taylor tending to the crop and sheep for him. He was in his forties when his father personally stopped his activities. He personally would also tend to the sheep, collect mangoes, dillies, and hunt. However, he did not tend to the sheep for a long time because the walls broke down and the wild goats took over which caused them to move the sheep. There was no one who tried to interfere with their farming of the land.
126. He agreed that there were three old foundations on the property which were built as camps for people to store crops until they were ready to move them. He could not say if his father used them.
127. He was not aware of there being a wall across the property and he had never had the property surveyed.
128. As a tractor operator, he had opportunities to use his tractor on the Property. From the Norris Carroll boundary back to the road, back to Jackie he cultivated the farms between four to six times. He explained that he ripped up the farms, leveled them out and rolled them, pushed out wells, cut pits and sometimes dug pits. He also pushed out wells with the tractor to get water. That was done on the properties of Norris Carroll, David Taylor, Monzel, Margaret and Jacqueline Turnquest.
129. The first time he did this was around the year 1964. He would be instructed by the owners and occupants, specifically Jackie's mother, Margaret's father, Monzel's father and Mr. Taylor himself, David Taylor's father and Ms. Virgie or Mr. Joseph Carroll. He cleared Jackie's property four to five times over an eight year period. He cleared Ms. Virgie Carroll's property about the same amount of times. The owner of the tractor paid him to do so and the owners of the property paid the tractor owner. He did not own the tractor.
130. Jackie had a foundation, fruit trees and a well on her property. Monzel had wells, fruit trees and a fence to block off the sheep. Margaret had a well. There were no walls separating the properties.
131. In cross-examination, the Newman Claimant stated that while born in Long Island, he grew up in Long Island, Nassau and elsewhere. After his birth in 1950, he left Long Island when he was about seventeen or eighteen. He did not grow up on the Property but grew up about a mile and a half away from it. The only thing on the land were the old ruins from the three little camps, some fruit trees and water holes. He could not say what was on the land until he worked with a tractor.
132. The time spent away from Long Island varied. He would sometimes spend two weeks away or six months away. He learned how to operate a tractor at fourteen years old. He permanently returned to Long Island in the 1980's.

133. He rejected the suggestion that the land cultivated by his father was not a part of the Newman Land. John Newman was his father's grand uncle and that Bill Newman and Arthur Newman were also in the same family.
134. William Henry Newman was his father. He could not say how his father was related to Arthur Newman. He believed that the W. B. Newman referred to in the action was his father and that the initial B was an error in the Registry. His father died sometime around 1991 and he could not say how old he was but he did know that he was in Long Island when his father died. He was not working for any particular company at the time. The date of death of William B. Newman was 13th November 1925 and it could possibly be his grandfather.
135. There was an error on the abstract of title. He did not know his grandfather and his father was ten years old when his grandfather died. His grandmother was Rose Miller Newman and he believed that she died sometime in the late 1970s or the late 1980s. He could not say how old he was when his grandmother died.
136. The boundary of the Newman Tract ran from Mr. Norris Carroll's land to the sea. His guess was that there were over 150 acres, roughly 164.95 acres and he was claimed 164.895 acres. His father had uninterrupted, undisturbed, quiet and physical possession of a portion of the Property from as far back as he could recall. A portion of the Property was used for sheep rearing and the growing of citrus, mango and dilly trees. The animals got water from watering holes and the Newman Pond. In 1991, after his father's death, he continued in undisturbed possession of the portion of the Property on which he would tend to the fruit trees, reap produce and go crabbing. He maintained a presence on the land and had never heard of any person making an adverse claim against him or his father.
137. Starting from 1991 he farmed a little more than half of the land, the lower area of the land was for the sheep. There were no wells but a lot of water holes. The sheep were on the land for roughly about five years.
138. His father farmed the entire land. He then stated that there were cross walls on Norris Carroll's and Jackie Turnquests' property. The line he initially referred to was not the same as the wall he had referred to.
139. He maintained his presence on the land by his periodic attendance, hunting, crabbing, killing goats, picking fruits, keeping the holes clean.
140. He confirmed that he was relying on the Crown Grant provided in his abstract of title. William Henry Newman and John Newman were a part of one family. John Newman was his father's grand uncle. Rose Newman nee Miller was William Henry Newman's first wife. His father had one wife and his father's father had two wives. Rose was the second wife. He believed the first wife's name was Charlotte. His mother was Ethlyn Newman nee Burrows.

141. He was uncertain of his connection with William B. Newman but felt as if it was his father and/or grandfather. His claim was for the eastern portion of the land which was by the northern portion of Norris Carroll's line. He described it as the eastern portion because it ran directly to the sea. He could not remember the exact year that he used the tractor to clear the other adverse claimants' properties. There was no wall between the property described as Crown Land and the property of the subject of the Crown Grant to John Newman.
142. At no time did any Government employee inform him that it was government property and that he should remove himself from the land. He never thought it prudent to survey the property and he never discussed the boundaries with the other adverse claimants as they all knew where their land was by marks which they would use which would usually be a tree.
143. He had heard that Donald Thompson had visited the property to survey it but he did not tell him that it was his land or that he objected to it being surveyed. Donald Thompson had informed him that he was surveying land for Treco. He was living on Long Island at the time. After moving away from Long Island he moved back between 1983 and 1985.
144. He denied Mr. Treco's claim that the road was placed throughout the property for some other purpose and explained that officers of the Royal Bahamas Police Force had asked him to place the road throughout during a time when drug smuggling was rampant on the island.
145. The road that he created with the tractors was the same that the parties traversed during their visit to the locus. There were two sides to the road. One of the sides led straight to Carroll's property. The Newman Property sat between Douglas McCartney and was west of the property of Lenard Wright. It was not the property which was opposite the old police station.
146. The Newman Claimant stated that Joseph Benjamin Carroll was the father of the Carroll Claimant and his mother was Virgie, a close relative of his. Ms. Virgie's father was Renza Burrows. He knew Mona Taylor and that she lived on the back of the airport on a hill. She was related to Renza Burrows. He understood that Mona Taylor who was also known as Margaret Elizabeth Taylor owned the property in question. While he saw her at church he had never met her in the field. He had used the equipment owned by Norris Carroll's family on their property.
147. He had seen several people working on the property but he had never seen Milton Treco working it nor had he seen Thomas John Treco or Ivan Cartwright working the property. He had never made any agreement with Norris Carroll or any of his brothers to misrepresent the truth to the court. He had not seen Norris Carroll in about four of five years.
148. Mr. Newman stated that he was not in possession of the total area of the Crown Grant.

