

~~CAT. 9.2~~

15, 1959

No. 15 of 1956.

In the Privy Council.

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

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BETWEEN

**JAMES CLINTON CHISHOLM** (Defendant) . . . . . *Appellant*

AND

**JAMES HALL** (Plaintiff) . . . . . *Respondent.*

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**RECORD OF PROCEEDINGS**

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G. F. HUDSON MATTHEWS & CO.,  
 32 QUEEN VICTORIA STREET,  
 LONDON, E.C.4.,  
*Solicitors for the Appellant.*

A. L. BRYDEN & WILLIAMS,  
 53 VICTORIA STREET,  
 LONDON, S.W.1,  
*Solicitors for the Respondent.*

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**In the Privy Council.**


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

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BETWEEN

JAMES CLINTON CHISHOLM (Defendant) . . . . . *Appellant*

AND

JAMES HALL (Plaintiff) . . . . . *Respondent.*


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**RECORD OF PROCEEDINGS**

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DESCRIPTION OF DOCUMENT	DATE
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16. Copy letter from Donald Hendry to James Hall, dated 29th December, 1952.
17. Copy letter from Donald Hendry to James Hall, dated 23rd December, 1952.
18. Copy letter from Donald Hendry to James Hall, dated 8th December, 1952.
19. Copy letter from James Hall to Messrs. Cargill, Hendry & Graham, dated 12th January, 1951.
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68. Notice of Intention to Appear by Counsel.
69. Order for Suspension of Execution Pending hearing of Motion for Leave to Appeal to Her Majesty in Council.
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71. Affidavit of Stanley Hartley Malcolm in Support of Evidence for Assessing Mesne Profits.
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73. Affidavit of James Clinton Chisholm in Support of Application for Leave to Appeal to Her Majesty in Council, dated 19th April, 1955.
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75. Order for payment of money into Court.
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77. Notice of Taxation.
78. Affidavit of Materiality.
79. Plaintiff's Bill of Costs.
80. Notice of Taxation.
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  94. Affidavit of Fitzroy Alberga Williams.
  95. Affidavit of Cyprian Chevalier Calame.
  96. Summons for Review and Re-opening of Assessment for Mesne Profits by a Judge.
  97. Affidavit in Support of Summons for Review and Re-opening of Assessment of Mesne Profits by a Judge.
  98. Affidavit of James Hall to oppose the Affidavits of Fitzroy Alberga Williams and Cyprian Chevalier Calame.
  99. Affidavit of Fitzroy Alberga Williams.
  100. Notice to Produce.
  101. Notice of intention to use Affidavits.
  102. Affidavit of Service.
  103. Notice to Produce.
  104. Notice to Produce.
  105. Affidavit of James Hall in Support of Summons to Continue Proceedings.
  106. Affidavit of James Hall in Support of Notice embodying list of Documents to form part of Records to be certified for Appeal to the Privy Council.
  107. Minute of Order dismissing Summons for Review of Taxation.
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  109. Order dismissing Summons to Continue Proceedings.
  110. Notice of Taxation.
  111. Defendant's Bill of Costs on Summons to Continue Proceedings, Review of Taxation, and Review and Re-opening of Assessment for Mesne Profits.
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**In the Privy Council.**

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

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BETWEEN

JAMES CLINTON CHISHOLM (Defendant) . *Appellant*

AND

JAMES HALL (Plaintiff) . . . . . *Respondent.*

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10 **RECORD OF PROCEEDINGS**  
**PART I**

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No. 1.

**WRIT OF SUMMONS.**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.  
IN THE HIGH COURT.  
Common Law.

Suit No. 31 of 1951.

Between JAMES HALL . . . . . Plaintiff.

and

20 JAMES CLINTON CHISHOLM . . . . . Defendant.

*In the  
Supreme  
Court.*

No. 1.  
Writ of  
Summons,  
31st  
January,  
1951.

GEORGE VI by the Grace of God of Great Britain, Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, to James Clinton Chisholm of 105 King Street, Kingston.

WE COMMAND you that within Fourteen days after the Service of this Writ upon you, exclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of James Hall of 122 Duke Street, Kingston, Landed Proprietor and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

*In the  
Supreme  
Court.*

Witness THE HONOURABLE SIR HECTOR HEARNE, Kt., Chief Justice of Jamaica, the 31st day of January in the year of our Lord One Thousand Nine Hundred and Fifty-one.

No. 1.  
Writ of  
Summons,  
31st  
January,  
1951,  
*continued.*

THE PLAINTIFF CLAIMS—

(A) A declaration that the portion of land now in the possession of the Defendant and being a strip of land 7 feet wide more or less from north to south and extending from King Street for a distance of 79 feet and 8 inches to the west and lying south of property known as 105 King Street is comprised in the Certificate of Title for 103 King Street registered at Volume 386 10 Folio 1 in the name of the Plaintiff.

(B) To recover possession of the said strip of land.

Dated the 31st day of January, 1951.

(Sgd.) CARGILLS HENDRY & GRAHAM,  
Solicitors for the Plaintiff.

No. 2.  
Statement  
of Claim,  
17th July,  
1951.

No. 2.  
STATEMENT OF CLAIM.

1. The Plaintiff is a Photographer and Landed Proprietor residing at 122 Duke Street in the Parish of Kingston.

2. On the 21st of January, 1901, Morris Aria Bonitto was registered 20 as proprietor of an estate in the lands described in the Certificate of Title at Volume 21 Folio 83. The said lands were described as follows:—

“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 Guildford 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 in 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 eighty six feet and from North to South twenty four feet butting and bounding North on land formerly belonging to James R. Gore but now 40



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 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.

*In the  
Supreme  
Court.*  
—  
No. 2.  
Statement  
of Claim,  
17th July,  
1951,  
*continued.*

10

Dated the Twenty first day of January One thousand nine hundred and one.”

3. By his last will dated the 24th day of November, 1916, and a Codicil thereto dated the 21st day of July, 1917, the said Morris Aria Bonitto deceased devised the property comprised in the Certificate of Title at Volume 21 Folio 83 aforesaid to his trustee to hold the same for the use and benefit of his wife Eugenia Blanche Bonitto to pay the rents and profits arising therefrom to her for her life and after her death to the use  
20 of the children of his daughter Catherine Louise Ferguson then alive as tenants in common in fee simple.

4. Letters of Administration with the Will and Codicils annexed of the estate of the said Morris Aria Bonitto deceased was granted by this Honourable Court to the Administrator General on the 31st day of January, 1919.

5. On the 7th day of May, 1919, the said Certificate of Title at Volume 21 Folio 83 was cancelled and a fresh Certificate for the said lands was registered at Volume 129 of Folio 85 whereby the Administrator General as administrator with the will annexed of the estate of the said  
30 Morris Aria Bonitto deceased was registered as the proprietor of the said lands.

6. The duplicate Certificate of title of the lands registered as aforesaid at Volume 129 Folio 85 having been lost a new Certificate of Title registered at Volume 386 Folio 1 was registered in favour of the Administrator General on the 16th day of October, 1941.

7. By a Contract in writing made on the 4th day of August, 1941, between the Administrator General of Jamaica and the Plaintiff, the Plaintiff agreed to purchase for the sum of £700 the lands then registered as aforesaid at Volume 129 Folio 85 being the lands now registered at  
40 Volume 386 Folio 1 of the Register of Titles and therein described as follows :—

“ 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 and butting North formerly on land of Mrs. Parks now on land of Morris Aria Bonitto East on King Street South on land belonging

*In the  
Supreme  
Court.*

No. 2.  
Statement  
of Claim,  
17th July,  
1951,  
*continued.*

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 and butting North on land 10 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 strip 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 comprised in Certificate of Title registered at Volume 129 Folio 85." 20

8. The Plaintiff took possession of the said lands on the 16th of August, 1941.

9. Pursuant to the said agreement the Plaintiff was registered as proprietor of the said land free from encumbrances by a transfer from the Administrator General dated the 24th and registered on the 30th of October, 1941, at Volume and Folio aforementioned.

10. The Defendant is in possession of a strip of land measuring from North to South seven feet more or less and extending from King Street for a distance of seventy-nine feet and eight inches to the West and lying South of the property known as Number One Hundred and Five 30 King Street belonging to the Defendant.

11. The said strip of land is part of the land comprised in the said Certificate of Title registered as aforesaid at Volume 386 Folio 1 of the Register of Titles and the Plaintiff is entitled to possession thereof.

#### THE PLAINTIFF CLAIMS—

(A) A declaration that the said strip of land is comprised in the Certificate of Title registered as aforesaid at Volume 386 Folio 1 of the Register of Titles.

(B) To recover possession of the said strip of land.

(C) Mesne profits from the 16th day of August, 1941. 40

Settled.

(Sgd.) N. W. MANLEY.

Filed and Delivered the 17th day of July, 1951, by Donald Hendry of No. 28 Duke Street, Kingston.

(Sgd.) DONALD HENDRY.

Plaintiff's Solicitor.

## DEFENCE AND COUNTER-CLAIM.

*In the  
Supreme  
Court.*No. 3.  
Defence  
and  
Counter-  
claim,  
27th  
September,  
1951.

1. The Defendant admits para. 1 of the Statement of Claim.

2. The Defendant admits that he is, and has been in possession of the strip of land described in para. 10 of the Statement of Claim, but the Defendant denies that the Plaintiff is entitled to possession thereof as alleged in para. 11, or at all.

3. The properties Nos. 101 & 103 King Street, now belonging to the Plaintiff, lie immediately to the South of the property No. 105 King Street, belonging to the Defendant, and the lands of the Plaintiff and the Defendant bind, and have at all material times bound each other.

4. By an Indenture dated the 23rd day of May, 1893, and made between Bernard Leonce Hodelin of the parish of Saint Catherine and Ella Louise Bonitto, the then wife of Morris Aria Bonitto, the said Bernard Leonce Hodelin conveyed unto the said Ella Louise Bonitto :—

“ 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 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 otherwise the same may be butted bounded known  
 “ distinguished or described TO HOLD the same UNTO the said  
 “ Ella Louise Bonitto and her heirs to the use of such person or  
 “ persons for such estate of inheritance or not of inheritance and  
 “ charged or chargeable in such manner and form as the said Ella  
 “ Louise Bonitto notwithstanding coverture shall at any time or  
 “ times by any deed or deeds direct limit declare or appoint AND  
 “ in default of any such direction limitation or appointment  
 “ TO THE USE OF the said Ella Louise Bonitto for and during the  
 “ term of her natural 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.”

5. The said Ella Louise Bonitto died on the 30th of March, 1901, without having by any deed or deeds or otherwise directed limited or appointed the said piece or parcel of land, and leaving her surviving, Morris Aria Bonitto Junior, Duncan Allwood Bonitto, and Catherine Louise Ferguson the children of the said Ella Louise Bonitto, and Morris Aria Bonitto.

6. In 1902, the said Morris Aria Bonitto Senior married Eugenia Blanche Bonitto, and together they occupied the property 105 King Street as their home.

*In the  
Supreme  
Court.*

No. 3.  
Defence  
and  
Counter-  
claim,  
27th  
September,  
1951,  
*continued.*

7. From and prior to the year 1902 the property 105 King Street contained a dwelling house, and an out-building to the south of the said dwelling house.

8. From and prior to the aforesaid year, the most southerly wall of the aforesaid out-building together with a zinc fence running due west from King Street and directly into and in line with the said wall, comprised the southern boundary of the property No. 105 King Street, and the northern boundary of the lands now belonging to the Plaintiff.

9. Between the said southern boundary and the dwelling house on 105 King Street, and contained in the property No. 105 King Street, 10 was a passage measuring from North to South, seven feet more or less and extending from King Street for a distance of eighty feet to the West.

10. By an Indenture dated the 22nd day of March, 1921, Morris Aria Bonitto Junior, Duncan Allwood Bonitto, and Catherine Louise Ferguson, the children of Ella Louise Bonitto referred to in paras. 4 & 5 hereof, conveyed the property No. 105 King Street for the sum of £180, to Eugenia Blanche Bonitto in fee simple.

11. On the 12th of March, 1928, the said Eugenia Blanche Bonitto was registered as the proprietor of an estate in the lands described in the Certificate of Title at Volume 208, Folio 36 of the Registered Book of 20 Titles. The said lands were described as follows:—

“ ALL THAT parcel of land known as number one hundred and five King St. in the parish of Kingston measuring from north to south twenty-five feet and from east to west seventy-five feet 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.”

12. The Defendant was registered as proprietor of the said lands free from incumbrances by a Transfer from Eugenia Blanche Bonitto 30 dated the 12th and registered on the 16th of April, 1928, made in consideration of the sum of £500.

13. At the time of the aforesaid transfer, the southern boundary of the said lands was as described in para. 8 hereof.

14. In 1937 the Defendant remodelled the main building on the aforesaid lands by extending the southern side thereof to the line of the southern boundary, but leaving a portion of the southern boundary fence and the southern wall of the out-building referred to in para. 8 intact.

15. The southern boundary of the property 105 King Street belonging to the Defendant which is the northern boundary of the lands belonging 40 to the Plaintiff, has been undisturbed from and prior to the year 1902 and up to the present time.

16. The Defendant says that by reason of the premises, the persons under whom both the Plaintiff and the Defendant respectively claim the properties 101 & 103 King Street & 105 King Street, have for the space of over seven years, acquiesced and submitted to the boundary as now exists between the said properties as being the reputed northern and

southern boundaries thereof, and that by virtue of Section 46 of Chapter 395 of the Revised Laws of Jamaica, such reputed boundary which includes in the land of the Defendant the strip of land referred to in para. 2 hereof is forever deemed and adjudged to be the true boundary between the lands of the Plaintiff and the lands of the Defendant.

*In the  
Supreme  
Court.*

No. 3.

Defence  
and  
Counter-  
claim,  
27th  
September,  
1951,  
*continued.*

ALTERNATIVELY,

The Defendant says that the Plaintiff and the Defendant have since the year 1941 acquiesced and submitted to the boundary as now exists between their respective properties as being the reputed northern and southern boundaries thereof, and that by virtue of Section 46 of Chapter 395 of the Revised Laws of Jamaica such reputed boundary is forever deemed and adjudged to be the true boundary between the lands of the Plaintiff and the lands of the Defendant.

17. Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation in the Statement of Claim as if the same were herein set out and specifically traversed.

COUNTER-CLAIM.

18. The Defendant repeats paras. 2—16 of his Defence herein.

THE DEFENDANT COUNTER-CLAIMS :—

20 (A) A declaration that the northern and southern boundaries of the properties 101–103 King Street & 105 King Street as now exist are the true boundaries between the said properties.

(B) An order that the Title of the Plaintiff to 101–103 King Street registered at Volume 386 Folio 1 of the Register of Titles be rectified so as to exclude therefrom the strip of land described in paras. 2 & 9 hereof.

(C) An order that the Title of the Defendant to 105 King Street registered at Volume 208 Folio 36 of the Register of Titles be rectified so as to include therein the said strip of land.

30

Settled,

(Sgd.) V. O. BLAKE.

Filed and Delivered the 27th day of September, 1951, by FRASER & CALAME, of No. 12 Duke Street, Kingston,

(Sgd.) FRASER & CALAME,  
Defendant's Solicitors.

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*In the  
Supreme  
Court.*

**No. 4.**

**REPLY AND DEFENCE TO COUNTER-CLAIM.**

No. 4.  
Reply and  
Defence to  
Counter-  
claim,  
23rd  
January,  
1952.

1. The Plaintiff joins issue with the Defendant on the Defence.

2. As to the Counter-claim the Plaintiff denies that there was a boundary acquiesced in and submitted to by the Plaintiff or his predecessors in title whereby the land in dispute was included in the lands in the occupation of the Defendant or his predecessors in title.

3. In any event the Plaintiff will contend that the Counter-claim discloses no reasonable cause of action and that in law lands comprised in a certificate of title pass to a transferee bona fide and 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. 10

Settled,

(Sgd.) N. W. MANLEY.

Filed and delivered this 23rd day of January, 1952.

(Sgd.) DONALD HENDRY,  
Plaintiff's Solicitor.

No. 5.  
Judge's  
Notes of  
Opening of  
Plaintiff in  
person,  
8th April,  
1953.

**No. 5.**

**JUDGE'S NOTES of Opening of Plaintiff in person.**

20

James Hall, Plaintiff, in person.

Mr. V. O. Blake for Defendant.

*Plaintiff opens :*

There has been affidavit filed. A Mr. Fraser asks permission to use deposition of one EUGENIA BLANCHE BONITTO a person dead asks that it be ruled out. Court rules that when matter comes up it will be decided.

Plaintiff says he decided to give evidence.

## PLAINTIFF'S EVIDENCE.

No. 6.

JAMES HALL.

JAMES HALL, sworn :

122 Duke Street, Kingston, Jamaica, landowner. In 1941 I engaged and purchased 2 plots of land under one title No. 101 and 103 King St., Kingston, the vendor was the Administrator General of Jamaica. I went to look at the property. I found that the measurement which they gave me was not there. I returned to office of the Auctioneer Cyril George Plummer and the Administrator General directed the Auctioneer himself. He told me something and I went to the Administrator General Mr. Allan O. Ritchie now dead. He told me something. I went back to the land and I found what they told me was true. A fence which I saw being constructed in 1937 by the Defendant Chisholm had encroached and cut off a portion of land enclosing it in his premises 105 King Street. I returned to the Administrator General and he told me something and I returned to my office and wrote a letter to the Administrator General. I made a deposit on land to Solicitor representing Sol. General. That was 5.8.41. On 16.8.41 I wrote a letter to the Administrator General and paid him the balance. The first payment was £25 the balance was £675. On that day he gave me a cash receipt. He wrote a letter to the tenants of the property and he took me in his car to the premises and showed me the proper boundary lines and put me in possession of the land and he told me something. Later on in same year about November I got a registered title to land which he showed me and delivered to me by Solicitor for the property Mr. L. V. D. Samuel. This is the title it covers both portions of land.

*Put in evidence marked Ex. 1.*

In 1942 I started an action in the Supreme Court against the same Defendant claiming the lands which he had encroached on. The land is 6' 8" North to South on King Street and continues from King St. to Western Boundary along line to Western Boundary and running from North to South at that point 7' 4". Paragraph 10 of Statement of Claim sets out land. I then employed Mr. Burke a Surveyor to survey the land. I withdrew this action because my then Solicitors were intimidated. So soon as I could find a Solicitor I brought back the action.

This land he continued to hold against me. I estimate the value of it £1,300 according to value in King Street to-day.

In 1942 he took £2.10 p.m. for the shop that he encroached on. £30 per year. I do not know the present rental at which it is rented now. I will take the £30 per year.

He constructed a room at back which in 1942 he rented for £1 per month making £12 per year. I am not certain what it is now rented for.

He constructed a fence wooden bottom wooden posts and zinced off. He put the fence there in 1937 and the same fence exists there.

I knew the premises prior to the construction of fence in 1937. It had an old wooden fence running from the S.W. corner of the main building of this line to western boundary it was not in same place when zinc fence. It was more than 7' long to the North. When he fenced the land he destroyed a bearing breadfruit tree in the line in 1945 and he put a kitchen where it was in 1952. There was also a bearing mango tree he cut down

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence*

No. 6.  
James Hall,  
8th April,  
1953.  
Examina-  
tion.

Ex. 1.

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence.*

No. 6.  
James Hall,  
8th April,  
1953,  
*continued.*

Cross-  
Examina-  
tion.

in 1925 and in 1937 when he encroached he cut down a pepper elder tree on the land. The veins of breadfruit tree have sprouted and there is now a young breadfruit tree near his kitchen.

*XXD.* : When I brought first action in 1952 Mr. Manley was my Counsel and Messrs. Livingston, Alexander and Levy my Solicitors. Before my Statement of Claim filed in that action I may have given my Solicitors a statement. I never said a word to my Counsel in 1942. I never told him that the Defendant had moved a fence in 1937. The Defendant removed existing fence in March, 1937. I was then living at 122 Duke Street. It was removed about 1st or second week in March, 10 1937. I used to visit the house 103 King Street three times or more per week. I was a member of U.N.I.A. and in that house we had a presiding member Dr. Gow and we used to hold meetings in the house. In 1937 the U.N.I.A. had its own offices right in front on the opposite side to 101 and 103 King Street. They kept meetings in their offices then. At that time I had no contemplation of buying 101 and 103 King Street. In 1937 it was great consternation with all people who knew 101 and 103 in seeing Defendant putting the fence where it was and all the people thought about it and thought that he had bought land from owner when he put fence there. At that time Dr. Gow was a tenant of 101 and 103 King 20 Street. I knew Eugenia Blanche Bonitto. I first knew her in 1941 when I was about to purchase the holding. I did not know in 1937 she was the life tenant of 101 and 103 King Street and that the Administrator General was the trustee of 101 and 103 King Street. I know that in 1937 the Defendant was extending the building lots at 105 King Street. That was during 1937 and 1938 that I know that. I know the position of the old fence before 1937. The reason why I knew position of fence was because I was accustomed to enjoy the fruits of the land. There were breadfruit, mangoes and tea bush. I would collect the tea bush as I pleased and I got mangoes to sell. Those mangoes are the fruit of a mango tree on land 30 now in contention, then it was on land of 103.

Commenced action in 1942 I discontinued it. My Solicitor Mr. Levy forced me to abandon action. He said he was not going to lose his life for the damn case and I made up mind to discontinue. The Defendant threatened Mr. Levy and myself with a gun. Mr. Levy told me that the Defendant threatened his life and he is not going to lose his life. The Defendant each time I talked to him about land he said I am not going to get back land through Court better let us drink it out. It is better for me to drink it out with him than for me to lose my life over it. While he talked to me he moved a gun he had on him from one pocket to another. 40 He never pointed it at me. We had a conversation about 5 times and each time he would move the gun. I took it so from what Mr. Levy told me he was threatening my life. I made no report to police he was threatening my life. I suggest that a reputable Solicitor discontinued my case for this reason. I knew all along the Defendant moved fence in 1937. The case was eventually discontinued in 1944. I did not wish to discontinue case that is why I continued. In 1944 Mr. Levy was not the only Solicitor in Kingston. He was the one of my choice. I did not think he had let me down. In 1942 I thought I had a good case. I did not think that Mr. Levy was cowardly and weak in forcing me to discontinue a good case. 50 I did not consult another Solicitor before I discontinued case. I did not



consult another Solicitor for the purpose of taking over the case in 1944. I was there in 1943 when Eugenia Blanche Bonitto gave evidence in my action then pending before the Registrar Mr. Trevor Lyons on order of the Court. At that time E. B. Bonitto was so sick and infirm that she had to be lead into the Court. My Solicitor Mr. Aston Levy was present at that examination. Mr. Dudley Evelyn appeared as my Counsel and Mr. N. J. Fraser appeared for Mr. Chisholm. I heard Mrs. Bonitto give evidence. After she had given evidence Mr. Evelyn might have cross examined her on my behalf. That examination was before I discontinued  
10 action. It was after that date that I discontinued action. I know that she is now dead. I learnt that she was dead in early part of 1952. I think when I went to see her for this case, I went to look for her at No. 8 Hope Street where I used to meet her before. I went to see her before as I thought the evidence she gave was much in my favour. I am objecting to it today as it was in a different case, in the case discontinued. In 1942 the dispute was over the same 7 feet of land as in this case between the same people over the same Certificate of Title. I had not read the Writ in this action or the Writ in the first action so I cannot say if they are identical word for word as to the claim. It is not so that when I heard Mrs. Bonitto was dead that  
20 I brought the action. I have never seen the registered plan for 105 King St. At no time have I ever seen it. I am saying that when Mrs. Bonitto was giving her evidence Mr. Samuels whispered to her and she said "whatever I say for 103 I mean it for 105." The Registrar said "you said 103." Mr. Samuels against whispered to her and she said "Whatever I said in 103 I mean it for 105 and I want you to write it down." When I saw Mr. Samuels whispering in Mrs. Bonitto's ear I said nothing at all. I did not know I could say anything. I am not telling a lie on Mr. Samuels. I am not certain that her evidence was so much in my favour. When I was negotiating to purchase 101 and 103 King Street I did not hold it was  
30 short in measuring as the Administrator General maintained I would get the full measurements. When I was put in possession I was put in possession of the 7 feet of land the piece of the Defendant's boundary and his fence was on my land. The Administrator General told me I was to have a piece of the Defendant's building. After the Administrator put me in possession I have never been on land. I tried to but the Defendant prevented me. The movement of his gun prevented me. The last time the movement of gun prevented me from going on land was 1944. The movement of the gun prevented me first time in 1941. I never claimed against Adminstrator General for deficiency of land. I took Counsel's opinion. At  
40 North-western corner of land in possession is an old wooden building and the fence had to lean to pass it. On land in Defendant's occupation at 105 there is a building the southern wall of which is against the northern wall of the old building on my land. The frontage of 101 and 103 was not measured by me but by my surveyor. The strip of land I claim is roughly 7' wide by 80' to 86' deep. I have never figured the area of land I claimed. I arrived at value of £1,300 in comparison to what I was offered for the whole property. In 1942 Mr. Chisholm took in £7 10s. per month for shop in front. He had a tailor who occupied shop and he told me that he paid the rent. The woman that was living in the room showed me a receipt  
50 she had for room.

Mr. Blake submits evidence as to this to be struck from record as it is hearsay.

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence.*

—  
No. 6.  
James Hall,  
8th April,  
1953,  
Cross-  
Examina-  
tion,  
*continued.*

## Geffrard Wellesley Bourke.

Plaintiff's  
Evidence.

Geffrard Wellesley Bourke sworn :

No. 7.  
Geffrard  
Wellesley  
Bourke,  
8th April,  
1953.  
Examina-  
tion.

Commissioned Land Surveyor and I live at Stony Hill, Montgomery Road, St. Andrew. I was employed I do not remember by you or Livingston and Alexander in 1942. I had possession of Ex. 1. I checked the measurements on earth with measurements as shown on title. I also made searches at Office of Title in respect of Title for adjoining premises 105 King Street. I prepared a plan. In connection with plan wrote out a memorandum to be read in connection with plan. I checked Title of 105. 10 I could not find Title of 107. I found that 105 King St. measured along King St. 32' 6" but measurement on title called for 25'. I also checked measurement of 103 King St.—the two parcels of land in Ex. 1. I found that to be on earth 38' 6". On the Title there is a piece of land shaded red excluded from the Title should be a total measurement of 50' excluding parts exempted it should give a measurement of 45' whereas on front I saw the measurement occupied by Hall is 38' 6" makes a difference of 6' 6".

(A) The portion shaded yellow is portion in dispute.

(B) The portion shaded purple 103 King St.

(C) Portion shaded green 101 King St. 20

(D) Portion shaded red is a strip of land excluded from Title for 101 and 103 by Certificate of Title.

Ex. 2. *Plan—Ex. 2.*

I have been a Commissioned Land Surveyor since around 1925. I have had about 15 years experience valuation land. The area of dispute a piece approximately 500 square feet and I would value that exclusive of building at 10/- per square ft. approximately £250. I have not inspected building for purposes of case. The portion shaded yellow on plan falls within the measurements of land registered in Ex. 1. I have examined western boundary of 101 and 103 King St. and checked northern and 30 southern boundaries. I have checked measurements of 105. I found 105 King St. according to C.O.T. of that property registered at Volume 208 Folio 36 measuring 32' 6" which includes the portion shaded yellow, whereas the north to south measurements of 105 King Street as per its registered title should be 25' 7". On eastern side in title is 25' on earth 25' 7". If you succeeded the strip will not make any difference to boundary in Defendant's title as western boundary on earth 25' 5" and title calls for 25'. I have had extended experience with property boundaries in King Street.

Cross-  
Examina-  
tion.

*XXD*: The N. to S. measurement of 105 King St. on Eastern boundary on earth from northern position shown on plan to north-eastern 40 portion of building is 25' 7". When I prepared plan I found buildings on 105 King Street I found a zinc fence to southern portion on 105 King St. As far as I could tell 105 King Street in 1942 on earth included disputed parts. Along western boundary of Defendant's land were 2 buildings.

The most southerly of those 2 buildings extended almost up to the northern wall of building at 103 King Street not more than 6" to 9" were between these buildings. I could just throw tape there and then. I meant to have looked at southern wall 105 King Street. I do not remember if the southern wall of this building was made of wood. East of that building plan shows a zinc fence. There is a building on the south-eastern side of 105 King Street.

*In the Supreme Court.*

*Plaintiff's Evidence.*

No. 7.  
Geffrard  
Wellesley  
Bourke,  
8th April,  
1953,  
Cross-  
Examina-  
tion,  
*continued.*

In 1942 the southern boundary on earth partly a line between 2 buildings, partly by a zinc fence and partly by southern face of a building extending on to King Street. These together constituted *prima facie* a boundary line. With the exception of the piece between the 2 buildings I would say it constituted a well defined boundary line. In 1942 I would not be prepared to say there were or were not any trees in dispute at spot. I do not remember.

*RE-XD* : Before I was employed to survey in 1942 I was not conversant with premises.

Re-Exami-  
nation.

*To Blake* : I would value disputed portions at 10/- per square foot.

I have had previous experience in sub-division. The Corporation would have no objection to attaching the disputed strip to 105 King St.

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**No. 8.**  
**LEONARD AUGUSTUS BRAMMER.**

No. 8.  
Leonard  
Augustus  
Brammer,  
8th April,  
1953.  
Examina-  
tion.

LEONARD AUGUSTUS BRAMMER sworn :

25 Second Avenue, Mountain View Gardens. Not working I remember 1937. I would be along King Street. I lived in 101 King Street from 1933 to 1934. While there I remember the northern boundary of those premises. 101 was a bit of land about 15' to 18' wide north to south. It had a drive-in-gate. There was a strip of land about 6' wide between the buildings 103 and 105. In this strip of land there were about 3 growing trees. To King Street was a pepper elder tree about 18' from King Street boundary. Then there was a hairy mango tree about 3' from end of building. A little further on was a breadfruit tree—a fairly old tree. I had access to the trees. I remember that well. I used to speak from northern window to that and to Mrs. Bonitto who lived at 105. At that time the fence was somewhere at the western end of the passage. An old fence and it ran to the western boundary. At that time no building in the passage. The trees were south of the fence.

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence.*

No. 8.  
Leonard  
Augustus  
Brammer,  
8th April,  
1953,  
*continued.*  
Cross-  
Examina-  
tion.

