

**A COMMISSION OF INQUIRY
INTO HISTORIC LAND LOSS
IN BERMUDA**

**CHAIRMAN
HON. WAYNE PERINCHIEF, J.P.**

**COUNSEL
MR. DIRK HARRISON**

**COMMISSIONERS
MR. QUINTON STOVELL
MR. JONATHAN STARLING**

TRANSCRIPT OF PROCEEDINGS

**LOCATION: WILLOWBANK CONFERENCE CENTER
THURSDAY, MARCH 25, 2021 AT 10:00 AM
MORNING SESSION (a)
MATTER NO. 015**

HON. WAYNE PERINCHIEF	0:11:	Please be seated. Good morning, everybody. And good morning Counsel.
		<p>This session today is a resumption of the matter of our claim number 015 known as the Brown matter. We adjourned on December 4, last year already 2020 from Warwick Camp, Bermuda, at which time this Commission issued notices of adverse notice to several individuals who are involved in this matter. Counsel at this point, I'll turn the proceedings over to you,</p>
COUNSEL DIRK HARRISON	1:22:	Mr. Chairman, good morning, Commissioners. I would like before we start just to allow the parties who are present to indicate appearances. We have Mr. Kim White
MR. KIM WHITE	1:37:	I'm here on behalf of Cox, Hallett, Wilkinson and Sir John Swan.
COUNSEL DIRK HARRISON	1:42:	Mr. Michael Hanson.

MR. MICHAEL HANSON 1:45: Good morning. We're here on behalf of the Bank of N.T. Butterfield

COUNSEL DIRK HARRISON 1:51: Ms. Myra Virgil.

MS. MYRA VIRGIL 1:54: Today, I'm representing the descendants of the late John Alfred Virgil.

COUNSEL DIRK HARRISON 2:02: Thank you very much, Chairman and Commissioners, I just indicated that in respect of your earlier comment regarding adverse notices being issued to parties based on the submissions of the claimants, the persons who are in attendance are the persons the adverse parties who have responded to the notice the other persons who were named and to whom notices have been sent. They were notified also, by way of the Royal Gazette, they are not present or have not indicated an interest to be present. I asked therefore, at this time, Mr. Chairman, that we could proceed. We just for clarity, it is a Matter #015 as indicated earlier, and just briefly, it is the applicants or claimants making a claim in a reference to the Estate of John Augustus Alexander Virgil.

I would ask at this time, Mr. Chairman that the witnesses, Mr. Charles Brown, and Mr. George Brown that they could be sworn or affirmed, depending on their religious conviction or any other conviction they may have. At this time, I'll just indicate also, we have two other witnesses who are on standby to give evidence in this matter. I would ask that just by way of procedure, that in respect of any questions that the parties may have for the witnesses, we the Commission could take the questions by way of seniority of the attorneys called to the Bar in Bermuda unless they wish to do it otherwise. May the claimants be sworn.

MRS. LISTER (Secty) 4:09: Good morning Would you like to swear or affirm. Can you stand place the bible in your right hand and state your name for the record and repeat after me.

MR. GEORGE BROWN 4:20: George Brown, I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

MR. CHARLES BROWN 4:46: Charles Brown, I swear by Almighty God that the evidence I shall give, shall be the truth, the whole truth, and nothing but the truth.

COUNSEL DIRK HARRISON 5:13: Chairman, I had indicated to the parties that I had one question to put to the claimants. And at the end of that question, I would indicate, I will indicate that I have no further questions.

HON. WAYNE PERINCHIEF 5:31: You may proceed, Counsel.

COUNSEL DIRK HARRISON 5:33: Good morning, Brown, Good morning, Mr. Brown. On the last occasion, reference was made to Exhibit CNLB10. It consists of the deeds what you had purported, in your evidence to be the original deeds which you maintain possession of, can you share with the Commission of Inquiry as to where these deeds have been all these years?
Who is speaking, could you identify your name for the record.

MR. CHARLES BROWN 6:15: Certainly, my name Charles Brown and I represent the beneficiaries of the Estate of John Augustus Alexander Virgil, Matter 015. The deeds that we speak of were presented to the beneficiaries by Mr. Aldridge from The Bank of Butterfield, who were the sole executives of the Will at the time. Mr. Aldrich presented these deeds to the beneficiaries in 1973, and from that day, until this day, those deeds have been in a safe and secure space under the custody of the beneficiaries.