The Wright Claimant's Case

149. During the trial Ms. Albertha Wright withdrew from the action and did not give any evidence.

The Treasurer Claimant's Case

150. By the Treasurer Claimant's Adverse Claim filed 15th October 2018, they claimed to be the beneficial owner of a portion of the Property coloured dark pink on the Compilation plan in fee simple. The Petitioner could not claim to be in exclusive possession thereof for at least sixty years in order to dispossess the Crown. They relied on the Affidavit of Thomas Ferguson, Acting Surveyor General ("**Mr. Ferguson**"), filed 15th October 2018 and his Affidavit filed 26th November 2018 in support of their claim (**the "Ferguson Affidavits"**).

151. By the Ferguson Affidavits, Mr. Ferguson averred that he had inspected the relevant files and records which confirmed the Treasurer's adverse claim. A survey had been conducted by the Department of Lands & Surveys by himself and his survey crew which referenced the recorded plan 274 L.I. It was discovered that the Crown had an interest in the matter with respect to the area coloured pink on Plan 347 L.I. which reflected 222.39 acres. This acreage exceeded the entitlement of the 160 acres depicted in Crown Grant D-101. The schedule and measurements in Plan 347 L.I. were inconsistent with those in Grant D-101.

152. During the survey, numerous rock walls were discovered which depicted the original boundary for Crown Grant D-101. While some of the walls were destroyed or shifted due to either weather conditions or human intervention, there was enough evidence to support the factual evidence of the 160 acres boundary. They concluded that the subject land consists of Crown Land as established on the recorded plan 401 L.I.

153. Mr. Ferguson explained that he physically walked the land from one end to the next and laid boundary markers when the survey was conducted. He explained that when he walked the land he discovered cross walls. The cross walls were the lines on both pink areas on the coloured Compilation plan between property the Crown was claiming, and the property Mr. Newman was claiming.

154. Based on the initial Crown Grant and the measurements found thereon, the actual Crown Grant itself stopped where the light pink area ended and the dark pink area began which was being claimed by the crown as Crown Land. There were boundary walls which bound the property. The Crown Grant started from the boundary wall to the cross wall to the north between the light pink and dark pink areas and ended at the end of the green area which was highlighted as a claim by Jackie Turnquest.

155. They also found cross walls on the parcels between the blue area for David and Herbert Taylor on Plan 410 there were additional walls which could be seen.

156. The claim made by the Petitioner and the Newman Claim exceeded the actual measurements as contained in the original Crown Grant.
157. The actual acreage of the Crown Grant appeared to be very consistent with an existing rock cross wall which was found to be the northern most extremity to the original Crown Grant.
158. The 160 acres is entitled to be private land which had been granted to John Newman but any excess remained with the Crown.
159. The tracts claimed by Albertha Wright did not fall within the land the subject of this action. The abstract of title in the 1306 quieting and the 1227 quieting appeared to be the same which led to confusion as to which property it referred to.
160. Under cross-examination, Mr. Ferguson confirmed to Mrs. Wright that her grant was not the same as the subject property. He informed Mrs. Wright that he had written to her to inform her that her surveyor was free to access all records which would have been available at the Department of Lands and Surveys. Other surveyors who attend the Department of Lands and Surveys are able to get free access to the information. He could never have taken all of the documents from the Department. They would always be available as surveyors use them to conduct their surveys. They had walked the entire Property, internally and along the cross walls. He could only document her claim.
161. During the court's visit to the locus, they started from the main road, inspected interior parts of the lots and went straight out to the coast. His measurements of the Crown Grant were absolutely correct and were intended to be what was stated in the Crown Grant. The acreage is spelled out specifically and the measurements relate specifically to the acreage which is what was intended for the Crown Grant.
162. The surveyor's intent was to grant 160 acres which was done by the Crown Grant. Measurements take precedence and are a very precise science. While they could sometimes be a few acres off it would not be hundreds of acres off. The document clearly stated that it was supposed to be 160 acres. At the time the survey was done it was done so accurately as it only increase by .6 of an acre which is 160.6 acres. Anything left over remained with the Crown. The 160 acres in the Crown Grant were given to John Newman. The Crown Grant was the master document. Anything that remains is still owned by the Crown.
163. When there was a conflict with possession, one way to resolve the conflict was to place a monument or marker which could be natural or artificial. The next element of importance was direction or distance. They found some monuments and markers. There were markings on the Crown Grant that limited it.
164. Plan 347 by Donald Thompson was approved as the plan presented as evidence of the survey by the surveyor and included several plots of land including a portion of Crown Grant D-101. He disagreed with Mr. Thompson's statement that the grant

included the the land from sea to sea. The distance from the cross wall and the sea was 2,000 feet. The distance between two cross walls was 2,244 square feet.

165. His survey was conducted in November 2018, five years after the petition was filed in this action. They were only advised of the adverse claimant's claims as they were conducting their survey. They did not actually have these claims in hand to confirm each individual claim. Their concern was with respect to the land which was ungranted and which therefore led to their adverse claim being filed. He looked at the actual grant document which formed the basis of their survey. They also considered whatever they found in terms of surrounding survey plans. The 26th November 2018 Affidavit, marked TF1 in which he referred to plan number 274 of Long Island assisted them in terms of checking coordinates for the particular tract.
166. The description in the 1700 Plan conflicted with what is on the Plan. The shape of a property was specific and was determined by the bearings and distances. The northern boundary of the property was stated to be the sea and not a wall. He did not think that surveyors would place the sea in a document as a boundary instead of a wall. The description and the diagram were not consistent. In the northwest boundary was William Burrows and John Morley and Southeasterly by Mary Major and Sophia Darville.
167. When he conducted his survey, he measured the rocky foreshore at the northern boundary of the Property. It was indicated on Plan 410. It was possible that the individual who created the plan in 1791 was trying to depict the rocky foreshore but there was space between the line and the actual boundary and that it was not intended for the coastline to be right on the boundary.
168. On the ground they were able to find the boundary walls which were physically present. There was a very distinctive boundary wall which formed part of the "hatchet" and which was physically in place. Because it was physically in place, they were able to utilize the distance from the corner of the boundary wall using thirty-four chains to set out the point. They found a stake at the buttonwood point but not at the point which was thirty-four chains northeast of that particular intersection. The hatchet head was very distinctive on the ground and the rock walls were very distinctive along the particular boundary. He did not have the Plan at the time he conducted the survey. He had a cursory look at the document as they were required to take reference to anything that would affect the land.