*XXD.* : Sometimes I get contracts for doing buildings. I last worked in last year for the Lucas Club. In that case I would be called a contractor. Apart from that I am both electrical and mechanical engineer. Last year the pavilion at Lucas Club reconstructed under my supervision. I was never a member of the U.N.I.A. I met Mr. Hall for the first time around 1923 to 1924. I have known him for about 30 years. I met him casually. I cannot remember when I first met him. After I left 101 and 103 King Street I passed up and down frequently and I continue to pass there until now. I have heard the name of Dr. Gow. I have never seen him. I have heard his name casually. I have never seen Dr. Gow 10 at 103 King Street or at all. I cannot remember if I had seen Mr. Hall at 103 before 1941. I would not necessarily remember if I had seen him at 103. I have a fair memory for my age, I am 72. In 1923 on 101 there was the bath, kitchen and toilet. There was no dwelling-house. I lived on 103. I was tenant for 103 King Street and I sub-let to about 3 persons. I gave up sub-letting of 103 in 1934. I gave it over to Mrs. Bonitto. In 1923 I let from the same lady, the owner Mrs. Bonitto. I never knew Mr. Maurice Bonitto. I first gave a statement in this case about two weeks ago, Mr. Hall came to my residence, prior to Mr. Hall speaking to me two weeks ago I had no occasion whatever to be thinking of measure- 20 ments, passages and trees in these passages. On the first occasion Mr. Hall brought nothing with him. He saw me two or three times, the first time he asked me if I lived at 101 and 105 King Street. I don't remember where I was living when I first knew Mr. Hall. I met him, spoke to him on several occasions during the thirty years I knew him. I do not regard him as a friend, I regarded him as an acquaintance. About two weeks ago when Hall came to me he asked me if I was living at 101 and 103. I think he did not know that I lived there. He asked me about lay-out of 101 and 103 and I explained what I knew of place. Hall came back to me a second time when he came he had a blue-print like Ex. 2. He 30 came back a third time he did not bring back plan. He came back third time to ask me to give evidence and to let me know when the case would be. When he came first time I mentioned the mango tree to him I also mentioned the breadfruit tree and pepper elder tree, the second time he talked about condition of place, I looked at plan and verified what I had told him from the plan. If Mrs. Bonitto said in 1943 that pepper elder, breadfruit tree and mango tree were in 105 King Street up to 1928 I would not be surprised, I say that up to 1934 they were in 103. I would not be surprised as she was owner of land and she would know her land better than I would. I would not say that my recollection of where those trees 40 were is a mistake. When I lived there I noticed the position of breadfruit tree, it was in space between 103 and building where Mrs. Bonitto lived on 105. I do not know if Mrs. Bonitto got any of the fruit from the breadfruit tree. The elder tree was nearest to King Street, the mango tree was next and the last tree was the breadfruit tree. The pepper tree was about 15' from King Street, I now say 15' to 18'. I think Amy McBee used to live with Mrs. Bonitto in King Street. I do not know Mr. Russell Lewars at all, I have had papers signed by him. In 1923 to 1934 I can say if I remember seeing any schoolboys coming to Mrs. Bonitto or Mr. McBee. I cannot remember seeing any schoolboys picking mangoes 50 from the land, (mango tree). Up to the present time I have given no statement in writing to Mr. Hall. Up to the time I left 101 and 103 I

could not tell the exact amount of buildings on 105. There were out-buildings against western boundary of 105, the passage was absolutely clear, the passage was clear through to Chancery Lane. I suppose the boundary fence was there. There was a room at western boundary of 103 and I can't remember if it went over the passage or not but I rented it to a tailor, it was made of wood. I could not tell what buildings at 105 western end were made of, the buildings at western end of 105—Chancery Lane did not join on to building at western end of 103, a fence was between. I cannot remember what fence was made of. I am unable  
 10 to say if end of building at 105 was part of line fence. The distance between the house Mrs. Bonitto occupied at 105 and the building I sub-let on 103 was about 5'. The distance between building which I let to tailor and out-building on 105 was a few feet. I do not know the back step of 105. The mango tree was right down that corner. The fence between 103 and 105 ran from east to west, I don't remember the exact position from where it started.

*In the Supreme Court.*

*Plaintiff's Evidence.*

—  
 No. 8.  
 Leonard Augustus Brammer,  
 8th April, 1953,  
 Cross-Examination,  
*continued.*

9th April.

9th April, 1953,  
 Cross-Examination,  
*continued.*

*Witness continues* : I worked with Jamaica Public Service Company. I retired in 1949. I never rented a room from Defendant at 103 King  
 20 Street. I rented no room with Mr. Hall. I never did business as a Commission Agent. I did business which required me to have an office, I never had an office of my own subsequent to 1941. I had an office after I retired at 115 King Street. That place belongs to Defendant, I took over the premises from one Harold Penso. I swear on my oath I never had an office at 103 King Street. When I was a tenant at 103 King Street between 1923 to 1934 I paid rent to Mrs. Bonitto, I never paid any rent to Administrator General.

Re-Examination.

*RE-XD* : I am a sick man, I was not feeling quite well yesterday, I was tired under my cross-examination, I feel somewhat refreshed today,  
 30 I remember that the fence between 103 and 105 started from Chancery Lane section boundary, it came along to the building that was occupied by Mrs. Bonitto, further than that I cannot go, I cannot place it any further.

No. 9.

**THEOPHILUS AUGUSTUS HUTCHINSON.**

No. 9.  
 Theophilus Augustus Hutchinson,  
 9th April, 1953,  
 Examination.

THEOPHILUS AUGUSTUS HUTCHINSON sworn :

43 William Street, Spanish Town, Tailor. I remember premises 101 and 103 King Street, Kingston. I lived there during the year 1929, 101 and 103 opened into one another. 101 is to south of 103. When I first lived  
 40 there Mr. L. A. Brammer collected rent from me, there was a gate entering into King Street from 101. To the north of 103 was a space of land, I never measured the width of this space, I walked over this space. To the north of this space was a dwelling-house, in this space of land was a

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence.*

No. 9.  
Theophilus  
Augustus  
Hutchinson,  
9th April,  
1953,  
*continued.*

*Cross-  
Examina-  
tion.*

breadfruit tree, hairy mango tree and pepper elder tree, the mango tree was a bearing tree. I lived there up to around 1935. I left after 1929 and went back to live there till around 1935. There was a fence between 103 and 105. As I know the fence started at end of building on 105 in a straight line to the west boundary near on to an out-building of 105. From that fence the side of building of 105 formed the fence to King Street. I went to live at Spanish Town about four years ago. After 1935 I lived at 21 Chancery Lane. In passing I observed repairs at 105, I observed the portion of land between 103 and 105, that piece of land was under some sort of construction, that might have been around 1937. 10

*XXN.*: I gave no statement to Mr. Hall in connection with this case. I have given no statement in writing to Mr. Donald Hendry in this case. I cannot remember giving a statement in writing to anyone in this case. I have known Plaintiff from around 1925, in 1925 I was living at 30½ Sutton Street, the Defendant then had a premises next door. I think Plummer was my landlord at 30½ Sutton Street, up to today I have known Plaintiff 28 years. I have been his house, he has never been to my house, we are friends. I was asked by Dr. Gow to give evidence. I am not a member of the U.N.I.A. Dr. Gow asked me to give evidence around 1942. Hall never spoke to me in 1942 about giving evidence for him. Dr. Gow 20 asked me, Dr. Gow directed me to no Solicitor that I remember. I agreed to give evidence, I did not speak to Hall in 1942 and tell him I would give evidence and nature of evidence, I last saw Dr. Gow last year, as far as I know he is not outside the Court, I was next spoken to in connection with this case around middle of last year, I was called by Dr. Gow before he left, I understand he has left the Island, Dr. Gow told me Mr. Hall would like to see me and we went to see Mr. Hall, I knew Dr. Gow before 1942, I first met Dr. Gow around 1914, as far as I know Dr. Gow lived at 103 King Street. While I was living at 103 King Street Dr. Gow lived there. Dr. Gow took over the place between 1934 to 1935. In 1929 I 30 paid rent to Mr. Brammer and after Brammer left I paid to Dr. Gow. I saw Mr. Hall last year at his home at 122 Duke Street, Hall said he is carrying on the case if I would still give my evidence, I said yes it is the truth I lived there. Hall discussed the evidence I was required to give, we discussed this last year, he asked me questions about the fence and I remembered where the fence was I remember seeing Eugenia Bonitto coming to 103 to Mr. Brammer. I did not know she gave evidence for Mr. Chisholm in case in 1942. I went to 101 and 103 from 1929 to about 1933. I then left and went to live at 21 Chancery Lane. I did not live at 21 Chancery Lane for long. I think it was the stormy weather caused me to leave King Street. 1933 was the hurricane and it damaged the house. 40 John Ritchie was agent of 21 Chancery Lane. I do not know who was the owner, I rented one of the rooms there. I do not remember who else lived there, I lived at 21 Chancery Lane till beginning of 1934. The storm weather in 1933 was in July or August, I believe the rent caused me to leave Chancery Lane, the rent of Chancery Lane was 25s. per month, the rent at 103 King Street was 18/-. I went back to 103 King Street in 1934, and left there coming on to the end of 1935. I left as I got a job where I got premises to live. That was at 119 Orange Street. I held that job until 1940. After that I went to 112 Orange Street until around 1942, 50 after 1942 I went to live at 173 Spanish Town Road until four years ago

when I went to Spanish Town. After I left 103 King Street I observed repairs to 105 King Street in 1937, I do not remember the month but I must say early in the year. In 1937 I passed up and down King Street several times, I know Mr. Chisholm, when I passed I never stopped at 105 I just passed I took no special interest in what was going on at 105 King Street. I cannot go further than to say that in 1937 repairs were being done at 105 King Street. While I was living at 103 King Street I had a table I did a little tailoring on and I put it in the passage. Starting from King Street was the pepper elder tree, then the mango tree then the bread-fruit tree. I occupied the downstairs room at 103 near the passage. Brammer was my landlord in first instance, I do not know if any other tailor lived there. I never rented an out-building on the western boundary of 103 from Mr. Brammer so if Mr. Brammer rented that out-building to a tailor I am not the man.

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence.*

No. 9.  
Theophilus  
Augustus  
Hutchinson,  
9th April,  
1953,  
Cross-  
Examina-  
tion.  
*continued.*

*RE-EX.* : I was living in a downstairs room to north near the mango tree. The table was near the mango tree. When I passed I saw repairs to 105, I observed improvement work being done. I saw construction in passage up and down. I never stopped but in passing I saw it, that was early part of 1937.

Re-Exami-  
nation.

20

No. 10.

## CLARICE HALL.

CLARICE HALL sworn :

Married woman, wife of Plaintiff, live with him at 122 Duke Street. I remember when you purchased 101 and 103 King Street. On 16th August, 1941, I went with Plaintiff to Barry Street and King Street to Administrator General's Office, I did not go inside, the Plaintiff went inside, sometime after he came out with Administrator General, told me something. We then went with the Administrator General to 101 and 103 King Street, we went inside the premises, I stopped at foot of stairway while the Plaintiff and the Administrator General went upstairs, they came down I went out on King Street with them, the Administrator General went in front of the tailor shop I followed the Administrator General, there something said to the Administrator General. The Administrator General called the Defendant, he came, the Administrator General told the Defendant he had encroached on 103 King Street which is now the property of Mr. Hall, Mr. Chisholm said Mr. Hall and I will talk out that Mr. Ritchie. Mr. Ritchie the Administrator General: you will have to get off. I have told you before, Mr. Ritchie left us there. Henry Sewell was also with us. Sewell was at your property at 72 Duke Street where he was employed as a linotype operator for you.

No. 10.  
Clarice  
Hall,  
9th April,  
1953.  
Examina-  
tion.

*Cross-examined* : I know Mr. Brammer. Been married to Mr. Hall in 1935. I met Mr. Brammer yesterday for the first time to speak to, but I have seen him many times. I saw him in 1935, July, at 103 King Street. I had a cousin Marie Rowe living there. I went to 103 King Street for the first time in December, 1933. I know Dr. Gow. Subsequent

Cross-  
Examina-  
tion.

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence*

No. 10.  
Clarice  
Hall,  
9th April,  
1953,  
Cross-  
Examina-  
tion,  
*continued.*

to 1941 I have never seen Mr. Brammer living there. After Plaintiff purchased 101 to 103 he used it as a tenement. He never rented front part as offices. It was used as a restaurant once. I think an auctioneer Clarke rented a room there as an office for a short time. I do not remember the exact time Mr. Alan Ritchie died. I have not committed the date he died to memory. I committed the other dates to memory. I remember when Plaintiff brought first case. I dont remember if Mr. Ritchie was then dead. I dont remember how long after he sold place to Plaintiff Ritchie died. Mr. Ritchie in person went to place with Mr. Hall and myself. The Plaintiff was given a letter to the tenants the same day. He gave the letter to my husband. I never read that letter. I knew the letter was to tenants. The conversation with Mr. Ritchie, Hall and Mr. Chisholm took place in front of 105 King Street. Mr. Chisholm was called by a boy in tailor shop from back of premises. Mr. Chisholm came immediately. I did not know where Mr. Chisholm had his office then. I do not know if in 1941 Mr. Chisholm had his office at 115 King Street. Hall went back to Mr. Ritchie after that. I hear Mr. Ritchie say the whole of this piece of building on 105 is on your land ; it is yours. I did not visit the place with Mr. Hall before he signed the contract. Henry Sewell was there. I do not know whose car was used. Sewell not still employed to Hall. He stopped when my husband gave up the printing around 1938. I now say Sewell was employed to my husband as a linotype operator in 1941. The magazine printing ceased in 1938 but the job printing continued till the machines were sold. I went to Administrator General between 11 a.m. to 12 noon. When my husband sold the linotype machines Sewell ceased to be employed to Hall. I do not remember the exact date the machines were sold to the City Printery. I did not go into premises of 105 King Street on 16th August, 1941. I went into the back of 103. A conversation did take place between Mr. Chisholm, Mr. Ritchie and Mr. Hall on 16th August, 1941. I do not know if Mr. Hall asked Mr. Ritchie to communicate with Mr. Chisholm after the encroachment.

Not re-examined.

No. 11.  
Douglas  
McCalla,  
9th April,  
1953.  
Examina-  
tion.

No. 11.  
**DOUGLAS McCALLA.**

DOUGLAS McCALLA (sworn) :

Clerk in the Office of Titles. I produce title covered by Volume 21 folio 83 premises 101 and 103 King Street. I produce Volume 129 folio 85 title to 101 and 103 King Street both cancelled certificates. I also produce Volume 208 folio 36 for 105 King Street. Exhibits 3, 4, 5 respectively.

Cross-  
Examina-  
tion.

Ex. 6.

[sic.] Ex. 7.

*XXD* : I produce an application dated 14.1.28, application 12489 to bring 105 King Street under operation of Registration of Titles Law. Exhibit 5 discloses transfer N 20172. I produce application 1892 dated 13.12.1901 to bring 101 and 103 under operation of Registration of Titles Law.



I have had about 14 years experience as a clerk in Registrar of Titles. When land is described by butting and bounding and admeasurement no surveys are taken. When application is by diagram or plan notice is given as provided in law to adjoining owners. Notice is also given when being registered by metes. Vol. 101 of transfers contains transfer No. 20172 from Eugenia Blanche Bonitto to J. C. Chisholm transferring 105 King Street—exhibit 8.

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence.*

No. 11.

Ex. 8.

Douglas  
McCalla,  
9th April,  
1953,

Ex. 9.

*continued.*  
Re-Exami-  
nation.

*RE-XD*: Volume 240 of transfers contains transfer 48056 from Alan O. Ritchie to James Hall of 101 and 103 King Street.—exhibit 9.

10 Transfer from Bonitto to Chisholm measures from north to south 25 feet and from east to west 75 feet more or less.

*To Court*: No plans or diagrams registered with lots to 105, 103 or 101 King Street.

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No. 12.

WILFRED WALKER.

No. 12.  
Wilfred  
Walker,  
9th April,  
1953.  
Examina-  
tion.

Ex. 10.

WILFRED WALKER (sworn):

A clerk of Supreme Court Registry. I produce will book No. 16 folio 1 containing grant of Letters of Administration with will and codicil annexed of Morris Aria Bonitto—exhibit 10.

20 Not cross-examined.

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No. 13.

HENRY SEWELL.

No. 13.  
Henry  
Sewell,  
9th April,  
1953.  
Examina-  
tion.

HENRY SEWELL (sworn):

16 Asquith Street, Jones Town. Linotype operator working with Gleaner Company. I know 101 and 103 King Street. I was employed to Plaintiff as a linotype operator at 72 Duke Street in year 1941. I remember in August of that year the Plaintiff told me something. I went down to Administrator General's Office alone. There I met Mrs. Hall standing outside. Mr. Hall and the Administrator General came out, 30 found us. Mr. Hall, Mrs. Hall and Administrator General left me. I then

*In the  
Supreme  
Court.*

*Plaintiff's  
Evidence.*

No. 13.  
Henry  
Sewell,  
9th April,  
1953,  
*continued.*  
Cross-  
Examina-  
tion.

walked to 101 King Street. The others went there and reached before me. I do not know how they went. When I got there they were coming out of 101 King Street. They went to a point above 103 King Street. The Administrator General showed Mr. Hall something and spoke. Mr. Chisholm came out of the adjoining premises 105. He said "All right Mr. Ritchie Mr. Hall and I will make it up." I left after that. I think that is all I know.

*XXD.* : Between years 1942 to 1944 I gave no statement to Mr. Hall's Solicitors. I was not asked by Mr. Hall to give a statement between 1942 to 1944 to Messrs. Livingston, Alexander & Levy. I was never 10 asked by Mr. Hall to give any statement to Mr. Hendry between 1951 and the present time. I have given no statement to any of Mr. Hall's legal advisers. I was only casually employed to Mr. Hall. In 1938 I was not working with Mr. Hall. I was then learning my trade with the Gleaner Company. I first worked with Mr. Hall early in 1941. I was then operating his linotype machine. He had a printery. The machines were never kept constantly running. Whenever he got a job he sent for me. In August, 1941, I was doing a little work for Mr. Hall. About 2 months before this I did a piece of work for Hall. I was on the work about 3 days before 16th August, 1941. Hall spoke to me the same day he 20 went to Administrator General's Office. He told me where he was going. He asked me to go down. He left before me, walking. I did not see anyone else leave with him. I had to turn off the machine before leaving. When I got there I saw Mrs. Hall. I did not see them both leaving. Hall mentioned to me he wanted me to go to 101 and 103 King Street. When I got to Administrator General's Office I saw Mrs. Hall there. He first told me to go down there. Mr. Hall told me to go up. They left first. I do not know how they went up. I did not go with them. When I got to 101 to 103 King Street I saw them come out of 101 and 103 King Street. I did nothing for Hall that day about helping him take over 30 possession. I first saw him come out of 101 King Street. I saw Mr. Hall, the Administrator General and Mrs. Hall coming out of the gate of 101 King Street. To the west of my way I saw them coming out. I saw Mrs. Hall standing at a stairway of 103 King Street. Mr. Chisholm came from 105. I knew Mr. Chisholm before casually. I knew him when he was a councillor of the K.S.A.C. Hall asked me to give evidence for him the early part of last year. He asked me if I remembered what took place. I told him I had a recollection.

Re-Exami-  
nation.

*RE-XD.*: Where machines were situate at 72 Duke Street was not open to street. The linotypes were to southern end of building. 40

*Case for Plaintiff closed.*

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Mr. Blake opens :

The Defendant will advance three lines of argument as defence :—

(1) In so far as certificate of title registered at Volume 386 folio 1 so far as that describes 101 and 103 King Street by name, by admeasurement and by metes and bounds the description by admeasurement ought to be rejected as *falso demonstratio* and the evidence of what was 103 King Street from as far back as 1902 as established on earth ought to prevail. In that connection I will submit the Defendant is entitled to give evidence of area of 101 and 103 inconsistent with the area intended being that comprised in measurements. *Watcham v. Attorney-General of the East Africa Protectorate* [1919] A.C. p. 533 (537 to 540).

(2) Even if the Court is unable to find that the description by admeasurement ought to be rejected as a *falso demonstratio*, section 46 of Limitation of Actions Law, Cap. 395 is a complete answer to the Plaintiff's claim. The Defendant is relying on deposition of Eugenia Blanche Bonitto which was taken in Suit C. L. 195 of 1942 between the same parties and over the same issue. I will tender statement of claim, writ and defence. The Plaintiff then was claiming the same relief then as is now sought. The only difference is that the pleadings in the present suit are more ample than the former pleadings did, but the basic issues the same. The defence that was filed in 1942 suit took the same point in relation to boundaries as is taken in this suit; the only difference is there is a counterclaim in this suit. This will be that Eugenia Blanche Bonitto is dead.

(3) If the Court finds sec. 46 of Limitation of Actions Law can only apply in so far as it binds Mr. Hall then the question will arise as to whether when he had writ 195/42 on files he could be said to be acquiescing in boundary he described in 1944 and writ here is within 7 years of discontinuance of the action putting writ on file and therefore it is tantamount to a protest then acquiescence can only be from date of discontinuance, then he has not acquiesced for 7 years. What Defendant will ask Court to find that on a proper construction of the Certificate of Title to 101 and 103 King Street this strip of land was never at any time included in parcel known as 101 and 103 and in alternative then the question is whether section 46 applies to registered land since the predecessors of title as to 105 and 103 have acquiesced since 1902 in that boundary for a period of over 7 years that boundary by law is to be deemed the correct boundary and cannot be questioned.

There is a counterclaim by Defendant in the event that Court decided upon question of certificate of title to 101 and 103 that the disputed strip was never part of 101 and 103, then the counterclaim is superfluous. It is only in the event that case not decided on construction that counterclaim will arise under either (2) or (3).

*In the  
Supreme  
Court.*

As to facts :

No. 14.  
Judge's  
Notes of  
Defen-  
dant's  
Counsel's  
Opening,  
9th April,  
1953,  
*continued.*

Defendant will say he bought 105 King Street from Mrs. Eugenia Blanche Bonitto in 1928. He will say from that time up to present time there has been no interference with southern boundary of 105 or northern boundary of 105. In 1928 premises 105 consisted of a brick nog dwelling of 4 apartments situated on the King Street side of premises and on south west side and along the Chancery Lane boundary there was an outbuilding consisting of 2 outrooms and a kitchen and the southern fence of 105 King Street comprises the southern wall of that outbuilding, a zinc fence running to east to King Street and that in 1937 he made an application to K.S.A.C. under Building Law to extend and improve existing structure on 105 King Street. The buildings to east side were extended to south and upon the completion of that work the southern boundary line of 105 was in identically the same position when he purchased in 1928 so that today the southern boundary of 105 comprises the southern wall of the extended buildings. The zinc fence which is in same position as it was in 1928 and the southern wall of outbuilding of south western corner is in same position as it was in 1928. The allegation about moving line in 1928 is untrue. 10

*Defendant's  
Evidence.*

**DEFENDANT'S EVIDENCE.**

20

No. 15.  
Earl Lloyd  
Edwards,  
9th April,  
1953.  
Examina-  
tion.

No. 15.

**EARL LLOYD EDWARDS.**

**EARL LLOYD EDWARDS (sworn) :**

I am a draughtsman employed in City Engineer's Department, K.S.A.C. I have been there 5 years. Whenever persons in area covered by the Building Law want to erect or add to any building they have to submit plans. I produce an application made by the Defendant in respect of 105 King Street. The application is dated 6 April, 1937, and the application dated 16 September, 1937 ; and I produce the records that are kept at the K.S.A.C. office. (The Defendant sees these applications and say they serve good purpose—put in Marked Exhibit 12.) I have seen Mr. Delvaille's signature but I would not know it. 30

Ex. 12.

Cross-  
Examina-  
tion.

*XXD* : Adjoining owners : in the case where we instruct the applicant to post a notice for 30 which gives interested parties time to object. In the case of the plan to recondition front part of building of 105 this would require notice under the Building Law. The papers do not show if any notice was served so I do not know if any notice was served.

Re-Exami-  
nation.

*RE-XD* : If a shop is being put up a notice would be required by person putting it up. If an existing building was being extended it would depend on nature of extension. If you have to construct a new roof a notice is required. The notice depends on nature of extension. Looking at the papers I would not be able to say if notice was or was not required. The plans attached to both the applications bear the signature of L. H. Delvaille. It looks to me like Mr. Delvaille's signature. He was the City Treasurer. 40

No. 16.  
WILFRED WALKER.

*In the  
Supreme  
Court.*

WILFRED WALKER (sworn) :

*Defendant's  
Evidence.*

Clerk employed in the Supreme Court Registry. I produce the record and writ of C.L. 195/42 between James Hall and James Clinton Chisholm. This file contains a deposition of Eugenia Blanche Bonitto taken by order of the Court by the then Registrar Mr. Trevor Lyons on the 28th June, 1943.

No. 16.  
Wilfred  
Walker,  
9th April,  
1953.

10 The Plaintiff objects on the grounds that an order was made that deposition of Eugenia Blanche Bonitto be admitted in that suit and no order was obtained that it be admitted in this suit. No objection to rest of file.

*Examina-  
tion.  
Objection.*

Blake refers to section 373 of Civil Procedure Code, Cap. 463. Blake refers to Motion dated 1st April, 1953, to read the deposition.

*Llanover v. Homfray* 1881 19 Ch. D. P. 224.

*Elias & Griffith* 1877 46 L.J. Ch. P. 806.

The proceedings are between same parties; names are the same; full opportunity for cross-examination was afforded to Plaintiff; he was represented by counsel and solicitor.

20 *The Plaintiff* : I have another objection. I refer to section 395 of Cap. 463.

*Blake* : If section 395 has any bearing at all I apply for special leave. I apply for special leave to use this deposition and in any event notice to prove death was given by Defendant. (Question of admission of deposition held over. Record put in as Exhibit 13 but this does not make deposition evidence.)

Ex. 13.

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No. 17.  
JAMES CLINTON CHISHOLM.

No. 17.  
James  
Clinton  
Chisholm,  
9th April,  
1953.  
*Examina-  
tion.*

JAMES CLINTON CHISHOLM (sworn) :

30 55 Hope Road, St. Andrew. Retired auctioneer. In 1928 I acquired premises 105 King Street. I acquired them from Mrs. Eugenie Bonitto. Before I took a transfer of those premises I visited them. I think that was sometime in April, 1928. I inspected the premises. Mrs. Eugenia Bonitto showed me around. The premises faced King Street on east. I saw a brick nog house with 4 apartments. It was in middle of land. The house had a small verandah in front. 3 apartments from north to south on western side. I look at exhibit 2. I point out the outbuildings. They run north to south on western boundary of 105 as shown on exhibit. I was shown around the boundaries of 105 King Street. The southern  
40 boundary of 105 King Street was a zinc fence commencing at King Street on east and running to west about 65 feet. The zinc fence stopped between

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

No. 17.

Ex. 14.

James  
Clinton  
Chisholm,  
9th April,  
1953.  
Examina-  
tion,  
*continued.*

2 rooms, the first room on north of fence was 105 and that is outbuilding I have described and on south the building was on 103 King Street. In 1928 the southern wall out of the south western building on 105 was about 4 inches from northern wall on building of 103. Zinc fence stopped to east of outbuildings. In 1928 outbuilding on 105 south western side was wood with a zinc roof. After seeing the premises I eventually bought them and I took a registered title from Mrs. Bonitto and premises were transferred on 16th April, 1928. This is my title—exhibit 14. Between the brick nog building in middle of land and fence there was a piece of land. The big 10  
nog building was about 6 feet from southern fence. After I purchased the place I rented out the place. I occupied no room on 105. Subsequent to my taking possession between 1928 and 1937 no one ever disputed the southern fence which I described. When I purchased Mrs. Bonitto's house at 105 I do not know if after I purchased she frequented 101 and 103.

10th April,  
1953.

I knew Mrs. Eugenia Blanche Bonitto. I was present before the Registrar in Supreme Court on 28th June, 1943, when she gave evidence. As far as I am aware Mrs. Bonitto is not alive today. She is dead. She died in 1950. I produce a certified copy of the entry of her death in the register of deaths—put in marked Exhibit 15.

Ex. 15.

Objection  
to  
Evidence.

Blake now asks that evidence given by her in previous suit be tendered. 20

*Blake* : Section 395 of Cap. 463 has no application whatever to evidence that has been taken in a previous suit. This section contemplates notices that ought to be given in relation to documents filed by parties in litigation in a suit. Evidence taken by Court Order not an affidavit and not a deposition requiring filing. Filing is an act which is performed by parties to litigation. When evidence taken by order of Court evidence by order becomes part of record and is incorporated therein. None of the parties to suit are required to file a record of evidence. Section 395 applies only to affidavit or deposition prepared by parties to suit which require filing. Deposition in that section must be read *ejusdem generis* 30  
with affidavit. Section 373 of Cap. 463 is the section which governs the admission of this evidence. If section 395 is the section which we ought to pay attention then section 373 has meaning.

*Mr. Hall* : I am saying that having become a part of the record that has been given by witness as a deposition that witness was not on point of death and that deposition was not taken at her dying bedside. An order had been made that that deposition be admitted in suit 195/42 ; I consider that deposition to be evidence in that suit and there is no order made to admit it in this suit. A notice would have to be served within one month of filing of this writ for this deposition to be put in. 40

*To court* : My objection is that I want a month's notice.

*Court* rules evidence taken on order of Court in suit 195 of 1942 be admitted.

Eugenia  
Blanche  
Bonitto  
(Deposi-  
tion),  
28th June,  
1943.  
Ex. 13.

EUGENIA BLANCHE BONITTO (Deposition).

[*Evidence given by Mrs. Bonitto read (See Exhibit 13 on p. 106).*]

*Examination (resumed)*

In 1937 I remodelled the 3 outbuildings by putting brick nog, that is I removed the board facing, leaving the upright, put bricks between and concreted it over. Before I did any such work the facing on southern side formed part of southern boundary between 105 and 103. I never changed the facing of the southern side. Today it still board and is as I bought it, except that board has been repaired in places. I look at exhibit 12. My signature appears on this plan. My signature is on these applications dated 6th April, 1937, and 16th September, 1937, and my signature appears on this plan dated 11th September, 1937. I made these applications to K.S.A.C. for work to be done at 105 and the applications were approved. Mr. Norman Betty, architect whom I employed, prepared these plans. For the purposes of those plans I saw Mr. Betty measure buildings and surrounding lands. In April, 1937, I remodelled building to front which opens on King Street from a private house to shop and I extended it to the south. The southern side was extended right on the southern line of 105. After I had extended that building the fence then was the southern wall of extended building—the zinc fence to western end of line. When work was done in 1937 I did not encroach on line or destroy the southern boundary and push it further south. About September, 1937, I did further work. I then extended the same building to western side. Western portion was extended. I extended it to west on southern side and right on the line. After I had finished that work southern boundary of 105 was about 18 feet of wall of new building. About 45 feet of zinc fence at end of zinc fence was the outbuilding. In doing these alterations I did not disturb the southern boundary which I found when I purchased from Mrs. Bonitto in 1928. In the year 1937 I had not destroyed a fence and extended my holding at 105 to south. After I had done that work I continued to tenant out 105 King Street. I had an office at 115 King Street. In 1941 August my office was at 115 King Street. In 1943 I made my office at 105. My office was never at 105 before that. In 1941 August I had no interview with Mr. Hall, his wife and Mr. Ritchie the Administrator General. I saw Henry Sewell give evidence. I never know him before yesterday when he gave evidence. On 16.8.41 Mr. Ritchie never said to me I had encroached on premises 101 and 103 now belonging to Mr. Hall. I never said Hall and I will make that up. There was no conversation like that. Mr. Ritchie never said You will have to get off. I have told you before I knew Hall in 1941. The first time I can remember I knew he had purchased 101 and 103 when I received a writ from him. Prior to that writ I received no letter from any Solicitor for Mr. Hall. My Solicitors were then Messrs. Fraser & Calame. I just cant remember if I got any letter from Livingston, Alexander & Levy. I now recollect I did receive a letter dated 25th February, 1942, from Messrs. Livingston, Alexander & Levy. I took this letter to my lawyers. Prior to that letter I never met Mr. Hall and he never spoke to me of 101 and 103 King Street. Subsequent to that letter Mr. Hall never spoke to me of 101 and 103 King Street. Prior to 1942 no one ever questioned the southern boundary of 105 King Street. Mrs. Bonitto from whom I bought 105 and the life tenant of 101 and 103 King Street never questioned the extension of building on 105. When I bought 105 King Street in 1928 there was a mango tree, a breadfruit tree and calabash tree growing in 105 to the

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

No. 17.  
James  
Clinton  
Chisholm,  
10th April,  
1953.  
Examina-  
tion,  
*continued.*

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

No. 17.

James  
Clinton  
Chisholm  
10th April,  
1953,  
Examina-  
tion.  
*continued.*

northern side of southern fence. These were very old trees; some of limbs were rotten; the trunks were old. The circumference of the mango tree was around 3 feet. None of these trees there today. The calabash was cut down in 1937; mango tree was cut down same time; the breadfruit tree was cut down some years after. The limbs of breadfruit tree and mango tree extended over southern boundary. There is now a breadfruit tree that sprang from roots of old and is now growing on land. The breadfruit tree is at present about 3 feet from southern fence and about 12 east of western boundary. Mr. Hall discontinued his suit 195/42 in year 1944. During the time the writ was on file Hall never interfered 10 with southern boundary of 105 King Street. He has never interfered with it. I have never ever threatened him with a gun. I knew Mr. Aston Levy. I never threatened him. I never spoke to Mr. Levy at all. All correspondence closed with my Solicitor. In 1951 Hall spoke to me. I met in King Street and he said he was going to bring an action against me for land and subsequent to that I was served with Writ. At the time Mr. Hall spoke to me in 1951 Mrs. Bonitto was dead.