COUNSEL DIRK HARRISON 7:03: And when you say deeds, could you just point out how many deeds have been in your

MR. CHARLES BROWN 7:09: The deeds that we speak of are the sets of deeds that were presented to the Commission as an earlier exhibit, and they, begin in 1880. And then the next Deed is 1885; to one after that

is 1887, followed by 1896, followed by 1924 and then 1926, and lastly 1945.

- COUNSEL DIRK HARRISON** 8:00: And finally, in respect of Mr. Aldridge from the Bank of Butterfield, who presented these documents, what was the occasion of these documents represented to you?
- MR. CHARLES BROWN** 8:15: The beneficiaries were invited to attend the bank, it was also recommended that they attend the bank, having spoken to counsel at Appleby, Spurling & Kempe previously, and they directed the beneficiaries to the Bank of Butterfield and to make arrangements to collect the deeds.
- COUNSEL DIRK HARRISON** 8:47: Thank you very much,
- HON. WAYNE PERINCHIEF** 8:49: Counsel, just for my edification and memory doesn't serve me well. Would you indicate we're an exhibit list, these deeds were recorded for our records?
- COUNSEL DIRK HARRISON** 9:03: Thank you Chairman, It is Exhibit CNLB10.
- HON. WAYNE PERINCHIEF** 9:20: Thank you, Counsel.
- COUNSEL DIRK HARRISON** 9:22: Thank you very much. At this time Commissioners I have no further questions for the claimants.
- HON. WAYNE PERINCHIEF** 9:47: At this point this Commission wishes to request the witnesses Mr. Charles or George Brown, either or both. You have the opportunity to question the person's present. To whom advice notice has been
- COUNSEL DIRK HARRISON** 10:11: Chairman at this time the persons to whom adverse notices have been issued, they will now put questions to the beneficiaries, the claimants
- HON. WAYNE PERINCHIEF** 10:27: Right in that,
In that case, I'll reverse my request and make that same request to whom adverse notice has been sent. And you may now question the witnesses. I've been instructed by Counsel that we should start in order of

precedent. Nevertheless, I don't know if you all know who has more status than the other, but

- MR. KIM WHITE** 10:57: It is evident on my lips, sir. I would recommend regretfully.
- HON. WAYNE PERINCHIEF** 11:05: Mr. White what was that?
- COUNSEL DIRK HARRISON** 11:07: It is evident on my lip, the gray?
- HON. WAYNE PERINCHIEF** 11:11: Well, I'll, I have an order here. And I'll just follow that and make apologies for anyone being stepped over. I would request that Mr. Kim White representing Sir John Swan, the first person to respond at this point. Counsel.
- COUNSEL DIRK HARRISON** 11:35: Well, it might be more efficient if I was to deal with the CHW matter first because it's brief.
- HON. WAYNE PERINCHIEF** 11:43: And when we say the CHW matter
- MR. KIM WHITE** 11:45: Cox Hallett Wilkinson (CHW)
Yes, sir. I keep in mind that you represent or you wear two hats, and in this case, we will indicate that for the record, Mr. Kim White is representing Cox, Hallet & Wilkinson Ltd. and will put his questions on their behalf initially; and after that Sir John Swan who Mr. Kim White also represents. Mr. White as a representative of Cox Hallett & Wilkinson
- HON. WAYNE PERINCHIEF** 12:19: Yes.
- MR. KIM WHITE** 12:21: I've had the benefit of discussion with Mr. Brown and Mr. Brown and we can resolve this issue for Cox, Hallett & Wilkinson Limited. Cox, Hallett Wilkinson and Cox & Wilkinson very quickly, Mr. Brown, whichever one wants to answer it, do you accept that Cox Hallett, Cox Hallett & Wilkinson Ltd had nothing to do with the transaction that you are complaining about in 1969.
- COUNSEL DIRK HARRISON** 12:47: Nine.

MR. CHARLES BROWN 12:49: We would like to share a statement if that's okay with you?

MR. KIM WHITE 12:55: That's up to the Commission.