Petitioner's Submissions

169. The Petitioner submitted that its claim is for the entirety of the John Newman Tract pursuant to the document signed by The Earl of Dunmore for the one hundred and sixty acres of land support in the diagram or plan of the land grant. They excluded twenty acres of land from the said tract which had been conveyed to John G. Darville on 6th August 1892 by Arthur Newman. With the exclusion of the latter acreage, the modern day methods of measurements, knowledge and experience provided for the correct measurement to be two hundred and twenty-two and thirty-nine hundredths of an acre.

170. They relied on the usual provisions of the Quieting Titles Act, 1959 which gives a person claiming to have any estate or interest in land the right to apply to the court to have his title to such land investigated in order for the court to consider whether a certificate of title should be granted. The court's investigation should include the receipt and consideration of any evidence which would prove that the petitioner or any adverse claimant, had a good and marketable title to the land.

171. In **Armbrister v Lightbourn (Bahamas) 2012 UKPC**, the Privy Council outlined the nature of proceedings under the Quieting Titles Act: -

“The purpose of the 1959 Act is to provide a judicial process for the determination of disputes as to title to land in the Bahamas. The process is initiated by a petition presented by a claimant. The petition is advertised, and adverse claims may be made by rival claimant. The procedure is in the nature of a judicial inquiry and it ends in a judgment in rem which, subject to appeal, finally settles entitlement to the land, not merely as between the parties, but for all purposes. This judicial procedure meets an economic and social need in the Bahamas, where many of the outlying islands were, for much of the Commonwealth's history, sparsely populated and only sporadically cultivated. Much of the land belonged to landlords who were not permanently resident, and travel was slow. Parcels of land often had no clearly defined boundaries based of comprehensive surveys.....”

172. Where a petition concerns a claim to title in fee simple, the Court must, on the completion of the investigation, declare one of the parties to the proceedings as having a better title. In **Ocean Estates Ltd v Norman Pinder [1969] 2 A.C. 19**, Lord Diplock stated: -

“At common law as applied in the Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an “absolute” title. Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser.”

173. None of the adverse claimants have met the prescribed notice period and their claims should not be revived. In **True Blue Co. Ltd v Moss and Others**, the Court of Appeal held that the language of Section 7 of the Quieting Titles Act was plain and intended to be mandatory. If an adverse claim was not filed within the time fixed by the notice, there was an absolute bar to that claim proceeding under the Act and that no rule, or even the inherent jurisdiction of the Court, could be prayed in aid to extend the time fixed by the Notice to enable to claim to be revived. The biggest offender was the Treasurer Claimant.

174. In relation to the discrepancy in the size of the Property between the Crown Grant and the survey conducted by the Surveyor General they submit that the latter confused the issue and created ambiguity where none exists. In **Alan R. Crawford and another v Christopher Stubbs and another** [2020] 1 BHS H. No. 15, Charles J ruled on the issue of whether there were differences with the dimensions of the property in question: -

“67 Mr. Sweeting submitted that although the above description does not use the exact wording (“more particularly described in the plan”) there is a strong implication that the plan should prevail as it uses the language “*land has such position shape marks boundaries and dimensions as are shown on the said diagram or plan hereto attached and is delineated in the part of the said diagram or plan which is coloured Pink.*”

68 According to Mr. Sweeting, the wording (above) suggests that an accurate description of what is to be conveyed is reflected more precisely on the plan and therefore, the plan ought to be given more weight than the written description.

69 Learned Counsel referred to Lord Hoffmann's opinion in *Alan Wibberley Building Limited v. Insley* [1999] 1 WLR 894 which is now regarded as the leading modern authority on the construction of the parcels in a conveyance. His pronouncements were summarized by Mummery L.J. in *Pennock & Anor v Hodgson* [2010] EWCA Civ 873 at paragraph 9:

- (1) “The construction process starts with the conveyance which contains the parcels clause describing the relevant land....
- (2) An attached plan stated to be “for the purposes of identification” does not define precise or exact boundaries. An attached plan based upon the Ordnance Survey, though usually very accurate, will not fix precise private boundaries nor will it always show every physical feature of the land.
- (3) Precise boundaries must be established by other evidence. That includes inferences from evidence of relevant physical features of the land existing and known at the time of the conveyance.
- (4) In principle there is no reason for preferring a line drawn on a plan based on the Ordnance Survey as evidence of the boundary to other relevant evidence that may lead the court to reject the plan as evidence of the boundary.”

70 Such pronouncements were also relied on in *Dixon v Hodgson* [2011] EWCA Civ 1612. In *Dixon*, the court also had to interpret an ambiguous conveyance in order to determine the actual boundaries of the land. The court further relied upon the following dicta of Mummery L.J. in *Pennock* (at paragraph 12):

“Looking at the evidence of the actual and known physical condition of the relevant land at the date of the conveyance and having the attached plan in your hand on the spot when you do this are permitted as an exercise in construing the conveyance against the background of its surrounding circumstances. They include knowledge of the objective facts reasonably available to the parties at the relevant date. Although, in a sense, that approach takes the court outside the terms of the conveyance, it is part and parcel of the process of contextual construction....”

71 Mr. Sweeting also relied on the case of *Chadwick and others v Abbotswold Properties Ltd and others* [2004] All ER (D) 213 (May) with regard to the interpretation of parcel clauses in conveyances. Lewison J. stated:

“43.... Where the definition of the parcels in a conveyance or transfer is not clear, then the court must have recourse to extrinsic evidence, and in particular to the physical features on the ground. As Bridge L.J. put it in *Jackson v Bishop* (1979) 48 P. & C.R. 57:

‘It seems to me that the question is one which must depend on the application of the plan to the physical features on the ground, to see which out of two possible constructions seems to give the more sensible result.’”

175. In *Farrington and Estate Title Co. Ltd v Harrisville Co. Ltd.* (Nos 13 & 14B of 1972) I.r.b. 1971-6 pg. 400 the Court of Appeal held: - “In applying the principle that where different portions of the description of property are not consistent that portion which defines the portion clearly will be accepted, it is immaterial in what part of the description the lack of precision occurs.....The general rules applicable to conflicting descriptions have, I think, some bearing on this controversy. Emmit on Title has this to say about plans (15th edn, p 441): - It may be said generally that, if the contents in linear admeasurement are stated, or if a clear and sufficient independent description of the property in the body of or schedule of the deed is given, a plan will operate as an explanation of this description and would not be allowed to contradict such description.....This comes back to the principle that where different portions of the description of property are not consistent, that portion which defines the property clearly and definitely will be accepted and the remainder rejected under the maxim false demonstration non nocet (*Llewelyn v Earl of Jersey* (1843) 11 M & W 183) but in applying the maxim, it is immaterial in what part of the description the lack of precision or correctness occurs...”