Cross-  
Examina-  
tion.

*XXD*: I purchased 105 King Street with a zinc fence running from King Street to 2 rooms on western side. That is true. That fence was between the outbuildings on 103 and 105. I have never measured the 20 depth of my property East to West as 75 feet. I had East to West measurement of 105 King Street made. I accepted these measurements. The outbuildings to West East to West is about 9 feet and about 9 feet North to South. I look at Ex. 14, the measurement East to West is 75 feet more or less. I never disturbed the Southern fence from its original position except when I erected the building to the East and I put it in the line. You never disturbed the line.

*Plaintiff*: I am putting it to you I have never disturbed the southern fence.

*Answer*: Yes.

30

So if Court visited the locus and found fence disturbed I am telling a lie.

The fence old or new it is still there.

I never constructed that fence in 1937. I never put the fence near to the outbuilding of 101. I never put 2 feet of your outbuilding on N.E. corner and which outbuilding is situated on western boundary of 101 on to 105. The wooden fence on southern side of my outbuilding is still to be seen there. After I purchased 105 I went in possession, not before. I never was in possession of 101 and 103 King Street. Plummer never took over the collection of rents from me. We were not always 40 enemies. You and I were never friends. When I saw you on street I spoke to you. You may have been to my office. I cannot remember you coming to my office of 105 King Street prior to 1941 and our having conversations there. There are no upstairs offices in 105 King Street. In 1941 I had an established place at 115 King Street. At 115 King Street my office was on land there in 1941. I was in New York from 1918 to April, 1926. I can't remember our meeting when I came from America. I purchased 104 King Street in 1926. I never took you there



to show you property. My neighbour at 102 King Street was Mr. Utah. I had no contention with Mr. Utah over my encroachment on Mr. Utah's southern boundary. I have a registered title for 104 King Street. I bought 104 with a registered title. Cargill, Cargill and Dunn were the Solicitors who acted for me when I purchased 104 King Street. I do not remember the Solicitor for Mr. Utah when he purchased 102. I remember the Solicitors for 105 King Street. I do not remember the Solicitors for 101 and 103 King Street. I know nothing about it. I do not know if the same Solicitors as acted for 105 King Street acted for 101 and 103 King Street. I had no conversation with you on this subject. I never advised you not to take you to Court over a strip of land between 105 and 103 King Street. I never mentioned to you the results of 104 and 102 King Street. I never collected rents for Mrs. Bonitto. I hear of Dr. Gow. I do not know him. I heard when deposition of Eugenia Bonitto read.

*In the  
Supreme  
Court.*  
-----  
*Defendant's  
Evidence.*  
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No. 17.  
James  
Clinton  
Chisholm  
10th April,  
1953,  
Cross-  
Examina-  
tion.  
*continued.*

10

30

40

No. 18.

**NORMAN LUTHER BETTY (Interposed).**

NORMAN LUTHER BETTY, sworn :

I am an architect and builder. I am president of the Jamaica Architectural Association. I live at 32 Upper Elletson Road with offices at 78 King Street. I know Defendant Chisholm. In 1937 he employed me. I visited site 105. In examining the boundaries of premises buildings thereon and the alignment on the street. As a consequence of measurements and observation I made plans. Exhibit 12 are the plans. I look at plan dated 6th April, 1937. It shows North to South measurement of 105 on Eastern boundary 32'. The southern boundary of 105 King Street then was a zinc fence stretching in a straight line from a fence on King Street to an existing room on western boundary of 105. This is what I found on earth in 1937. East to West measurement of that fence was around 70'. The boundary measurement was 80', the remaining 10' was southern wall of building. I cannot recall what was the southern wall of this outbuilding. I cannot see from the plan. When I prepared this plan there was one main building facing King Street. There was a space between the southern side of that building and the southern boundary. The north to south measurement of that space was about 6' 3". I prepared another plan dated 11.9.37. When I prepared plan of 1937 I visited 105 again and carried out measurements. I look at building shown on April plan. By September an extension had been done to main building and that extension took the building to the southern boundary fence. I prepared the September, 1937, plan to extend the building again on western side of the first extension taking the building west and south on the boundary line. I have on many occasions since the preparation of these plans visited 105 King Street. The southern boundary to-day

No. 18.  
Norman  
Luther  
Betty  
*(interposed)*,  
10th April,  
1953.  
Examina-  
tion.

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

No. 18.

Norman  
Luther  
Betty  
(interposed),  
10th April,  
1953,  
continued.  
Cross-  
Examina-  
tion.

comprises the section of the extended boundary on King Street going westwards, then there is a fence made up of old boards and zinc and at the end the southern wall of an end room. The direction and position of the southern boundary of 105 King Street has not been altered since 1937. All that has happened is that in some portions walls of buildings have replaced the zinc fence.

*XXD.* : I remember you quite well. I have known you many years. I have done work for you. In 1941 and 1942 you called at my office and I may have said to you I worked for Mr. Chisholm. I have made many plans for Mr. Chisholm. In calling me to 105 he showed me no title to premises. 10 He had no need to show me boards as I saw the fence. I remembered what I saw and made my plans according to order. He told me he wanted extensions and I gave him the plan. With regard to building regulations you are to build on the boundary line or allow a space of 4' between your proposed building and the boundary line. When I measured the distance was 6' 3" or thereabouts. I have not got my scale rule so I say distance is about 6' 3". I would say I have a vast experience with respect to my profession.

No. 19.

James  
Clinton  
Chisholm  
10th April,  
1953,  
Cross-  
Examina-  
tion,  
continued.

No. 19.

**JAMES CLINTON CHISHOLM (Cross-examination continued)**

20

*J. C. Chisholm XXN. continued :*

I was present when Mrs. Bonitto gave her deposition. She did say there was a pepper elder tree growing in passage in 103. I started to have an office at 105 in 1943. I have never seen you at my office at 105. In 1940 you never repeatedly visited me at my office at 105 King Street. The southern part of building is on line. The piece of land you now claim is about 6' wide. The distance between the front building on 105 and the front building on 103 is around 10". I have extended building 18' East to West. The distance I don't think is 22" it is around 10" to 17". I have not measured them accurately. I do not know that present position of 30 zinc fence establishes that. My building is hard on line. The zinc fence is not hard against your building. Your building does not come up to line on King Street side. It is about 10" from your line facing the King Street side. Eugenia Blanche Bonitto was owner of 105, she sold to me. I do not know what interest she had in 101 and 103.

Do you think if she was selling you property No. 105 King Street she could put you in possession of 101 and 103 King Street?

*Answer :* I never gave it consideration whether she could or not. She put me in possession of disputed strip when I purchased 105. I never moved the fence. You have never told me you saw me move fence. 40 I never told you let us drink out the land and not go to Court. I have a gun, I never walked with gun. It is at my residence. I do not walk

with it. I never walk with a gun. I have never changed my gun from one pocket to the other when talking with you. I have never put you in fear. I knew Mr. Aston Levy. I knew he was your Solicitor in first action brought for the recovery of this strip of land. I have been to his office once or twice before when I was in real estate business, not more than twice. I made Mr. Levy no threats, told him nothing about you. I went to Sir Noel Livingston and I saw Mr. Levy in the office. I did not go to Mr. Ritchie the Administrator General with you. I knew Mr. Ritchie. On 16th August, 1941, my office was at 115 King Street. I do not know  
 10 if I was at 105 on that . I cannot remember that. A tailor did rent a portion of the extension a part of the time. He was not the first tenant. The tailor paid me 30/- per month. I collected rent by the month. I gave receipts written from receipt books. I kept account of my business from year to year. I have not got the receipt books for so far back. They are destroyed. I used to pay Income Tax. I was not directed to use the tenants name on those reports. I now have tenants and there is a tenant there now. The tenants pay £3 per month. The front shop is rented for £13 per month. I would say £1 for the 3 feet. Mr. H. Young is the tenant for the 15 feet. Mariott has the big shop.  
 20 I am collecting £4 in all per month for that section. I am collecting £1 7s. for room at back to western end of land. I cannot remember name of that tenant. I have had it continuously occupied save for a short break since 1944. The man in shop uses the strip of land to west of shop and near the southern fence. I collect no rent for this. There is a kitchen on this strip—the tenants use it. I have been undisturbed as to this strip of land. I have enjoyed the use and profits of this land undisturbed. I never read my title from time I got it. I did not have my title. The place was bought under mortgage and Samuel and Samuel kept title up to date. The title never came into my hands. I do not know that  
 30 disputed strip of land is covered by registered title as to 101 and 103. That strip of land belongs to 105. I never moved southern fence in 1937 and enclose disputed strip to make it part of 105.

*RE-XD*: When I bought 105 in 1928 I got no idea what was the distance between main building and southern fence.

*(This witness was re-called—see p. 34.)*

No. 20.

**VICTOR OSMOND BENNETT.**

VICTOR OSMOND BENNETT (sworn):

40 Auctioneer and Real Estate Agent with offices at 42 East Street, Kingston. In 1935 I had offices at 101 King Street. C. G. Plummer was agent. I did not know the landlord. I remained there for about 2 years. In 1935 there was a fence between 101 and 105. I did not know 101 was 2 lots of land. I knew it as 101. There was a building

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

No. 19.

James  
Clinton  
Chisholm  
10th April,  
1953,  
Cross-  
Examina-  
tion,  
*continued.*

Re-Exami-  
nation.

No. 20.

Victor  
Osmond  
Bennett,  
10th April,  
1953.  
Examina-  
tion.

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

No. 20.  
Victor  
Osmond  
Bennett,  
10th April,  
1953,  
*continued.*  
Cross-  
Examina-  
tion.

on north-western boundary corner of 101. There was a building on south-western corner of 105. The distance on southern face of the building on 105 and the distance on northern face of building of 101—they were practically touching—about 1" or 2" apart. The fence between 101 and 105 was a zinc fence with posts and lathes. This fence extended from King Street westerly to the 2 rooms. It did not continue between the two buildings in the 1" to 2". It stopped immediately East of these buildings. During the time I was there Mr. Chisholm occupied 105. I never heard of any dispute about the boundary.

*XXD*: I had offices at 101 King Street. I was here at first day of 10 case. I did not tell Mr. Fraser that I did not know the place. I had no discussion with Mr. Fraser on that day. On Wednesday evening I went to 103 King Street. I went to Mr. Chisholm. When I went there he was not there. Wednesday was not the first time I saw the western boundary of 101, 103 and 105 King Street. I have seen these boundaries before. In 1935 there was the main building and outbuildings on 101. The outbuildings were kitchen, sewer and bathroom; when I was there bathroom was to the south-west. I think it was south of the kitchen. It was some 16 years since I left premises and I have not been there since, and I speak from memory. I do not remember how many steps were in 20 building. I have only been in the two front rooms. There were 2 front rooms there. The room I was in measured about 10' × 16'. The main hall was divided in two by wooden partitions with a passage. I occupied one room and a portion of the front piazza. There was about 18" of land between zinc fence on south and northern walls at 101. I walked up four steps in King Street to my office. The passage between the two rooms about 3 feet. I used to go outside to use a high-up sewer. Miss Ethel Binns kept a dress shop to the room corresponding to mine while I was there. I did not know tenants in the back. I knew Mr. Chisholm's 30 premises at 105 then. There was a breadfruit tree over to Chisholm's side of fence, might be a couple of inches from fence. Another tree was there. I never went there very often. I think there was a big mango to south of building in 101. I saw the mango in 101. The building I occupied came between that mango tree and northern fence of 101. The mango tree was south of the building. I did not go there on Wednesday evening. I went to see Mr. Chisholm at 105 King Street on Wednesday.

Re-Exami-  
nation.

*RE-XD*: Mr. Hall brought proceedings against Chisholm prior to this case about 10 years ago and I gave a statement to Fraser & Calame 10 years ago.

## RUSSELL ELLIOTT LEWARS.

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

RUSSELL ELLIOTT LEWARS sworn :

I am Town Clerk, K.S.A.C. of 7 Argyle Road, St. Andrew. I will be 42 years old on 14th May, 1953. I know premises of 105 King Street, Kingston. I was around 8 to 9 years old when I came to know 105 King Street—that is between 1919 to 1920. I was actually then living in Chancery Lane. I knew Mrs. Eugenia Bonitto was owner of 105 King Street then. Miss Amy McBeen then lived at 105 King Street. She was  
 10 my god-mother. I had occasion for some number of years to visit 105 King Street. I used to have lunch there every day ; as I was going to school my god-mother would provide lunch. I stopped going to have lunch till I was around 14 to 15 years old but I was still a regular visitor of premises. I knew the adjacent premises No. 103 King Street. I remember the southern building between 105 and 103 King Street. On western side of 105 King Street there was a range of buildings. My recollections were there were a range of 3 rooms constructed of wood. Mrs. McBeen lived on 105. Miss McBeen and old mother also lived there. These outbuildings on west ran from north to south. Miss McBeen's  
 20 mother lived in the southernmost room of the range of outbuildings to the west. The southern boundary of 105 consisted of a zinc fence. I have the impression part board but most of it zinc running from King Street westerly right to the south of the southernmost room of the outbuildings. I don't remember if the zinc fence continued past the east end of the south wall of the outbuilding. I had knowledge of a building on the west side of 103. There was an old wooden room on the extreme western boundary of 103 practically hard up against the wall of the southernmost room of 105 and there was also the main building on 103. The northern wall of the main building of 103 was a matter of few inches  
 30 south of the zinc fence. There was a main building on 105. The southernmost wall of the main building of 105 was approximately 6 to 7 feet. I can distinctly recollect a particular tree from my childhood days on 105. This tree was a mango tree. This mango tree was in 105. To the best of my recollection it was a hairy mango tree—a common mango. I climbed it regularly when in season and ate mangoes off it. When I first knew tree it was a medium sized tree—not too big, not too small. That mango tree was more to western end of the passage way between the zinc fence between 105 and 103 and the southern line of main building of 105. It was in 105. I knew Mrs. Eugenia Blanche Bonitto very well.  
 40 She used to live at 105 with her step-daughter along with my god-mother. Mrs. Bonitto ceased to live at 105 in 1928. She removed to No. 8 Hope Street, Woodford Park. Up to the time she removed I was a regular visitor to 105 King Street. Miss McBeen's mother died prior to 1928 and Miss McBeen remained at 105 and removed with Mrs. Bonitto in 1928 to 8 Hope Street. I resided at 8 Hope Street. I lived there in the same house between 1929 to 1933. Mrs. Bonitto is now dead. I did not actually attend the funeral but I assisted with the funeral arrangements. I saw her dead body and I would say she would be around 80 years old when she died. She died on 24th January, 1950. She lived at 8 Hope  
 50 Street till her death. I have a recollection that I did visit 105 King

No. 21.  
Russell  
Elliott  
Lewars,  
13th April  
1953.  
Examina-  
tion.

*In the  
Supreme  
Court.*

*Defendant's  
Evidence.*

No. 21.  
Russell  
Elliott  
Lewars,  
13th April,  
1953,  
Examina-  
tion,  
*continued.*

Street after Mrs. Bonitto's death in 1928 and between 1928 and 1937. I knew Mr. J. C. Chisholm was the owner after Mrs. Bonitto's removal. On day early last week is the last occasion when I visited 105 King Street. I then saw the southern boundary of 105. The southern boundary today starting from King Street in East is now a concrete nog or wall plastered over which runs from King Street hard up against boundary line of 105 extending in a westerly direction for a distance of approximately 30' to 40'. I did not measure it then. The zinc fence which I recollect from childhood days was in the same position running from the bread shop in a westerly direction to the Eastern end of the southern wall of the range of buildings on the west. Having regard to what I recollect of my childhood days and what I saw when I visited premises between 1928 and 1937 and what I saw a few days ago I say that southern boundary of 105 King Street appears to be in the exact same position as it was when I first knew it when I was a lad. At no time in my boyhood days or subsequently known the mango tree I have described to be in 103 King Street. I have never known a passage of 6' to 8' between the main building of 103 and the southern fence to 105 to exist. From what I saw when I visited a few days ago there has been a change of the buildings on 105. The wooden section of the outbuildings on 105 have been removed and replaced by concrete nog. I do not think I examined the southernmost wall of the outbuildings to west. I think it is concrete nog. The main building in front has been extensively altered and different door to front.

Cross-  
Examina-  
tion.

*XXD*: I was subpoenaed by Plaintiff in this case to produce plans. I get subpoenas frequently as a statutory officer in charge of Corporation records and an officer attends on my behalf. I send an officer here to produce plans. I have been with the Corporation for 15 years. I am familiar with most of the rules of the K.S.A.C. I could not say if pit latrines are constructed with rising walls. I have carried the mango tree in my head from childhood days. The building surveyor approves of plans in accordance with regulations and I sign this after he has signed. I have held the office of examining plans and passing them. I do not know the exact manner in which pit latrines are constructed. I was not aware that there was a bit of land to west of the southernmost room of 105 and that that bit of land belonged to 103. Miss McBeen is alive today. Her mother lived in southernmost room of the outbuilding. I went in that room several times. That room was on the western and southern boundary.

Q. If a pit latrine had been located there belonging to 103 and pit latrine removed leaving the foundations and room put on those foundations?—  
A. I know of no pit latrine there. I knew of no pit latrine there where the room to south-west of out-building is located. The zinc fence which I knew in my childhood days is in the same position today. I have a fairly good memory. I remember the mango tree. The mango tree was roughly about 30 to 40 feet from the Eastern door of the most southerly room of the outbuilding. I do not recollect the limbs from the mango tree going over 103. It was possibly 3' to 4' from fence. Mango tree limbs usually go beyond 4'. The diameter of trunk was roughly 5" to 6". I last saw Mrs. Bonitto at 105 King Street in 1928. I recollect other trees in a faint way in 105. I don't remember breadfruit tree, or a large calabash

tree. It is quite likely I would forget seeing a calabash tree. Miss McBeen was Mrs. Bonitto's companion and she continued so till Mrs. Bonitto's death. I do not recollect if the sanitary convenience in 105 was a pit latrine or sewer. That convenience was on northern side to the north-west. I do not remember if they were on North-western boundary. There was a kitchen, a bath, and a latrine.

Q. If they were on North-western boundary and 2 rooms attached to them.

There were 3 outrooms not 2 outrooms. The North-western corner of the land was the northern room of outbuilding. I do not recollect standing on zinc fence bottom when I climbed the mango tree. Mrs. Eugenia Bonitto owned No. 105. I remember 1928 in a general way. I remember the removal to 8 Hope Street in 1928 but not the month. I know premises 103. I saw the building on the premises. The building on 105 faced King Street; the building on 103 faced King Street, ran from East to West. There was a space between the buildings. This space was between 6' to 7'. I do not remember a pepper elder tree on the land. I think I saw 3 rooms at western end of 105 when I last visited the premises. I have no objection to going to premises with Court and seeing how the 20 outrooms fit.

*In the  
Supreme  
Court.*  
*Defendant's  
Evidence.*  
No. 21.  
Russell  
Elliott  
Lewars,  
13th April,  
1953,  
Cross-  
Examina-  
tion,  
*continued.*

No. 22.

**NOEL JOSLYN FRASER.**

NOEL JOSLYN FRASER sworn :

Solicitor of Supreme Court of Jamaica. Member of firm of Fraser & Calame with Offices at 12 Duke Street. My firm is Solicitors on record for Defendant. My firm was Solicitor on record for Defendant for suit 195 of 42 brought by Plaintiff against Defendant. I produce a letter from my firm to Messrs. Livingston, Alexander and Levy dated 7th March, 1942. I have a copy of my letter to them—Exhibit 16. That letter makes reference to a letter from Messrs. Livingston, Alexander and Levy dated 25.2.42. They were at that time Solicitors for Plaintiff. I have not now in my possession the original of their letter. The original was in my possession to around year 1944. The papers were disposed of and destroyed along with old papers when I was clearing my office of old papers at that time. I have the old brief that was retained and that contained a copy of the original letter. I had given instructions for the copy to be made for Counsel's brief. I had seen the copy made, checked it myself and this is the actual copy that was in Counsel's brief and then checked by me—Exhibit 17. I produce 3 copies of letter dated 21.1.52, from my firm to Mr. Donald Hendry, their 11.7.52, their 3.1.53 and 13.2.53. Notice to produce all this has been served. The Plaintiff objects to these letters. They are all not bearing satisfactory evidence—letters admitted. I produce 4 letters 18.7.51, 18.1.52, 6.1.53 and 23.3.53 from Mr. Donald Hendry to me in relation to this suit.

No. 22.  
Noel Joslyn  
Fraser,  
13th April,  
1953.  
Examina-  
tion.

Ex. 16.

Ex. 17.

*In the  
Supreme  
Court.*  
*Defendant's  
Evidence.*

No. 22.  
Noel Joslyn  
Fraser,  
13th April,  
1953,  
*continued.*  
Cross-  
Examina-  
tion.  
Re-Exami-  
nation.

*XXD.*: I remember Mrs. Eugenia Blanche Bonitto and I remember when she gave evidence. I examined her on behalf of Mr. Chisholm. I do not recollect her sitting between Mr. Samuel and myself. She sat to the right of the Registrar in front, nobody sat next to her. She never sat between Mr. Chisholm and Solicitor Samuels. I have no recollection of the Registrar objecting to Mr. Samuel's appearing. My recollection is that Mr. Samuel said he was then representing Mrs. Bonitto. I re-examined her. I never saw Mr. L. V. D. Samuel whisper in her ear two times before I re-examined her.

10

*RE-XD.*: Mr. Samuel would have had to leave his seat to go and whisper to her.

No. 23.  
James  
Clinton  
Chisholm  
(*re-called*),  
13th April,  
1953.  
Cross-  
Examina-  
tion.

No. 23.  
**JAMES CLINTON CHISHOLM** (*re-called*).

J. C. CHISHOLM (*re-called* still on oath):

*XXD.*: I know tailor Wynter. He occupied the tailor shop. I cannot recollect the date. I can't tell date when he left. I do not remember tailor Wynter's apprentice calling me to back of premises to Mr. Ritchie. I did not see Mr. Ritchie there. I never saw Mr. Ritchie point out to you a crack in wall. I never said all right Mr. Ritchie, Mr. Hall and I will settle it. Sometime in 1950 you objected to my surveying the disputed land. It was not because Mrs. Bonitto died I wanted to include land in my registered title. Land was mine already. I employed Mr. Forsythe as my Surveyor. I know his signature. This document has his signature—Exhibit 26. It was after Mr. Forsythe went to survey that this action was brought.

Ex. 26.

*No RE-XN.*:

*Case for Defendant*



**No. 24.**  
**JUDGMENT.**

*In the  
Supreme  
Court.*

On or about the 16th August, 1941, the Plaintiff purchased from the Administrator General of Jamaica the lands situate at King Street, Kingston, and known as 101 and 103 King Street. In respect of this purchase a transfer of the Certificate of Title as registered in Volume 386 at Folio 1 of the Register of Titles in the Office of Titles for these lands was made to him.

No. 24.  
Judgment,  
25th July,  
1953.

The first Certificate of Title to these lands is dated 21st January, 1901, issued to one Morris Aria Bonitto, deceased, and registered in Volume 21 at Folio 83 of the Register Book of Titles. On 31st January, 1919, Letters of Administration with the Will and Codicils annexed of the estate of the said Morris Aria Bonitto deceased was granted to the Administrator General. On the 7th day of May, 1919, this said Certificate of Title was cancelled and a new Certificate of Title for the said lands was issued to the Administrator General as administrator of the will and codicils of the estate of the said Morris Aria Bonitto deceased and registered in Volume 129 at Folio 85 of the Register Book of Titles. This duplicate Certificate of Title was lost, and on 16th October, 1941, a new Certificate of Title registered in Volume 386 at Folio 1 was issued in favour of the Administrator General. The transfer on sale of the said lands to the Plaintiff was noted on this Certificate of Title on 30th October, 1941, and the duplicate of this Certificate of Title is now in his possession as the registered proprietor of these lands.

Under the contract in writing made on 4th August, 1941, between the Administrator General and the Plaintiff, the Plaintiff agreed to purchase the lands then registered as aforesaid and therein described as follows:—

“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 and 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 and 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 strip 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

*In the  
Supreme  
Court.*

No. 24.  
Judgment,  
25th July,  
1953,  
*continued.*

bounding on King Street measuring eleven feet from East to West and Twenty-four feet from North to South and being the land comprised in Certificate of Title registered at Volume 129 Folio 85.”

The Plaintiff’s lands at 101 and 103 King Street lie immediately to the south of the lands known as 105 King Street belonging to the Defendant and the lands of the Plaintiff and those of the Defendant bind and have at all material times bound each other as to their northern and southern boundaries, respectively.

The first Certificate of Title to the lands at 105 King Street is dated 12th March, 1928, issued to one Eugenia Blanche Bonitto (now deceased) 10 as registered proprietor and recorded in Volume 208 at Folio 36 of Register Book of Titles. In this said Certificate of Title the lands are described as follows :—

“ ALL THAT parcel of land known as number One hundred and five King St. in the parish of Kingston measuring from north to south twenty-five feet and from east to west seventy-five feet 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.” 20

The Defendant was registered as proprietor of these said lands by transfer on sale from the said Eugenia Blanche Bonitto, deceased, on 16th April, 1928, and holds the duplicate of the Certificate of Title to these lands.

Prior to the bringing of these lands at 105 King Street under the Registration of Titles Law at the time of the sale of the same to the Defendant the recitals of title to these lands under the Common Law are as follows :—

“ By an Indenture dated 23rd May, 1893, and made between Bernard Leonce Hodelin and Ella Louise Bonitto, the then wife of 30 the said Morris Aria Bonitto, the said Bernard Leonce Hodelin conveyed the lands now known as 105 King Street unto the said Ella Louise Bonitto and her heirs to the use of such person or persons for such estate of inheritance or not of inheritance and charged or chargeable in such manner and form as the said Ella Louise Bonitto notwithstanding coverture shall at any time or times by any deed or deeds direct limit declare or appoint AND in default of any such direction limitation or appointment To THE USE of the said Ella Louise Bonitto for and during the term of her natural life and after 40 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.”

The said Ella Louise Bonitto died on 30th March, 1901, without having by any deed or otherwise directed, limited, or appointed the said lands and leaving her surviving, Morris Aria Bonitto, Junior, Duncan Allwood Bonitto and Catherine Louise Ferguson the children of the said Ella Louise Bonitto and Morris Aria Bonitto.

By an Indenture dated 22nd March, 1921, and made between the said Morris Aria Bonitto, Junior, Duncan Allwood Bonitto and Catherine Louise Ferguson of the one part, the said Eugenia Blanche Bonitto of the

other part for the consideration therein contained the said Morris Aria Bonitto Junior, Duncan Allwood Bonitto and Catherine Louise Ferguson conveyed the said lands at 105 King Street to the said Eugenia Blanche Bonitto in fee simple.

*In the  
Supreme  
Court.*

No. 24.  
Judgment,  
25th July,  
1953,  
*continued.*

By a writ of summons dated 18th November, 1942, and numbered C.L. 195 of 1942, the Plaintiff brought action in this Court against the Defendant. In this suit C.L. 195 of 1942 the Plaintiff claimed the same relief as he is today claiming. Upon application of the Plaintiff dated 21st June, 1944, the action under the writ of summons of 18th November, 10 1942, was wholly discontinued, the Plaintiff paying to the Defendant his taxed costs.

By his statement of claim in these proceedings the Plaintiff pleads that :—

“ The said strip of land is part of the land comprised in the said Certificate of Title registered as aforesaid at Volume 386 Folio 1 of the Register of Titles and the Plaintiff is entitled to possession thereof.”

And the Plaintiff claims :—

20 “ (A) A declaration that the said strip of land is comprised in the Certificate of Title registered as aforesaid at Volume 386 Folio 1 of the Register of Titles.

(B) To recover possession of the said strip of land.

(c) Mesne profits from the 16th day of August, 1941.”

The Defendant in his defence admits that he is and has been in possession of the strip of land as claimed by the Plaintiff, but denies that the Plaintiff is entitled to possession thereof, contending that the land lies within the boundary of his lands 105 King Street, saying that the southern boundary of 105 King Street which is at the same time the northern boundary of 103 King Street, has been undisturbed from and prior to the 30 year 1902 and up to the present time.

The Plaintiff claims that he is entitled to all the land as described by admeasurement in his Certificate of Title. He alleges that in the year 1937 when the Defendant was repairing, remodelling and enlarging the buildings on 105 King Street, he the Defendant, encroached on the lands of 103 King Street by removing the southern fence to 105 King Street to its present position and enclosed as part of 105 King Street a portion of the lands of 103 King Street and which land for the purposes of this case may be described as the disputed strip of land.

40 The main question for decision is whether this disputed strip of land measuring from north to south seven feet more or less and extending from King Street for a distance of seventy-nine feet and eight inches to the west, and now lying immediately north of the southern fence of 105 King Street is a part of the lands of 103 King Street as claimed by the Plaintiff.

*In the  
Supreme  
Court.*

No. 24.  
Judgment,  
25th July,  
1953,  
*continued.*

The Plaintiff gave evidence to the effect that in 1941 he purchased from the Administrator General of Jamaica the two plots of land known as 101 and 103 King Street ; prior to purchase by him he inspected these plots ; upon this inspection he found that they did not agree in measurement with the measurements as stated in the title for this land :—

“ I went to look at the property. I found that the measurements which they gave me was not there . . . I went to the Administrator General and he told me something . . . I went back to the land and found what he told me was true ; a fence which had been constructed in 1937 by the Defendant Chisholm 10 had encroached and cut off a portion of land enclosing it in his premises 105 King Street.”

The Plaintiff after further interviews with the Administrator General purchased these plots of land. The Plaintiff says that after purchase the Administrator General gave him a letter to the tenants on these lands and further that he, the Administrator General, went with him, showed him the boundaries and put him in possession of the land, including the disputed strip of land :—

“ I was put in possession of the 7 feet of land : piece of the Defendant’s building and his fence was in my land. The adminis- 20 trator General told me I was to have a piece of the Defendant’s building.”

While the Plaintiff’s case is that he was put in possession of this disputed strip of land, he has never been in physical possession of it, he stating that the Defendant prevented him from coming upon these lands.

The Plaintiff stated also that he knew the lands numbers 105, 103 and 101 King Street prior to the year 1937, that when the Defendant did reconstruction work on the buildings on 105 King Street he demolished the old wooden fence on the southern boundary of 105, and erected the present “ zinc fence encroaching on 103 and enclosing within this zinc 30 fence as part of the lands of 105 the disputed strip on which were then growing a bearing mango tree, a bearing breadfruit tree and a pepper elder tree, all of which trees have been cut down by the Defendant.”

The Plaintiff says that he commenced an action in 1942 to recover possession of this strip of land from the Defendant but that his then Solicitor forced him to discontinue it by reason of threats issued by the Defendant to both himself and his Solicitor.

In 1942, for the purposes of the first proceedings brought by the Plaintiff against the Defendant Mr. J. W. Burke, a Commissioned Land Surveyor, made certain measurements of the lands at 105, 103 and 101 40 King Street and prepared a plan of these lands showing the disputed strip of land. When he went there in 1942 Mr. Burke found a well defined boundary between 103 and 105 King Street :—

“ In 1942 the southern boundary on earth (of 105 King Street) consisted partly by a line between two buildings, partly by a zinc fence and partly by the southern face of building extending over

to King Street : these together constituted *prima facie* a boundary line ; with the exception of the piece between the two buildings I would say it constituted a well defined boundary line."

