

15, 1959

UNIVERSITY OF LONDON
INSTITUTE OF JURISPRUDENCE
L.E.C.
In the Privy Council.
25 RUSSELL SQUARE
LONDON, W.C.1.

No. 15 of 1956.

ON APPEAL
FROM THE COURT OF APPEAL OF THE SUPREME COURT
OF JAMAICA.

BETWEEN

JAMES CLINTON CHISHOLM . (Defendant) *Appellant*

AND

JAMES HALL (Plaintiff) *Respondent.*

10

Case for the Appellant.

RECORD.

1. This is an appeal by special leave from a judgment of the Court of Appeal of the Supreme Court of Jamaica (Carberry, C.J., MacGregor and Rennie, JJ.), dated the 30th July, 1954, reversing a judgment of Semper, J. (acting), dated the 25th July, 1953. p. 57. p. 35.

2. The action was brought by the Respondent as Plaintiff on the 31st January, 1951, for a declaration that a portion of land in the possession of the Appellant 7 feet wide more or less from north to south and extending from King Street, Kingston, Jamaica, for a distance of 79 feet and 8 inches to the west was comprised in the Certificate of Title under the Registration of Titles Law (Chapter 353 of the Revised Laws of Jamaica) for 103 King Street aforesaid registered in the name of the Respondent and to recover possession of the said strip of land. In addition to the said relief the Respondent by his Statement of Claim filed and delivered on the 17th July, 1951, claimed from the Appellant mesne profits in respect of the said strip of land from the 16th August, 1941. p. 1. p. 2. p. 96. p. 2, l. 16. p. 4, l. 40.

3. By a Counter-claim filed and delivered in the said action on the 27th September, 1951, the Appellant claimed a declaration that the northern and southern boundaries of the properties 101 and 103 King Street aforesaid and 105 King Street aforesaid as then existing were the true boundaries between the said properties and orders to rectify the registered title of the Respondent and the registered title of the Appellant respectively so as to exclude from the former and to include in the latter the said strip of land. p. 5. p. 7, ll. 20 to 29.

4. The said strip of land is shown body coloured yellow on the plan which forms part of Exhibit 2 and was prepared from measurements taken on the 24th July, 1942. p. 98-99.

5. The Appellant is the registered proprietor under the said Law of the property known as 105 King Street aforesaid registration in his name having been effected on the 16th April, 1928, upon the Transfer dated the 12th April, 1928, of the said property from Eugenia Blanche Bonitto. In the Certificate of Title granted to the said Eugenia Blanche Bonitto dated the 12th March, 1928, and registered in the Register Book Vol. 208, Fol. 36, the said property is described as—

p. 92, ll. 21 to 27.

p. 92, l. 33.

p. 92.

p. 92, ll. 10 to 15.

“ ALL THAT parcel of land known as number One Hundred and Five King Street in the Parish of Kingston measuring from North to South twenty-five feet and from East to West seventy-five feet 10 more or less and butting North on land of Zatilda Gordon, South on land of The Administrator-General on behalf of Estate Morris Aria Bonitto deceased, East on King Street and West on land of Margaret Hill.”

p. 86.

6. The said property 105 King Street was conveyed to Ella Louise Bonitto by an Indenture dated the 23rd May, 1893, and made between Bernard Leonce Hodelin of the one part and the said Ella Louise Bonitto of the other part. In the said Indenture the said property was described as—

p. 86, ll. 17 to 26.

“ ALL THAT piece or parcel of land situate lying and being in 20 the said City and parish of Kingston formerly known as No. 13 but now No. 105 King Street containing from East to West Seventy-five feet and from North to South Twenty-five feet and butting and bounding East on King Street West on a tenement formerly belonging to David Goldsmith but now or lately to one Mrs. Wilson North on a tenement formerly belonging to one Godson but now or lately to Mr. Norman and South on a tenement formerly belonging to William Willysey but now to Dr. James Ogilvie or howsoever the same may be butted bounded known distinguished or described.”

By the said Indenture the said property was settled in default of 30 appointment by the said Ella Louise Bonitto to the use of the said Ella Louise Bonitto during her life and after her decease to the use of all and every the children or child of the said Ella Louise Bonitto and Morris Aria Bonitto in fee simple.

p. 87.