176. In *Lowe v Bahamas (Office of the Prime Minister)* [1994] BHS J. No. 392, Thompson J stated: - “Counsel for the petitioner referred the court to the case of *Dale vs. Richardson* LRB 1 [1971 – 1976] a decision of then Chief Justice Bryce. In that case a vendor had put forward as a good root of title to Sugar Loaf Cay a 1920 conveyance of 40 acres bounded on all sides by the sea. By a modern survey the land was found to contain 60 acres and the court held that the description “bounded on all sides by the sea” must be tantamount to a conveyance of the whole Cay. The description clearly identified the boundaries and the wrong statement as to measurement of the Cay was no effect.”

177. The confusion created by the various plans and descriptions in the conveyances in the Taylor Claimants and the Carroll Claimant seem to be incapable of resolution. The size of the claim was substantially greater than the conveyances from Margarita Taylor. The conveyances and the Will differ in size, boundaries and description of the land in the Taylor Claimant. The Burrows Claimant suffered from the same malady and the property conveyed was from the Burrows tract and not the Newman Tract; a fact which was extremely important given the fact that his witnesses gave viva voce evidence that they were in undisturbed possession since the 1950's and 1960's and that no Burrows were ever on their claim or border in the Newman tract.

Adverse Claimant's Submissions

178. The MT Claimant, the Taylor Claimants, the JT Claimant, the Monzel T and the Newman Claimant made combined submissions.
179. They maintain that the Petitioner was claiming a documentary title to the Property which commenced with the possession of the land by Arthur Newman. The Property however was not included in the will of Arthur Newman.
180. Arthur Newman died survived by three children: Grace, Mary and Eleanor Newman.
181. The Petitioner seeks to support his possession claim by tracing its claim through Elizabeth, the daughter of Grace Elizabeth Newman. The evidence led at trial revealed that Grace Elizabeth Newman was not only survived by a daughter, Maude Cartwright Adderley, but by sons who were older than her and to whom the Property devolved. There was no will produced to displace the rules of descent then in force.
182. The Petitioner attempted to trace their link through Maude Cartwright Adderley, through whom they claim that Herbert Milton Treco took possession of the Property.
183. Mr. Treco in his oral evidence conceded that he did not have the consent of anyone else to present the petition.
184. No evidence was led of any activity, farming or otherwise by the Petitioner after 1956.
185. Mr. Treco stated that he was never in possession of the land, but was seeking ownership through his ancestors who were the descendants of Arthur Newman.
186. Evidence was also led of the existence of a pending action over the same Property involving the principals of HMI Holdings against Jacqueline Turnquest, Betty Turnquest and Florence Taylor. Evidence was also led of the claim that the Property was owned by another company Newman Holdings Limited. No evidence was led of any conveyance from Newman Holdings to the principals in the 2009 action or of any conveyance from them to HMI Holdings.
187. The oral evidence from David Taylor as to their possession of their portion of the Property being claimed by them and of their constructing cross walls was not disputed by any evidence and even confirmed by the Petitioner.
188. The M Turnquest Claimant's evidence of farming on the property by her grandmother and then her father Ormond, and finally herself was not disputed by any evidence. She confirmed that her father was able to purchase a brand new AMC pickup truck from the proceeds of hot pepper sales grown on the land.
189. The location of the portion of the Property being claimed by her was confirmed by other witnesses.

190. The Monzel T Claimant derives his claim from his father Arnold who was the brother of Ormond. Their parcels were next to each other. His evidence confirmed that his father had farmed the land since 1965 upon the death of his mother and continued until his death in 1993. After 1993 the Monzel T Claimant took possession of the land and continued farming on it.
191. His father left a will which did not specifically devise the property, but he was the beneficiary of his father's residual estate. He admitted that his father had no papers for this piece of land. He gave evidence of digging a pit for farming and digging a well for the cattle to get water.
192. He also confirmed that he gave permission for his son Marcus to continue farming and sheep rearing, which he did with the help of his cousin Donald Burrows until Mr. Milton Treco destroyed the fences in 2012 which had been erected to protect the sheep.
193. The JT Claimant's claim to a part of the Property known as Bosun was based on a possessory claim starting with her great grandfather Washington Wells. She took possession in 1985 and started farming and in 2007 she commenced the construction of her house on the property by laying the foundation. This evidence was not refuted or disputed by any party. She confirmed that after receiving the letter from Mr. Treco, she stopped the construction of the house but continued farming.
194. She confirmed that the 2009 action is still extant. Her evidence was corroborated by the evidence of Richard Wells.
195. The Newman Claimant confirmed that he entered into possession in 1991 after the death of his father. He confirmed that he helped to construct a roadway from the public road to the boundary of his father's property to allow his father access to the land. His evidence confirmed the presence of activity on the various parcels of land being claimed by the other Claimants. He confirmed that his father grew crops and fruit and raised sheep which he continued when he took possession in 1991 until 12 or 15 years ago when he stopped the farming but maintained a presence still on the land.
196. His evidence was corroborated by the evidence of Orlando Turnquest.
197. None of these Claimants admitted to seeing any of the principals of HMI on the Property.
198. The Surveyor for the Petitioner, Mr. Thompson confirmed that he measured the perimeter of the Property and set out his work which resulted in the Plan 347 L.1.
199. The limitation period governing adverse possession claims is 12 years as provided in **Section 16(3) of the Limitation Act (1995)**. Prior to the Act, the limitation period was 20 years.

200. There is no discrepancy or ambiguity in the description of the North and Southwestern boundaries in the plan attached to Grant D-101. These boundaries are the sea.

201. Mr. Ferguson for the Treasurer asserted that despite the description stating the boundaries were the sea, mathematically the Grant is limited to the mathematical markings on the plan, whereas Mr. Thompson the Petitioner's surveyor states that the Grant is from sea to sea.

202. The Adverse Claimants rely on **Farrington and Estate Title Co. Ltd. v Harrisville Co. Ltd. [1971] 1LRB 400** where Hogan JA stated:-

"The general rules applicable to conflicting descriptions have, I think some bearing on this controversy. Emmet on Title had this to say about plans (15th edn, p. 441): 'It may be said generally that, if the contents in linear admeasurements are stated, or if clear and sufficient independent description of the property in the body of or schedule of the deed is given, a plan will operate as an explanation of this description and would not be allowed to contradict such description. This is particularly the case if the plan was stated to be for purposes of "identification only"..."

A little later the authors state:-

"But if the plan is clear, and the description of the body of the deed not clear, and more particularly where the reference to the plan is in such words as "all which premises are more particularly described in the plan and endorsed on etc., the description in the plan will prevail (Eastwood v Ashton [1915] AC 900, Washington v Townsend (1939) (1939) Ch.588).