*In the  
Supreme  
Court.*

The plan which Mr. Burke made was produced at the trial (marked "Exhibit 2"). The boundary as found by Mr. Burke between 103 and 105 King Street is substantially that as existed at the time of purchase of 103 and 101 King Street in 1941 by the Plaintiff.

No. 24.  
Judgment,  
25th July,  
1953,  
*continued.*

The Plaintiff called two witnesses, Leonard Augustus Brammer and Theophilus Augustus Hutchinson, in corroboration of his account as to  
10 where the disputed strip of land lay prior to 1937. The witness Brammer occupied 101 and 103 King Street between the years 1923 to 1934, then paying rent to the late Mrs. Eugenia Blanche Bonitto. This witness speaks of the pepper elder tree, breadfruit tree and mango tree, and in cross-examination says :—

20 " If Mrs. Bonitto said in 1943 that pepper elder tree, breadfruit tree and mango tree were in 105 King Street up to 1928 I would not be surprised. I say that up to 1934 they were in 103. I would not be surprised as she was owner of land and would know her land better than I would. I would not say that my recollection of where those trees were is a mistake. When I lived there I noticed the position of the breadfruit tree. It was in space between 103 and building where Mrs. Bonitto lived in 105. I do not know if Mrs. Bonitto got any of the fruit from the breadfruit tree. The elder tree was nearest to King Street, the mango tree was next and the last tree was the breadfruit tree."

In re-examination this witness says :—

30 " I remember that the fence between 103 and 105 started from Chancery Lane section boundary ; it came along to the building that was occupied by Mrs. Bonitto. Further than that I cannot go. I cannot place it any further."

The witness Hutchinson lived at 101 and 103 King Street in the year 1929 and returned to live there again during the year 1935. With regard to the disputed strip of land this witness says :—

" To the north of 103 was a space of land. I never measured the width of this space. I walked over this space. To the north of this space was a dwelling house. In this space of land was a breadfruit tree, hairy mango tree and pepper elder tree."

In cross-examination this witness, who is now living at Spanish Town, admits he gave no statement in writing to the Plaintiff, his Solicitor or  
40 to anyone in connection with this case, and with regard to the work done by the Defendant in the year 1937 to the buildings on 105 King Street, says :—

" In 1937 I passed up and down King Street several times. I know Mr. Chisholm. When I passed I never stopped at 105, I just passed. I took no special interest of what was going on at 105 King Street. I cannot go further than to say that in 1937 repairs were being done at 105 King Street."

*In the  
Supreme  
Court.*

No. 24.

Judgment,  
25th July,  
1953,  
*e continued.*

The Plaintiff further called his wife Clarice Hall and Henry Sewell, a former employee, in corroboration of his account of the then Administrator General putting him in possession. In cross-examination as to this visit Mrs. Hall says :—

“ I heard Mr. Ritchie (the Administrator General) say the whole of this piece of building on 105 is on your land ; it is yours.”

Evidence was also produced by the Plaintiff to produce and put in evidence the documents of title and other documents exhibited as forming part of this case.

The Defendant in his evidence says that he in April, 1928, purchased 10 105 King Street from Eugenia Blanche Bonitto ; that prior to the purchase he inspected the premises and Mrs. Bonitto showed him around . . .

“ I was shown around the boundaries of 105 King Street. The southern boundary of 105 King Street was a zinc fence commencing at King Street on east and running to west about 65 feet, the zinc fence stopped between two rooms ; the first room on north of fence was 105 and on the south the building was on 103 King Street. In 1928 the southern wall of the south western building on 105 was about four inches from the northern wall of the building on 103 ; the zinc fence stopped on east of outbuildings.” 20

The Defendant says that in 1928 the south-western side of the outbuildings on 105 were of wood ; that when repairing and remodelling the outbuildings on 105 in or about the year 1937 he removed the board facing leaving the uprights which were then brick filled and cement plastered over ; that the trees described by the Plaintiff and his witnesses were to the northern side of the dividing fence between 105 and 103 King Street and not on the lands of the Plaintiff, he says :—

“ When I bought 105 King Street in 1928 there was a mango tree, a breadfruit tree and a calabash tree growing in 105 to the northern side of the southern fence . . . None of these trees are 30 there today ; the calabash tree was cut down in 1937 ; mango tree was cut down at the same time ; the breadfruit tree was cut down some years after.”

The Defendant denies at any time disturbing the boundary between 105 and 103 King Street and says that at no time was the boundary fence between these two properties removed so as to enclose within 105 the disputed strip of land.

Prior to doing the reconstruction work to the buildings on 105 King Street in 1937, the Defendant employed a Mr. Betty, an architect and builder. Mr. Betty was called by the Defendant. He deposed as to the measurements and plans then made by him (Exhibit 12). As to the boundary fence between 105 and 103 King Street he says :— 40

“ The direction and position of the southern boundary of 105 King Street has not been altered since 1937. All that has happened is that in some portions walls of buildings have replaced the zinc fence.”

The Defendant also called Victor Osmond Bennett, an auctioneer, who had offices at 101 King Street in 1935, in corroboration of his account of the position of the dividing fence between 105 and 103 King Street.

*In the  
Supreme  
Court.*

The record of proceedings in the first suit brought by the Plaintiff against the Defendant was produced as an exhibit in the Defendant's case. In this record is the deposition made by the late Eugenia Blanche Bonitto. The Defendant denies that these proceedings were discontinued by the Plaintiff by reason of threats issued by him to the Plaintiff or his then solicitor the late Mr. Levy.

No. 24.  
Judgment,  
25th July,  
1953,  
*continued.*

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.

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  
20 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. His explanation in the witness box for the discontinuance of first action brought against the Defendant is not a credible one, a reputable Solicitor would not be influenced by reason of threats as alleged by the Plaintiff to have been used by the Defendant, the impression I formed of the Plaintiff is that he is not a person who may be forced against his will, or what he may consider to be in his interest, to discontinue any action, the deposition of the late Eugenie Blanche Bonitto as taken in the first  
30 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.

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  
40 boundary of 105 King Street has been undisturbed and that the disputed strip of land falls within the southern boundary of 105 King Street.

I am inclined to the view that the Plaintiff's case is built largely around the knowledge gained by him on his visit of inspection made to the lands of 101 and 103 King Street immediately prior to purchase by him and his detailed perusal of the Certificate of Title to these lands without any regard as to the true position on earth of the boundary line between these lands and 105 King Street, or to the possibility that this boundary on earth may have been fixed prior to the date of the first Certificate of Title to the lands then intended to be purchased by him.

*In the  
Supreme  
Court.*

No. 24.  
Judgment,  
25th July,  
1953,  
*continued.*

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.

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 that 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.

Other arguments and submissions were addressed to the Court in the conduct and course of this case, but finding as I have in the two preceding paragraphs on the major question for the consideration of the Court, a discussion and decision of these is unnecessary. With relation to the Defendant's Counterclaim he is entitled to the declaration claimed here, also by reason of my findings the other relief sought does not now arise.

The Plaintiff is not entitled to the relief he claims: there must be judgment for the Defendant on the claim with costs to be taxed and on the counterclaim judgment for the Defendant for the declaration claimed that the northern and southern boundaries of the properties 101 and 103 King Street and 105 King Street as now exist are the true boundaries between the said properties with costs to be taxed.

(Sgd.) D. H. SEMPER,  
J. (Ag.)

25th July, 1953.

40



No. 25.  
**FORMAL JUDGMENT.**

*In the  
 Supreme  
 Court.*

The 25th day of July, 1953.

No. 25.  
 Formal  
 Judgment,  
 25th July,  
 1953.

THIS ACTION coming on for Trial on the 8th, 9th, 10th, and 13th days of April, 1953, before the Honourable Mr. Justice Semper (acting) in the presence of the Plaintiff appearing in person and of Counsel for the Defendant and UPON READING the pleadings and UPON HEARING the evidence of the Plaintiff and the Defendant and the witnesses produced on their behalf taken in their oral examination at the Trial and UPON  
 10 HEARING what was alleged by the Plaintiff and by Counsel on behalf of the Defendant and the said Mr. Justice Semper (acting) having reserved Judgment and having delivered his written Judgment on the 25th day of July, 1953.

THIS COURT DOTH HEREBY ORDER AND ADJUDGE :—

(1) That the claim brought by the Plaintiff in this action do stand dismissed out of Court, and that the northern and southern boundaries of the properties 101–103 King Street, and 105 King Street as now exist are the true boundaries between the said properties.

20 (2) That the Plaintiff do pay to the Defendant his costs of defence to be taxed.

(Sgd.) FRASER & CALAME,  
 Defendant's Solicitor.

This judgment is entered by FRASER & CALAME of No. 12 Duke Street, Kingston, Solicitors for and on behalf of the Defendant herein.

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*In the  
Court of  
Appeal.*

No. 26.

**NOTICE AND GROUNDS OF APPEAL.**

No. 26.  
Notice and  
Grounds of  
Appeal,  
7th  
August,  
1953.

Suit No. C.L. 31 of 1951.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE.

Common Law.

Between JAMES HALL . . . . . Plaintiff  
and  
JAMES CLINTON CHISHOLM . . . . . Defendant.

TAKE NOTICE that the Court of Appeal will be moved on the 17th day 10  
of September, 1953, or so soon thereafter as Counsel may be heard on  
behalf of the Plaintiff-Appellant for an Order that the Judgment given at  
the trial of this Action before the Honourable Mr. Justice Semper for the  
Defendant on the claim and counterclaim with costs be set aside and  
Judgment be entered in favour of the Plaintiff with costs, or in the alterna-  
tive that a new trial be had between the parties and an Order that the  
Defendant do pay to the Plaintiff the costs of and incidental to this Appeal.

AND TAKE FURTHER NOTICE that the following *inter alia* are  
the grounds which the Plaintiff-Appellant will rely :—

(1) That the Learned Trial Judge was wrong in treating this 20  
action as one of disputed boundary between premises 103 and  
105 King Street, Kingston, rather than one of disputed possession  
of the piece of land claimed by the Plaintiff and which reduces by  
about six feet the land described in his Certificate of Title of the  
said 103 King Street and increases by about seven feet the land  
described as 105 King Street the property of the Defendant.

(2) That the Learned Trial Judge misdirected himself or  
failed to assess accurately the evidence of the witness Brammer who  
occupied 101 and 103 King Street from 1923 to 1934 as well as the  
evidence of Hutchinson who also occupied the said premises in 30  
1929 and 1935.

(3) The Learned Judge also failed to note that the deposition  
of Eugenia Bonitto is more in favour of the Plaintiff's claim than  
that of the Defendant's.

(4) That His Lordship the Trial Judge did not state the evidence  
of one of Plaintiff's witnesses Henry Sewell, and if the evidence  
of this witness was stated His Lordship omitted to make reference  
to it in giving Judgment on the 25th July, 1953.

(5) That Plaintiff made a Fourteen-point written Submission  
out of the Registration of Titles Law, signed and delivered the same 40  
to His Lordship the Trial Judge, as exhibit at the trial, and when  
giving Judgment His Lordship did not take the said submissions  
into account and made no reference to any of them.

The Plaintiff-Appellant craves leave to amend or add to these grounds of Appeal (if necessary) as soon as a copy of the Judge's Notes of Evidence becomes available.

*In the  
Court of  
Appeal.*

Dated the 7th day of August, 1953.

(Sgd.) J. HALL,  
Plaintiff.

No. 26.  
Notice and  
Grounds of  
Appeal,  
7th  
August,  
1953,  
*continued.*

To : The abovenamed Defendant,  
or  
his Solicitors,  
10 Messrs. Fraser & Calame,  
12 Duke Street,  
Kingston.

Filed by the abovenamed Plaintiff, whose address for service is 122 Duke Street, Kingston.

**No. 27.**

**FURTHER GROUNDS OF APPEAL.**

No. 27.  
Further  
grounds of  
Appeal,  
10th March,  
1954.

TAKE NOTICE that at the hearing of the above Appeal an application will be made on behalf of the Plaintiff-Appellant for leave to amend the Grounds of Appeal filed herein in the following respects :—

20 (i) By the re-numbering of paragraphs 2, 3 and 5 thereof to be paragraphs 7, 8 and 9 respectively.

(ii) By the deletion of paragraphs 1 and 4 thereof, and the substitution therefor of the following six paragraphs :—

30 1. The Plaintiff is entitled to Judgment on the Pleadings having regard to the admission made in paragraph 2 of the Defence that the Defendant "is and has been in possession of the strip of land described in para. 10 of the Statement of Claim," that is to say, the "strip of land measuring from North to South seven feet more or less and extending from King Street for a distance of seventy-nine feet and eight inches to the West and lying South of the property known as number one hundred and five King Street belonging to the Defendant." The subsequent denial in paragraph 2 of the Defence that "the Plaintiff is entitled to possession thereof" clearly related to the claim made by the Defendant in paragraph 16 and 17 of his Defence that the Plaintiff and Defendant, and/or their respective predecessors in title, "have for the space of seven years acquiesced and submitted to the boundary as now exists between the said properties as being the reputed Northern and Southern boundaries thereof, and that  
40 by virtue of Section 46 of Chapter 395 of the Revised Laws of Jamaica, such reputed boundary which includes in the land of the Defendant the strip of land referred to in paragraph 2 hereof is forever deemed and adjudged to be the true boundary between

*In the  
Court of  
Appeal.*

No. 27.  
Further  
grounds of  
Appeal,  
10th March,  
1954,  
*continued.*

the lands of the Plaintiff and the lands of the Defendant " and this is put beyond any doubt whatsoever when reference is made to paragraphs (A), (B) and (C) of the Defendant's counter-claim. The Plea is in reality one of Confession and Avoidance. The Defendant is bound by his Pleadings, and Section 46 of Cap. 395 has no application whatsoever to land brought under the operation of the Registration of Titles Law of Section 2 of Cap. 353.

2. The learned Judge misdirected himself and/or misunderstood the whole issue when he stated in his Judgment that " the main question for decision is whether the disputed strip of land is a part of the lands of 103 King Street as claimed by the Plaintiff." The real issue between the parties, having regard to the Pleadings filed herein was whether, although the aforesaid disputed strip of land was admittedly contained in the Plaintiff's Certificate of Title, and assuming that it was found as a fact that the Plaintiff and/or his predecessors in title had acquiesced in the present boundary between Nos. 103 and 105 King Street for a period of seven years, the effect of Section 46 of Cap. 395 was that the aforesaid reputed boundary should for ever be deemed and adjudged to be the true boundaries between the aforesaid properties.

3. The learned Judge was wrong in allowing the Defence, without an amendment of his Defence, to contend that the aforesaid disputed strip was never contained in the Plaintiff's Certificate of Title.

4. The learned Judge failed to appreciate that a Judgment based upon the doctrine of "*falsa demonstratio*" is wholly and entirely inconsistent with an admission by the Defendant that the disputed strip is contained in the Plaintiffs' Certificate of Title.

5. The finding of fact by the learned Judge that " the disputed strip of land falls within the boundaries of 105 King Street " is unreasonable, contrary to and against the weight of the evidence, and could only have been arrived at by completely ignoring the following governing factors :—

(i) The admission made by the Defendant in his defence that the said disputed strip is in fact contained in the Plaintiff's Certificate of Title.

(ii) The evidence of the Commissioned Land Surveyor, G. W. Bourke, conclusively proves that the said disputed strip is in fact contained in the Plaintiff's Certificate of Title.

(iii) The deposition of the late Eugenia Blanche Bonitto was tendered in evidence on behalf of the Defendant, and the answers given by the said deponent during cross-examination completely corroborate the fact that the aforesaid disputed strip was, up to the year 1928, enjoyed as a part of the premises known as 103 King Street.

6. The finding of fact by the learned Judge that " the boundary fence between 105 King Street and 103 King Street

has remained undisturbed for a period going back prior to the year 1902 " is unreasonable, contrary to and against the weight of the evidence, having regard, *inter alia*, to the unmistakable admission made by the aforesaid Eugenia Blanche Bonitto, under cross-examination, that the breadfruit tree, the mango tree and the pepper-elder tree were all growing in the passage, about six or seven feet wide, in 103 King Street, with the consequent result that the disputed strip—which was at all times throughout the trial identified by the aforesaid trees being thereon—was, until the year 1928, actually a part of the premises known as 103 King Street. Her subsequent attempted correction, in re-examination, is too transparent for comment.

*In the Court of Appeal.*

No. 27.  
Further grounds of Appeal, 10th March, 1954, *continued.*

10

Settled  
(Sgd.) V. DUDLEY EVELYN.  
10/3/54.

To : The abovenamed Defendant or his Solicitors,  
Messrs. Fraser and Calame,  
Solicitors,  
12 Duke Street,  
Kingston.

20

Filed by R. E. T. PETERKIN of No. 60 Duke Street, Kingston, Solicitor for and on behalf of the abovenamed Plaintiff-Appellant whose address for service is that of his said Solicitor.

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No. 28.

AFFIDAVIT of Plaintiff in Proof of Missing Notes and Submissions.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.  
IN THE COURT OF APPEAL.

Between JAMES HALL . . . . . Plaintiff  
and

30

JAMES CLINTON CHISHOLM . . . . . Defendant.

No. 28.  
Affidavit of Plaintiff in proof of missing Notes and Submissions, 22nd March, 1954.

I, JAMES HALL make oath and say as follows :—

1. That I reside and have my true place of abode at No. 122 Duke Street in the City of Kingston and my postal address is Kingston Post-Office and I am the Plaintiff herein.

2. Plaintiff begs leave to say that he has read the Notes of his evidence furnished by the Registrar and found wherein very much of his evidence at the trial before His Lordship the Trial Judge to be missing, and hereby ask the Honourable Appeal Court that corrections to the missing evidence be accepted.

*In the Court of Appeal.*

No. 28.  
Affidavit of Plaintiff in proof of missing Notes and Submissions, 22nd March, 1954, continued.

3. Plaintiff further beg leave to say that on the 13th April, 1953, during the trial of the case Plaintiff made a 14 points written Submission, whereupon His Lordship the Trial Judge instructed him to sign the same and he, His Lordship would receive it as exhibit, and Plaintiff then and there signed Three copies of the said Submission all of the same tenor and date and handed One Copy to His Lordship the Trial Judge and a copy to Mr. V. Blake Counsel then appearing for Defendant and the Third copy Plaintiff retained ; and the said Submissions cannot be found in the files of the Court and no account is given of the whereabouts of the same.

10

THEREFORE PLAINTIFF PRAYS that copies of the said Submissions be received by The Honourable Court of Appeal, marked " A " and " AA."

Sworn to at the City and Parish of Kingston  
this 22nd day of March, 1954, before me :

(Sgd.) J. HALL.

(Sgd.) ???  
Justice of the Peace.

Filed by the Plaintiff, Mr. R. E. T. PETERKIN, 60 Duke Street, Kingston, Plaintiff's Solicitor.

20

No. 29.  
Correction of Notes of Plaintiff's Evidence (Exhibit " A " to No. 28).

No. 29.  
**CORRECTION of Notes of Plaintiff's Evidence.**  
(Exhibit " A " to No. 28.)

" A "

My residence is at No. 122 Duke Street Kingston Jamaica. In 1941 I engaged and purchased Two plots of land under One Title Nos. 101-103 King Street Kingston. The Vendor was the Administrator General of Jamaica I was sent by Auctioneer C. G. Plummer to look at the property. He told me it had a 50 feet frontage on King Street, I went to see the place and returned and told Plummer that I did not find it to contain 50 feet. He told me that he was selling for the Administrator General, I must go to him and he will explain to me. I then went to the Administrator General Mr. Allan O. Ritchie, now dead. Mr. Ritchie told me that Chisholm is encroaching on a portion of the land (at this point the Judge told me to say " the Administrator General told you something ") in continuation Plaintiff said ; I went back to the land and found that what Mr. Ritchie told me was true. A fence which was constructed in 1937 by the Defendant Chisholm had cut off and enclosed a portion of the land of 103 King Street and enclosed it in his premises 105 King Street. I returned to the Administrator General and he sent me to the Title Office to see the correct measurements of the property (at this point His Lordship said to me : " say the Administrator General told you something ").

30

40

I went back to my office and wrote a letter to the Administrator General and told him in it that I will purchase the property under the measurements shown in the register book of the Island's Register, and on delivering the letter to him he read it in my presence and said to me: "Chisholm has got to get off, am coming out there to put him off." On the 5th of August, 1941, I made a deposit on the land to Mr. L. V. D. Samuel the Solicitor representing the Administrator General and on the 16th August, 1941, I wrote another letter to the Administrator General and paid him the balance. The first payment was £25. The balance was £675. On that

10 day he gave me a cash receipt. When I was going to the Administrator General's Office to pay him the balance of the purchase price I took along with me my wife and a young man named Henry Sewell. I asked them to await me on the Northern piazza of the Administrator General's Office while I went inside to pay. The Administrator General wrote a letter to the tenants and took me and my wife in his car to the premises. At the premises he took me upstairs and through a window to the North he showed me the boundary line of the premises between 103 and 105 King Street. He then returned downstairs and took me to the front of the premises between 103 and 105 King Street and sent a Tailor's apprentice

20 inside the premises at 105 to call Mr. Chisholm. Mr. Chisholm came to him and he told Mr. Chisholm Mr. Hall is now the owner of these premises and all these encroachments you have on the land belonged to him and you must deliver them. Mr. Chisholm said, alright Mr. Ritchie myself and Mr. Hall will fix it up. Mr. Ritchie then said to Mr. Chisholm, Mr. Hall is not selling any of the land. Mr. Ritchie then turned to me and pointed out a large crack in the wall where the encroachment joins to the original building of Mr. Chisholm and said to me "this is the line and all this part of the building belongs to you," and he left us. Later on in the same year about the month of November, I got a Registered

30 Title to the lands which he showed and delivered to me. The title was handed to me by Mr. L. V. D. Samuel who was then Solicitor for the property. In handing me the title Mr. Samuel said: "The Administrator General has sold to you all of his interest in Nos. 101-103 King Street and it is now for you to put off Chisholm from the encroachments which he made on the land. I therefore prepared and filed my first action in the Supreme Court No. C.L. 195 of 1942 claiming the land which Defendant encroached on. The land measures 6 feet 8 inches from North to South on King Street and continues in a straight line to the Western boundary and measures 7 feet 4 inches from North to South at that point. My then

40 Solicitor Mr. Aston Levy, employed Mr. Bourke a Surveyor to Survey the land. Sometime after filing the case my Solicitor reported to me that he was tormented with threats from Chisholm and his friends. He urged to withdraw the case and sell the property. I used to refuse to do it and all the while every time I have to talk to Chisholm he continued to move his gun from one pocket across his stomach to another pocket and I considered him doing so for the purpose of menacing me. One day the lawyer, Mr. Aston Levy sent to call me. On arrival at his office he started a contention and said: "Mr. Manley can't bother with the case I told you to stop it and am not going to lose my life for the damned

50 case." I started to cry. He said: "Stop that." I said to him; "Alright, give it up." He wrote a paper and I signed it. As soon as I could find a Solicitor I brought back the action. He continued to hold

*In the  
Court of  
Appeal.*

No. 29.  
Correction  
of Notes of  
Plaintiff's  
Evidence  
(Exhibit  
"A" to  
No. 28),  
*continued.*

*In the  
Court of  
Appeal.*

No. 29.  
Correction  
of Notes of  
Plaintiff's  
Evidence  
(Exhibit  
"A" to  
No. 28),  
*continued.*

possession of the land from and against me. I estimate the value of the strip of land to be £1,300 according to the value of land in King Street today. In 1942 he rented the shop for £2.10.0 per month this makes £30 per year. I do not know the present rental. This is the shop which he constructed on the land facing on King Street. He constructed a room on the old foundation of my old pit latrine which in 1942 he rented for £1 per month making £12 per year. I am not certain what it is now rented for. I am asking His Lordship to visit the *Locus In Quo* and see how this room is constructed on the old foundation of my old pit latrine with a part of the foundation open to the back and the roof of the room 10 lower than that of his original outbuilding where he joins them. He constructed a zinc fence made up of wooden battens and wooden posts. He put the fence there in the year 1937, and the same fence is still existing. I knew the premises prior to the construction of the fence in 1937. It had an old wooden fence running from South-west corner of Chisholm's main building in a straight line to the Western boundary. It was not in the same position of the present zinc fence. It was more than 7 feet to the North of the present fence and attached to the Southwest corner of Chisholm's main building and ran in a straight line to and against his outbuilding to the Western boundary. When he fenced off the land in 20 1937 he enclosed a bearing breadfruit tree, a bearing mango tree and a pepper elder tree. In 1937 when he carried the encroachment of his building over the land he cut down the pepper elder tree and later when he extended the encroached building he cut down the mango tree. In 1952 he cut down the breadfruit tree and put a kitchen where it was. The roots of the breadfruit tree have sprouted and there is now a young breadfruit tree near his kitchen.

*Cross-Examination* : Defendant removed the old fence and constructed the existing fence during the months of February and March, 1937. It was during the last week in February and the first and second weeks in 30 March, 1937. I used to visit the house 103 King Street three or more times per week, I was a member of the U.N.I.A. and in that house I had a friend whose name was Dr. Gow and I used to go there to meet him. I knew Eugenia Blanche Bonitto. I knew her in 1941 when I was about to purchase the holdings. I did not know in 1937 she was the life tenant of 101-103 King Street and that the Administrator General was the Trustee of the property. I know that in 1937 the Defendant extended his building over the land in question after removing the fence at 105 King Street. That was during 1937 and 1938. I knew the position of the old fence before 1937. The reason why I knew of the position of the old fence was because I was 40 accustomed to enjoy the fruits of the land when Dr. Gow was in charge of them as a tenant of 103. There were breadfruit, mangoes and teabush. I could collect the teabush as I pleased and Dr. Gow used to give me and sell me mangoes. Those mangoes were the fruits of a mango tree on land now in contention. At that time it was on land of 103 King Street when I was negotiating to purchase 101-103 King Street. I did not agree to purchase the property knowing that it was short in measurement because the Administrator General maintained that I would get the full measurements. When I was put in possession I was put in possession of 7 feet of land containing a piece of the Defendants building which he constructed 50 along with his new fence on my land. Yes, the Administrator General told me I was to get a piece of the Defendant's building because that



part of it was constructed on my land. I never claimed against the Administrator General for the difference in the measurements of the land. Near to the North-Western corner of land in my possession is an old wooden building and the fence which Defendant erected in 1937 was nailed 2 feet South from the corner of that building on the front or Eastern side of said building near to the door which enter the said building, and this is one of my reasons to ask His Lordship to visit the *Locus in Quo*. On land in Defendant's occupation at 105 there is a building the Southernmost and Fourth room of which is built on the old foundation of my old pit Latrine and that foundation wall is attached to my said old building on my land.

*In the Court of Appeal.*

No. 29. Correction of Notes of Plaintiff's Evidence (Exhibit "A" to No. 28), *continued.*

No. 30.

PLAINTIFF'S SUBMISSIONS.

(Exhibit "AA" to No. 28.)

"A.A."

(True copy of Submissions made 13/4/53)

No. 30. Plaintiff's Submissions (Exhibit "AA" to No. 28), 13th April 1953.

1. The Limitation of Actions Law, Section 46, was originally 14 George III of Chapter 5.
2. The General Limitation of Actions Law Chapter 395 was dated 1881.
- 20 3. The Registration of Titles Law is dated 1888.
4. I refer to Section 2 of the Registration of Titles Law Chapter 353.
5. I am entitled to all the land described by measurement in my Certificate of Title, under the Registration of Titles Law ; because I am a Bona-Fide purchaser for value.
6. The Defendant's Certificate of Title in no way conflicts with mine.
7. The Defendant's Counter-Claim must fail, in any event, because of Section 154 of the Registration of Titles Law Chapter 353.
- 30 8. The Defendant's Claim, if any (which is not admitted) would be against the person who applied to register 101-103 King Street in the first instance ; and failing such person against the Insurance fund, under section 155.
9. Section 156 of the Registration of Titles Law is conclusive in favour of the Plaintiff.
10. The old documents lodged with both the Plaintiff's and the Defendant's applications to Register show that originally the disputed strip must have been part of 101-103 King Street.

*In the  
Court of  
Appeal.*

11. If Chisholm did not move the fence some previous owner of 105 King Street must have moved it as the advantage of moving it would be with some owner of 105 King Street.

No. 30.  
Plaintiff's  
Sub-  
missions  
(Exhibit  
"AA" to  
No. 28),  
13th April,  
1953,  
*continued.*

12. This Action is not a boundary dispute. The area of the disputed strip is roughly one-fifth of the land in Chisholm's possession ; and the land is a small city lot, not a large country property.

13. In any event, the Plaintiff has not " Acquiesced " in the alleged boundary. He has brought Two actions since 1942, and has repeatedly asserted his claim to the disputed strip.

14. There is no Section of the Registration of Titles Law which can 10 give Chisholm the right to hold the disputed strip.

(Sgd.) J. HALL.  
13/4/53.

No. 31.  
Notice of  
Motion for  
leave to  
adduce  
further  
evidence  
at the  
hearing  
of Appeal,  
29th  
March,  
1954.

No. 31.

**NOTICE OF MOTION for Leave to Adduce Further Evidence at the Hearing of Appeal.**

TAKE NOTICE that the Court of Appeal will be moved at the sitting of the Court or so soon thereafter as Counsel can be heard by Counsel for the abovenamed Plaintiff for an order that the Plaintiff be at liberty on the hearing of the Appeal herein under the Plaintiff's Notice of Appeal dated the 7th day of August, 1953, to adduce in addition to the evidence 20 before the Court below the evidence of G. R. Priestley or alternatively that the evidence of the said G. R. Priestley be taken in such other manner as the Court of Appeal shall order and that the Plaintiff be at liberty to adduce and read such evidence upon the hearing of the said Appeal herein and for an order that the costs of and incidental to this application and the taking of the said evidence abide the result of the said appeal.

AND FURTHER TAKE NOTICE that the ground of this application is :—

That the nature of the evidence which the Plaintiff now seeks leave to adduce is such that had it been before the Court on the 30 trial of the said action the Defendant could not have rebutted it.

Dated the 29th day of March, 1954.

(Sgd.) R. E. T. PETERKIN,  
Plaintiff's Solicitor.

To : The Registrar of the Supreme Court,  
Kingston.

And to : The Defendant or his Solicitors,  
Messrs. Fraser & Calame,  
Kingston.

Filed by R. E. T. PETERKIN of No. 60 Duke Street, Kingston, Solicitor 40 for and on behalf of the abovenamed Plaintiff whose address for service is that of the said Solicitor.

## No. 32.

**NOTICE of Intention to apply at the Hearing of Appeal for Leave to Adduce Fresh Evidence.***In the  
Court of  
Appeal.*

TAKE NOTICE that the abovenamed Plaintiff intends at the hearing of the Appeal under the Plaintiff's Notice of Appeal dated the 7th day of August, 1953, from the Judgment herein of the Honourable Mr. Justice Semper given on the 25th day of July, 1953, to apply to the Court of Appeal for special leave to adduce in addition to the evidence before the Court below the following evidence :—

No. 32.  
Notice of  
intention  
to apply  
at the  
hearing  
of Appeal  
for leave  
to adduce  
fresh  
evidence,  
29th  
March,  
1954.

10 The Affidavit of G. R. Priestley sworn herein on the 29th day of March, 1954, in which it is deposed that on the issue of whether the Defendant encroached on the Plaintiff's land situate at 103 King Street in the parish of Kingston, a Plan prepared by the said G. R. Priestley shows that there are four rooms in the outbuilding of No. 105 King Street and not three as shown on the Plan prepared by Norman Luther Betty which is in evidence, and that the most Southerly room of the four has been built on land that forms part of the said No. 103 King Street.