7. By an Indenture dated the 22nd March, 1921, and made between Morris Aria Bonitto the Junior, Duncan Allwood Bonitto and Catherine Louise Ferguson (who were all the children of the said Ella Louise Bonitto, who had died on the 30th March, 1901, and Morris Aria Bonitto) of the one part and the said Eugenia Blanche Bonitto of the other part the said property was conveyed to the said Eugenia Blanche Bonitto by the 40 description—

p. 87, l. 46.

“ ALL THAT piece or parcel of land situate lying and being in the said City and Parish of Kingston formerly known as No. 13 but now No. 105 King Street containing from East to West seventy-five feet and from North to South Twenty-five feet butting and bounding East on King Street aforesaid West on a tenement now in the possession or occupation of Mrs. Wilson North on a tenement formerly belonging to one Norman but in the possession or occupation of Mrs. Gordon and South on a tenement formerly belonging to

Dr. James Ogilvie now in the possession or occupation of the Purchaser or howsoever otherwise the said Piece or Parcel of land may be butted bounded known distinguished or described.”

8. The first Certificate of Title under the said Law in respect of the property known as 103 and 101 King Street aforesaid was granted to the said Morris Aria Bonitto as the proprietor of the said property in fee simple on the 21st January, 1901, and registered in the Register Book Vol. 21 Fol. 83. The said property was therein described as—

10 “ ALL THAT piece or parcel of land situate in the City and parish of Kingston known as No. 103 King Street containing by admeasurement from North to South Twenty-six feet and from East to West eighty-six feet be the same more or less butting and bounding North formerly on land of Mrs. Parks now on land of or belonging to the said Morris Aria Bonitto East on King Street aforesaid South on land belonging to Dr. James Ogilvie and West formerly on Chancery Lane but now on a portion of the said land sold to George White and since conveyed to James Guilford-Binns SUBJECT however to a claim being established by the City Council of Kingston to a portion of the same land bounding on King Street measuring eleven feet from East to West and eighty-six feet from North to South AND ALSO 20 ALL THAT piece or parcel of land situate lying and being in the City and parish of Kingston and known as No. 101 King Street containing by measurement from East to West 86 feet and from North to South 24 feet butting and bounding North on land formerly belonging to James R. Gore but now belonging to James Ogilvie, East on King Street aforesaid and West on land formerly belonging to or in the possession of Miss Campbell now belonging to or in the possession of Charles Campbell SAVING AND EXCEPTING thereout a strip of land along the Southern boundary measuring from north to south five feet and from east to west eighty-six feet AND SUBJECT 30 to a claim being established by the City Council of Kingston to a portion of the same parcel bounding on King Street measuring eleven feet from East to West and twenty-four feet from North to South or howsoever otherwise the same may be butted bounded known distinguished or described.”

9. The said Morris Aria Bonitto died on or about the 20th November, 1918, and on the 31st January, 1919, letters of administration with his Will and two Codicils thereto annexed of his estate were granted by the Supreme Court of Jamaica to the Administrator General for Jamaica.

40 10. The said Certificate of Title dated the 21st January, 1901, was cancelled upon the issue on the 7th May, 1919, of a new Certificate of Title in respect of the said property 103 and 101 King Street to the Administrator General for Jamaica as the proprietor thereof in fee simple and such new Certificate was registered in the Register Book Vol. 129 Fol. 85. The said property was therein described as—

“ ALL THAT parcel of land situate in the City of Kingston known as number One Hundred and Three King Street containing by admeasurement from North to South Twenty-six feet and from

East to West eighty-six feet be the same more or less butting North formerly on land of Mrs. Parks now on land of Morris Aria Bonitto East on King Street South on land belonging to Dr. James Ogilvie and West formerly on Chancery Lane but now on a portion of the said land sold to George White and since conveyed to James Guilford-Binns SUBJECT HOWEVER to a claim being established by the City Council of Kingston to a portion of the same parcel bounding on King Street measuring Eleven feet from East to West and eighty-six feet from North to South AND ALSO ALL THAT other parcel of land situate in the City of Kingston and known as number One Hundred and One King Street containing by measurement from East to West Eighty-six feet and from North to South Twenty-four feet butting North on land formerly belonging to James R. Gore but now belonging to James Ogilvie East on King Street and West on land formerly belonging to Miss Campbell now to Charles Campbell saving and excepting thereout a slip of land along the Southern boundary measuring from North to South five feet and from East to West Eighty-six feet and subject to a claim being established by the City Council of Kingston to a portion of the same parcel bounding on King Street measuring eleven feet from East to West and Twenty-four feet from North to South and being the land described in Certificate of Title registered in Vol. 21 Fol. 83." 10 20

p. 96.