By the description "on the other sides [meaning the north and south sides], to use the words of Hogan JA in that same case, "the intention of the Crown as revealed in the documents preclude any intention to leave an un-granted strip" as contended for by Treasurer on Plan 410 L.1 Ex TF-4."

By this they maintain that the Grant went from sea to sea.

203. The commutation deed to Arthur Newman did not by virtue of Section 9 of the Quit Rent Commutation Act 1846 (No. 83 of 1846) vest in him any better title than he had previously possessed. The Deed raised a presumption of the payment by Arthur Newman of the rents due to the Crown and therefore his claim of ownership.

204. The law is well established that a person's title to land is only good in so far as there is no other person who can show a better title. An adverse claimant, even if he is a trespasser, can dispossess a documentary owner of land if the owner fails to assert his superior title within the requisite period. Once the limitation period has expired, the documentary owner will be banned from asserting their right against an adverse claimant in possession.

205. The Adverse Claimants rely on the Privy Council decision of **Bannerman Town et al v Eleuthera Properties Ltd** where Lord Briggs stated:-

“While occupation or use of land is a familiar non-technical concept, possession of land is a legal term of art. Possession, for however short a time, may be sufficient to found a cause of action in trespass against someone thereafter coming upon the land. But possession sufficient to bar a prior title (whether itself documentary or possessory) must be proved for the whole of the time prescribed by the relevant Limitation Act.”

206. The trespasser must prove that he took effective control of the land being claimed which is inconsistent with the rights of the true owner. See **Leigh v Jack 5 Ex D. 264**. Further this conduct must be continuous for the duration of the limitation period.
207. Uninterrupted and uncontested possession of land for a specified period is one of the legally recognized modes of acquisition of ownership of land; see **Perry v Clissold [1907] AC73**.
208. At the expiration of the limitation period of 12 years the adverse possessor is vested with the title and the owner cannot be re-vested by reentry. **Section 25 of the Limitation Act** provides:-
“At the expiration of the period prescribed by this Act for any person to bring an action to recover land, the estate or interest of that person in the land shall vest in the person who is then in adverse possession of the land within the meaning of section 24.”
209. They further submit that the effect of the Act is to execute a conveyance to the person in possession and to extinguish the right of the former owner and transfer the legal fee simple.
210. These Adverse Claimants set out the requirements for adverse possession as established in **JA Pye (Oxford) Ltd. v Graham [2002] VKHL 30** where Lord Browne-Wilkinson stated:-
“....there are two elements necessary for legal possession:
1. A sufficient degree of physical custody and control (“factual possession”);
2. An intention to exercise such custody and control on one’s own behalf (“intention to possess”)
211. Lord Browne-Wilkinson adopted the definition enunciated in **Powell v McFarlane [1997] 38:-**
“Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impractical, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. “What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature of the situation of the land involved but not subject

to variation according to the resources or status of the claimants”: *West Bank Estates Ltd. v Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not the acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalize with any precision as to what acts will or will not suffice to evidence factual possession.”

212. The Adverse Claimant must prove also an intention to possess the land as discussed in *Pye* where it was stated:-

“requiring and “intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the process of the law will allow.”

This is evidenced from the physical acts of the adverse claimants. These adverse claimants rely on their evidence of their physical acts of possession which clearly evidenced their individual intentions to possess their respective portions of the land.

213. They maintain that Margaret Turnquest Claimant, and the Taylor Claimants have dispossessed the Petitioner and its predecessors having been in possession of their portions of the land from 1963 and 1950 and onward respectively.

214. The JT Claimant, Monzel T Claimant and the Newman Claimant have respectively dispossessed the Petitioner and its predecessors in title having been in possession from 1985, 1993, and 1981 and onward.

215. The Carroll Claimant supported and adopted the submissions of law made by the aforementioned adverse claimants.

216. He reviewed his evidence given at trial to show his claim to possession of the property being claimed by him. He also provided the court with a factual and historical account of the Property and the people associated with the Property based on her direct knowledge.

217. The only adverse claimant he was not familiar with was the Newman Claimant, although he was aware of his being around when the Carroll tract was being cleared.

218. The Carroll Claimant denied ever seeing Mr. Treco or any of the principals of the Petitioner on the Property. He maintained that his occupation of the Property was open and not clandestine.

Submissions of the Treasurer

219. In response to the Petitioner’s claim that it was out of time to file its adverse claim it relied on **In the Petition of Scott E. Findeisen and Brandon S. Findeisen (as**

Trustees of the Stephen A. Orlando Revocable Trust [2016] CLE/qui/01564 where it was held: -

“In my opinion, since quieting petitions are investigative in nature, strict procedural rules that obtain in adversarial trials, should not apply. To supply strict rules seem draconian especially if the adverse claim is not inordinately late and does not affect the hearing of the petition. Furthermore, if a prospective adverse claimant is shut out, the proceedings may result in a judgment in rem. I therefore did not follow the Court of Appeal decision in True Blue Co. Ltd which was decided over fifty years ago.”

220. There is no better title than the Crown who is the ultimate owner of land and it was not dispossessed of the sixty-two acres of land included in the Property.

DECISION

221. The court conducted a visit to the locus in quo and walked the length of the Property and was able to see each section being claimed by the various parties.

222. There was evidence of occupation of the Property at various levels throughout the entire Property, except for the extreme northern portion which consisted only of rock and had no signs of any development.

223. There was evidence of the road referred to in these proceedings, the cross walls, the boundary walls, wire fences, fruit trees, the foundation placed there by the J Turnquest Claimant, the several agricultural pits, and the Newman Pond.

224. The Petitioner seeks a Certificate of Title with respect to the entire Property as they claimed to have both a documentary title and a possessory title as a result of being in possession of the Property in excess of seventy years or at the minimum forty years. Their claim was made by virtue of the Quieting Titles Act, 1959 (“**the Act**”) which enables a petitioner to apply to the Court for a Certificate of Title over land after an investigation into title is conducted. Similarly, the Adverse Claimants entered opposing claims for Certificates of Title based on the provisions of the Act.

225. **Section 16 of the Act** provides:-

“16. Without limiting the generality of the provisions of section 3 of this Act, the court shall have power to declare by a certificate of title in the form prescribed by section 18 of this Act that the petitioner is the legal and beneficial owner in fee simple of the land mentioned in the petition in any of the following circumstances —

(a) where the petitioner has proved a good title in fee simple to a share in land and has proved such possession as, under the Limitation Act, would extinguish the claim of any other person in or to such land;

(b) where the petitioner has proved such possession of land as, under the Limitation Act, would extinguish the claim of any other person in or to such land;

(c) where the petitioner has proved that he is the equitable owner in fee simple of land and is entitled at the date of the petition to have the legal estate conveyed to him.”