AND FURTHER TAKE NOTICE that the ground of such application is :—

20 That the nature of the evidence which the Plaintiff now seeks leave to adduce is such that had it been before the Court on the trial of the said action the Defendant could not have rebutted it.

Dated the 29th day of March, 1954.

(Sgd.) R. E. T. PETERKIN,  
Plaintiff's Solicitor.

To : the Registrar,  
Supreme Court.

And to : The Defendant or his Solicitor,  
Messrs. Fraser & Calame,  
Kingston.

30

Filed by R. E. T. PETERKIN of No. 60 Duke Street, Kingston, Solicitor for and on behalf of the abovenamed Plaintiff whose address for service is that of his said Solicitor.

## No. 33.

**AFFIDAVIT of James Hall.**

No. 33.  
Affidavit  
of James  
Hall,  
30th  
March,  
1954.

I, JAMES HALL whose true place of abode and Postal address is 122 Duke Street in the parish of Kingston, Landed Proprietor, make oath and say as follows :—

1. That I did on the 2nd day of April, 1953, serve a Subpœna out  
40 of the Supreme Court of Judicature of Jamaica on Russell Lewars, Town

*In the  
Court of  
Appeal.*

Clerk, requiring him to produce into Court at the trial of the case in the Lower Court all plans for improvements of 105 King Street and he refused to do so.

No. 33.  
Affidavit  
of James  
Hall,  
30th  
March,  
1954,  
*continued.*

Sworn to at  
in the parish of Kingston this 30th day (Sgd.) J. HALL.  
of March, 1954 before me :—

(Sgd.)  
Justice of the Peace.

This Affidavit is filed by R. E. T. PETERKIN of No. 60 Duke Street, Kingston, Solicitor for and on behalf of the abovenamed Plaintiff whose 10 address for service is that of his said Solicitor.

No. 34.  
Affidavit  
of  
Gladstone  
Rushworth  
Priestley,  
29th  
March,  
1954.

No. 34.

**AFFIDAVIT of Gladstone Rushworth Priestley.**

I, GLADSTONE RUSHWORTH PRIESTLEY whose true place of abode is No. 10 Cassia Park Avenue in the parish of Saint Andrew and whose postal address is Half Way Tree Post Office make oath and say :—

1. That I am an Architect and Builder with my office at No. 110 West Street in the parish of Kingston.

2. I prepared a Plan of the buildings of No. 105 King Street in the 20 parish of Kingston on the 21st day of August, 1947.

3. On the Plan is shown an outbuilding at the Western boundary of the said No. 105 King Street consisting of four rooms (Plan exhibited with this Affidavit and marked " A " for identity).

(Sgd.) G. R. PRIESTLEY.

Sworn to at Kingston in the parish of  
Kingston the 29th day of March,  
1954, before me :—

(Sgd.) A. M. BROWN,  
Justice of the Peace.

30

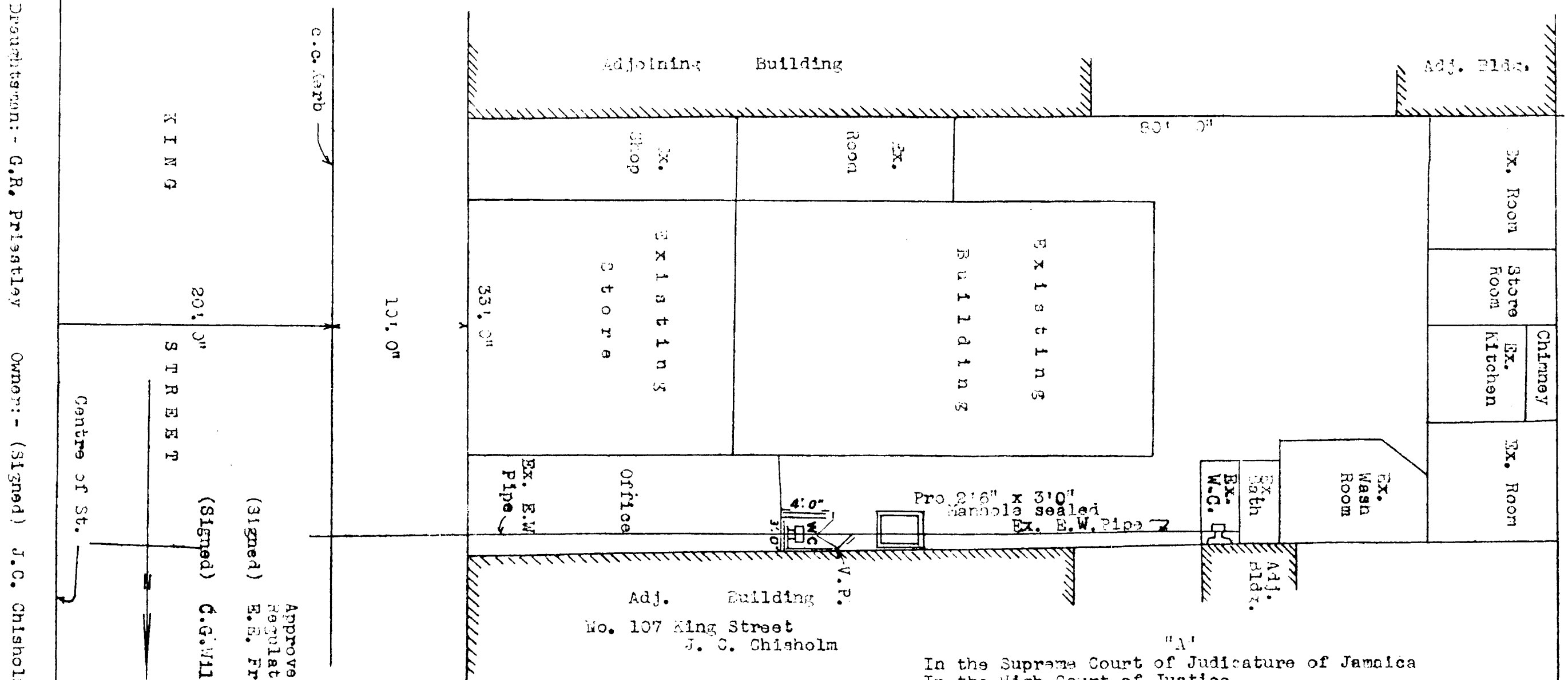
This Affidavit is filed by R. E. T. PETERKIN of No. 60 Duke Street, Kingston, Solicitor for and on behalf of the abovenamed Plaintiff whose address for service is that of his said Solicitor.

PLAN - EXHIBIT "A" to Affidavit of Glaistone Rushworth Priestley.

No. 105 KING STREET  
J. Hall

Adjoining Building

Adj. Bldg.



Adj. Building  
No. 107 King Street  
J. C. Chisholm

In the Supreme Court of Judicature of Jamaica  
In the High Court of Justice  
Common Law

BETWEEN JAMES HALL Plaintiff  
AND JAMES CLINTON CHISHOLM Defendant

This is the Plan mentioned and referred to in  
the Affidavit of G.R. Priestley dated the 29th  
day of March, 1954

(Sgd) G. R. PRIESTLEY

A. H. BROWN  
Justice of the Peace

c.c. kerb  
 KING STREET  
 201' 0"  
 Centre of St.  
 (Signed) E.E. Fraser for Chief Engineer  
 d/d 21/8/47  
 (Signed) G.G. Wilson Secretary  
 d/d 22/8/47  
 Approved subject to the Regulation.  
 Draughtsman: - G.R. Priestley  
 Owner: - (Signed) J.C. Chisholm.

**No. 36.**  
**JUDGMENT.**

*In the  
Court of  
Appeal.*

Parkinson for the Appellant.

Blake for the Respondent.

No. 36.  
Judgment,  
30th July,  
1954.

The judgment of the Court (Carberry, C.J., MacGregor and Rennie, J.J.) was delivered by Mr. Justice MacGregor on the 30th day of July, 1954.

The Plaintiff-Appellant unsuccessfully claimed in an action against the Defendant-Respondent :—

10 (A) a declaration that a strip of land measuring 7 feet more or less from north to south and extending from King Street for a distance of 69 feet 8 inches to the west and lying to the south of 105 King Street, is comprised in his Certificate of Title to Nos. 101 and 103 King Street registered at Volume 386 folio 1 of the Register of Titles ;

(B) to recover possession of this strip of land ; and

(C) an order for mesne profits.

20 The Appellant is the registered proprietor of two properties known as Nos. 101 and 103 King Street in the city of Kingston. The Respondent is the registered proprietor of 105 King Street which lies immediately to the north of No. 103. A zinc fence which purports to separate the properties, runs from the southern wall of the Respondent's main building at the eastern or King Street end of No. 105, to an outroom at the south western end of that property. The southern walls of the main building to the east, and of the outrooms to the west, comprise the rest of the alleged boundary line. At the eastern end, the buildings on 103 King Street are separated from those on No. 105 by a space of about 8 inches and at the western end, the Respondent's outroom to which the zinc fence runs, is hard up against an outroom belonging to the Appellant on No. 103.

30 103 King Street was first brought under the Registration of Titles Law on the 21st January, 1901, when Morris Aria Bonitto was registered as the proprietor in vol. 21 folio 83. The lands were therein described as :—

40 " 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 Guildford 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 in ALL THAT piece or parcel of land situate lying and being in the City and Parish of Kingston

*In the  
Court of  
Appeal.*

No. 36.  
Judgment,  
30th July,  
1954,  
*continued.*

and known as No. 101 King Street containing by measurement from East to West eighty-six feet and from North to South twenty-four 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 to a claim being established by the city council of Kingston to a 10 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."

Morris Aria Bonitto died in November, 1918, and Letters of Administration with the will annexed were granted in respect to his estate to the Administrator General on the 31st January, 1919. By his will, 103 King Street was devised to a trustee to pay the rents and profits arising therefrom, to his wife Eugenia Blanche Bonitto for her life and thereafter to his children by a previous marriage, as tenants in common in fee simple. 20

On the 7th May, 1919, the said Certificate of Title was cancelled and a fresh certificate for the said lands was registered, with the Administrator General as proprietor. The duplicate certificate in respect of this registration was lost and a new Certificate of Title was registered in the name of the Administrator General on 16th October, 1941, at Vol. 386 folio 1. The Appellant bought Nos. 101 and 103 King Street from the Administrator General and he was put in possession on the 16th August, 1941, and by a transfer dated the 24th September and registered on the 30th October, 1941, the Appellant became the registered proprietor of these two properties. 30

The Respondent is the registered proprietor of 105 King Street. The history of that property, as far as it is known, shows that on the 23rd May, 1893, Bernard Leonce Hodelin conveyed to Ella Louise Bonitto, the first wife of Morris Aria Bonitto, the property which is described in the Indenture as—

" 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 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 40 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 otherwise the same may be butted bounded known distinguished or described."

By this deed Mrs. Bonitto was given a power of appointment over the land, but she died on 30th March, 1901, without having exercised it. In accordance with the terms of the deed, the property, 105 King Street,

became vested in her children. Morris Aria Bonitto married Eugenia Blanche Bonitto in 1902 and they lived together at 105 King Street from then until his death in 1918. Eugenia Blanche Bonitto continued to live there until she sold it to the Respondent in 1928, she having bought the property from her step-children on 22nd March, 1921. On the 12th March, 1928, No. 105 was brought under the Registration of Titles Law and Eugenia Blanche Bonitto was registered as proprietor of—

*In the  
Court of  
Appeal.*

No. 36.  
Judgment,  
30th July,  
1954,  
*continued.*

10 “ ALL THAT parcel of land known as number one hundred and five King St. in the parish of Kingston measuring from north to south twenty-five feet and from east to west seventy-five feet 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.”

The Respondent was registered as the proprietor of that property by transfer dated 12th and registered 16th April, 1928.

20 From this summary of the facts it is observed that the members of Bonitto family owned or were receiving the rents and profits of No. 103 from 1901 until 1941, and of No. 105, from 1893 until 1928; that Mr. Bonitto who owned No. 103 from 1901 until his death in 1918, lived in the adjoining property No. 105, certainly from 1902 until his death in 1918, and thereafter his second wife received the rents and profits of No. 103 and continued to live in No. 105 until in 1928 when she sold it to the Respondent.

In 1928 when the Respondent purchased No. 105, there was a zinc fence dividing that property from No. 103. One of the main issues of fact at the trial was the location of this fence in 1928.

30 In 1937 the Respondent effected alterations to the main building at No. 105. He extended it southwards to within 8 inches of the main building on No. 103. Later, in 1937, he extended another portion of the main building to the south, and connected it with the previous extension. In his evidence the Respondent stated that the new southern wall of these extensions was erected on the line of the boundary between Nos. 105 and 103, as he found it and followed the zinc fence which had been there.

The Appellant alleged that in carrying out these extensions, the Respondent removed the zinc fence, encroached on No. 103 and replaced the fence 7 feet further south in the line that it now occupies, and that he thus enclosed as part of No. 105, the strip of land in dispute, about 7 feet wide and 79 feet 8 inches long, running from King Street on the east to the western boundary of the land.

40 It was submitted for the Appellant that, in the pleadings the Respondent had admitted the Appellant's claim, and that the Respondent was not in law entitled to rely on *falsa demonstratio* as it had not been pleaded.

In paragraphs 10 and 11 the Appellant pleaded :—

“ 10. The Defendant is in possession of a strip of land measuring from North to South seven feet more or less and extending from King Street for a distance of seventy-nine feet and eight inches to the West and lying South of the property known as Number One Hundred and Five King Street belonging to the Defendant.



*In the  
Court of  
Appeal.*

No. 36.  
Judgment,  
30th July,  
1954,  
*continued.*

11. The said strip of land is part of the land comprised in the said Certificate of Title registered as aforesaid at Volume 386 Folio 1 of the Register of Titles and the Plaintiff is entitled to possession thereof."

It was submitted that when the Respondent pleaded in paragraph 2 of the defence :—

"The Defendant admits that he is, and has been in possession of the strip of land described in paragraph 10 of the statement of claim "

that he was admitting that he is in possession of the disputed strip lying 10 south of his property No. 105, that it is no part of 105 and therefore as it is included in the Appellant's registered title, he was entitled to an order for possession. We do not agree with this submission. The Respondent continued his plea in paragraph 2—

"but the Defendant denies that the Plaintiff is entitled to possession thereof as alleged in paragraph 11, or at all."

Then in paragraphs 7, 8 and 9 of the Defence the Respondent pleaded that the southern boundary of No. 105 was the fence and southern wall of the outrooms, including in No. 105 the passage between the main houses on Nos. 103 and 105. 20

We were referred to s. 218 of the Code, Cap. 463 which corresponds with R.S.C. O. 21 r. 21, and which provides :—

"No defendant in an action for the recovery of land, who is in possession by himself or his tenant, need plead his title unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and in such statement it shall be implied that he denies or does not admit the allegations of fact contained in the plaintiff's 30 statement of claim.

He may nevertheless rely on any ground of defence which he can prove, except as hereinbefore mentioned."

In *Danford v. McAnulty* (1882-3) 8 A.C. 456 it was held that in an action for the recovery of land, as the instant case is, a statement of defence alleging that the defendant is in possession operates as a denial of the allegations in the plaintiff's statement of claim, and requires the plaintiff to prove them. When referring to O. 19 r. 15, which now is O. 21 r. 21, Lord FitzGerald said at p. 465 :—

"[It] is divisible into three parts. 1. The defendant need not 40 plead his title unless it is equitable. 2. It is sufficient for him to state that he is in possession. 3. He may rely on any defence he can prove though he has not stated it. The obvious intention of this exceptional rule, if we are to construe it by its own light alone, seems to be to leave the defendant in an action for the recovery of land in the same position substantially as he was before the Judicature Act and Rules, that is to say entitled to rely on his possession

as a sufficient denial of the plaintiff's title and a sufficient answer until the plaintiff had proved his title, and then enabling the defendant to rely on any defence he could prove though he had not pleaded it."

*In the  
Court of  
Appeal.*

No. 36  
Judgment,  
30th July,  
1954,  
*continued.*

Summarising the description of the parcel referred to as No. 103 King Street, as registered at Vol. 386 Folio 1, it will be seen that there are the following descriptions :—

- (A) No. 103 King Street ;
- 10 (B) containing by admeasurement from north to south twenty-six feet and from east to west eighty-six feet be the same more or less ; excluding a portion reserved for a claim by the City Council 11 feet from east to west ;
- (C) butting and bounding north formerly on land of Mrs. Parks, now on land of or belonging to the said Morris Aria Bonitto.

The measurements given in the same title for the parcel referred to as No. 101 King Street are, east to west eighty-six feet, excluding a portion reserved for a claim by the City Council 11 feet from east to west, and from north to south twenty-four feet, but a strip five feet wide along the southern boundary is excluded from this parcel of land. The north to south  
20 measurement, therefore, of Nos. 103 and 101 is 26 feet plus 24 feet less 5 feet, a total of 45 feet.

Summarising also the description of No. 105 King Street, the following descriptions are found in the Conveyance dated 23rd May, 1893 :—

- (A) No. 105 King Street ;
- (B) containing from north to south twenty-five feet and from east to west seventy-five feet ;
- (C) butting south on a tenement formerly belonging to William Willysey but now to Dr. James Ogilvie.

In the registered title at Vol. 208 folio 36 the lands are described as—

- 30 (A) No. 105 King Street ;
- (B) measuring from north to south twenty-five feet and from east to west seventy-five feet more or less ;
- (C) butting south on land of the Administrator General on behalf of estate Morris Aria Bonitto deceased.

In 1942 Mr. G. W. Bourke, a Commissioned Land Surveyor, checked the measurements on earth with the measurements shown in the duplicate Certificate of Title ; there should have been, from north to south forty-five feet ; he found only 38 feet 6 inches at the eastern end of the premises and at the western end 37 feet 4 inches. To obtain the measurements  
40 from north to south called for by the title, it would be necessary to go northwards and include a strip of land 6 feet 6 inches wide at the eastern end and 7 feet 8 inches wide at the western end, the disputed strip, which is within the alleged boundary fence of No. 105. The width of No. 103 from east to west was, at the south, 80 feet 4 inches, and at the north, 79 feet 4 inches.

*In the  
Court of  
Appeal.*

No. 36.  
Judgment,  
30th July,  
1954,  
*continued.*

Mr. Bourke examined the title to No. 105 in the Office of the Registrar of Titles. He found that No. 105 measured on earth from north to south at the eastern end, 32 feet 6 inches, and at the western end 33 feet 1 inch. If from these measurements were subtracted the strip of land in dispute, then the measurements would be, at the eastern end 32 feet 6 inches less 6 feet 6 inches, viz. 26 feet, and at the western end 33 feet 1 inch less 7 feet 8 inches, viz. 25 feet 5 inches. But Mr. Bourke stated in evidence :—

“ I found 105 King Street, according to Certificate of Title . . . measuring 32 feet 6 inches which includes the portion shaded yellow 10 (i.e. the piece in dispute) whereas the north to south measurements of 105 King Street as per its registered title should be 25 feet 7 inches. On eastern side in title is 25 feet, on earth 25 feet 7 inches.”

Examination of his plan shows that that 25 feet 7 inches is the measurement at the eastern end to the southern wall of the original building before it was extended. That would leave 5 inches between that southern wall and the disputed strip. [Mr. Bourke's plan by mistake shows the measurement of 6 feet 6 inches as from the fence to the wall, instead of from the fence to the end of the disputed strip.] 20

It was submitted further for the Appellant that the measurements as shown on his registered title included not only that part of No. 103 which is now within the fences and in the occupation of the Appellant, but also this strip lying to the north and outside of the existing fence and which is now occupied by the Respondent as part of No. 105. If it is correct, that this disputed strip of land is included in the Appellant'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, and we agree, 30 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.

For the Respondent it was pointed out that this is an action of ejectment and the Appellant can only succeed on the strength of his own title; that the onus was on him to show that the disputed strip was included in his Certificate of Title; that he has attempted to do so by relying on the measurements in his certificate which are given as “more or less” but that when these measurements are applied to the land, they are found not to be accurate with respect to the land now in 40 the Appellant's occupation or as occupied by him and his predecessors in title certainly as far back as 1902; that in these circumstances, a latent ambiguity in the description by measurement is revealed, and that the general principles of construction which are applied in such cases should be followed.

It is therefore necessary to examine closely the measurements of Nos. 103 and 101 King Street as given in the Certificate of Title. Of No. 103 they are “north to south twenty-six feet and from east to west eighty-six feet be the same more or less.” But these measurements are subject to a claim by the City Council to a portion of the same parcel 50

where it touches on King Street, measuring 11 feet from east to west and 86 feet from north to south. This measurement of 86 feet from north to south is palpably erroneous and would appear to be a clerical error.

*In the  
Court of  
Appeal.*

No. 36.  
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*continued.*

Turning to that portion of the Appellant's property known as No. 101 King Street, the measurements in the certificate of title are given as 86 feet east to west and 24 feet north to south. A strip to the south, 5 feet from north to south and 86 feet east to west is excepted, and this lot of land No. 101 King Street is also stated to be subject to a claim by the  
10 City Council to a portion fronting on King Street. The measurements of this claim are given as north to south 24 feet and from east to west 11 feet.

Mr. Bourke's plan disclosed that the City Council did not make use of the whole of the strip eleven feet wide reserved for their claim. The result is therefore that the width of No. 103 is less than 86 feet by the width of the piece of land actually taken over.

We now consider the measurements of the respondent's property. His certificate of title calls for north to south 25 feet and east to west 75 feet more or less. Mr. Bourke's plan shows that the respondent occupied 32 feet 6 inches from north to south along the eastern boundary, i.e.,  
20 including the disputed strip of 6 feet 6 inches. Excluding that strip, the Respondent would have 26 feet. The measurement to the original wall of the main building, before it was extended in 1937, was 25 feet 7 inches, leaving a space of 5 inches between the wall and the disputed strip. It will also be noted that the east to west measurement of 75 feet is the same as the east to west measurement as called for in the certificate of title of both Nos. 101 and 103 had all the 11 feet reserved for the City Council been used by the Council. But the width of No. 105 on earth is 79 feet 4 inches. It probably is that originally a portion to the east had also been reserved for the Council which has not taken all that was reserved for it ; but there is no  
30 evidence to support this.

It was submitted on behalf of the Appellant that the Appellant and the Respondent are together in occupation of land the total measurement of which from north to south is the exact measurement given in the registered titles of Nos. 101, 103 and 105, but this is not correct. As has been noted above, the north to south measurement of Nos. 103 and 101, after deducting the 5 feet strip, is 45 feet ; that of No. 105 is 25 feet, making a total of 70 feet from north to south. Mr. Bourke's plan shows that the parcel occupied by the Appellant measures 38 feet 6 inches from north to south, excluding the disputed strip, and the parcel occupied by the Respondent  
40 measures 32 feet 6 inches including the disputed strip. The total of these two strips is 71 feet. There is therefore an excess of 1 foot between the total north to south measurements of both holdings over the sum of the relevant figures given in both certificates of title.

It is therefore 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.

*In the  
Court of  
Appeal.*

No. 36.  
Judgment,  
30th July,  
1954,  
*continued.*

It would therefore appear either that the description of these parcels by admeasurement is inaccurate or that the description of only No. 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, Second Edition at page 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.”

10

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.

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. Cf. *Eastwood v. Ashton* [1915] A.C. 900 per Lord Loreburn L.C. at pp. 906, 907 ; Lord Parker at pp. 909, 912 ; and *Watcham v. Attorney General of the East African Protectorate* [1919] A.C. 533. 20

We now examine the extrinsic evidence of the identity of these properties.

For the purpose of carrying out the extensions to the main building on No. 105 mentioned above, the Respondent had two plans prepared by Mr. Betty, an architect. They show the original building on No. 105, and the proposed alterations. The earlier of these plans shows, as the southern boundary of No. 105, a zinc fence running from King Street westerly towards the outrooms at the west of the enclosure. The zinc fence stops at the eastern side of the southern end of the range of three outrooms. At the King Street end the fence passes a few inches north of the main building of No. 103. The plan also shows the main building of No. 105 as some six to seven feet from this zinc fence. As a result of the alterations this main building was extended southward to the zinc fence so that the new southern wall of the main building replaced the fence from King Street westerly for a distance of about 35 feet. The zinc fence then continued to mark the boundary up to the point where it touched the outrooms. The Appellant gave evidence and called two witnesses to support him, that in 1937, when the Respondent did this reconstruction, he demolished an old wooden fence on the then existing southern boundary of No. 105 and erected a new zinc fence, the present fence, encroaching on No. 103, and enclosing for the first time the disputed strip. The learned trial Judge did not accept that evidence but 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. 30 40

In the course of his judgment the learned Judge said :—

“ 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 Bourke 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 . . .

10

On a question of fact I find that the 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 prior to the year 1902.”

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.

20

But these findings of the learned Judge, that the fence in 1902 occupied the same position that it occupied, in 1920 to the knowledge of Lewars, in 1928 when purchased by the Respondent, and at the present time, does not answer the question, where was that fence at the time of the registration of the title to No. 103 in 1901 ?

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.

30

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

40

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Court of  
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*continued.*

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Appeal.*

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*continued.*

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.

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 of land would coincide.

The documents also reveal that in a declaration of the 14th January, 1928, Eugenia Blanche Bonitto stated that the property contiguous 10 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.

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. 20

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.

At this point it may be convenient to consider whether or not the learned trial Judge was right in coming to the conclusion 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 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 30 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. 40

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 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 registration because of the then position of the fence.

*In the  
Court of  
Appeal.*

No. 36.  
Judgment,  
30th July,  
1954,  
*continued.*

Summarising the position, the following facts are found :

10 In March, 1885, the premises 103 King Street and 10 Chancery Lane were held as one holding, the northern boundary of both being a straight line. At some time thereafter, and before December, 1900, the portion now known as 10 Chancery Lane was sold. But the northern boundary of both properties was still a straight line. At the time of the application for registration the northern boundary of No. 103 still remained where it had been at the time of the sale of what now is 10 Chancery Lane. At the date of the wedding of Morris Aria Bonitto to Eugenia Blanche Bonitto the fence had been moved and the room had been extended. That removal and extension could only have taken place after Morris Aria Bonitto entered into possession of No. 103. At the time therefore of the registration, No. 103 included the disputed strip.

20 In our view the appeal must be allowed. The judgment of the learned trial Judge will be set aside and judgment entered for the Appellant :

- (A) for the declaration he sought ;
- (B) for recovery of possession of the strip of land ; and
- (C) the case must be referred to the Registrar to assess the mesne profits payable to the Appellant ;
- (D) the Appellant must have his costs of the appeal and in the Court below.

30 We suggest that in view of the additions made in 1937 by the Respondent (in good faith), that the Respondent should be permitted to purchase the disputed strip from the Appellant.

(Sgd.) J. E. D. CARBERRY.  
C.J.

„ C. M. MACGREGOR.  
J.

„ A. B. RENNIE.  
J.



No. 37.

ORDER allowing Appeal.

*In the Court of Appeal.*

No. 37.  
Order allowing Appeal, 30th July, 1954.

Supreme Court Civil Appeal 10 of 1953  
in  
Suit No. C.L. 31 of 1951

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COURT OF APPEAL

Between JAMES HALL . . . . . Plaintiff-Appellant  
and  
JAMES CLINTON CHISHOLM . . . Defendant-Respondent. 10

The 30th day of July, 1954.

UPON MOTION By way of Appeal on the 25th, 26th, 29th, 30th and 31st days of March, 1954, made unto this Court by Mr. E. C. L. Parkinson of Counsel for the Plaintiff from the Judgment of Mr. Justice Semper dated the 25th day of July, 1953, and Upon Hearing Counsel for the Appellant and Mr. V. O. Blake of Counsel for the Respondent and Upon Reading the said Judgment This Court Did Order that the said Appeal should stand for Judgment and the Said Appeal standing this day in the paper for Judgment the written Judgment of the Court was read whereby This Court Doth Order that :

20

1. This Appeal be allowed and that the said Judgment in the Court below dated the 25th day of July, 1953, be set aside and Judgment entered for the Plaintiff-Appellant.

(A) for the declaration he sought ;

(B) for recovery of possession of the strip of land ; and

(C) for mesne profits, for the assessment of which the case must be referred to the Registrar ; and

2. The Plaintiff-Appellant do have his costs of this Appeal and in the Court below.

Entered the 24th day of September, 1954.

30

By the Court.  
L.S.

(Sgd.) M. BURKE.  
Registrar.

This Order is entered by the Plaintiff-Appellant in person.



## No. 38.

## ORDER Granting Special Leave to Appeal to Her Majesty in Council.

*In the  
Privy  
Council.*

AT THE COURT AT BUCKINGHAM PALACE.

The 1st day of December, 1955.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT

Mr. BOYD-CARPENTER

EARL OF MUNSTER

Mr. MAUDLING

No. 38.  
Order  
granting  
Special  
Leave to  
Appeal  
to Her  
Majesty  
in Council,  
1st  
December,  
1955.

10 WHEREAS there was this day read at the Board a Report from the  
Judicial Committee of the Privy Council dated the 10th day of November,  
1955, in the words following, viz. :—

20 “ WHEREAS by virtue of His late Majesty King Edward the  
Seventh's Order in Council of the 18th day of October, 1909, there  
was referred unto this Committee a humble Petition of James  
Clinton Chisholm in the matter of an Appeal from the Court of  
Appeal of Jamaica between the (Defendant) Petitioner and James  
Hall (Plaintiff) Respondent setting forth (amongst other matters)  
that the Respondent instituted an Action against the Petitioner  
on the 31st January, 1951, in the High Court claiming a declaration  
that a strip of land 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  
Laws of Jamaica) for 103 King Street registered in the name of  
the Respondent and to recover possession of the strip of land and  
the Respondent by his Statement of Claim filed and delivered on  
the 17th July, 1951, also claimed mesne profits from the 16th August,  
1941 : that by Counterclaim filed and delivered on the 27th Sep-  
30 tember, 1951, the Petitioner claimed a declaration that the northern  
and southern boundaries of the properties 101–103 King Street  
and 105 King Street as then existing were the true boundaries  
between the properties and for Orders to rectify the Title of the  
Respondent to 101–103 King Street so as to exclude therefrom  
the strip of land and the Title of the Petitioner to 105 King Street  
registered so as to include the strip of land : that on the 25th July,  
1953, the Court dismissed the Respondent's claim and adjudged  
that the northern and southern boundaries of the properties  
101–103 King Street as then existing were the true boundaries :  
40 that the Respondent appealed to the Court of Appeal which on  
the 30th July, 1954, allowed the Appeal set aside the Judgment  
of the High Court and entered Judgment for the Respondent for  
the declaration claimed by him for recovery of possession of the  
said strip of land and for mesne profits for the assessment of which  
the case was referred to the Registrar : that the aforesaid Judgment  
of the Court of Appeal was entered on the 24th September, 1954,  
and on the 30th September, 1954, Notice of Motion for leave to  
appeal to Your Majesty in Council was given by the Petitioner :

*In the  
Privy  
Council.*

No. 38.  
Order  
granting  
Special  
Leave to  
appeal  
to Her  
Majesty  
in Council,  
1st  
December,  
1955,  
*continued.*

that on the 30th March, 1955, the Registrar of the said Court assessed the mesne profits and on the 19th April, 1955, the Petitioner gave a further Notice of Motion for leave to appeal to Your Majesty in Council: that on the 29th April, 1955, the Motions were heard by the Court of Appeal and dismissed on the ground that Rule 3 of the Rules of the Court governing Appeals to Your Majesty in Council provides that the application for leave to appeal shall be made within 21 days from the date of the Judgment to be appealed from and that such date is the date on which Judgment is pronounced and not the date on which Judgment is entered: And humbly 10  
praying Your Majesty in Council to grant to the Petitioner special leave to appeal from the Judgment of the Court of Appeal of Jamaica dated the 30th July, 1954, or for further or other relief:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Jamaica dated the 30th day 20  
of July, 1954, upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

“And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof 30  
and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Captain General and Governor in Chief or Officer administering the Government of the Island of Jamaica and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

**PART II.**  
**EXHIBITS.**

No. 7.