11. The said Certificate of Title dated the 7th May, 1919, was lost and in place thereof there was issued on the 16th October, 1941, to the Administrator General for Jamaica as the proprietor in fee simple a new Certificate of Title to the said property 103 and 101 King Street which was registered in the Register Book Vol. 386 Fol. 1. The said property was therein described in the same terms in every substantial respect as those in which the said land had been described in the said Certificate of Title dated the 7th May, 1919. 30

p. 83, l. 23.

p. 97.

12. The said Administrator General transferred the said property 103 and 101 King Street to the Plaintiff by a Transfer dated the 24th October, 1941, and the Plaintiff was registered as proprietor thereof on the 30th October, 1941.

p. 96, l. 35.

p. 2, l. 20 and p. 3, l. 26 to 35.

p. 3, l. 36.

13. In his said Statement of Claim the Respondent referred to the said Certificates of Title of the said property 103 and 101 King Street, to the said transfer from the Administrator General to the Respondent and to the Contract dated the 4th August, 1941, pursuant to which such transfer was made and to the said registration of the Respondent and alleged that he took possession of the said property on the 16th August, 1941, and that the said strip of land was part of the land comprised in the said Certificate of Title dated the 16th October, 1941, and that he was entitled to possession thereof. 40

p. 5.

p. 5, l. 13.

p. 5, l. 43.

14. In his said Defence and Counter-claim the Appellant referred to the said Indenture dated the 23rd May, 1893, and alleged that the said Morris Aria Bonitto married the said Eugenia Blanche Bonitto in 1902 and that together they occupied the said property 105 King Street as

their home. The Appellant further alleged that from and prior to the year 1902 the southern boundary of the said property 105 King Street and the northern boundary of the lands belonging to the Respondent was constituted by the most southerly wall of an outbuilding on 105 King Street and a zinc fence running due west from King Street directly into and in line with the said wall. Part of the said zinc fence is shown on the said plan forming part of Exhibit 2 running along the southern boundary of the strip of land body coloured yellow thereon. The Appellant further referred to the said Indenture dated the 22nd March, 1921, and to the said Certificate of Title relating to 105 King Street dated the 12th March, 1928, and to the said transfer to and registration as proprietor of the said property of the Appellant. The Appellant further alleged that the southern boundary of 105 King Street and the northern boundary of the lands belonging to the Respondent had been undisturbed from and prior to the year 1902 and up to the present time and that by reason thereof the persons under whom both the Respondent and the Appellant claimed the said properties had for the space of over seven years acquiesced and submitted to such boundary and that by virtue of Section 46 of Chapter 395 of the Revised Laws of Jamaica (The Limitation of Actions Law) such reputed boundary which included in the land of the Appellant the said strip of land was for ever deemed and adjudged to be the true boundary between the land of the Respondent and the lands of the Appellant.

15. In his Reply and Defence to Counter-claim filed and delivered on the 23rd January, 1952, the Respondent denied that there was a boundary acquiesced in and submitted to by the Respondent or his predecessors in title whereby the said strip of land was included in the lands in the occupation of the Appellant or his predecessors in title and alleged that in law lands comprised in a Certificate of Title pass to a Transferee *bona fide* for value notwithstanding that they are or have been in the possession of a third party at the date of the transfer for any period of time or by reason of any error as to boundaries no matter how long standing.

16. The action came on for trial before Semper, J. (acting), on the 8th, 9th, 10th and 13th April, 1953. There was a conflict between the evidence given by and on behalf of the Respondent and that given by and on behalf of the Appellant on four main matters :—

(A) As to whether the boundary fence between 105 King Street and 103 King Street had prior to the year 1937 run along the southern boundary or along the northern boundary of the said strip of land coloured yellow on the said plan included in Exhibit 2.