226. Section 17 provides:-

“17. (1) After the court has completed the hearing of an application made under section 3 of this Act it may —

(a) dismiss the application;

(b) dismiss the application and grant a certificate of title in the form prescribed by section 18 of this Act to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act;

(c) grant a certificate of title in the form prescribed by section 18 of this Act to the petitioner;

(d) grant separate certificates of title in the form prescribed by section 18 of this Act to the petitioner and to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act in respect of the whole or separate parts of the land described in the petition.

(2) The court may give one certificate of title comprising all the land described in the petition, or may give separate certificates of title as to separate parts of the land

227. As an aide to the court, the plan of the Petitioner was colour coded to reflect the various adverse claims. The code was as follows:-

- 1) Crown - Deep Pink
- 2) Newman Claimant – Light Pink
- 3) Carroll Claimant – Dark Blue
- 4) Taylor Claimants – Light Blue
- 5) Monzel T Claimant – Red
- 6) J Turnquest Claimant - Green
- 7) Margaret Turnquest - Yellow

The Petitioner and Albertha Wright were claiming the entire Property.

228. The locus classicus **Bannerman Town, Millars and John Millars Eleuthera Association (Appellant) v Eleuthera Properties Ltd (Respondent) (Bahamas) [2018] UKPC 27** contains an in depth interpretation of the Act along with an exposition on the legal principles of possession necessary to determine ownership to the land. This authority is binding on this court and the principles which must be established and proven are clearly set out. It is necessary therefore to set them out herein. Lord Briggs stated:-

“The Quieting Titles Jurisdiction

33. The jurisdiction under the Quieting Titles Act in the Bahamas is, (as elsewhere, for example in parts of Canada), a statutory graft upon a body of law about the ownership of unregistered land, the main purpose of which is to remedy perceived defects in that law (compared for example with systems of land registration) which harm the public interest by adversely affecting the marketability, and therefore beneficial use and development, of land. The Act necessarily takes for granted and adopts parts of the procedure for the deduction and proof of title under that system of law, which is itself partly common law and partly statutory. For present

purposes the relevant statutory elements are to be found in the Conveyancing and Law of Property Act 1909 (Bahamas) as amended, and the Limitation Act 1995 (Bahamas) replacing earlier statutes of limitation and reducing the relevant limitation period for present purposes from 20 to 12 years.....

38.....the statutory process for obtaining a certificate of title under the Act has both constraints and opportunities which set it apart from the deduction and proof of title as between vendor and purchaser. The main constraint is that, whereas the vendor and purchaser process affects no one other than themselves, even if a dispute is resolved by the court on a vendor and purchaser summons (for which see section 4 of Page 13 the Conveyancing Act), the process of quieting titles is designed to lead to a certificate which, save in cases of fraud, is good against the whole world, in favour of the person or persons (petitioner or adverse claimants) who succeed in proving their title: see sections 19 and 27 of the Quieting Titles Act. Thus, although title to unregistered land is normally thought of in purely relative terms, the issue in any proceedings being who has the better title, a certificate of title confers something more like absolute title, of the quality conferred by registered title under a system of land registration. For this reason, the court needs to be cautious before certifying title under the Act, as the Board warned in the *Armbrister* case.

229. Despite the Court’s jurisdiction to investigate the title of a petitioner or adverse claimant it is not mandated to issue a certificate of title.

41. But none of this means that the court has the duty, or even the power, to create title by use of the machinery conferred by the Act, where in truth no title at all is proved. Section 17 of the Act gives the court a discretion whether to dismiss the application entirely, to dismiss it and grant a certificate of title to an adverse claimant, to grant a certificate of title to the petitioner, or to grant separate certificates of title to different parts of the land to the petitioner and to one or more adverse claimants. In *Nova Scotia (Attorney General) v Brill* [2010] NSCA 69, para 37, Fichaud J said this, speaking of the Quieting Titles Act 1989 in the Nova Scotia Court of Appeal:

“The QTA does not enable a court to create title. Rather it authorises a court to grant a certificate that reflects the title, including possessory title, to which the party is entitled by the legal principles that exist outside the QTA.”

The Board considers that the same principles apply to the Bahamian Act.

230. The Board agreed with the Bahamian court’s reliance of what was considered to be a good root of title.

43.The judge relied upon the following definition of a good root of title in Megarry and Wade’s *Law of Real Property* (4th ed) at p 580:

“A document which describes the land sufficiently to identify it, which shows the disposition of the whole legal and equitable interest contracted to be sold, and which contains nothing to throw any doubt on the title ...”

To substantially the same effect is the definition in *Williams on Vendor and Purchaser* (4th ed, 1936) at p 124. It is a time-honoured and practical definition, which is not challenged in these proceedings.

231. As for the principle of possession, the Board stated:-

50. While occupation or use of land is a familiar non-technical concept, possession of land is a legal term of art. Possession, for however short a time, may be sufficient to found a cause of action in trespass against someone thereafter coming upon the land. But possession sufficient to bar a prior title (whether itself documentary or possessory) must be proved for the whole of the time prescribed by the relevant Limitation Act: see *Perry v Clissold* [1907] AC 73, per Lord Macnaghten at p 79:

“It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title.”

51. Possession of land is generally described as having two elements, factual possession and the intention to possess: see *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419. In the present case there is no difficulty about a general intention to possess by the various Descendants who gave evidence, since they believed that they were co-owners of the land pursuant to Ann Millar’s will. Such a belief, even if mistaken, is sufficient for the purposes of intention to possess: see *Roberts v Swangrove Estates Ltd* [2008] Ch 439. All that is common ground.

52. Possession of land may be exercised jointly, and vicariously. Where a number of persons are proved to have occupation and use of land together, and the question arises whether they had joint possession of the whole of the land, this will usually turn upon the agreement, arrangement or shared common intention (if any) between them: see eg *Bigden v London Borough of Lambeth* (2001) 33 HLR 43; *Brown v Faulkner* [2003] NICA 5(2); *Churcher v Martin* (1889) 42 ChD 312 and (in Canada) *Afton Band of Indians v Attorney General of Nova Scotia* (1978) 85 DLR (3d) 454.