**APPLICATION to register title of 101 and 103 King Street.**

*Exhibits.*  
—  
*Defendant's*  
*Exhibit.*  
—

**7**  
Applica-  
tion to  
register  
Title,  
101 and 103  
King Street,  
13th  
December,  
1900.

To the Registrar of Titles :—

I, JAMES OGILVIE of the City and Parish of Kingston in this Island, Health Officer and whose postal address is Kingston, hereby apply to have the lands described in the 1st Schedule hereto brought under the operation of the Registration of Titles Law, 1888, and I declare :—

10      1. That I am the owner of an estate in fee simple in possession of the said lands.

2. That such lands including all buildings and other improvements thereon are together of the value of Seventy Pounds and no more.

3. That the deeds documents or other evidence on which I rely in support of my title to the said lands are set forth in the 2nd Schedule hereto to the best of my knowledge and belief and there are no deeds documents or evidences invalidating my title to the said lands.

20      4. That I am not aware of any mortgage or incumbrance affecting the said lands or that any person hath any estate or interest therein at law or in equity in possession remainder reversion contingency or expectancy other than those enumerated in the 3rd Schedule hereto.

5. That the said lands are unoccupied.

6. That the names and addresses so far as is known to me of the occupants of all lands contiguous to the said lands described in 1st Schedule (a) are as follows :—

North : on Samuels, 105 King Street, Kingston.

East : on King Street.

West : on Ernest Wilson, No. 10 Chancery Lane, Kingston.

South : on unoccupied land.

30      7. That the names and addresses so far as is known to me of the owners of all lands contiguous to the said land described in 1st Schedule (a) are as follows :—

North : on land belonging to Morris Aria Bonitto, 76, Princess Street, Kingston.

East : on King Street.

West : on land belonging to James Guilford Binns, No. 36 King Street, Kingston.

South : on land belonging to James Ogilvie, Kingston.

40      8. That the names and addresses so far as is known to me of the occupants of all lands contiguous to the said land described in 1st Schedule (b) are as follows :—

North : on unoccupied land.

*Exhibits.*

*Defendant's Exhibit.*

7

Application to register Title, 101 and 103 King Street, 13th December, 1900, *continued.*

East : on King Street.

West : on Charles Campbell, No. 8 Chancery Lane, Kingston.

South : on Esther Thompson, No. 99 King Street, Kingston.

9. That the names and addresses so far as is known to me of the owners of all lands contiguous to the said land described in 1st Schedule (b) are as follows :—

North : on land belonging to the said James Ogilvie, Kingston.

East : on King Street.

West : on land belonging to Charles Campbell, No. 8 Chancery Lane, Kingston.

South : on land belonging to James Ogilvie, Kingston.

10

AND I DIRECT the Certificate of Title to be issued in the name of MORRIS ARIA BONITTO of the City and Parish of Kingston in this Island, Shopkeeper.

Made and Subscribed at Kingston in the Parish of Kingston in this Island on the 13th day of Decbr., 1901, in the presence of :—

(Sgd.) JAMES OGILVIE.

(Sgd.) J. H. BRUCH,  
J.P.

20

1st SCHEDULE

(A) ALL THAT piece or parcel of land situate in the said 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 bounded 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 the said James Ogilvie and West formerly on Chancery Lane but now on a portion of the same 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.

30

(B) 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 Eighty-six feet and from North to South Twenty-four 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 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.

40

## 2nd SCHEDULE (A)

1. Gore, James Robert to Ogilvie, Dr. James. Dated the 13th day of March, 1885. Recorded Liber N.S. 28 Folio 306. Deed of Conveyance.
2. Declaration of Dr. James Ogilvie dated the            day of            1900.
3. Certificate of Collector of Taxes.
4. Willasey, Priscilla to Ogilvie, James. Dated 13th June, 1885—unrecorded.

*Exhibits.*  
 Defendant's  
*Exhibit.*

7  
 Application to  
 register  
 Title,  
 101 and 103  
 King Street,  
 13th  
 December,  
 1900,  
*continued.*

## 2nd SCHEDULE (B)

- 10 1. Steel, Elizabeth to Ogilvie, Dr. James, dated the 6th day of July, 1883. Recorded Liber New Series 28 Folio 306. Conveyance.
2. Declaration of Elizabeth Steel and Ellen Beakley dated the            day of            , 1900.
3. Collector of Taxes Certificate.
4. Declaration of James Ogilvie dated the            day of            , 1900.

## 3rd SCHEDULE

Incumbrances.            None.

- 20 Made and subscribed at Kingston in the parish of Kingston in this Island on the 13th day of Decbr., 1900, in the presence of
- (Sgd.) JAMES OGILVIE.
- (Sgd.) J. H. BRUCH.  
 J.P.

## No. 7 (a).

## STATUTORY DECLARATION of Elizabeth Steel and Ellen Blakely.

Jamaica S.S.

- 30 We, ELIZABETH STEEL, Spinster and ELLEN BLAKELY, Domestic both of Kingston in this Island do solemnly and sincerely declare as follows :—

I the said Elizabeth Steel for myself say as follows :—

In the year One thousand eight hundred and forty-nine the land now known as No. 101 King Street Kingston was sold at Public sale and I became the purchaser thereof through my Agent Mr. Alfred Earle Robins for the sum of Twenty Two Pounds. I thereupon paid the purchase money and received and entered in possession of the said land and a Deed of Conveyance for the said land was I believe executed to me and may have been delivered to the said Mr. Robins who managed all my affairs for me but I have never had such deed nor can it anywhere be found.

- 40 2. From the year One thousand eight hundred and forty-nine when I received possession of the said land as aforesaid up to the date hereof

7 (A)  
 Statutory  
 Declaration  
 of  
 Elizabeth  
 Steel and  
 Ellen  
 Blakely,  
 6th July,  
 1883.

*Exhibits.*  
—  
*Defendant's Exhibit.*

I have continued in the quiet and undisturbed possession of the same and have used occupied and enjoyed it and having now sold it to Dr. James Ogilvie of Kingston I am about to convey it to him.

7 (A)

And I the said Ellen Blakely for myself say as follows :—

Statutory  
Declara-  
tion of  
Elizabeth  
Steel and  
Ellen  
Blakely,  
6th July,  
1883,  
*continued.*

3. I know and am well acquainted with my co-declarant Elizabeth Steel having been on terms of intimate acquaintance with her for the last thirty years.

4. I know the land now known as No. 101 King Street Kingston referred to by my co-declarant and am aware of the purchase thereof by her. The said Elizabeth Steel has to my knowledge been in the quiet and undisturbed possession and enjoyment of the said land from the year one thousand eight hundred and forty-nine to the date hereof. And we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the Sixth year of the Reign of Her Majesty Queen Victoria entitled "An Act to abolish oaths and affidavits except in certain cases and to substitute declarations in lieu thereof and to suppress voluntary and extra-judicial oaths and affidavits."

Declared to by the said Elizabeth Steel  
at Kingston aforesaid this sixth day  
of July, 1883, before me } (Sgd.) ELIZABETH STEEL. 20  
(Sgd.) A. H. JONES,  
J. P. Kingston.

Declared to by the said Ellen Blakely  
at Kingston aforesaid this sixth day  
of July, 1883, before me } (Sgd.) ELLEN BLAKELY.  
(Sgd.) A. H. JONES,  
J.P. Kingston.

7 (B)

Convey-  
ance,  
Elizabeth  
Steel to  
James  
Ogilvie,  
6th July,  
1883.

No. 7 (b).

**CONVEYANCE—Elizabeth Steel to James Ogilvie.**

30

Jamaica S.S.

THIS INDENTURE made the Sixth day of July One thousand eight hundred and eighty-three Between ELIZABETH STEEL of Kingston in this Island Spinster of the One Part and JAMES OGILVIE of the same place Practitioner in Physic and Surgery of the other part WITNESSETH that in consideration of the sum of Twenty Five pounds paid by the said James Ogilvie to the said Elizabeth Steel (the receipt whereof is hereby acknowledged) the said Elizabeth Steel doth hereby grant bargain sell alien enfeof release and convey unto the said James Ogilvie and his heirs ALL THAT piece or parcel of land situate in and known as No. 101 King Street in Kingston in this Island containing in depth from East to West Eighty-six feet and in breadth from North to South Twenty Four Feet butting and

40

bounding North on land in the possession of or belonging to the Heirs of Miss Willasey South on land the property of the said James Ogilvie East on King Street and West on land in the possession of or belonging to Miss Campbell or howsoever otherwise the same may be butted bounded known distinguished or described together with all erections and fixtures therein and all rights and things appurtenant or reputed to be appurtenant thereto AND ALL the estate and interest of the said Elizabeth Steel therein and thereto TO HOLD the said land hereditaments and premises unto and to the use of the said James Ogilvie his heirs and assigns for ever

10 (*Vendor's covenants for good right to convey, for quiet enjoyment, free from incumbrances and for further assurance.*)

*Executed by the said Elizabeth Steel and duly attested.*

*Receipt for consideration money endorsed, signed and witnessed.*

*Memorandum of proof sworn the 6th July, 1883, endorsed and signed by Justice of the Peace.*

*Exhibits.*  
 ———  
*Defendant's Exhibit.*  
 ———  
 7 (B)  
 Convey-  
 ance,  
 Elizabeth  
 Steel to  
 James  
 Ogilvie,  
 6th July,  
 1883,  
*continued.*

No. 7 (c).

CONVEYANCE—James Robert Gore to James Ogilvie.

Jamaica S.S.

THIS INDENTURE made the Thirteenth day of March One thousand  
 20 eight hundred and eighty five Between JAMES ROBERT GORE of Kingston  
 in this Island Clerk of the one part and JAMES OGILVIE of Kingston  
 aforesaid Medical Practitioner of the other part WITNESSETH that in  
 consideration of the sum of Thirty-five Pounds sterling lawful money of  
 Great Britain and this Island paid by the James Ogilvie to the said James  
 Robert Gore upon or immediately before the execution of these presents  
 (the receipt whereof is hereby acknowledged) the said James Robert Gore  
 DOth hereby grant bargain sell alien release and convey unto the said  
 James Ogilvie and his heirs ALL THAT piece or parcel of land situate in  
 and known as No. 103 King Street, Kingston, containing by estimation  
 30 from North to South twenty-six feet and from East to West One hundred  
 and sixty-one feet more or less and butting and bounding Northerly part  
 on land of or belonging to Mr. Williams and other part on land of  
 Mrs. Parks Easterly on King Street aforesaid Southerly part on land of  
 or belonging to Matilda Campbell and other part on land of the said James  
 Ogilvie and Westerly on Chancery Lane or howsoever otherwise the said  
 land may be butted bounded known distinguished or described together  
 with all buildings erections and fixtures thereon and all ways paths passages  
 waters lights liberties easements hereditaments rights members and  
 appurtenances whatsoever actually or reputedly belonging or appertaining  
 40 to the said piece or parcel of land intended to be hereby assured or any  
 part thereof and ALL the estate right title interest property possession  
 claim and demand whatsoever of the said James Robert Gore therein and  
 thereto TO HAVE AND TO HOLD the said land hereditaments and premises  
 hereinbefore described and all and singular the premises intended to be

7 (c)  
 Convey-  
 ance,  
 James  
 Robert  
 Gore to  
 James  
 Ogilvie,  
 13th March,  
 1885.



*Exhibits.* hereby assured with the appurtenances unto the said James Ogilvie and  
 Defendant's his heirs TO THE USE of the said James Ogilvie his heirs and assigns for  
 Exhibit. ever

7 (c)  
 Convey-  
 ance,  
 James  
 Robert  
 Gore to  
 James  
 Ogilvie,  
 13th March,  
 1885,  
*continued.*

(Covenants by Vendor for good right to convey, for quiet enjoyment,  
 free from incumbrances and for further assurance.)

*Executed by James Robert Gore and attested.*

*Receipt for consideration money endorsed signed and witnessed.*

*Memorandum of proof sworn the 13th March, 1885, endorsed and signed  
 by Justice of the Peace.*

7 (D)  
 Convey-  
 ance,  
 Priscilla  
 Willasey  
 to James  
 Ogilvie,  
 13th June,  
 1885.

No. 7 (d).

10

**CONVEYANCE—Priscilla Willasey to James Ogilvie.**

“ Jamaica S.S.”

THIS INDENTURE made the Thirteenth day of June in the year one thousand Eight hundred and Eighty five. Between PRISCILLA WILLASEY of the Parish of Kingston in this Island Singlewoman of the One Part and JAMES OGILVIE of Kingston aforesaid Medical Practitioner of the Other Part “ WITNESSETH that in consideration of the sum of Thirty Pounds sterling lawful money of Great Britain and this Island paid by the said James Ogilvie to the said Priscilla Willasey upon her immediately before the execution of these presents (the receipt whereof is hereby acknowledged and hereon endorsed) the said Priscilla Willasey DOTH hereby grant bargain sell alien release enfeoff and Convey unto the said James Ogilvie and his heirs ALL THAT piece or parcel of land situate in and known as No. 103 King Street, Kingston containing by estimation from North to South Twenty Six feet and from East to West One hundred and Sixty one feet more or less and butting and bounding Northerly part on land of or belonging to W. Williams and other part on land of Mrs. Parks. Easterly on King Street aforesaid, Southerly part on land of or belonging to Matilda Campbell and other part on land of the said James Ogilvie and Westerly on Chancery Lane or howsoever otherwise the said Land may be butted bounded known distinguished or described together with all buildings erections and fixtures thereof and all ways paths passages waters lights liberties easements rights hereditaments members and appurtenances whatsoever actually or reputedly belonging or appertaining to the said Piece or parcel of land intended to be hereby assured or any part thereof and all the Estate right title interest property possession claim or demand whatsoever of the said J. Priscilla Willasey therein and thereto TO HAVE AND TO HOLD the said land hereditaments and premises herein before described and all and singular other the premises

intended to be hereby assured with the appurtenances unto the said James Ogilvie and his heirs to the use of the said James Ogilvie his heirs and assigns for ever

*(Vendor's covenants for good right to convey, for quiet enjoyment free from incumbrances and for further assurance.)*

*Executed by the said Priscilla Willasey and duly attested.*

*Receipt for consideration money endorsed signed and witnessed.*

*Memorandum of proof sworn the 13th June, 1885, endorsed and signed by Justice of the Peace.*

*Exhibits.*  
—  
*Defendant's Exhibit.*

7 (D)  
Convey-  
ance,  
Priscilla  
Willasey  
to James  
Ogilvie,  
13th June,  
1885,  
*continued.*

10

No. 7 (e).

**STATUTORY DECLARATION of James Ogilvie.**

Jamaica S.S.

I, JAMES OGILVIE of the City and Parish of Kingston in this Island Health Officer do hereby solemnly and sincerely declare as follows :—

7 (E)  
Statutory  
Declara-  
tion of  
James  
Ogilvie,  
13th  
December,  
1900.

1. I am 61 years of age.

2. I am Health Officer for the Parish of Kingston and live at Airlie Lodge in the Parish of Saint Andrew.

3. By Deed of Conveyance dated the 13th day of March, 1885, and  
20 made between James Robert Gore of the One Part and me the said James Ogilvie of the Other Part and recorded in the Island Record Office in Liber 28 Folio 306 of the New Series the said James Robert Gore conveyed the land known as No. 103 King Street in the Parish of Kingston mentioned and described therein to me measuring from North to South Twenty-six feet and from East to West one hundred and sixty-one feet.

4. After the execution of the said Conveyance from the said James Robert Gore to me the said James Ogilvie a Miss Priscilla Willasey claimed an interest in the said land accordingly by Deed of Conveyance dated the 13th day of June, 1885, unrecorded made between the said Priscilla  
30 Willasey therein described of the One Part and me the said James Ogilvie of the Other Part in consideration of £30 : paid to her she conveyed all her estate and interest in the said land No. 103 King Street to me.

5. I subsequently sold the western portion of this land measuring 26 feet from North to South and 75 feet from East to West to George White this left a parcel of land measuring 26 feet from North to South and eighty-six feet from East to West.

6. By Deed of Conveyance dated the 6th day of July, 1883, and made between Elizabeth Steel of the One Part and me the said James Ogilvie of the Other Part and recorded in the Island Record Office in Liber 21  
40 folio 66 of the New Series the said Elizabeth Steel conveyed to me the land

*Exhibits.* now known as No. 101 King Street, Kingston, mentioned and described therein measuring from East to West 86 feet and from North to South Twenty-four feet.

*Defendant's Exhibit.*

7 (E)  
Statutory  
Declara-  
tion of  
James  
Ogilvie,  
13th  
December,  
1900,  
*continued.*

7. I have reserved a strip of land along the whole Southern boundary of this last mentioned lot measuring from East to West 75 feet and from North to South 5 feet for the purpose of a pathway for my tenants in the adjoining premises No. 99 King Street.

8. I have ever since the above Conveyances to me been in the peaceable quiet and undisturbed possession of the said two pieces or parcels of land and I have from time to time at my own expense caused to be repaired and kept in order and good condition the fences thereof and billed the bushes thereon and I have also paid in my own name all land taxes and quit rents due thereon. 10

9. I did not receive at the times of purchase of the said two parcels of land any documents of title except the two Conveyances hereinbefore mentioned and the Declaration of Elizabeth Steel and Ellen Blakely dated the 6th day of July, 1883, but I had known the Vendors the said James Robert Gore and Elizabeth Steel to have been in respective quiet and undisturbed possession as owners of the two parcels of land.

10. I am informed and verily believe that 11 feet of the frontage of land situate in King Street in Kingston aforesaid on the same side as premises Nos. 101 & 103 and extending as far out as the aforesaid mentioned two parcels of land has been claimed by the Mayor and Council of Kingston and it is subject to the establishment of such claim if any with respect to the aforesaid two parcels of land that I am selling to Morris Aria Bonitto AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the Sixth year of Her Majesty's Reign entitled "An Act to abolish Oaths and Affidavits except in certain cases and to substitute Declarations in lieu thereof and to suppress voluntary and extra-judicial Oaths and affidavits and also by virtue of the Voluntary Declarations Law 19 of 1884. 20 30

Taken acknowledged and declared to  
at Kingston in the parish of Kingston  
this 13th day of Decbr., 1900, before  
me :— } (Sgd.) JAMES OGILVIE.

(Sgd.) J. H. BRUCH,  
J.P.

No. 7 (f).

LETTER—Acting Referee of Titles to Registrar of Titles.

Farquharson & Milholland,  
Kingston,  
Jamaica.

15th December, 1900.

H. F. Pouyat, Esq.,  
Registrar of Titles.

Sir,

10

101 and 103 King St. Kingston

I provisionally approve of the registration of the title in the name of Morris Aria Bonitto of the City and Parish of Kingston in this Island Shopkeeper of “ (A) 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 26 Feet and from East to West 86 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 same 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 11 feet from East to West and 86 feet from North to South (B) 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 5 feet and from East to West 86 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 11 feet from East to West and 24 feet from North to South or howsoever otherwise the same may be butted bounded known distinguished or described.”

I direct notification of this approval to be given once a fortnight for one month in the Daily Telegraph and in the Gazette and to be served on all persons in possession or charge of or owning the adjoining lands warning all such persons that unless a caveat forbidding the same be lodged within one month from the date of the first of such advertisements the title will be registered in accordance with this provisional approval.

Papers herewith

Your obedient servant,  
(Sgd.) F. J. MILHOLLAND,  
Acting Referee of Titles.

(encls.)

*Exhibits.**Defendant's Exhibit.*

7 (F)

Letter,  
Acting  
Referee of  
Titles to  
Registrar  
of Titles,  
15th  
December,  
1900.

CANCELLED CERTIFICATE OF TITLE for 101-103 King Street.

Volume 21  
Folio 83

*Exhibits.*  
*Plaintiff's*  
*Exhibit.*

3

Cancelled  
Certificate  
of Title for  
101-103  
King Street,  
21st  
January,  
1901.

MORRIS ARIA BONITTO

of the City and parish of Kingston in this Island, Shopkeeper is now  
the

CANCELLED  
Reg. in Vol.  
129 Fol. 85  
D.B.  
24.5.19.

proprietor of an estate

in fee simple

subject to the incumbrance notified hereunder in all that piece or parcel 10  
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 eight-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 Aris 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 parcel bounding on King Street measuring eleven feet from 20  
East to West and eighty-six feet from North to South AND ALSO in 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 eighty-six feet and from North to South twenty-four 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 there out a strip of land along the Southern boundary measuring  
from North to South five feet and from East to West eight-six feet AND 30  
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 or howsoever  
otherwise the same may be butted bounded known distinguished or  
described—

Dated the twenty-first day of January One thousand nine hundred and  
one—

HYDE PONYAT,  
Registrar of Titles.

*Particulars of the following mortgages from Morris Aria Bonitto to 40*  
*the Victoria Mutual Building Society are endorsed on the Certificate of Title*  
*as follows :—*

- No. 1286. Mortgage dated 4th April, 1901, to secure £160.
- No. 1758. Mortgage dated 7th March, 1904, to secure £250.

- No. 2459. *Mortgage dated 12th June, 1907, to secure £300.*  
 No. 3485. *Mortgage dated 28th September, 1909, to secure £68.*  
 No. 6237. *Mortgage dated 29th October, 1914, to secure £400.*  
 No. 7216. *Mortgage dated 22nd August, 1916, to secure £500.*  
 No. 7877. *Mortgage dated the 30th July, 1917, to secure £350.*

*Exhibits.*  
 ———  
*Plaintiff's*  
*Exhibit.*  
 ———  
 3  
 Cancelled  
 Certificate  
 of Title for  
 101-103  
 King Street,  
 21st  
 January,  
 1901,  
*continued.*

No. 11.

LETTERS OF ADMINISTRATION with Will and Codicils of Morris Aria Bonitto.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

In Probate and Administration.

10 IN THE ESTATE of MORRIS ARIA BONITTO late of the City and  
 Parish of Kingston, Merchant, deceased.

11  
 Letters of  
 Administra-  
 tion with  
 Will and  
 Codicils of  
 Morris Aria  
 Bonitto,  
 31st  
 January,  
 1919.

BE IT KNOWN that Morris Aria Bonitto late of the City and Parish  
 of Kingston, Merchant, deceased, who died on or about the 20th day of  
 November, 1918, at Kingston aforesaid made and duly executed his last  
 Will and Testament with two codicils thereto dated respectively the  
 24th day of November, 1916, the 21st day of July, 1917, and the 5th day  
 of November, 1918, and did therein name Cecil Malvern DaCosta his  
 Executor, who has by Deed of Renunciation duly executed and recorded  
 in the Island Record Office renounce the appointment of Executor and  
 20 BE IT FURTHER KNOWN that on the 31st day of January, 1919,  
 Letters of Administration with the said Will and Codicils annexed (copies  
 of which are hereunto annexed) of all the Estate which by Law devolves  
 on and vests in the Personal representative of the said deceased were  
 granted by the said Court to John Mapletoft Nethersole the Administrator  
 General for Jamaica.

(Sgd.) REGINALD SEATON,  
 Acting Registrar.

Extracted by Messrs. Samuel and Samuel of No. 18A Duke Street,  
 Kingston, Solicitors for the said Administrator General.

30 Jamaica S.S.

THIS IS THE LAST WILL AND TESTAMENT of me MORRIS ARIA  
 BONITTO of the City and Parish of Kingston, in this Island, Merchant.

1. I hereby revoke all Wills and Testamentary documents heretofore  
 made by me and declare this alone to be my last Will and Testament.

*Exhibits.*

*Plaintiff's Exhibit.*

11

Letters of Administration with Will and Codicils of Morris Aria Bonitto, 31st January, 1919, *continued.*

2. I hereby nominate constitute and appoint Cecil Malvern DaCosta of the City and Parish of Kingston Merchant (hereinafter called "my Trustee") to be my real and personal representative and the Executor and Trustee of this my Will.

3. (*Bequest of business and life policies.*)

4. I hereby devise my several properties as follows:—

(A) Numbers 101–103 King Street unto my Trustee to hold the same for the use and benefit of my wife Eugenia Blanche Bonitto to pay the rents and profits arising therefrom to her for her life and after her death unto and to the use of the children of my son Morris Aria Bonitto then alive in fee simple. 10

(B) (*Devise of Numbers 86, 88 and 92 Princess Street.*)

(C) (*Devise of Number 143 King Street.*)

(D) (*Devise of Number 17A Victoria Avenue.*)

(E) (*Devise of Number 17 Victoria Avenue.*)

(F) (*Devise of Number 4 Devon Avenue.*)

5. (*Residuary devise and bequest.*)

IN WITNESS whereof I have hereunto set my hand to this my Will this Twenty-fourth day of November in the year one thousand nine hundred and sixteen. 20

(Sgd.) M. A. BONITTO.

Signed by the said Morris Aria Bonitto as his Last Will and Testament in the presence of us both present at the same time who in his presence and at his request and in the presence of each other have hereto subscribed our names as witnesses.

(Sgd.) LIONEL L. SAMUEL,  
Solicitor,  
18A Duke Street,  
Kingston.

(Sgd.) L. V. D. SAMUEL, 30  
Solicitor,  
18A Duke Street,  
Kingston.

Jamaica S.S.

THIS IS A CODICIL to the last Will and Testament of me MORRIS ARIA BONITTO dated the 24th day of November, 1916.

1. In my said Last Will and Testament in paragraph 4 (A) thereof I have devised nos. 101–103 King Street unto my Trustees on certain Trusts after the death of my wife unto and to the use of the children of my son Morris Aria Bonitto then alive in fee simple but I now revoke 40 the said devise and devise the said nos. 101–103 King Street after the death of my wife Eugenie Blanche Bonitto to the children of my daughter Catherine Louise Ferguson then alive as tenants in common in fee simple.

2. (*Devise of No. 17B Victoria Avenue.*)

3. (*Devise of No. 19 Victoria Avenue.*)

In all other respects I confirm my said Last Will and testament dated as aforesaid the 24th day of November, 1916.

IN WITNESS whereof I have set my hand to this First Codicil to my last Will and Testament this 21 July day of July One thousand nine hundred and Seventeen.

(Sgd.) M. A. BONITTO.

Signed by the said Morris Aria Bonitto as a first codicil to his last Will and Testament in the presence of us both present at the same time who in his presence and at his request and in the presence of each other have hereto subscribed our names as witnesses.

*Exhibits.*  
-----  
*Plaintiff's Exhibit.*  
-----

11  
Letters of Administration with Will and Codicils of Morris Aria Bonitto, 31st January, 1919, *continued.*

(Sgd.) LIONEL L. SAMUEL,  
Solicitor,  
18A Duke Street,  
Kingston.

(Sgd.) L. V. D. SAMUEL,  
Solicitor,  
18A Duke Street,  
Kingston,  
Jamaica.

20

(*The Testator's second Codicil dated 5 November, 1918, did not affect Nos. 101-103 King St.*)

No. 4.

**CANCELLED DUPLICATE CERTIFICATE OF TITLE for 101-103 King Street.**

Volume 129.  
Folio 85.

4  
Cancelled Duplicate Certificate of Title for 101-103 King Street, 7th May, 1919.

THE ADMINISTRATOR GENERAL FOR JAMAICA is now the proprietor of an estate in fee simple subject to the incumbrances notified hereunder in ALL THAT parcel of land situated 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

Cancelled Duplicate Certificate of Title having been lost a new Certificate is issued at Vol. 386 Folio 1 Arnold Foot Registrar of Titles 16.10.41



*Exhibits.**Plaintiff's  
Exhibit.*

4

Cancelled  
Duplicate  
Certificate  
of Title  
for  
101-103  
King  
Street,  
7th May,  
1919,  
*continued.*

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 10 and Twenty-four feet from North to South and being the land described in Certificate of Title registered in Volume 21 Folio 83.

Dated the seventh day of May One thousand nine hundred and nineteen.

DAVID BALFOUR,  
Registrar of Titles.

Incumbrance referred to :—

Mortgages Nos. 1286, 1758, 2459, 3485, 6237, 7216 and 7877 from Morris Aria Bonitto to The Victoria Mutual Building Society of Kingston to secure the aggregate sum of Two thousand and twenty eight pounds with 20 interest thereon.

DAVID BALFOUR,  
Registrar of Titles.

No. V.129 Discharge. The land comprised in this Certificate is wholly discharged from the seven mortgages above mentioned. Entered hereon on 20th June, 1919.

DAVID BALFOUR,  
Registrar of Titles.

*Defendant's  
Exhibit.*

6

Applica-  
tion to  
register the  
title of  
105 King  
Street,  
14th  
January,  
1928.

No. 6.

APPLICATION to register the Title of 105 King Street.

30

To the Registrar of Titles.

I, EUGENIA BLANCHE BONITTO of Number 105 King Street, Kingston, Widow whose postal address is Kingston aforesaid hereby apply to have the land hereinafter described brought under the operation of the Registration of Titles Law, and I declare :—

1. That I am the owner of an estate in fee simple in possession in ALL THAT piece or parcel of land known as Number 105 King Street in the City and Parish of Kingston, containing from East to West Seventy-five feet and from North to South Twenty-five feet more or less and butting and bounding North on land belonging to Miss Zatilda Gordon, South on 40

land in the possession of the Administrator-General on behalf of Estate Morris Aria Bonitto deceased, East on King Street aforesaid and West on land belonging to Miss Margaret Hill or howsoever otherwise the same may be butted bounded known distinguished or described.

*Exhibits.*  
—  
*Defendant's Exhibit.*  
—

2. That such land including all buildings and other improvements thereon is of the value of Two Hundred and Fifty Pounds and no more.

6  
Applica-  
tion to  
register the  
title of  
105 King  
Street,  
14th  
January,  
1928,  
*continued.*

3. That the deeds, documents or other evidence on which I rely in support of my title to the said land are set forth in the Schedule hereto to the best of my knowledge and belief, and there are no deeds documents or  
10 evidences invalidating my title to the said land.

4. That I am not aware of any mortgage or incumbrance affecting the said land or that any other person hath any estate or interest therein at Law in Equity, in possession, remainder reversion, contingency or expectancy.

5. That the said land is occupied by me as owner thereof.

6. That the names and postal addresses, so far as is known to me, of the occupants of all lands contiguous to the said land are as follows :—

West :—	Isaiah Darby	12 Chancery Lane,	Kingston.
North :—	Miss Hilda Priestley	107 King Street,	Kingston.
South :—	L. A. Brammer	103 King Street,	Kingston.

7. That the names and postal addresses, so far as is known to me, of the owners of lands contiguous to the said land are as follows :—

West :—	Miss Margaret Hill	51 East Street,	Kingston.
North :—	Miss Zatilda Gordon	Old Harbour,	P.O.
South :—	The Administrator-General for Jamaica, Kingston.		

AND I direct the Certificate of Title to be issued in the name of myself the said Eugenia Blanche Bonitto.

SCHEDULE above referred to :—

1. B. L. Hodelin to Ella Louise Bonitto  
30 Conveyance dated 23rd May, 1893 ;  
recorded at Liber 87 Folio 262.
2. Morris Aria Bonitto et al to Eugenia Blanche Bonitto  
Conveyance dated 22nd March, 1921 ;  
recorded at Liber 250 Folio 194.
3. Declaration of Applicant.
4. Certificate of Collector of Taxes.
5. Certificate of Deputy Stamp Commissioner.

Made and subscribed by the said Eugenia  
Blanche Bonitto on the 14th day of  
40 January, 1928, at Kingston in the  
presence of :—

EUGENIA B. BONITTO.

A. M. TUCKER, J.P.,  
Kgn.

*Exhibits.*

No. 6 (a).

**CONVEYANCE—Hodelin to E. L. Bonitto.**

*Defendant's Exhibit.*

6 (A)  
Convey-  
ance,  
Hodelin to  
E. L.  
Bonitto,  
23rd May,  
1893.