MR. CHARLES BROWN 12:58: A brief statement on that matter Chairman?

HON. WAYNE PERINCHIEF 13:01: Yes, in response to the first question from Mr. Kim white representing Cox Hallett Wilkinson Mr. Charles Brown will respond by way of a statement. You can carry on Mr. Brown.

MR. CHARLES BROWN 13:10: Thank you Commission, Any reference to Mr. David Wilkinson is in his own capacity, or as an associate with the now defunct Cox and Wilkinson and is not associated with the law firm of Cox, Hallett & Wilkinson. Further, we wish to unreservedly withdraw any reference to the law firm of Cox, Hallett and Wilkinson and apologize for the reference.

HON. WAYNE PERINCHIEF 13:59: Counsel keeping in mind that this statement is recorded should we now take that as exhibit a submission from Mr. Brown?

COUNSEL DIRK HARRISON 14:10 Well, once Well, if he has it in a written form, you could but the record would stand by itself, at this time Chairman,

HON. WAYNE PERINCHIEF 14:18: Yes and going forward, I would request that we make that an exhibit for at the time we do our summations we would require that but we will continue at this point. Thank you.

COUNSEL DIRK HARRISON 14:35: I would just like to thank the Browns for that and appreciate them, helping truncate the proceedings and I will ask the Commission that they will remove from the record all references to those firms.

HON. WAYNE PERINCHIEF 14:48: Counsel you have heard the request.

COUNSEL DIRK HARRISON 14:50: Chairman that is something that at the relevant time, by way of findings or by way of the production report, it could be done at that time.

MR. KIM WHITE 15:00: I agree okay.

HON. WAYNE PERINCHIEF 15:02: Yes, Mr. White, you've heard the comment from our Counsel.

MR. KIM WHITE 15:05: That's great.

HON. WAYNE PERINCHIEF 15:06: That at the requisite time, when the report is drawn up, those references will be admitted to the firm that you represent Cox, Hallett Wilkinson Limited.

MR. KIM WHITE 15:19: Thank you. Counsel. Is it correct that Mrs. Barbara Brown will be giving evidence following Mr. Charles and Mr. George Brown?

COUNSEL DIRK HARRISON 15:31: That's correct.
I won't put questions to them, which I'll put to her. Gentlemen, in your evidence. You have made reference to a report by the firm of Britta, Caribbean Engineering Consultants Limited and sometimes referred to it as the Summer's report. Thank you. Do you accept that the report was dated the 24th July, 1996?

MR. CHARLES BROWN 16:05: Yes.

COUNSEL DIRK HARRISON 16:07: Do you accept that this report suggests page two of it, following the face page, thorough searches have been made of the appropriate registries in Bermuda in the old Parish Vestry records

MR. CHARLES BROWN 16:22: Would you kindly repeat the question?

COUNSEL DIRK HARRISON 16:24: I'm reading from the second page of the report which you submitted an evidence. It says on the second line in the middle of the page, thorough searches have been made of the applicable registries in Bermuda and the old Parish Vestry records.

MR. CHARLES BROWN 16:39: And I'm not and the question is,

COUNSEL DIRK HARRISON 16:41: Does the report say that

MR. CHARLES BROWN 16:44: Which page?

COUNSEL DIRK HARRISON 16:47: page 2, find the face page. So I guess page one would you'd call it go back one and go down. It says contingent limiting conditions.

Probably to assist the Commissioners it could also be projected on the screen.

MR. KIM WHITE 17:00: Yes there it is there second sentence of that paragraph in the middle of the page could you go up higher?

MR. CHARLES BROWN 17:10: Yes, the report does state what you read.

COUNSEL DIRK HARRISON 17:12: Thank you. And take you again to Page 5 at the top of page 5, there's the first complete sentence at the top of page five which states, "There is no record in the Registrar General's Office of a Conveyance voluntary or otherwise of Lot 4, or any part thereof between 24th January, 1962 and the 17th January, 1972".

MR. CHARLES BROWN 17:40: I agree that the report states

COUNSEL DIRK HARRISON 17:43: Turn the page over please.

I'm just going to ask you Mr. White to just allow the Secretary to project it on the screen. So the Commissioners could follow please.