53. There is an element of uncertainty in those authorities whether the requisite mutual meeting of minds must amount to an agreement or to an arrangement, or to a common intention shared between them. It is not necessary that there should be a formal contract. But the mere aggregate of the separate intention of each occupier, which is neither communicated to nor shared with any of the others, will be insufficient. The requirement is for a shared common understanding, sufficient to render multiple occupants of land joint possessors of it. It is quite separate from the general requirement of an intention to possess. Rather, it forms part of the analysis of possession in fact.

54. Possession may be vicarious in the sense that A may occupy land on behalf of B, such that B rather than A is in possession of it: see eg *Bligh v Martin* [1968] 1 WLR 804. Vicarious possession may arise where, for example, A is the licensee, agent or agricultural contractor of B. Again, this will depend upon the existence of some agreement or arrangement between them.

The parties in order to satisfactorily prove their claim to ownership either through a documentary title or adverse possession must prove the two elements necessary to establish possession of the property.

232. The Board also considered different acts (non-exhaustive) which would possibly amount to possession.

71. The Board’s view is however that EPL’s conduct in relation to the Property in and after 1988 falls well short of qualifying as possession of the Property, or of any part of it. Leaving aside the required intention to possess, factual possession requires some occupation, use or other dealing with the land as an occupying

owner might have been expected to undertake. It will be a fact-specific question in the sense that the characteristics of the land in question will be of primary relevance. In the present case, the Property was unsuitable between 1988 and 2010 for much more than the intermittent activities of subsistence farming, crabbing and so forth already described, although it may have had long-term development value. Although a buyer of development land with documentary title may be deemed to be in possession of it unless the contrary is proved, a person without documentary title who neither occupies nor uses the land, because he has only a wish to use it for development at some time in the future, must nonetheless do something sufficient to constitute the taking of possession of it if he is to acquire title.

72. Taking the various aspects of EPL's conduct in relation to the Property in turn, the 1988 survey can hardly qualify, since it was undertaken prior to the execution of the 1988 Conveyance. The subsequent clearing of boundary lines by Mr Patram between 1994 and 2004 does not in the Board's view qualify as taking possession. The two long boundaries to the Property on its east and west sides were, respectively, the high tide line abutting the Atlantic Ocean and the line of the government's public highway. Both were entirely accessible to the world at large and the clearing of undergrowth (if that is what clearing the boundary lines means) did nothing to enclose the Property nor inhibit its use by others in any way. The evidence as to what constituted, on the ground, the northern and southern boundaries is less clear, but again, merely removing undergrowth obstructing the boundary lines does not amount to the taking of possession.

73. Nor does the occasional placing and replacement of signs saying Private Property. In *Simpson v Fergus* (1999) 79 P & CR 398, the question was whether the plaintiffs had established sufficient possession (to support an action in trespass) over a private service road at the rear of their property to which they had no documentary title, but which they had marked out with parking spaces together with a notice saying "Private Land No Unauthorised Parking". The English Court of Appeal held that this amounted not to possession, but merely to a declaration of intent to possess, insufficient to support an action in trespass against neighbours parking their vehicles on the private road. Having acknowledged that what may amount to possession will depend upon the characteristics of the land in question, Robert Walker LJ said this, at pp 402-403:

"Possession is a legal concept which depends on the performance of overt acts, and not on intention (although intention is no doubt a necessary ingredient in the concept of adverse possession). It may or may not be sufficient in international law to annex an uninhabited and uninhabitable rock by planting a flag on it. ... but to establish exclusive possession under English law requires much more than a declaration of intention, however plain that declaration is. Actual occupation and enclosure by fencing is the clearest, and perhaps the most classic, way of establishing exclusive possession (though even enclosure is not invariably enough): ... it may well not have been feasible for Mrs Simpson (or for Mr Humphries before her) to have fenced off the parking spaces, although conceivably it might have been possible to do so with some form of moveable barrier, moveable posts, chain or whatever. Had either Mr Humphries or Mrs Simpson attempted to do that, matters might have come to a head much sooner. But to my mind, it is not correct, and would indeed be a serious heresy, to say that because it is difficult or even impossible actually to take physical possession of part of a reasonably busy service road, that simply for that reason some lower test should be imposed in deciding the issue of exclusive possession."

233. Based on the Privy Council's reasoning, there are several issues which must be considered. These include whether the Petitioner successfully either held the

documentary title to the Property or occupied the Property in undisturbed possession for twelve years as against the Adverse Claimants who respectively purport to be in adverse possession of the Property.

234. If none of these parties can prove the two elements of possession, they will fail at their claim to be issued a Certificate of Title for the portion of the land being claimed by them.

235. The limb of mutual intention between the Petitioner and the Adverse Claimants does not exist in this case as they do not share a common intention to own the Property as one but separately.

236. Upon a review of the evidence, I note that some of the witnesses referred to the Eastern portion of the property but when probed they were in fact referring to the Northern part of the land. Similarly they referred to the Western portion of the land and when probed they were referring to the Southern portion of the Property.

237. I also accept that each of the adverse claimants were able to prove occupation of their various portions of the land, which when corroborated by the visit to the locus in quo, showed that there was occupation and possession of the land.

238. I also accept that even the Petitioner accepted through Mr. Treco's evidence the existence of the occupation and possession of the J Turnquest Claimant and the Taylor Claimants. He acknowledged that the Taylors had cross walls erected to protect the sheep and to separate their land.

239. The Petitioner also attempted to disrupt the J Turnquest Claimant by obtaining an injunction against her which was unsuccessful.

240. The evidence of the Carroll Claimant was highly persuasive and assisted the Court in its investigation. His evidence which was both direct and to a lesser degree circumstantial enabled the court to come to the conclusions that it must. His evidence of the occupation of the portion of land being claimed by him, supported the visual findings of the agricultural pits, the presence of animals on the property as well as the obvious farming being conducted.

241. The Wright Claim was withdrawn and consequently her claim is dismissed.

242. The Monzel T and the Margaret Turnquest claims emanated from the same source and the evidence of each of the witnesses supported both claims. Further the evidence of Mr. Alburn Newman and Mr. Orlando Turnquest corroborated these adverse claimants evidence of possession.

243. The Newman Claimant in his evidence was more supportive of the other adverse claimants than himself. I found his evidence to be vague at times, however, I accepted that the construction of the roadway which he cleared using a tractor was to enable his father to access his property which was on the northern side of the Newman Pond. I also

accept that there were ruins on the portion of the land which had been used for storage. Based on these facts I accept that there was possession of a portion of the land being claimed by the Newman Claimant.

244. I accept that John Newman was granted the said property of 160 acres by the Crown and the said Arthur Newman took possession of the property in or about 1794. Arthur Newman sold 20 acres of the property to John Darville in 1856, the remaining 140 acres were never sold and therefore became the property of the lineage of Arthur Newman.