THIS INDENTURE made the Twenty-third day of May in the Year of Our Lord One thousand eight hundred and ninety Three Between BERNARD LEONCE HODELIN of the Parish of Saint Catherine in the Island of Jamaica Planter of the One Part and ELLA LOUISE BONITTO the wife of Morris Aria Bonitto of the City and Parish of Kingston in the said Island Shopkeeper of the Other Part WHEREAS the said Bernard Leonce Hodelin is the owner in fee simple in possession of the hereditaments hereinafter described and hath agreed with the said Ella Louise Bonitto for the sale thereof to her at the sum of One Hundred Pounds NOW THIS INDENTURE WITNESSETH that in consideration of the sum of One Hundred Pounds as purchase money paid to the said Bernard Leonce Hodelin by the said Ella Louise Bonitto at or before the execution of these presents the receipt whereof the said Bernard Leonce Hodelin hereby acknowledges he the said Bernard Leonce Hodelin as Beneficial Owner hereby conveys unto the said Ella Louise Bonitto 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 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 otherwise the same may be butted bounded known distinguished or described To HOLD the same Unto the said Ella Louise Bonitto and her heirs To THE USE of such person or persons for such estate of inheritance or not of inheritance and charged and chargeable in such manner and form as the said Ella Louise Bonitto notwithstanding coverture shall at any time or times by any Deed or Deeds direct limit declare or appoint AND in default of any such direction limitation or appointment To THE USE of the said Ella Louise Bonitto for and during the term of her natural 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 BUT if all such children or child shall die in the lifetime of the said Ella Louise Bonitto and Morris Aria Bonitto or either of them To THE USE of the said Ella Louise Bonitto and Morris Aria Bonitto in fee simple IN WITNESS whereof the said Bernard Leonce Hodelin hath hereunto set his hand and seal the day and year first above written.

Signed Sealed and Delivered in the presence of :—

(Sgd.) B. L. HODELIN. Seal.

(Sgd.) ARNOLD J. STEELE.

*Memorandum of proof sworn the 23rd May, 1893, endorsed and signed by Justice of the Peace.*

## No. 6 (b).

## CONVEYANCE—M. A. Bonitto and Others to Eugenia Blanche Bonitto.

Stamps.

£1.15/-

26/4/21.

Jamaica S.S.

*Exhibits.**Defendant's  
Exhibit.*

6 (B)

Convey-  
ance,  
M. A.Bonitto and  
Others to  
Eugenia  
Blanche  
Bonitto,  
22nd  
March,  
1921.

THIS INDENTURE is made on the 22nd day of March One thousand nine hundred and twenty-one Between MORRIS ARIA BONITTO the Junior of the United States of America, DUNCAN ALLWOOD BONITTO of the same place Gentleman and CATHERINE LOUISE FERGUSON the wife of Charles Ernest Ferguson of the City and Parish of Kingston in the Island of Jamaica, Storekeeper (hereinafter called "the Vendors") of the One Part and EUGENIA BLANCHE BONITTO of the said City and Parish of Kingston, Widow of the late Morris Aria Bonitto the Senior (hereinafter called "the Purchaser") of the Other Part WHEREAS by Indenture dated the Twenty-third day May One thousand eight hundred and ninety-three made between Bernard Leonce Hodelin therein described of the One Part and Ella Louise Bonitto therein described of the Other Part recorded in the Island Record Office in Libro New Series 87 Folio 262 the piece or parcel of land therein and hereinafter fully mentioned and described and intended to be hereby conveyed was conveyed unto the said Ella Louise Bonitto to hold the same to such uses as she should direct limit declare or appoint and in default thereof to the use of the said Ella Louise Bonitto for and during the term of her natural 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 the Senior (who afterwards intermarried with and became the husband of the Purchaser) in fee simple AND WHEREAS the said Ella Louise Bonitto departed this life on the Thirtieth day of March One thousand nine hundred and one without having by any deed or deeds or otherwise directed limited or appointed the said piece or parcel of land AND WHEREAS the Purchaser did on the Twenty-third day of April One thousand nine hundred and two intermarry with the said Morris Aria Bonitto the Senior AND WHEREAS the Vendors are the only children born to the said Ella Louise Bonitto and Morris Aria Bonitto the Senior AND WHEREAS the said Catherine Louise Ferguson (nee Bonitto) intermarried with the said Charles Ernest Ferguson on the Eleventh day of January One thousand nine hundred and eleven AND WHEREAS the Vendors being so seised and possessed of the said piece or parcel of land have contracted and agreed with their stepmother the Purchaser for the absolute sale and conveyance to her of the said piece or parcel of land at or for the price or sum of One Hundred and Eighty Pounds NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of One Hundred and Eighty Pounds as purchase money paid by the Purchaser to the Vendors (the receipt whereof is hereby respectively acknowledged) THE Vendors as Beneficial Owners hereby convey unto the Purchaser and her heirs 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

*Exhibits.*  
*Defendant's*  
*Exhibit.*

6 (B)  
 Convey-  
 ance,  
 M. A.  
 Bonitto and  
 Others to  
 Eugenia  
 Blanche  
 Bonitto,  
 22nd  
 March,  
 1921,  
*continued.*

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 To HOLD the same Unto and To THE USE of the Purchaser the said Eugenia Blanche Bonitto freed and discharged from all payments obligations and liability with respect to Succession Duty arising from the death of the said Ella Louise Bonitto IN WITNESS whereof the Vendors the said Morris Aria Bonitto the Junior Duncan Allwood Bonitto and Catherine Louise Ferguson have hereunto respectively set their hands and affixed their seals the day and year first hereinbefore written. 10

(Sgd.) MORRIS AIRIA BONITTO. Seal.  
 (Sgd.) DUNCAN ALLWOOD BONITTO. Seal.  
 (Sgd.) CATHERINE LOUISE FERGUSON. Seal.

Signed Sealed and Delivered by the said Morris Aria Bonitto the Junior and Duncan Allwood Bonitto in the presence of:—

(Sgd.) JOSEPH SUSKIND as to Morris Aria Bonitto and Duncan Allwood Bonitto. 20

Signed by the said Catherine Louise Ferguson in the presence of:—

(Sgd.) EDWIN CHARLEY,  
 J.P.

*(Sundry memoranda of proof are endorsed.)*

6 (c)  
 Statutory  
 Declaration  
 by  
 Eugenia  
 Blanche  
 Bonitto,  
 14th  
 January,  
 1928.

No. 6 (c).

**STATUTORY DECLARATION by Eugenia Blanche Bonitto.**

IN THE MATTER of an Application to bring land known as NUMBER 105 KING STREET in the Parish of Kingston under the operation of the Registration of Titles Law.

I, EUGENIA BLANCHE BONITTO do solemnly and sincerely declare:— 30

1. That my true place of abode is at No. 105 King Street in the Parish of Kingston, and my postal address is Kingston P.O. and I am the Applicant herein.

2. That I knew and was personally acquainted with Ella Louise Bonitto in her lifetime.

3. That the said Ella Louise Bonitto was the wife of Morris Aria Bonitto and she died on the 30th day of March One thousand nine hundred and one.

4. That the only children born unto the said Ella Louise Bonitto were, Morris Aria Bonitto (Junior) Duncan Allwood Bonitto and Catherine Louise Bonitto who afterwards inter-married with Charles Ernest Ferguson, and they are the parties to the Indenture numbered 2 in the Schedule to this Application.

*Exhibits.*  
 ———  
*Defendant's Exhibit.*  
 ———

5. That after the death of the said Ella Louise Bonitto I married the said Morris Aria Bonitto who died on the 20th day of November, 1918.

6 (c)  
 Statutory Declaration  
 by

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the sixth year of the Reign of Her Late Majesty Queen Victoria entitled an  
 10 "Act to abolish Oaths and Affidavits except in certain cases and to substitute Declarations in lieu thereof and to suppress voluntary and extra-judicial oaths and Affidavits."

Eugenia Blanche Bonitto,  
 14th January, 1928,  
*continued.*

EUGENIA B. BONITTO.

Taken and acknowledged at Kingston the Fourteenth day of January, 1928, before me :—

A. M. TUCKER,  
 Justice of the Peace,  
 Kgn.

20

No. 6 (d).

**CERTIFICATE of Discharge of Taxes.**

*(Certificate of discharge of taxes.)*

6 (D)  
 Certificate of Discharge of Taxes, 19th January, 1928.

No. 6 (e).

**SUCCESSION DUTY RECEIPT upon the succession on the death of Ella Louise Bonitto.**

*(Succession duty receipt upon the succession on the death of Ella Louise Bonitto.)*

6 (E)  
 Succession Duty receipt upon the Succession on the death of E. L. Bonitto.

*Exhibits.*

No. 6 (f).

*Defendant's  
Exhibit.*

LETTER—Referee of Titles to Registrar of Titles.

Brown's Town,  
Jamaica.

26th January, 1928.

6 (F)  
Letter,  
Referee of  
Titles to  
Registrar  
of Titles,  
26th  
January,  
1928.

## THE REGISTRATION OF TITLES LAW.

To the Registrar of Titles,  
Kingston.

Sir,

APPLICATION NO. 12489—105 KING STREET, KINGSTON 10

I provisionally approve of the land described as set out hereunder being brought under the operation of The Registration of Titles' Law, and the Title thereto issued in the name of Eugenia Blanche Bonitto of No. 105 King Street in the Parish of Kingston, Widow.

2. I direct that notice of this approval be given by advertisements to be published once in the "Jamaica Gazette," and once a week for three weeks in the Jamaica Mail newspaper and by service upon the owners and occupiers of the contiguous lands.

3. The Certificate of Title to be issuable at or after the expiration of five weeks from the appearance of the first of such advertisement unless in 20 the meantime a Caveat shall have been duly lodged.

I return all the papers herewith.

I am, Sir,

Your obedient servant,  
(Sgd.)

Referee of Titles.

## Description of land above referred to :

All that parcel of land known as Number 105 King Street in the parish of Kingston measuring from North to South Twenty Five Feet and From East to West Seventy Five Feet more or less and butting North on land of 30  
Zatilda Gordon South on land of the Administrator-General on behalf of Estate Morris Aria Bonitto deceased East on King Street aforesaid and West on land of Margaret Hill.

**No. 6 (g). FORM OF ADVERTISEMENT of Application to Register Title.**

**FORM A** APPLICATION TO BRING LAND UNDER THE REGISTRATION OF TITLES LAW—CHAPTER 340

Name of Applicant	Date of Provisional Order of Approval	PROPERTY	Number of Notifications in Jamaica Gazette	Number of Notifications in other Newspapers	Period within which after date of publication of first Advertisement Caveat may be entered
Eugenia Blanche Bonitto of Number 105 King Street in the parish of Kingston, Widow  Application No. 12489.  Samuel & Samuel	26th January, 1928	ALL THAT parcel of land known as Number 105 King Street in the parish of Kingston measuring from North to South Twenty Five Feet and from East to West Seventy Five Feet 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 aforesaid and West on land of Margaret Hill.	1	One insertion per week for <sup>3</sup> weeks in The Public Opinion newspaper	5 Weeks

**OFFICE OF TITLES—JAMAICA 2nd February, 1928.**

WHEREAS the Party above-mentioned has applied to have the land above described brought under the Registration of Titles Law—Chapter 340, and one of the Referees having provisionally approved of the Registration of the Title of the Applicant to the said Land and having directed that publication of the same be made in the Jamaica Gazette and Public Opinion newspaper as above specified and that Notices be served on the persons in possession, charge of, or owning the adjoining Lands.

THIS is therefore to Notify all persons having any interest in or claim against the said land that in case no Caveat forbidding the Registration of the Title to the said Land be received by me on or before the expiration of the period of Five weeks from the date of the publication of this Notice for the first time in the Jamaica Gazette and Public Opinion newspaper then I shall proceed as by Law directed to bring such Land under the operation of the said Law.

To.....the owner or occupier of lands adjoining the land above described.

(Sgd.) C. E. MELLISH,  
*Registrar of Titles.*

N.B.—Forms of Caveat may be had on application at the Office of Titles, Public Buildings, Kingston.  
Postage must be prepaid on letters addressed to the Office of Titles.

*Exhibits.*  
—  
*Defendant's Exhibit.*  
—  
6 (g)  
Form of Advertisement to register Title, 2nd February, 1928.



*Exhibits.*

*Plaintiff's Exhibit.*

5

Certificate of Title for 105 King Street, 12th March, 1928.

No. 5.

**CERTIFICATE OF TITLE for 105 King Street.**

1481.  
Register Book.  
Vol. 208 Fol. 36.

**JAMAICA.**

**CERTIFICATE OF TITLE UNDER THE REGISTRATION OF TITLES LAW, 1888.**  
EUGENIA BLANCHE BONITTO of 105 King Street, Kingston, Widow, is now the proprietor of an estate in fee simple subject to the incumbrances notified hereunder in ALL THAT parcel of land known as number One 10 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 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.

Dated the Twelfth day of March one thousand nine hundred and twenty-eight.

(Sgd.) C. E. MELLISH,  
Registrar of Titles.

Incumbrances referred to :—

20

No. 20172 Transfer dated the 12th and registered on the 16th of April, 1928, from the abovenamed Eugenia Blanche Bonitto of all her estate in the land comprised in this Certificate to James Clinton Chisholm of 75 Barry Street, Kingston, Auctioneer and Real Estate Agent, Consideration money Five Hundred and twenty-five pounds.

(Sgd.) C. E. MELLISH,  
Registrar of Titles.

*(There are endorsements upon the certificate of title of the following mortgages by James Clinton Chisholm :—*

*No. 18366 dated 14 April, 1928 to Louisa Samuel to secure £350. 30*

*No. 21953 dated 25 March, 1930, to E. N. Mordecai to secure £800.*

*No. 22883 dated 22 August, 1930, to E. N. Mordecai to secure £500.)*

*Defendant's Exhibit.*

8

Transfer of land, 105 King Street, to James Clinton Chisholm, 12th April, 1928.

No. 8.

**TRANSFER OF LAND, 105 King Street, to James Clinton Chisholm.**

D.A. 1393/28

20172

I, EUGENIA BLANCHE BONITTO of Number 105 King Street in the City and Parish of Kingston, Widow, being registered under "The Registration of Titles Laws" by Certificate of Title dated the Twelfth day of March One Thousand Nine hundred and Twenty-eight and entered in Volume 208 Folio 36 of the Register Book as proprietor of an estate 40

in fee simple in the land comprised in the said Certificate subject to no incumbrances in consideration of the sum of Five hundred and twenty-five pounds paid to me by James Clinton Chisholm of No. 75 Barry Street in the City and Parish of Kingston, Auctioneer and Real Estate Agent Do HEREBY TRANSFER to the said James Clinton Chisholm all my estate and interest in 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 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 and being the land comprised in the said Certificate of Title registered at Volume 208 Folio 36.

*Exhibits.*  
 ———  
*Defendant's Exhibit.*  
 ———  
 8  
 Transfer of land, 105 King Street, to James Clinton Chisholm, 12th April, 1928,  
*continued.*

Dated the 12th day of April One thousand nine hundred and twenty-eight.

E. B. BONITTO.

Signed by the said Eugenia Blanche Bonitto in the presence of:—

(Sgd.) L. V. D. SAMUEL,  
 Solicitor.

No. 12.

20 APPLICATIONS (2) of James Clinton Chisholm under Building Law with Plans (separately Reproduced).

12  
 Applications (2) of James Clinton Chisholm under Building Law with Plans (separately reproduced), 6th April, 1937, and 16th September, 1937.

BUILDING APPLICATION LAW

KINGSTON & ST. ANDREW CORPORATION

APPLICATION UNDER BUILDING LAW

No. of Application : 11886.

No. of Premises : 105 King Street, Kingston.

Owner : ———

Address : 115 King Street.

6th April, 1937.

30 To the Town Clerk,  
 Kingston.

Sir,

I beg to make application for Permission to (a) Alter existing building at 105 King Street, Kingston, and submit herewith the necessary particulars and plans (in duplicate) for approval.

*Exhibits.*  
—  
*Defendant's*  
*Exhibit.*  
—

I hereby deposit the sum of £ ——— being the fee payable on this application on the approval of my building application. I understand that 50% of the deposit will be refunded if my application is refused, or if withdrawn by me.

12  
Applica-  
tions (2)  
of James  
Clinton  
Chisholm  
under  
Building  
Law with  
Plans  
(separately  
reproduced),  
6th April,  
1937, and  
16th  
September,  
1937,  
*continued.*

If permission is granted I hereby agree to conform to the Building Law and Regulations in every respect and acknowledge my responsibility for the act of my Builder or any other person I may employ to do my work.

I also agree to give two days notice of my intention to commence the work and to immediately inform you in writing when it is completed. 10

Yours faithfully,  
(Sgd.) J. C. CHISHOLM,  
Owner of Premises.

No. 11886.

KINGSTON & ST. ANDREW CORPORATION

APPLICATION UNDER BUILDING LAW

No. of Application :  
No. of Premises : 105 King St.  
Applicant : J. C. Chisholm.  
Referred to City Engineer.

(Sgd.) G.S.P. 20  
7/4/37.

Mr. Bronstroph,

This site is outside the business area. Alignment shown on attached site plans, is this all required ? Sewer existing kitchen in order. There is an old dwelling house on this site, the front apartments of which are now being used as a Tailor shop, it is proposed to remodel this portion (as shown in plans) so as to lower the existing floor level. As the frontage of existing building is now being used as a Tailor shop would it be necessary to post a shop Notice ? Site and building plans herewith attached for 30 your consideration.

(Sgd.)  
8.4.37.

Alteration to shop. I should not think shop Notice necessary—as the building is in use as a “Tailor’s shop”—Please direct. Front elevation provided with parapet—will parapets be required on the sides —if so how far back ?

(Sgd.) O. R. ROWLANDS,  
Act. Dn. B/Surveyor.  
9/4/37. 40

## KINGSTON &amp; ST. ANDREW CORPORATION

## APPLICATION UNDER BUILDING LAW

No. of Application : 11886.  
 No. of Premises : 105 King St.  
 Owner : J. C. Chisholm.  
 Postal Address : 105 King St.  
 Sept. 16, 1937.

To the Town Clerk,  
 Kingston.

10 Sir,

I beg to make application for permission to (a) one room at 105 King Street and submit herewith the necessary particulars and plans (in duplicate) for approval.

I hereby deposit the sum of £                    being one-third of the fee payable on this application on the approval of my building application and undertake to pay the balance two-thirds when the plans have been examined and/or amended and approved. I understand that the deposit will be refunded if my application is refused.

20 If permission is granted I hereby agree to conform to the Building Law and Regulations in every respect and knowledge my responsibility for the act of my Builder or any other person I may employ to do my work.

I also agree to give two days notice of my intention to commence the work and to immediately inform you in writing when it is completed.

Yours faithfully,

(Sgd.) J. C. CHISHOLM,  
 Owner 105 King St.

No. 11886.

## KINGSTON &amp; ST. ANDREW CORPORATION.

30

## APPLICATION UNDER BUILDING LAW.

No. of Application  
 No. of Premises 105 King Street.  
 Applicant J. C. Chisholm.

Referred to City Engineer.

Referred to M.O.H. Kingston.

(Sgd.) G. S. PHILLIPS.  
 16.9.37.

Mr. Rowlands,

40 This site is outside the business area. Alignments will not be interfered with. Sewer Existing. Plans showing proposed work herewith attached.

I see no objections.

(Sgd.) G. S. PH.  
 17.9.37.

D.T.C. approved.

O. R. ROWLANDS,  
 Act. B/Surveyor.  
 18.9.37.

*Exhibits.*

*Defendant's Exhibit.*

12  
 Applications (2)  
 of James  
 Clinton  
 Chisholm  
 under  
 Building  
 Law with  
 Plans  
*(separately reproduced)*,  
 6th April,  
 1937, and  
 16th  
 September,  
 1937,  
*continued.*

*Exhibits.*

No. 1.

*Plaintiff's  
Exhibit.***CERTIFICATE OF TITLE for 101 and 103 King Street.**Register Book.  
Volume 386 Folio 1.1  
Certificate  
of Title for  
101 and  
103 King  
Street,  
16th  
October,  
1941.**JAMAICA.****CERTIFICATE OF TITLE UNDER THE REGISTRATION OF TITLES LAW.**

ADMINISTRATOR GENERAL FOR JAMAICA is now the proprietor of an estate in fee simple subject to the incumbrances notified hereunder in ALL THAT parcel of land situate in the City of Kingston known as No. 103 King Street containing by admeasurement from North 10 to South 26 feet and from East to West 86 feet be the same more or less and 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 11 feet from East to West and 86 feet from North to South AND ALSO ALL THAT other parcel of land situate in the City of Kingston and known as 20 No. 101 King Street containing by measurement from East to West 86 feet and from North to South 24 feet and 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 but now to Charles Campbell SAVING AND EXCEPTING THEREOUT a strip of land along the southern boundary measuring from North to South 5 feet and from East to West 86 feet and subject to claim being established by City Council of Kingston to a portion of same parcel bounding on King Street measuring 11 feet from East to West and 24 feet from North to South and being the land comprised in Certificate of Title Registered at 30 Volume 129 Folio 85.

Dated the 16th day of October, 1941.

(Sgd.) ARNOLD FOOTE,  
Registrar of Titles.

Endorsement :—

Transfer No. 48056 dated 24th and registered 30th October, 1941, from Administrator General to James Hall of Kingston Landlord for £700.0.0.

NOTE.—This Certificate was issued in place of Vol. 129 Fol. 85 dated 21st January, 1901, which was lost.

## TRANSFER OF LAND, 101 and 103 King Street, to James Hall.

D.A. 7418/41.

48056.

*Exhibits.**Plaintiff's  
Exhibit.*

9

Transfer  
of land,  
101 and 103  
King Street,  
to James  
Hall,  
24th  
October,  
1941.

I, ALLAN OSCAR RITCHIE, The Administrator General for Jamaica, being registered under "The Registration of Titles Laws" by Certificate of Title dated the Sixteenth day of October One thousand nine hundred and forty-one and entered in Volume 386 Folio 1 of the Register Book as Proprietor of an estate in fee simple in the land comprised in the said Certificate, subject to no incumbrances, in consideration of the

10 sum of seven hundred pounds paid to me by James Hall of No. 72 Duke Street in the Parish of Kingston, Landlord, Do HEREBY TRANSFER to the said James Hall all my estate and interest and all the estate and interest which I am capable of transferring and disposing of in 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 and butting North formerly on land of Mrs. Parks now on land of Morris Aria Bonitto, East on King Street, South on land

20 belonging to Dr. James Ogilvie and West formerly on Chancery Lane but now on a portion of the said land sold to George Whyte 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

30 Eighty-six feet and from North to South Twenty-four feet and 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 strip 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 lands comprised in the said Certificate of Title registered in Volume 386 Folio 1 of the Register of Titles.

Dated the twenty-fourth day of October One thousand nine hundred and forty-one.

40

(Sgd.) ALLAN O. RITCHIE,  
Administrator General for Jamaica,  
Trustee Estate Moses Aria Bonitto  
deceased.

Signed by the said Allan Oscar Ritchie  
The Administrator General for Jamaica in the presence of:—

IAN T. GRAHAM,  
J.P. Kingston.

---

*Exhibits.*

No. 2.

*Plaintiff's  
Exhibit.***PARTICULARS in relation to Plan of 101 and 103 King Street prepared by Geffrard Wellesley Bourke and Plan (separately reproduced).**

2  
Particulars  
in relation  
to Plan of  
101-103  
King Street  
prepared by  
Geffrard  
Wellesley  
Bourke  
and Plan  
(*separately  
repro-  
duced*),  
July, 1942.

1. The parcels of land Three in number shaded green, circumscribed in green and shaded in red is land described as the Second Parcel of land referred to in Certificate of Title 386 Folio 1.

The portion shaded red is the 5 feet strip of land referred to in Certificate of Title 386 Folio 1.

The portion hatched in green is the land excluded from Certificate of Titles 386 Folio 1. Subject to the establishing of a claim by the City Council of Kingston. 10

2. The portion shaded green is the remainder of the second parcel of land.

The portions of land Three in number shaded purple, circumscribed in purple and shaded yellow is the land described as the first parcel of land mentioned in Certificate of Title 386 Folio 1.

3. The portion circumscribed in purple is the land excluded from this Certificate of Title Subject to the establishing of a claim by the City Council of Kingston.

The portion of land shaded purple and yellow is the remainder of the First parcel of land described in Certificate of Title 386 Folio 1. 20

NOTE: The portion shaded yellow has been taken in and is within the present boundaries of the adjoining owner and now held with 105 and 107 King Street.

The land which the present proprietor of 101 and 103 King Street has in his possession are the portions and shaded green and purple.

NOTE: The total North to South measurements of the land comprised in the Certificate of Title 386 Folio 1 should be 24 feet plus 26 feet = 50 Ft. less 5 feet strip of land on the Southern boundary = 45 feet.

On earth the North to South measurement of the land now known as 101 and 103 King Street is only 38 Ft. 6 ins. (Thirty-eight feet Six inches) on the Eastern Boundary and 37 Feet 4 ins. on the Western boundary. 30

A strip of land has therefore been lost to the Registered Title (of 101 and 103 King Street) and is situate on the Northern boundary of the land firstly described in Certificate of Title 386 Folio 1. which measures after allowing for the reservation of a strip of land to the City Council and the 5 feet strip above-referred to as follows:—

North to South on the Eastern boundary on King Street 6 Ft. 6 ins. and on the Western boundary 7 ft. 8 ins. and from East to West between the Eastern and the Western boundaries 79 ft. 4 ins. 40

NOTE: The description of the reservation from the strip of land for the City Council described in the 1st. parcel is obviously wrong and the North to South measurement could not be what is stated: Further the East to West measurement is taken from the kerb on King Street.

In the reservation for the City Council in respect of the land in the 2nd parcel the East to West measurement is taken from the Eastern boundary of the land and not from the kerb as in the 1st parcel.

*Exhibits.*  
 Plaintiff's  
*Exhibit.*

On the plan I have shown the boundaries of 105 King Street belonging to Mr. Chisholm and the boundaries of 107 King Street on King Street also belonging to Mr. Chisholm.

2  
 Particulars  
 in relation  
 to Plan of  
 101-103  
 King Street  
 prepared by  
 Geffrard  
 Wellesley  
 Bourke  
 and Plan  
 (separately  
 repro-  
 duced),  
 July, 1942,  
 continued.

I was able to get the measurements of 105 and 107 King Street by measurements on this roadway, and was able to get the Western measurements of 105 King Street from premises 10 and 12 Chancery Lane the 10 occupants of which gave me permission to enter for this purpose.

The Northern and Southern boundaries of 105 King Street is easily ascertained from observations on earth and from 10 and 12 Chancery Lane and from the existing building of 103 King Street belonging to Mr. Hall.

The existing North and South measurements of 105 King Street on the East measures 32 feet 6 ins. and the existing North to South boundary on the west measures 33 ft. 1 in.

If the North and South measurements of the strip of land shaded yellow are deducted from these measurements it would result in the North to South measurement of 105 King St. to be as follows :—

20 On the East 25 ft. 7 ins. On the West 25 ft. 5 ins. These measurements would compare favourably with the measurements as stated in the title of 105 King St.

(Sgd.) G. W. BOURKE,  
 Commissioned Land Surveyor,  
 17A Duke Street, Kingston.

*Defendant's*  
*Exhibit.*

No. 17.

LETTER—Livingston & Alexander to J. C. Chisholm.

25th February, 1942.

Dear Sir :—

30 We act for Mr. James Hall of this City Registered Proprietor of premises 101 and 103 King Street and we are instructed to communicate with you on his behalf in relation to your encroachment on a substantial portion of our client's land.

17  
 Letter,  
 Livingston  
 &  
 Alexander  
 to J. C.  
 Chisholm,  
 25th  
 February,  
 1942.

Our instructions show that you have encroached upon and are in possession of a parcel of land to the South of the correct boundary of your premises 105 King Street which parcel belongs to our client and is a portion of the land comprised in Certificate of Title registered at Volume 386



*Exhibits.* Folio 1 in our client's name. The parcel runs along the whole of the Southern side of 105 King Street and is that portion of the land now occupied by you which lies South of a line running along the southern face of the original main building on 105 King Street.

*Defendant's Exhibit.*

17

Letter,  
Livingston  
&  
Alexander  
to J. C.  
Chisholm,  
25th  
February,  
1942,  
*continued.*

Our instructions are to require you to immediately vacate the above parcel of land to hand over and deliver possession of same to our client and also to make reasonable arrangements for compensation to our client and for payment of the costs and expenses which he has incurred in this matter.

Failing immediate satisfactory arrangements our instructions are to 10 issue proceedings in the High Court but we believe that on your giving the matter your careful consideration you will appreciate it will be in your own interest to have the matter adjusted amicably.

Yours faithfully,  
(Sgd.) LIVINGSTON & ALEXANDER.

J. C. Chisholm, Esq.,  
115 King St.,  
Kingston.

---

16

Letter,  
Fraser &  
Calame to  
Livingston  
&  
Alexander,  
7th March,  
1942.

No. 16.

LETTER—Fraser & Calame to Livingston & Alexander.

20

7th March, 1942.

Messrs. Livingston & Alexander,  
Solicitors,  
Kingston.

Dear Sirs :—

*re* James Hall & J. C. Chisholm.

Mr. J. C. Chisholm has consulted us with reference to your letter to him of the 25th ultimo herein, and has instructed us to reply thereto.

Mr. Chisholm instructs us that he purchased 105 King Street in the year 1928, and at that time there was a fence, a portion of which is still 30 in existence, showing the boundary between these premises and 103 King Street; there was also an outbuilding the southern wall of which stood on that boundary. Some years ago he extended a portion of the main building to this boundary line so that the southern wall of the extension was erected where a part of the southern fence stood when he purchased the premises.

Mr. Chisholm denies that he has encroached on your client's land, but on the contrary states that the portion claimed by your client is part of 105 King Street, and he has been in undisturbed possession thereof from the date of his purchase. Under these circumstances he is quite prepared to defend any proceedings which your client may care to institute against him.

Yours faithfully,  
FRASER & CALAME.

*Exhibits.*  
—  
*Defendant's Exhibit.*  
—  
16  
Letter,  
Fraser &  
Calame to  
Livingston  
&  
Alexander,  
7th March,  
1942,  
*continued.*

---

No. 13.

10

**DOCUMENTS in Suit C.L. No. 195 of 1942.**

- (A) Writ of Summons.
- (B) Statement of Claim.
- (C) Statement of Defence.
- (D) Order for Examination of Eugenia Blanche Bonitto before trial.
- (E) Deposition of Eugenia Blanche Bonitto.
- (F) Letter, E. Bonitto to C. G. Plummer (Exhibit E.B.B.1).
- (G) Affidavit of James Hall as to Documents.
- (H) Affidavit of James Clinton Chisholm as to Documents.
- (I) Order discontinuing action.

20

13  
Documents  
in Suit  
C.L.  
No. 195  
of 1942.

---

*Exhibits.*

No. 13 (a).

*Defendant's Exhibit.*

**WRIT OF SUMMONS.**

Suit C.L. No. 195 of 1942.

13 Documents, in Suit C.L. No. 195 of 1942 : (A) Writ of Summons, 18th November, 1942.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.  
IN THE HIGH COURT.  
Common Law.

Between

JAMES HALL . . . . . Plaintiff

and

JAMES CLINTON CHISHOLM . . . . . Defendant. 10

GEORGE VI, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King Defender of the Faith, Emperor of India, To James Clinton Chisholm of 115 King Street Kingston

WE COMMAND you that within Fourteen days after the service of this Writ upon you, exclusive of the day of such service you do cause an appearance to be entered for you in an action at the Suit of, James Hall of 122 Duke Street, Kingston, and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

Witness the Honourable SIR ROBERT HOWARD FURNESS Kt. 20 Chief Justice of Jamaica, the 18th day of November in the year of Our Lord One Thousand Nine Hundred and forty-two.