MR. KIM WHITE 17:57: Turn the page over please, and below the first little paragraph there it reads, "There is no record in the Registry in the form of a recital, which sets out how this real property came into the possession of the Grantor in the earlier Voluntary Conveyance listed above. The Conveyance they're listing above are the conveyances from...from John William David Swan to Leslie Earl Ming, and also to attorney such as Sir Edward Richards, and yes, those are the Conveyances they're referring to and does not read that in the report. And finally, at the bottom

COUNSEL DIRK HARRISON 20:32 We have lost sound.

MRS. LISTER (Secty) 20:34: Hi Counsel we are have a slight delay with the screen transmission in fact it seems that the screen itself is frozen. For everyone's knowledge, we've just temporarily lost internet and the connection should be resuming shortly. Please bare with us.

MR. MICHAEL HANSON 20:37: We also notice counsel that the mics were being unmuted when people were speaking so we were picking up the sound from the commissioners table, not the individual witnesses or counsel.

COUNSEL DIRK HARRISON 20:46: Okay, thank you very much. Secretary, we are not hearing on this side. And could I ask that all microphones are muted except for the witnesses or counsel? Who is was in questions.

HON. WAYNE PERINCHIEF 21:06: Counsel, we did experience a drop out. And if you would go back, if you like any comments you made, would you repeat for our purposes, but we are continuing. For the record we have experienced the dropout of the internet connection at 10:34 am, nevertheless we will resume, once we reconnect. It's the perils of the technology.

COUNSEL DIRK HARRISON 21:21: The last thing that I heard Chairman was Mr. White, asking the Secretary to scroll the page. I'm not certain what question followed or where the question, what exactly the question was, if I could be guided. Thank you.

HON. WAYNE PERINCHIEF 21:40: Yes, if we were to start from, I think the Summit report that you requested.

COUNSEL DIRK HARRISON 21:45: Yes. Second last paragraph, which is now on the screen. And it reads, "the record did not reveal how any part of Lot 4 : Plan 7 seven came into possession of John William David Swan at the time that he voluntary conveyed the six lots derived from block four to LeslieEarl Ming. Does read that Mr. Brown does it not?"

MR. CHARLES BROWN 22:04: It does read that.

COUNSEL DIRK HARRISON 22:06: I'd asked you to turn to the exhibit which we provided the Commission with which relates to the deed dated 21st of July 1970. And it is certified. And it's the deed that I'm talking about is this deed. Do the Browns have that? The Browns don't have that. It's the one with the Red Seal on it. Give them two copies and the Commission may want to see it as well.

HON. WAYNE PERINCHIEF 22:40: Yes, Mr. White, would you just repeat that for the record.

COUNSEL DIRK HARRISON 22:56: I'm referring now to a Deed dated the 21st July, 1970 which has been extracted from the Registrar General's Office, and it has a Registrar General Seal on the front, dated the 8th February, 2021. That's the document I'm referring to sir.

HON. WAYNE PERINCHIEF 23:17: On the screen, 8th February 2021. That's the date stamp.

COUNSEL DIRK HARRISON 23:24: From the Registrar General. Mr. Brown, this certificate says this is to certify the document here in annex Martin. I'm
Sorry just a minute, Mr. White So I'm wondering whether or not you wish to make this an exhibit if you wish to rely on it.

Yes that can be made an exhibit?

HON. WAYNE PERINCHIEF 23:42: Yes Counsel, at this time, if Mr. White would refer to the entire document by description. Yes. For the purposes of like entered into our records as an exhibit.

COUNSEL DIRK HARRISON 23:58: The description of the document, sir is a certificate from the Registrar General's Office of a deed dated 21st July, 19 170.

HON. WAYNE PERINCHIEF 24:12: dated again 21st of

COUNSEL DIRK HARRISON 24:15: 21st July, 1970.

HON. WAYNE PERINCHIEF 24:22: And that certificate you say was taken from the there's a certificate on it. Yes, there is that eight the February 2021. You obtained that?