245. In **Stephen Henry Johnson v Eleuthera Land Company Ltd SCCivApp. No. 96 of 2019**, the Court of Appeal opined:-

“30. In my judgment, the decision of the Privy Council in Bannerman Town places a gloss on the Court of Appeal's decision in the Estate of Ruth Ingraham relied upon by the trial judge. A trial judge is not bound to give a Certificate of Title to either a petitioner or adverse claimant if the judge was not satisfied that either of them had any title to the property whether documentary or possessory.

31. In the Bannerman Town case, as all the parties sought to claim a documentary title through a devise in the will of Ann Millar which was void for perpetuity, none of them had any documentary title to the property, whatsoever. The court could not create a documentary title where clearly none existed.

32. However, it is important that the Bannerman Town decision not be used to undermine the policy of the Quieting Titles Act as articulated by this court in the Ruth Ingraham and by the Nova Scotia Court in Nova Scotia v Brill, that is to quiet titles. The Quieting Titles Act cannot create a title when clearly none exists, but it does not prevent a court from quieting titles between contested litigants.”

246. The Petitioner through birth and death certificates and baptismal certificates attempted to form an association to the lineage of Arthur Newman. However, the Petitioner was unsuccessful in this attempt. It is clear to this Court that the Petitioner does not possess documentary title to the property. Mr. Treco could not state or confirm that he nor his fellow shareholders in HMI could prove that they were the direct heirs of Arthur Newman. In fact they relied on the lineage of the daughter of Arthur Newman, when in fact he died leaving older sons and no evidence of a will. In addition to this, Mr. Treco on behalf of the Petitioner categorically stated that the Petitioner did not have the consent of any other person to bring this claim, which he insisted was based on a documentary title. He was unable to prove this.

247. Initially, the Petitioner's claim was also based on possession of the Property. They were also unable to prove this. Mr. Treco's evidence admitted of his only recent visiting to the Property when he discovered the J Turnquest Claimant's presence. He also only discovered the cross walls on the Taylor's tract when attempting to have the Property surveyed. He did not prove any sufficient acts of possession although he had the intention to possess. To be successful he required both and must have possessed the land for a continuous period in excess of 12 years. The Petitioner's attempt in

seeking to control the J Turnquest Claimant was unsuccessful. They could not prove any overt acts of possession for the requisite 12 year period.

248. I am satisfied therefore, that the Petitioner was unable to prove either a documentary title or a possessory title to the Property and their claim for a Certificate of Title for 226 acres is dismissed.

249. The Crown in its submissions maintains and it is accepted that the Crown is the ultimate owner over all land in the Bahamas. It is also accepted that any uninhabited land which has not been granted by the Crown is still owned by the Crown.

250. The Crown maintains that the original Crown Grant to John Newman did not go to the sea based on the Plan attached to the Grant, which they maintain should be relied on.

251. They further maintain that based on Section 16 (2) of the Limitation Act, a limitation period runs from 60 years from the date when the right first accrued. If the foreshore was granted in the Crown Grant, the limitation period would have long expired for any claim to be made for the same.

252. I viewed this portion of the Property and I am satisfied that a good portion of the land being claimed by the Newman Claimant, the Petitioner and the Crown is rock and scrub vegetation which does not support the existence of any occupation by any person.

253. This fact alone does not support the possessory claim by the Newman Claimant to that portion of the Property. Further as the portion of the land being claimed by the Crown is the excess portion of the land above the 160 acres, I accept that the cross wall which existed on the Northern portion of the Newman tract supports the Crown's submission that the wall was the northern end of the Crown Grant, everything north of the wall was outside of the Crown Grant.

254. As the only viable claim to this portion of land is a possessory one, and there was no evidence of any possession of this portion of the land, I need not determine the issue as to whether the Crown Grant went to the sea. I hereby find that the Crown is the owner of the land north of the cross wall on the Newman tract as there has been no possession by any person on the same and it in fact exceeds the 160 acres which was granted to John Newman.

255. The Newman Claimant's claim for the land north of the wall is dismissed.

256. While the Adverse Claimants have made significant claims to the Property, I accept the evidence presented to support their claims, except as it relates to the Newman tract and find that they have substantively possessed and manifested an intention to possess the Property. The Adverse Claimants have all shown that they were in possession of different portions of the 140 acres of land throughout different stages of their lives and their predecessors' lives. Many recall growing up on the land with their now deceased parents and grandparents, some cultivating crops and raising animals,

maintaining the land, and building on the same property, whereas the Petitioner was unable to satisfy the Court that they held exclusive possession over the Property for a minimum period of twelve years as required by statute or even had a documentary claim to the Property. During the time that the Adverse Claimants were on the various pieces of the property, the Petitioner failed to assert his right to possession over the land and the one attempt failed.

257. Accordingly, I am satisfied that the Adverse Claimants have proven a possessory claim to the portions of the land being claimed by them as aforesaid. They have enjoyed an undisturbed exclusive possession over their respective portions of the Property.

258. In considering all of the evidence led and submissions of the parties, I find that the Adverse Claimants have a better title to their respective properties than the Petitioner. In the circumstances, pursuant to Section 17 of the Quieting Titles Act, 1959, I grant each of the Adverse Claimants Certificates of Title to the property as set out below in the form prescribed and declare that they are the legal and beneficial owners of their respective properties:-

1. Jacqueline Turnquest - 4.056 acres as set out on the Compilation Plan and coloured Green;
2. Margaret Turnquest - 6.459 acres as set out on the Compilation Plan and coloured Yellow;
3. Monzel Turnquest – 14.518 acres as set out on the Compilation Plan and coloured Red;
4. David & Herbert Taylor – 10.905 acres as set out on the Compilation Plan and coloured Light Blue;
5. Norris Carroll – 18.75 acres as set out on the Compilation Plan and coloured Dark Blue;
6. Alburn Newman – the land as set out on the Compilation Plan and coloured Light Pink to the cross wall which is delineated by the start of the Dark Pink. The Claimant and the Crown shall obtain a surveyor to determine the balance of the land being granted. Further the Newman Pond shall not form a part of the Property but remain under the control of the Crown;
7. The Crown is declared the owner of 62 acres of the land coloured Dark Pink

259. The Wright Claim is dismissed.

260. The Adverse Claimants except for the Newman Claimant and the Crown are entitled to their costs to be paid by the Petitioner and taxed if not agreed. The Newman Claimant is entitled to one half of his costs to be taxed if not agreed.

Dated this *28* day of *April* 2023



Hon. Madam Justice G. Diane Stewart