(B) As to whether certain trees which grew on the said strip of land prior to the year 1937 had been to the north or to the south of the said fence.

(C) As to whether the Appellant had in the course of the extension and reconstruction of the buildings on 105 King Street in the year 1937 moved the fence to the south ; and

(D) As to whether in August, 1941, the Respondent and the Administrator General had had a conversation with the Appellant

in the course of which the Administrator General had alleged to the Appellant that the land in his possession encroached on that registered in the proprietorship of the Administrator General and the Appellant had stated that he would agree upon such matter with the Respondent.

pp. 9-11.

p. 13, l. 21.

p. 15, l. 34.

p. 23, l. 27.

p. 27, l. 15.

p. 29, l. 36.

pp. 31-33.

p. 9 (l. 48) and p. 10.
p. 13 (l. 29) and p. 14.
p. 15 (l. 48) and
pp. 16 and 17.
p. 25 (l. 51) and p. 26.
p. 30 (l. 30).
p. 31 (l. 33) and
p. 32 (l. 15).

As to (A) the evidence called on behalf of the Respondent was that of the Respondent himself and that of Leonard Augustus Brammer who had been tenant of 103 King Street from 1923 to 1934 and of Theophilus Augustus Hutchinson who had lived there from 1929 until 1933 and again in 1934 and 1935. The evidence on the part of the Appellant was that of the Appellant himself and that of Norman Luther Betty, an architect employed by the Appellant in connection with the said extension and reconstruction, Victor Osmond Bennett an auctioneer who had an office at 101 King Street from 1935 for about two years and Russell Elliott Lewars who knew the property from 1919 until 1928. 10

As to (B) the evidence for the Respondent was that of the Respondent himself and of the said Brammer and the said Hutchinson while that on behalf of the Appellant was that of the Appellant himself and of the said Bennett and the said Lewars.

p. 9-11.

p. 25 (l. 26).

p. 27 (l. 42) and p. 28.

As to (C) the evidence on behalf of the Respondent was that of the Respondent himself and on behalf of the Appellant that of the Appellant himself and of the said Betty. 20

p. 9.

p. 17 (l. 20) and p. 18.

p. 19 (l. 21) and p. 20.

p. 25 (l. 32).

As to (D) the evidence on behalf of the Respondent was that of the Respondent himself and that of his wife Clarice Hall and of Henry Sewell who was employed by the Respondent in 1941 and stated that he had accompanied the Respondent during the alleged conversation in August, 1941; the evidence on behalf of the Appellant was that of the Appellant himself.

p. 24 (l. 44).
p. 106 (l. 13) and
pp. 107-109.
p. 101 (l. 9).

p. 116 (l. 18).

In relation to (A) and (B), in addition, there was received on behalf of the Appellant in evidence the deposition of the said Eugenia Blanche Bonitto on her examination on the 28th June, 1943, in an action in the Supreme Court of Jamaica No. 195 of 1942 brought by the Respondent against the Appellant for substantially the same relief as that sought in the present action which action was discontinued by order made on the 21st June, 1944. The said Eugenia Blanche Bonitto had died on the 24th January, 1950. 30

pp. 35-42.

17. On the 25th July, 1953, Semper, J. (acting), delivered his judgment in the action. In relation to the said conflicts of fact Semper, J., said as follows:—

p. 41 (l. 10).

“Neither the Plaintiff nor his witnesses who deposed as to the actual position of the dividing fence between 105 and 103 King Street struck me as witnesses upon whose testimony much reliance could be placed. The Plaintiff did not satisfy me that of his own knowledge he knew in 1937 that the Defendant removed the dividing fence between 105 and 103 King Street and re-erected it so as to enclose within 105 the disputed strip of land. 40

p. 41 (l. 17).
p. 9.
p. 17 (l. 20).
p. 19 (l. 21).