COUNSEL DIRK HARRISON 24:35: From the Registrar General certifying that this came from The Book of Deeds No.108 at Pages 242 to 246 in the Registrar General's office Hamilton

HON. WAYNE PERINCHIEF 24:48: Counsel, I tribute it to

COUNSEL DIRK HARRISON 24:53: Chairman I could ascribe the Exhibit JS1 the initials of the person to whom the adverse notice had been sent JS1.

HON. WAYNE PERINCHIEF 25:07: That document will be recorded as an Exhibit JS1 (John Swan 1). For the purposes of the record. Thank you very much you may continue Mr. White.

COUNSEL DIRK HARRISON 25:21: The certificate says this this deed was in the Book of Deeds No. 108 : Page 242-246 46. Mr. Brown, do you accept that this deed is a deed relating to the property purchased by John William David Swan from Mr. Augustus.

Counsel, I would just ask that he could be given an opportunity to look at it first?

MR. KIM WHITE 25:53: Certainly. Maybe I should take you through the deed. And if you look at the first paragraph, the deed at the top it says: Between JOHN EMMANUEL AUGUSTUS of Church Road, Southampton Parish, Bermuda, Mason-Contractor, (hereinafter, called "the Vendor") of the first part JOHN WILLIAM DAVID SWAN of Victoria Street Hamilton, Hamilton, Bermuda, Real Estate Agent, (hereinafter called "the Purchaser") of the second part, and PETER JAMES CHALMERS SMITH of Parliament Street, Hamilton, Bermuda, Barrister and Attorney (hereinafter called "the Grantee to Uses") of the third part. Is that correct?

MR. CHARLES BROWN 26:24: That's what you've read correctly was written here.

MR. KIM WHITE

26:28: That then has a recital, the second paragraph that it says, "on the Fifteenth day of April 1969, maid between Russell Levi Pearman of the first part of the Vendor of the second part and David Edmund Wilkinson the third part for the consideration therein mentioned and the said Russell Levi Pearman did appoint grant and release the hereditaments hereinafter described unto the vendor and his heirs to the common uses of bar dower. It's an ancient form of conveyancing language I'm afraid, gentlemen, I'm just reading what's there, okay. We don't use that language anymore. It goes onto say at Paragraph B, the Vendor has agreed with the Purchaser for the absolute sale to him of the hereditaments intended to be hereby appointed granted and released and the inheritance thereof in fee simple to possession free from encumbrances at the price of sixty thousand Bermuda dollars (\$60,000). Paragraph B. Yes, it says that does it not?

MR. CHARLES BROWN

27:25: It does.

COUNSEL DIRK HARRISON

27:27: If you could then turn the page at 2. THAT in further pursuance of the said agreement and for the consideration hereinbefore expressed, the Vendor doth hereby grant and release unto the Purchaser and his heirs: ALL THAT certain parcel of land situate in Sandys parish in the Islands of Bermuda delineated and outlined in pink on the plan (being drawing No. 7084-4-2-69 prepared by Wycliffe M.S. Stovell) annexed to an Indenture dated the 15th day of April 1969 and made between John Augustus Alexander Virgil of the first part and Russell Levi Pearman of the second part and David Edmund Wilkinson of the third part and thereon designated "4A", "4B", "4C", "4D", "4E", "4F", "4G", "4H", and a roadway and bounded NORTHWESTERLY partly, blah, blah, blah and goes on. But that was the salient bit. It says all that does it not?

MR. CHARLES BROWN

28:36: It does.

MR. KIM WHITE 28:42: So when Mr. Summers has said these things in his report, dated 1996 such as the record did not reveal how any part of Lot 4 came into possession of John William David Swan at the time that he Voluntary Conveyed the six (6) lots derived from Lot 4 to Leslie Earl Ming cannot be true can it?

MR. CHARLES BROWN 29:12: I'm not understanding your question.

MR. KIM WHITE 29:14: I'll put it to you directly. The document the Exhibit JS1 came from the Registrar General Book of Deeds No 108. Page 242-46, relating to a deed that was executed in 1970. Mr. Summers report was done in 1996.