N.B.—This writ is to be served within Twelve calendar months from the date thereof or if renewed within Six calendar months from the date of the last renewal, including the day of such date and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor, at the Office of the Registrar of the Supreme Court in Kingston.

**THE PLAINTIFF CLAIMS—**

(A) A declaration that the portion of land now in the possession 30 of the Defendant and being a strip of land 7 feet wide more or less from North to South and extending from King Street for a distance of 79 feet 8 inches to the West and lying south of property known as 105 King Street is comprised in the Certificate of Title for 103 King Street registered at Volume 386 Folio 1 in the name of the Plaintiff.

(B) To recover possession of the said strip of land.

(Sgd.) LIVINGSTON & ALEXANDER,  
Plaintiff's Solicitors.

This Writ was issued by LIVINGSTON & ALEXANDER, Solicitors of 40 Kingston, whose address for service is 20 Duke Street, Kingston, Solicitors for the said Plaintiff, who resides at 122 Duke Street, Kingston Post Office.

No. 13 (b).

STATEMENT OF CLAIM.

Suit No. C.L. 195 of 1942.

*Exhibits.*

*Defendant's Exhibit.*

13

Documents in Suit C.L. No. 195 of 1942 : (B) Statement of Claim, 10th February, 1943.

1. The Plaintiff is a Photographer and Shopkeeper carrying on business at 72 Duke Street in the parish of Kingston.

2. By a contract in writing made on the 4th day of August, 1941, between the Administrator General for Jamaica and the Plaintiff the Plaintiff agreed to purchase for the sum of £700 the lands registered at Volumn 386 Folio 1 of the Register of Titles and therein described as

10 follows :—

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 and 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 strip 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 comprised in Certificate of Title registered at Volume 129 Folio 85.

20

30

3. The Plaintiff took possession of the said land on the 16th of August, 1941.

4. Pursuant to the said agreement the Plaintiff was registered as proprietor of the said land free from encumbrances by a transfer from the Administrator General dated the 24th and registered on the 30th of October, 1941, at the Volume and Folio aforementioned.

40

5. The Defendant is in possession of a strip of land measuring from North to South seven feet more or less and extending from King Street for a distance of seventy-nine feet and eight inches to the West and lying South of property known as Number One Hundred and Five King Street belonging to the Defendant.

*Exhibits.*  
*Defendant's*  
*Exhibit.*

6. The said strip of land is part of the land comprised in the said Certificate of Title registered as aforesaid at Volume 386 Folio 1 of the Register of Titles and the Plaintiff is entitled to possession thereof.

13

**THE PLAINTIFF CLAIMS :—**

Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(B) State-  
ment of  
Claim,  
10th  
February,  
1943,  
*continued.*

(A) A declaration that the said strip of land is comprised in the Certificate of Title registered as aforesaid at Volume 386 Folio 1 of the Register of Titles.

(B) To recover possession of the said strip of land.

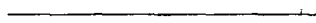
(C) Mesne profits from the 16th day of August, 1941.

Settled.

(Sgd.) N. W. MANLEY.

10

Filed and delivered this 10th day of February, 1943, by Messrs. LIVINGSTON & ALEXANDER of No. 20 Duke Street, Kingston, Solicitors for and on behalf of the abovenamed Plaintiff.



13

**No. 13 (c).**

Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(c) State-  
ment of  
Defence,  
16th March,  
1943.

**STATEMENT OF DEFENCE.**

Suit No. C.L. 195 of 1942.

1. The Defendant admits paragraph 1 of the Statement of Claim and save as is herein expressly admitted denies each and every allegation contained in the Statement of Claim as if the same were here set out and 20 traversed seriatim.

2. The Plaintiff was not registered as the proprietor of the land described in paragraph 2 of the Statement of Claim but registered only as the proprietor of such portion of the land comprised in Certificate of Title registered in Volume 129 Folio 85 as the Administrator General for Jamaica was capable of transferring.

3. The Defendant denies that the strip of land referred to in paragraph 5 of the Statement of Claim is part of the land comprised in Certificate of Title registered in Volume 129 Folio 85.

4. The Defendant is the registered proprietor under the Registration 30 of Titles Law of 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 more or less and butting north on land of Zatilda Gordon, south on land of Administrator General on behalf of Estate Morris Aria Bonitto deceased east on King Street and west on land of Margaret Hill and being the

land comprised in Certificate of Title registered in Volume 208 Folio 36 and state that the strip of land referred to in paragraph 3 hereof is part of premises now known as No. 105 King Street aforesaid.

*Exhibits.*  
—  
*Defendant's Exhibit.*

5. The Defendant has been in the undisturbed possession of the land described in paragraph 4 hereof (including the strip of land referred to in paragraph 5 of the Statement of Claim) from the 16th day of April, 1928.

13  
Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(c) State-  
ment of  
Defence,  
16th March,  
1943.  
*continued,*

6. The predecessors in title of the Defendant have been in the undisturbed possession of the land described in paragraph 4 hereof (including the strip of land referred to in paragraph 5 of the Statement of Claim) 10 from prior to the year 1902.

7. The lands of the Plaintiff and the lands of the Defendant bind and have bound upon each other and a reputed boundary has been acquiesced in and submitted to by the several proprietors owning such lands and by the several persons under whom such proprietors claim for the space of over seven years and by virtue of Sec. 46 of Cap. 395 the Limitation of Actions Law such reputed boundary (as now exists) is deemed and adjudged to be the true boundary between the lands of the Plaintiff and the lands of the Defendant.

(Sgd.) W. K. EVANS,  
15.3.43.

20

Filed and delivered on the 16th day of March, 1943, by Messrs. FRASER and CALAME of No. 12 Duke Street, Kingston, Solicitors for and on behalf of the above-named Defendant.

No. 13 (d).

**ORDER FOR EXAMINATION of Eugenia Blanche Bonitto Before Trial.**

Suit No. C.L. 195 of 1942.

The 8th day of June, 1943.

30 UPON HEARING Mr. N. J. Fraser of Messrs. Fraser & Calame, Solicitors for the Defendant and Mr. Aston Levy of Messrs. Livingston and Alexander, Solicitors for the Plaintiff and UPON READING the Affidavits of Noel Joslyn Fraser, James Clinton Chisholm and Eugenie Blanche Bonitto dated the 25th May, 1943, 26th May, 1943 and the 31st May, 1943, respectively filed herein IT IS ORDERED that the said Eugenie Blanche Bonitto a witness on behalf of the Defendant be examined viva voce on oath before the Registrar of the Supreme Court the Defendant's Solicitors giving to the Plaintiff's Solicitor 7 days notice in writing of the time and place where the examination is to take place. IT IS FURTHER

13  
Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(d) Order  
for Exam-  
ination of  
Eugenia  
Blanche  
Bonitto  
before  
trial,  
8th June,  
1943.

*Exhibits.*  
 Defendant's  
 Exhibit.  
 13  
 Documents  
 in Suit  
 C.L.  
 No. 195  
 of 1942 :  
 (D) Order  
 for Exam-  
 ination of  
 Eugenia  
 Blanche  
 Bonitto  
 before  
 trial,  
 8th June,  
 1943,  
*continued.*

ORDERED that the examination so taken be filed in the Office of the Supreme Court of Judicature and that an office copy thereof may be read and given in evidence on the trial of this cause saving all just exceptions without any further proof of the absence of the said witness than the Affidavit of the Solicitor of the Defendant as to his belief and that the costs of this Application and the said Examination be costs in the cause.

(Sgd.) TREVOR LYONS,  
 Registrar.

Filed by Messrs. FRASER & CALAME of No. 12 Duke Street, Kingston, 10  
 Solicitors for the above-named Defendant.

Entered in Chamber Order Book No. 6 Folio 142.

13  
 Documents  
 in Suit  
 C.L.  
 No. 195  
 of 1942 :  
 (E) Deposi-  
 tion of  
 Eugenia  
 Blanche  
 Bonitto,  
 28th June,  
 1943.

No. 13 (e).

DEPOSITION of Eugenia Blanche Bonitto.

Suit No. C.L. 195 of 1942.

Deposition of witness examined in the above Action at the Supreme Court building, King Street in the parish of Kingston before me, Trevor L. Lyons, Registrar of the Supreme Court, pursuant to an Order in this Action dated the 8th day of June, 1943.

On Monday the 28th day of June, 1943, the examination was commenced 20  
 at 11.10 a.m.

Evelyn instructed by A. Levy appeared as Counsel for the Plaintiff.

N. J. Fraser appeared as Solicitor for the Defendant.

L. V. D. Samuels watching on behalf of the witness.

EUGENIE BLANCHE BONITTO of 8 Hope Street, Woodford Park, in the parish of Saint Andrew, having been duly sworn by me, was examined on behalf of the Defendant, and said as follows :

I am the widow of late Morris Aria Bonitto, my husband was formerly the owner of lands in King Street, Kingston now known as 101, 103 and 105 King Street. 30

I was married 1902.

At time of my marriage my said husband was owner of the said premises. Nos. 101 and 103 King Street were occupied together as one holding—rented to one tenant.

No. 105 King Street was occupied by my husband and myself.

Nos. 101 and 103 were usually called No. 103 King Street—one number only was used by us. When we spoke of No. 103 we meant Nos. 101 and 103.

There was then a house on 103 it is still there now.

There was then a house on 105 in which I and my husband lived.

I sold 105 in 1928 the house was there then.

When I got married in 1902 there was a fence dividing No. 103 from 105—zinc fence—There was also an outbuilding at 105 in 1902—I remember the wall that was then the Southern wall of the outbuilding.

The outbuilding was built of wood and was constructed on the line between 103 and 105—the Southern wall of the outbuilding formed part of the line fence and the zinc fence joined on to the Southern wall to form  
10 balance of the line fence.

There was a passage between the zinc fence and the house on 105.

My husband died November, 1918, and at the date of his death we were still living at 105.

After husband's death I acquired 105 King Street—I bought it from the children of my said husband by his 1st wife.

After my husband's death—some years after he died I began to enjoy the rents and profits of 101 and 103 King Street.

I appointed Auctioneer Plummer as rent collector some years after I had begun to collect the rents.

20 Previous to Plummer's appointment I used myself to collect the rents.

I began to collect rents a couple of years after my husband's death, and before I bought 105 from the children.

103 King Street was sold by the Administrator General as Trustee for my husband's Estate to the Plaintiff in 1941 and I stopped enjoying the rents and profits from the date of the sale.

I sold 105 King Street to Defendant in 1928—I then stopped living there. The boundary fence between 103 and 105 King Street was in 1928 the same position as when I first went to live at 105 in 1902—it had never been moved.

30 I had lived at 105 continuously from 1902 to 1928.

Cross-examined by Mr. Evelyn on behalf of the Plaintiff the witness says as follows :—

Since I sold 105 in 1928 I have been living at Woodford Park, I occasionally went back to look at 103. Up to that time when I sold it in 1941—but not very often for I had Mr. Plummer as my rent collector.

Plummer became my rent collector some years after I sold 105 in 1928. He was collector up to 1941—he got me the Plaintiff as purchaser.

Nos. 101 and 103 were one holding, the premises had on two numbers and they were never taken off—it was generally known as 101.  
40 The holding only had 1 house on it and it was known as 101.

*Exhibits.*

*Defendant's Exhibit.*

13  
Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(E) Deposition of  
Eugenia  
Blanche  
Bonitto,  
28th June,  
1943,  
*continued.*



*Exhibits.*

*Defendant's Exhibit.*

13  
Documents  
in Suit  
C.L.

No. 195  
of 1942 :  
(E) Deposition of  
Eugenia  
Blanche  
Bonitto,  
28th June,  
1943,  
*continued.*

The adjoining house was 105—The house to the North of 105 I do not remember whether it was 107—nor do I remember who was owner or neighbours.

I have seen the premises which adjoined 105 to the North small premises and a small house—it must have been known as 107—to the North of 107 there was a passage leading from King Street past the house to the back of the premises.

No. 109 King Street was to the North of 107—109 had a house—I have never been in 109 nor 107 for that matter—but I would not dispute that there may be a passage to the back of 109 leading from King Street to the back of the premises. 10

There was also a passage leading from King Street passing the house and going into the back of the premises at No. 105 King Street—about 6 to 7 feet wide but I cannot say for certain.

I have observed that Defendant has made alterations to the house at 105. These alterations were made before the Administrator General sold 101 and 103 to the Plaintiff in 1941.

The front of the house at 105 was turned into a shop and extended to the South of the boundary of 103—the addition went right down to where the zinc fence was in 1902 and also in 1928 when I sold it. 20

From I went there in 1902 there was a passage leading from King Street past the house in 103 and leading to the back of the premises 103, and that passage was there when I sold 105 in 1928. The passage about 6 or 7 feet wide.

At the back of 103 was a breadfruit Tree, near to the fence between 103 and 105 in the passage on 103 was a common Mango tree—there was also a pepper-elder tree growing in the passage in 103.

Plaintiff did not come to see me before he bought 101 and 103 from the Administrator General—I was sick at the time. I did not know Plaintiff until after the place was sold to him. 30

The Administrator General was selling the place and Plummer the Auctioneer got the purchaser. I asked Plummer to sell the place.

The letter now shown to me was signed by me. Plummer came and told me he had got a purchaser and that I must sign the letter as authority for him to sell. The letter dated 4th August, 1941, put in evidence and marked E. B. B. 1.

I did not meet Mr. Hall the Plaintiff nor speak to him on the Saturday before I signed the Letter E. B. B. 1. I did not meet him at the corner of Church Street and North Parade in Kingston nor at all that day.

Plaintiff did not come up to my house at Woodford Park on that Friday before the letter E. B. B. 1 was signed. He did not come up there until after the place was bought and the business settled. I had a conversation with Plaintiff on that occasion about the boundary line between 105 and 103, he said something about the Title and I told him that he bought the place as he saw it. 40

In 1928 Defendant came to me and asked me if I was prepared to give him 105 King Street to sell. I told him I was not giving it to any Auctioneer to sell. He returned sometime after and told me he has got a purchaser and he said I would not have to pay him any commission. After the place was sold I gave Defendant £10 commission, he asked me if I would give it to him and I give him £10. He sold the place to himself and charged me £10 commission.

*Exhibits.*  
—  
*Defendant's Exhibit.*

13  
Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(E) Deposition of  
Eugenia  
Blanche  
Bonitto,  
28th June,  
1943,  
*continued.*

I thought it strange. Defendant never came to me after I had sold him 105 and asked me to sell him a strip of land which made the passage  
10 in 103 because I had already sold him the place as I had it.

*Q.* Did you at any time tell Plaintiff about Defendant's having taken £10 as commission for selling 105 to himself.

*A.* No I don't remember.

*Q.* Did you tell Plaintiff that Defendant had come to ask me to sell him the said strip of land referred to above.

*A.* No.

*Q.* Have you ever moved the fence between 103 and 105.

*A.* No, I have already said I sold it as I found it when I first went there to live.

20 Re-examined by Mr. Fraser on behalf of Defendant the witness said as follows :—

*Q.* The fence between 103 and 105 was in a straight line with the Southern wall of the outbuilding.

*A.* Yes.

*Q.* Was there a passage between the house on 103 and the zinc fence.

*A.* I now say there was no passage there—the passage to which I have referred and identified by the trees etc. growing in it was actually in 105 not in 103.

30

(Sgd.) E. B. BONITTO.

The above deposition of Eugenie Blanche Bonitto were first read over to her by me and were then signed by her in the presence of Mr. Fraser representing the Defendant and Mr. Evelyn representing the Plaintiff.

The Examination concluded at 1.07 p.m.

(Sgd.) TREVOR L. LYONS,  
Registrar.

28.6.43.

*Exhibits.*

No. 13 (f).

*Defendant's Exhibit.* EXHIBIT " E.B.B.1 " in Examination of Eugenia Blanche Bonitto. LETTER—E. Bonitto to C. G. Plummer.

13  
Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(F) Exhibit  
" E.B.B.1,"  
in Exam-  
ination of  
Eugenia  
Blanche  
Bonitto ;  
Letter,  
E. Bonitto  
to C. G.  
Plummer,  
4th August,  
1941.

No. 8 Hope Street,  
Woodford Park,  
Kingston.  
4th August, 1941.

C. G. Plummer, Esq.,  
79 Church St.,  
Kingston.

10

Dear Sir,

This serves to authorise you to sell my premises Nos. 101 & 103 King St., to Mr. J. Hall for the sum of Seven Hundred Pounds (£700).

In consideration of my accepting this amount, the partition in the drawing room must be allowed to remove by me.

Yours truly,

(Sgd.) E. BONITTO.

*Hall v. Chisholm*  
C.L. 195/42

Put in evidence at the examination of Mrs. Bonitto before the Registrar 20 and marked E.B.B.1.

(Sgd.) T. L. L.,  
Registrar.  
28.6.43.

13

Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(g) Affidavit  
of James  
Hall as to  
Documents,  
18th  
August,  
1943.

No. 13 (g).

AFFIDAVIT of James Hall as to Documents.

Suit No. C.L. 195 of 1942.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.  
IN THE HIGH COURT OF JUSTICE.  
Common Law.

30

Between

JAMES HALL . . . . . Plaintiff

and

JAMES CLINTON CHISHOLM . . . . . Defendant.

I, JAMES HALL being duly sworn make oath and say as follows :—

1. My true place of abode is at 122 Duke Street in the parish of Kingston my postal address is 122 Duke Street Kingston Post Office and I am a Photographer and Shopkeeper and the above-named Plaintiff.

2. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the First Schedule hereto.

*Exhibits.*  


---

*Defendant's Exhibit.*

3. I object to produce the said documents set forth in the second part of the said First Schedule hereto on the ground that the said documents have been obtained by or prepared by or on behalf of or are letters written by or to Messrs. Livingston & Alexander my Solicitors solely for the purpose of conducting my claim herein or consist of opinions and advice of Counsel given for the same purpose.

13  
 Documents in Suit C.L. No. 195 of 1942 : (g) Affidavit of James Hall as to Documents, 18th August, 1943, *continued.*

10 4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.

5. The last-mentioned documents were last in my possession or power on or about their respective dates.

6. To the best of my knowledge information and belief such last-mentioned documents are now in the possession or power of the respective addressees thereof.

20 7. According to the best of my knowledge, information and belief, I have not now and never had in my possession custody or power or in the possession custody or power of my solicitors or agents, Solicitor or agent, or in the possession custody or power of any other persons or person on my behalf, any deed, account, books of accounts, voucher, receipt, letter, memorandum, paper or writing or any copy or extract from any such document or any other document whatever relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters, or any of them other than and except the documents set forth in the said First and Second Schedule thereto.

FIRST SCHEDULE.

FIRST PART.

- 30 1. Letter from E. Bonitto to C. G. Plummer dated 4th August, 1941.  
 2. Cash Receipt of Messrs. Samuel & Samuel for £25 from me dated 5th August, 1941.  
 3. Cash receipt of Administrator General for £675 from me dated 16th August, 1941.  
 4. Letter from Administrator General to Tenants of 101/103 King Street Kingston dated 16th August, 1941.  
 5. Letter from L. V. D. Samuel to me dated 15th October, 1941.  
 6. Letter from L. V. D. Samuel to me dated 17th October, 1941.  
 7. Letter from L. V. D. Samuel to me dated 23rd October, 1941.  
 40 8. Letter from L. V. D. Samuel to me dated 27th October, 1941.  
 9. Letter from L. V. D. Samuel to me dated 30th October, 1941.

- Exhibits.* 10. Letter from Messrs. Samuel & Samuel to me dated 1st November, 1941.
- Defendant's Exhibit.* 11. Cash Receipt of Messrs. Samuel and Samuel for £7.10/- from me dated 5th November, 1941.
- 13  
Documents in Suit C.L.  
No. 195 of 1942 :  
(e) Affidavit of James Hall as to Documents, 18th August, 1943,  
*continued.*
12. Cash Receipt of E. Bonitto for £1, from me dated 29th December, 1941.
13. Duplicate Certificate of Title Registered at Volume 386 Folio 1, of the Register Book of Titles in the Office of Titles.
14. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 7th March, 1942. 10
15. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 9th April, 1943.
16. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 8th June, 1943.
17. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 10th June, 1943.
18. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 16th June, 1943.
19. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 6th August, 1943. 20
20. Copies of the Application to bring the land known as Nos. 101 and 103 King Street under the Operation of the Registration of Titles Law and of the Title deeds and papers in connection therewith in the office of Titles.
21. Copy of the Transfer No. 48056 registered at Volume 386 Folio 1 in the office of Titles.
22. Duplicate Certificate of Title registered at Volume 386 Folio 1 in the Register Book of Titles in the office of Titles.
23. Copy of the Certificate of Title registered at Volume 208 Folio 36 of the Register of Titles in respect of premises 105 King Street. 30
24. Copy of the Will and Codicil of Morris Aria Bonitto, relating to devise of 101-103 King Street.
25. Copy of the deposition of Eugenie Blanche Bonitto on examination before the Registrar of the Supreme Court on 28th June, 1943.
26. Copies and Notes of documents in Application No. 12489 on which Title of 105 King Street brought under the operation of the Registration of Titles Law at Volume 208 Folio 36.
27. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 12th August, 1943.

## SECOND PART.

40

Correspondence with Solicitors and Counsel, Statements, Plans, copies of documents, briefs, opinions and drafts and copies of proceedings.

## SECOND SCHEDULE.

- |    |   | <i>Exhibits.</i>                         |
|----|---|--|
|    | 1. Letter from me to C. G. Plummer and Mrs. E. Bonitto dated 4th August, 1941.                      | <i>Defendant's Exhibit.</i>              |
|    | 2. Letter from me to the Administrator General dated 14th August, 1941.                             | 13                                       |
|    | 3. Letter from me to Messrs. Samuel & Samuel dated 16th October, 1941.                              | Documents in Suit                        |
|    | 4. Letter from me to Messrs. Samuel & Samuel dated 31st October, 1941.                              | C.L.                                     |
|    | 5. Letter from Messrs. Livingston & Alexander to J. C. Chisholm dated 25th February, 1942.          | No. 195 of 1942 : (c) Affidavit of James |
| 10 | 6. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 12th December, 1942. | Hall as to Documents, 18th               |
|    | 7. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 15th May, 1943.      | August, 1943,                            |
|    | 8. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 14th June, 1943.     | <i>continued.</i>                        |
|    | 9. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 19th June, 1943.     |  |
|    | 10. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 5th August, 1943.   |  |
| 20 | 11. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 9th August, 1943.   |  |
|    | 12. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 17th August, 1943.  |  |

(Sgd.) J. HALL.

Sworn to at Kingston in the Parish of Kingston this 18th day of August, 1943, before me.

(Sgd.) ROBERT B. BARBER,  
J.P.

NOTE.—This affidavit is filed by Messrs. LIVINGSTON & ALEXANDER of No. 20 Duke Street, Kingston, solicitors for and on behalf of the abovenamed Plaintiff.

*Exhibits.*

No. 13 (h).

*Defendant's Exhibit.*

**AFFIDAVIT of James Clinton Chisholm as to Documents.**

Suit No. C.L. 195 of 1942.

13

Documents  
in Suit  
C.L.  
No. 195  
of 1942 :  
(H) Affidavit  
of James  
Clinton  
Chisholm  
as to  
Documents,  
November,  
1943.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.  
IN THE HIGH COURT OF JUSTICE.  
Common Law.

Between JAMES HALL . . . . . Plaintiff  
and  
JAMES CLINTON CHISHOLM . . . . . Defendant.

I, JAMES CLINTON CHISHOLM being duly sworn make oath and say 10  
as follows :—

1. My true place of abode is at No. 46 Beechwood Avenue in the Parish of Saint Andrew and my postal address is Cross Roads P.O. I am an Auctioneer and the above-named Defendant.
2. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the First Schedule hereto.
3. I object to produce the said documents set forth in the second part of the First Schedule hereto on the ground that the said documents have been obtained by or prepared by or on behalf of or are letters written by or 20 to Messrs. Fraser & Calame my Solicitors, solely for the purpose of conducting my Defence herein or consist of Opinions and advices of Counsel given for the same purpose.
4. I have had, but have not now in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.
5. The last mentioned documents were last in my possession or power on or about their respective dates.
6. To the best of my knowledge information and belief such last-mentioned documents are now in the possession or power of the respective 30 addressees thereof.
7. According to the best of my knowledge, information and belief, I have not now and never had in my possession custody or power or in the possession custody or power of my Solicitors or Agents, Solicitor or Agent, or in the possession custody or power of any other persons or person on my behalf, any deed, account, book of accounts, voucher, receipt, letter, memorandum, paper or writing or any copy or extract from any such document or any other document whatever relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters, or any of them other than and except the documents 40 set forth in the said First and Second Schedule hereto.

## FIRST SCHEDULE.

## PART 1.

- |    |  |   |
|----|--|---|
|    |  | <i>Exhibits.</i>  |
|    |  | <i>Defendant's Exhibit.</i>   |
|    |  | 13  |
|    |  | Documents in Suit C.L. No. 195 of 1942 : (H) Affidavit of James Clinton Chisholm as to Documents, November, 1943, <i>continued.</i> |
|    | 1. Letter from Messrs. Livingston & Alexander to me dated 25th February, 1942.   |   |
|    | 2. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 12th December, 1942.  |   |
|    | 3. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 15th May, 1943.   |   |
| 10 | 4. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 14th June, 1943.  |   |
|    | 5. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 19th June, 1943.  |   |
|    | 6. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 5th August, 1943.   |   |
|    | 7. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 9th August, 1943.   |   |
|    | 8. Letter from Messrs. Livingston & Alexander to Messrs. Fraser & Calame dated 17th August, 1943.  |   |
| 20 | 9. Copy of the Certificate of Title registered at Volume 208 Folio 36 of the Register of Titles in respect of premises 105 King Street.  |   |
|    | 10. Copy of the Application to bring the land known as No. 105 King Street under the operation of the Registration of Titles Law and of the Title deeds and papers in connection therewith in the Office of Titles.          |   |
|    | 11. Copy of the Transfer registered at Volume 386 Folio 1 in the Office of Titles.   |   |
|    | 12. Copy of the Application to bring the land known as Nos. 101 and 103 King Street under the operation of the Registration of Titles Law and of the Title Deeds and papers in connection therewith in the Office of Titles. |   |
| 30 | 13. Copy of the will and Codicil of Morris Aria Bonitto relating to devise of 101-103 King Street.   |   |
|    | 14. Copy of Building Plan of premises 105 King Street dated 6th April, 1937.   |   |
|    | 15. Copy of Deposition of Eugenie Blanche Bonitto on Examination before the Registrar of the Supreme Court on 28th June, 1943.   |   |

## SECOND PART

Correspondence with Solicitors and Counsel, Statements, Plans, copies of documents, Briefs, Opinions and drafts and copies of proceedings.

40

## SECOND SCHEDULE

1. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 7th March, 1942.
2. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 9th April, 1943.



- Exhibits.* 3. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 8th June, 1943.
- Defendant's Exhibit.* 4. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 10th June, 1943.
- 13 Documents in Suit C.L. No. 195 of 1942 : (ii) Affidavit of James Clinton Chisholm as to Documents, November, 1943, *continued.*
5. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 16th June, 1943.
6. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 6th August, 1943.
7. Letter from Messrs. Fraser & Calame to Messrs. Livingston & Alexander dated 12th August, 1943. 10

(Sgd.) J. C. CHISHOLM.

Sworn to at the City and Parish of Kingston this day of November, 1943, Before me :—

(Sgd.) A. M. TUCKER,  
Justice of the Peace ; Kgn.

This Affidavit is filed by Messrs. FRASER & CALAME, of No. 12 Duke Street, Kingston, Solicitors for the abovenamed Defendant.

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No. 13 (i).

**ORDER Discontinuing Action.**

Suit No. C.L. 195 of 1942. 20

The 21st day of June, 1944

Before—

Mr. JUSTICE CARBERRY

UPON the application of the Plaintiff by his Solicitors Messrs. Livingston & Alexander and with the consent of the Defendant testified by the signature hereon of Messrs. Fraser & Calame his Solicitors, IT IS HEREBY ORDERED that this action be wholly discontinued and that the Plaintiff do pay to the Defendant his costs in the action to be taxed.

We consent.

(Sgd.) FRASER & CALAME, 30  
Defendant's Solicitors.

Filed by Messrs. LIVINGSTON & ALEXANDER, Solicitors for the abovenamed Plaintiff.

Entered in Supreme Court Chamber Order Book No. 6 Folio 241.

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**No. 15. CERTIFIED COPY OF ENTRY in Register of Deaths—Eugenia Blanche Bonitto.**

CERTIFIED COPY of an Entry in a REGISTER OF DEATHS.

Given at the General Register Office ;  
Spanish Town, Jamaica.

Bm 9355

Death in the district of Cross Roads parish of Saint Andrew.

Date and Place of Death	Name and Surname	Sex	Condition	Age last Birthday	Rank, Profession or Occupation	Certified cause of Death and Duration of Illness	Signature, Qualification and Residence of Informant	When Registered
Twenty-fourth January 1950 8 Hope Street Woodford Park Saint Andrew	Eugenia Blanche Bonitto	Female	Widow	84 years	Widow of Morris Bonitto Merchant	(a) Cardiac Failure (b) Hypostatic Pneumonia Certified by K. A. Sleem M.B.chB. Edin.	M. G. Seaga, Present at the death 36 Paddington Terrace, Saint Andrew	Twenty Sixth January 1950

Signed by the said Myrtle Geraldine Seaga in the presence of Edith C. Forbes Registrar of Births and Deaths Cross Roads District, Parish of Saint Andrew.

Certified to be a true copy of the Entry in the Registration Form Bm 9355 of a Death within the District of Cross Roads in the parish of Saint Andrew in the said Island of Jamaica.

Given at the General Register Office, Spanish Town, Jamaica, under the seal of the said Office, this Twenty-sixth day of March 1953.

(Sgd.) ?? A. M. G. SHAW,  
Actg. Registrar General.

Exb. 15 Tendered in evidence. *Hall vs. Chisholm.*

*Exhibits.*  
*Defendant's Exhibit.*  
15  
Certified Copy of Entry in Register of Deaths :  
Eugenia Blanche Bonitto,  
26th March, 1953.

*Exhibits.*

No. 26.

*Plaintiff's  
Exhibit.***SURVEYOR'S NOTICE (Law 31 of 1942) to James Hall.**

26.  
Surveyor's  
Notice  
(Law 31  
of 1942)  
to  
James Hall,  
10th June,  
1950.

I hereby give notice that I am instructed by J. C. Chisholm to survey that parcel of land situate in the parish of Kingston and known by the name of No. 105 King Street which adjoins lands said to belong to you or to be in your Possession and I shall commence to survey the same on Monday the 19th day of June, 1950, between the hours of 8 and 8.30 a.m. of the Clock commencing at King Street at which time and place you are requested to attend by yourself or agent as you may think fit and in the meantime I shall make such traverses as I may deem requisite. You **10** must bring all diagrams and other papers referring to your land in order to protect your interest therein.

Dated the 10th day of June, 1950.

To : James Hall, Esq.,  
122 Duke Street,  
Kingston.

(Sgd.) K. G. FASYTHE,  
Surveyor,  
104 Tower Street, Kingston.

**In the Privy Council.**

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

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**BETWEEN**

**JAMES CLINTON CHISHOLM (Defendant)** . . . . . *Appellant*

**AND**

**JAMES HALL (Plaintiff)** . . . . . *Respondent.*

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**RECORD OF PROCEEDINGS**

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**G. F. HUDSON MATTHEWS & CO.,**  
32 QUEEN VICTORIA STREET,  
LONDON, E.C.4.,  
*Solicitors for the Appellant.*

**A. L. BRYDEN & WILLIAMS,**  
53 VICTORIA STREET,  
LONDON, S.W.1,  
*Solicitors for the Respondent.*