“I do not accept the account of the Plaintiff, his wife and the witness Henry Sewell of the taking of possession by him at

the time of purchase of 103 and 101 King Street and the presence of the then Administrator General on these lands in order to formally put him in possession. His witnesses Brammer and Hutchinson obviously had their memories refreshed as to the facts in respect to which they were required to depose . . . the deposition of the late Eugenia Blanche Bonitto as taken in the first action brought by him was evidence which did not confirm his allegation that this disputed strip of land lay within the boundaries of 101 and 103 King Street.

p. 13 (l. 21);
p. 15 (l. 34).

p. 106 (l. 13).

10 “ The Defendant impressed me as being reliable and definite. The evidence of the several witnesses called by him corroborated him with certainty on all the material aspects of this case. His evidence of the true boundary line between 105 and 103 King Street and the location of the fence on this boundary line with that of his witness Betty who visited the locus in 1937 and evidence of the Plaintiff’s witness Burke seem to me to be consistent with the Defendant’s case that the southern boundary of 105 King Street has been undisturbed and that the disputed strip of land falls within the southern boundary of 105 King Street.

p. 41 (l. 33).

20 “ On a question of fact I find that disputed strip of land falls within the boundaries of 105 King Street and on the balance of the evidence I accept the Defendant’s contention that the boundary fence between 105 King Street and 103 King Street has remained undisturbed for a period going back to prior to the year 1902.

p. 42 (l. 1).

30 “ No plans or diagrams are attached to the Certificates of Title relating to the lands of both the Plaintiff and the Defendant, the area of these lands is not stated thereon, their measurements north to south may be stated as being ‘ more or less,’ they are not acceptable as definite measurements for use as a guide in the ascertainment of the area of the lands intended to be conveyed in the respective titles. Apart from the measurements given in these Certificates of Title the only other identification of these lands is by their street numbers ‘ 101,’ ‘ 103 ’ and ‘ 105 ’ King Street and a recital of the then reputed owners of the lands adjacent to them. I think from the facts before me that the only true guide is the identification of these lots by their numbers and finding in fact as I do the southern fence of ‘ 105 ’ King Street has remained undisturbed and that the disputed strip of land was never within lands of ‘ 101 ’ and ‘ 103 ’ King Street I am of the view in so far as the measurements contained in the Plaintiff’s Certificate of Title may admit of any interpretation that the disputed strip of land falls within 103 and 101 King Street that such measurements must be rejected as *falsa demonstratio* and that the description of these lands by their street numbers and boundaries ought to prevail.”

p. 42 (l. 6).

p. 97 (l. 1).

40 18. By his Formal Judgment dated the 25th July, 1953, Semper, J. (acting), ordered that the claim brought by the Respondent be dismissed and that the northern and southern boundaries of the properties 101 and 103 King Street and 105 King Street as now existing are the true boundaries between the said properties and ordered the Respondent to pay the Appellant’s costs of defence.

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p. 43 (l. 1).

pp. 44 and 45.
pp. 57-67.

19. The Respondent appealed to the Court of Appeal of the Supreme Court of Jamaica and on the 30th July, 1954, the judgment of the Court was delivered granting to the Respondent the declaration sought by him, recovery of possession of the said strip of land and mesne profits to be assessed and the Respondent's costs of the appeal and in the Court below.

p. 62 (l. 25).
p. 97 (l. 1).

20. In the course of their judgment the Court of Appeal said " If it is correct that this disputed strip of land is included in the Appellant's (the present Respondent's) registered Title, then, as a new Certificate of Title was issued in 1941 for 103 King Street, on the authority of *Goodison v. Williams*, Clark's Reports 349, a majority decision of the Full Court in 1931, the Appellant is entitled to possession of it. It was admitted by the Respondent (the present Appellant) and we agree, that whatever our views may be, we are bound by that decision ; the Respondent however stated that he reserved the right to question that decision in a higher Court if it should become necessary." After considering the measurements as given in the Certificate of Title and on the plan which is included in Exhibit 2 the Court of Appeal concluded that it was " clear that the measurements given in the Certificates of Title in respect of the land transferred to both the Appellant and the Respondent do not coincide with what either occupies, nor do their actual holdings when added together agree with the total measurements given by their Certificates of Title." 10 20

p. 63 (l. 44).

p. 64 (l. 1).