COUNSEL DIRK HARRISON 29:36: Chairman, if I may just interject my recollection of the part that had been shown to the witness made reference to the fact that as exhibited here on the screen that the record did not reveal. I believe it was an earlier part that had been put to the witness good, I'll asked us to return to

MR. KIM WHITE 29:59: In fact I'll take you back to that Counsel. In fact, Mr. Summers does say thorough searches have been made of the applicable Registries in Bermuda and the Old Parish Vestry Records. He also said that there is no record in the Registry, the registry that he's referring to, of course, is the Registrar General's office in the form of recital, which sets out how this real property came into possession of the Grantor in the earlier Voluntary Conveyance listed above.

COUNSEL DIRK HARRISON 30:25: Thank you so much, Chairman, just before the witness answers, whether or not that is true, I don't know if this witness can answer to the truth or that would have to be the person who did the report, he can only indicate whether or not he sees he has agreed Counsel already that what is there is what has been read. So whether or not it's true or not, I'm not sure if this witness can speak to the truth only the make of the document.

MR. KIM WHITE 30:50: But he can speak to whether or not it appears likely that the report was wrong.

COUNSEL DIRK HARRISON 30:55: Well, that's different. That's a different question. Certainly not to the truth. To you,

MR. KIM WHITE 31:01: I put to you that it appears based on the Deed that was found in the Book of Deeds No. 108, Page 242-246, that Mr. Summers report may have been wrong that no record existed.

MR. CHARLES BROWN 31:15: It appears that the transactions that would have preceded this supposed transaction from 1885 through to the time this transaction supposedly took place, it appears that those documents are not necessarily been brought forward to show the relationship between this document and documents that reflect transactions on the same piece of land prior to 1970, namely, in January of 1969 and in 1968, January 1969, February 1969 and April 15, 1969. So the answer is that this document appears to be out of step with the documents that have been entered into evidence prior to this document appearing today.

MR. KIM WHITE 32:13: I asked the Commission to note that the answer is not responsive to the question that I asked the question that I asked is very simply. It appears that the report from Mr. Summers may be incorrect that no record exists of the transaction relating to John David William Swan, and the answer to that is either yes or no, they can agree or they cannot agree. But that answer was responsive not to the question.

HON. WAYNE PERINCHIEF 32:44: Witness Mr. Brown do you wish to comment further?

MR. CHARLES BROWN 32:48: Sorry.

HON. WAYNE PERINCHIEF 32:51: Do you wish to comment further?

MR. CHARLES BROWN 32:53: I'd like to further add that we stand by The Bermuda Caribbean report.

HON. WAYNE PERINCHIEF 33:01: That is the short answer I believe Mr. White that the witness, would you repeat that Caribbean?

MR. CHARLES BROWN 33:11: We stand by the report prepared by the Bermuda Caribbean Engineer Consultants Limited, dated the 24th of January 1996, which was previously entered into evidence.

HON. WAYNE PERINCHIEF 33:24: Thank you Mr. Brown a more fulsome answer.

MR. KIM WHITE 33:29: Thank you. To be clear Mr. Brown you have no part in preparing that report did you?

MR. CHARLES BROWN 33:35: No I did not, it was an independent consultant.

MR. KIM WHITE 33:39: So you are not in a position to say whether or not Mr. Summers and Bermuda Caribbean because it may not have been Mr. Summers may have been an employee of Bermuda Caribbean was thorough in their examination of the Registrar General's records?

MR. CHARLES BROWN 33:51: I couldn't comment on their profession and no more can I comment on yours.

MR. KIM WHITE 33:55: Fair enough, thank you. Could I ask you to turn on that exhibit to the last three (3) pages actually 1234, excluding the plans that are attached to it? In fact, the last three (3) pages we've asked each one of these pages I'll explain are headed memoranda, memoranda, and memoranda.

COUNSEL DIRK HARRISON 34:30: I'm sorry Counsel we're

HON. WAYNE PERINCHIEF 34:33: Counsel will you make your comment please sir?

COUNSEL DIRK HARRISON 34:35: Just to ask Counsel, are we still at JS1?

MR. KIM WHITE 34:40: Same exhibit yes JS1. Thank you. It's a very simple question. Do you understand what memoranda mean on a Deed just in case you don't I want to explain it to you?

MR. CHARLES BROWN 34:53: Feel free to explain.