" It would therefore appear either that the description of these parcels by admeasurement is inaccurate or that the description of only number 105 is inaccurate but the Respondent is in possession of more land than that to which he is entitled under his Title.

" In *Norton on Deeds*, 2nd Edition at p. 233, the author states :—

' Where the parcels are described by both a general or collective, and a special description, or divers special descriptions, and nothing exists which satisfies all descriptions but something exists which satisfies some or one of them, and is described with sufficient certainty, the other or others may be disregarded. 30

p. 64 (l. 11).

' We next look to the other descriptions of the Appellant's parcel as given in his Certificate of Title. They are, No. 103 King Street, and, certain stated boundaries and both are, by themselves, valueless in determining the true boundary between the properties of the Appellant and the Respondent.

p. 64 (l. 16).

' As the delimitation of the Appellant's land cannot be accurately ascertained by the descriptions given in his Certificate of Title, extrinsic evidence is admissible to identify these parcels . . . The learned trial Judge . . . accepted the evidence of the Respondent that when No. 105 was transferred to the Respondent in 1928 the boundary fence between the properties was as it was seen by Mr. Betty in 1937 '." 40

p. 65 (l. 12).

After referring to Semper, J.'s findings of fact that the boundary fence between 105 and 103 King Street had remained undisturbed for a period going back prior to the year 1902 the Court of Appeal proceeded :—

p. 65 (l. 10).
p. 81.
p. 106 (l. 13).

" These findings are based, *inter alia*, on the evidence of Mr. Russell Lewars and Mrs. Eugenia Blanche Bonitto and cannot

be contested except for the use of the word 'prior,' it being established only that the fence was in existence at the date of the wedding in 1902.

" But these findings of the learned Judge . . . do not answer the question where was that fence at the time of the registration of the title to No. 103 in 1901 ? p. 80 (l. 1).

" We therefore propose to refer to certain facts which appear in the documents put in evidence but to which no argument was addressed to us, and to which no reference was made at the trial.

10 " Perusal of the documents of title shows that by the Deed of the 13th March, 1885, James Ogilvie acquired the interest of James Gore in No. 103 King Street, which is described as containing by estimation north to south 26 feet and east to west 161 feet. Such a description can only mean that the northern boundary throughout its length is a straight line. Further perusal also shows that on the 13th December, 1900, James Ogilvie made application to bring No. 103 King Street under the Registration of Titles Law. In his declaration in support of his application he stated in paragraph 5 ' I subsequently sold the western portion measuring 26 feet north to south and from east to west 75 feet.' The north-eastern corner of the western portion so sold should therefore coincide with the north-western corner of what is now No. 103 King Street, and the northern boundaries of No. 103 and of the portion so sold should be a straight line. Looking at the plan, Exhibit 2 (Bourke's plan), the only conclusion one can come to is that the premises shown thereon as No. 10 Chancery Lane must be what was formerly the western portion of No. 103 King Street. The north-eastern corner of No. 10 Chancery Lane does not coincide with the north-western corner of No. 103 King Street as contended for by the Respondent. He would place the north-western corner of No. 103 King Street some 7 or so feet south of the north-eastern corner of No. 10 Chancery Lane, thus making a straight line joining the northern boundaries of No. 103 King Street and No. 10 Chancery Lane, impossible. p. 75 (l. 16).
pp. 71-73.
p. 77 (l. 33).
p. 65 (l. 39).

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" If however, the disputed strip were included in No. 103, then the northern boundaries of No. 103 and of No. 10 Chancery Lane would be a straight line, and the north-western and north-eastern corners respectively of the two lots would coincide.

40 " The documents also reveal that in a declaration of the 14th January, 1928, Eugenia Blanche Bonitto stated that the property contiguous to No. 105 King Street on its western boundary was No. 12 Chancery Lane. No mention is made of No. 10 Chancery Lane. This declaration was made for the purpose of bringing No. 105 King Street under the operation of the Registration of Titles Law and if No. 105 King Street was bounded in part by No. 10 Chancery Lane, she would have been obliged to say so. p. 66 (l. 9).
p. 88 (l. 25).

50 " Looking once more at Exhibit 2 (Bourke's plan), it will be seen that the facts in Eugenia Blanche Bonitto's declaration support the Appellant's case. They do not support the Respondent's case since that case requires that No. 10 Chancery Lane should also be stated as being contiguous to No. 105 King Street. p. 66 (l. 16).
p. 88.

p. 66 (l. 21).

“ Apart from any question of measurement, it is therefore possible to ascertain the north-western corner of No. 103 King Street and the south-western corner of No. 105 King Street. They coincide with the north-eastern corner of No. 10 Chancery Lane. With this point ascertained, it is possible to say whether or not the description by measurement of No. 103 is false at least in so far as it relates to the western boundary. It shows that this measurement is not false.

p. 66 (l. 28).

“ At this point it may be convenient to consider whether or not the learned trial Judge was right in coming to the conclusion 10 that the fence as existed in 1902 onwards was a boundary fence between Nos. 103 and 105 King Street. The strongest evidence to support the view that it was a boundary fence is the building on the western end of No. 105 King Street. The fence joined this building at its southern end. Against the view that that was a boundary fence is the fact that Morris Aria Bonitto was the owner of No. 103 King Street from January, 1901, and the occupier of No. 105 King Street to the time of his death in 1918. Title to No. 105 King Street was in his children, but his possession of it was of such a nature that his wife Eugenia Blanche Bonitto stated 20 in her evidence that he was its owner. It is also significant that in his Certificate of Title for No. 103, he is given as the owner of No. 105. As the owner of No. 103 and the person in possession of No. 105 King Street, he could have removed the boundary fence and placed such erections on No. 103 as best suited his convenience. No one could have interfered with any such activity of his.

p. 66 (l. 44).

“ We would now refer to the outbuildings on No. 105. Examination of Mr. Bourke's plan, Exhibit 2, shows that the range of outbuildings has at some time been extended, that at the date of his survey it consisted of three rooms, the southernmost one of 30 which had at some time been added. During the course of the arguments, this Court visited the premises and this addition was plainly visible. When was that room added? Clearly at some time prior to the wedding of Morris Aria Bonitto and Eugenia Blanche Bonitto. If, as now seems clear, the fence was moved by Morris Aria Bonitto after he purchased No. 103 in 1901, then the room must have been built after he went into occupation of No. 103 and before the date of the wedding. The extension could not have been made prior to the date of the registration because 40 of the then position of the fence.”

21. The Appellant submits that the judgment of the Court of Appeal should be reversed and the action dismissed and the declaration made by Semper, J., on the Counter-claim restored for the following among other

REASONS

- (1) THAT it is correct as found by Semper, J., and by the Court of Appeal that the measurements contained in the documents and Certificates of Title of 105 and 103 King Street are not accurate.

- (2) THAT the descriptions in the same documents by reference to abuttals provide no sufficient identification of the positions of the said properties.
- (3) THAT in these circumstances the effective descriptions of the said properties are "105 King Street" and "103 King Street" respectively.
- (4) THAT extrinsic evidence is properly admissible for the purpose of determining the boundaries of the said properties by reference to those descriptions.
- 10 (5) THAT the finding of Semper, J., that the boundary between 105 and 103 King Street has ever since 1902 been along the southern boundary of the disputed strip of land is correct.
- (6) THAT the onus of showing that such boundary was at any prior time in some other position is on the Respondent and there is no evidence available to enable the Respondent to discharge that onus.
- 20 (7) THAT the conclusion of the Court of Appeal that the said plan by its reference to 10 Chancery Lane shows that the said strip of land is included in 103 King Street is based on the assumption that the boundary between 10 Chancery Lane and 12 Chancery Lane as shown on such plan in 1942 was the boundary between 10 Chancery Lane and 12 Chancery Lane at the date of the division of 103 King Street by the sale of the western part thereof by James Ogilvie some time between 1885 and 1900 and there is no evidence to support such assumption.
- 30 (8) THAT the statement of the Court of Appeal that in a declaration of the 14th January, 1928, Eugenia Blanche Bonitto stated that the property contiguous to No. 105 King Street on its western boundary was 12 Chancery Lane is inaccurate in that such declaration contained no such statement. p. 66 (l. 9).
p. 106 (l. 13).
- (9) THAT in any case, even if such declaration had contained such statement, the conclusion of the Court of Appeal that such statement supports the view that the said strip of land is included in 103 King Street is based on the assumption that the boundary between 10 Chancery Lane and 12 Chancery Lane in 1942 was the same boundary as existed in 1928 and there is no evidence to support such assumption.
- 40 (10) THAT the conclusion of the Court of Appeal that the position of the outbuilding on the south-western part of 105 King Street does not support the Appellant's case is based on the assumption that this outbuilding was erected between January, 1901, and the marriage of Eugenia Blanche Bonitto in 1902 which assumption is in turn based on the assumption that the boundary fence

between 105 and 103 King Street was in January, 1901, along the northern edge of the said strip of land which assumption is in turn based on the assumption mentioned above that the boundary between 10 Chancery Lane and 12 Chancery Lane was the same in 1942 as it had been on the sale by James Ogilvie of the western part of 103 King Street.

- (11) THAT in any case, even if all the said conclusions of the Court of Appeal be correct, it is undisputed that from 1928 until some time in 1941 the boundary fence 10 between 105 and 103 King Street was on the southern boundary of the said strip of land and that in view of the rejection by Semper, J., of the evidence of the Respondent and his wife and the said Henry Sewell as to the alleged visit by the said Administrator General and the Respondent to the property in August, 1941, the first challenge to the Appellant's possession of the said strip of land was by means of the letter dated the 25th February, 1942, from the Respondent's solicitors to the Appellant. 20

p. 41 (l. 17).

p. 99 (l. 26).

- (12) THAT accordingly there was for upwards of seven years prior to the receipt of such letter by the Appellant an acquiescence in and submission to the said fence along the southern boundary of the said strip of land by the adjoining proprietors of 105 and 103 King Street respectively, with the consequence that in accordance with Section 46 of the said Limitation of Actions Law such fence, being the reputed boundary between 105 and 103 King Street, is to be deemed the true boundary between such proprietors. 30

- (13) IN so far as *Goodison v. Williams* decided the contrary it was wrongly decided because :—

- (A) Section 55 of the Registration of Titles Law, 1888 (Ch. 21) (Section 69 of the Registration of Titles Law Ch. 353 of the Revised Laws of Jamaica), provides that the land included in any Certificate of Title is to be deemed to be subject to any rights acquired over such land since the same was brought under the operation of the said Law under any statute of limitations. 40
- (B) Section 53 of the said Law of 1888 (Section 67 of Ch. 353) provides that the evidence of a Certificate of Title registered and granted under the said Law that the person named in such certificate is seised or possessed of the estate or interest of which he is named as proprietor is subject to the subsequent operation of any statute of limitations.
- (C) Section 63 of the said Law of 1888 (Section 84 of Ch. 353) provides that a transferee from the proprietor of registered land is subject to and liable 50

for all and every the same liabilities to which he would have been subject and liable if he had been the former proprietor.

10 (D) Accordingly, by reason of the provisions of the said Sections 55 and 63, the word "subsequent" in the said Section 53 ought upon its true construction to be interpreted as subsequent to the bringing of the land comprised in a Certificate of Title under the operation of the said Law of 1888 and upon this interpretation there is nothing in the said Section 53 to exclude the operation in relation to land comprised in a Certificate of Title of Section 46 of the said Limitation of Actions Law where a period of upwards of seven years has expired since such land was first brought under the operation of the said Law of 1888.

20 (E) Alternatively the said Section 46 does not operate until the period of seven years thereunder is complete and in the present case such period became complete between the 16th October, 1941, when the last Certificate of Title was issued and the 25th February, 1942, when the acquiescence and submission ceased. p. 98 (l. 1).

(F) The dissenting judgment of H.I.R. Brown, A/C.J., in *Goodison v. Williams* was correct and is to be preferred to the other judgments therein.

(14) FOR the reasons appearing in the said judgment of the said Semper, J.

JOHN L. ARNOLD.

In the Privy Council.

ON APPEAL
*from the Court of Appeal of the Supreme
Court of Jamaica.*

BETWEEN

JAMES CLINTON CHISHOLM
(Defendant) *Appellant*

AND

JAMES HALL . (Plaintiff) *Respondent.*

Case for the Appellant

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