MR. KIM WHITE 34:56: The property was purchased as a whole lot and when you sub-divide the lot off, on the deed of purchase and evidence is your purchase, you do a memoranda saying this piece, went to x, this piece went to y until finally there doesn't exist any land left on the original deed. That's what a memoranda is okay. That's all I wanted to explain to you. So you see these memoranda, they seem to be relating to a number of eight (8), memoranda there?

MR. CHARLES BROWN 35:41: Yes eight

MR. KIM WHITE 35:41 Yes, thank you. And there were eight (8) lots in the subdivision. I believe that is correct?

MR. CHARLES BROWN 35:46: Yes.

COUNSEL DIRK HARRISON 35:49: Thank you. Could I ask you to turn now to your exhibit? I don't know the exhibit number but it was the presentation to the Commission. Here we go. It's exhibit No. 8-9 of your big binder, 8-9 Subject It's the what I would call the 'Butterfield Report' by Appleby's would that make it easier.

HON. WAYNE PERINCHIEF 36:21: And yeah. And at that time, if the secretary could find it for you to the same exhibit and projector on screen if possible. And Mr. White if you would give us time to do that?

MR. CHARLES BROWN 36:34: Yes, sir. And if you would just for the record, repeat the exhibit number?

MR. KIM WHITE 36:47: Exhibit 8-9.

HON. WAYNE PERINCHIEF 37:03: That would be rather two letters before the initials before that.

MR. KIM WHITE 37:09: It's the binder sent to me by the Commission. I have no idea. Okay.

HON. WAYNE PERINCHIEF 37:12: What does it say again?

COUNSEL DIRK HARRISON 37:22 Chairman the document projected on the screen indicates CNLB8.

HON. WAYNE PERINCHIEF 37:27: Yes Counsel, we see that now

MR. KIM WHITE 37:34: Could the witness go to the last page of that report? There is perfect please show the signature. Do you agree with me that this report is dated the 30th day of October 1978?

MR. CHARLES BROWN 37:56: Yes.

MR. KIM WHITE 37:57: Could I ask the Secretary to go back a page? That paragraph right in the middle there. Paragraph 53 and ask the witness.

HON. WAYNE PERINCHIEF 38:17: Could you enlarge it a bit secretary?

MR. KIM WHITE 38:30: If you go down to the word, "the conveyance" in the middle, I'll just read to put it in context. The Conveyance to Russell Levi Pearman mentions the sub-division and the plan attached

COUNSEL DIRK HARRISON 38:41: Mr. White could I just ask you to read it from the very start, I certainly do not want to give you more work.

MR. KIM WHITE 38:46: Certainly, no problem 53. xx
"As a matter of interest, although not of importance to this report, a sub-division of Brownacre" into eight lots and a roadway, had been approved by the Central Planning Authority on the 7th March 1969, that is, before John Augustus Alexander Virgil sold "Brownacre" on the 15th of April 1969. (The part I'm interested in is) The Conveyance to Russell Levi Pearman mentions the sub-division and the plan attached the Deed clearly shows the sub-division into lots. Furthermore, there are eight memoranda, endorsed on the Conveyance to Mr. Swan, (paragraph 52 above) from which it is clear that all eight lots have been disposed of by Mr. Swan to individual Purchasers. It does, does it not read that?

MR. CHARLES BROWN 39:33: It does read as you read it.

MR. KIM WHITE 39:35: And you have accepted that document, the Deed referred to in that paragraph and has memoranda attached. And I'm going to suggest to you that's the document that this report is speaking to the sale by Sir. John Swan of the various eight lots which are entered as memoranda on that deed.

MR. CHARLES BROWN 39:57: I accept that those are your conclusions your position.

MR. KIM WHITE 40:03: Can you suggest another conclusion? Mr. Brown.

MR. CHARLES BROWN 40:05: I'm accepting what you've presented.

MR. KIM WHITE 40:08 Thank you. I appreciate.

MR. CHARLES BROWN 40:13: We take issue with the transactions that support 1969.

MR. KIM WHITE 40:18: So I see another way of the previous transaction, not Sir John's transaction.

MR. CHARLES BROWN 40:23: They're interrelated. They're not separate. One brother is shaking his head.

COUNSEL DIRK HARRISON 40:29: We're going too fast. We're taking notes. My apologies.

MR. KIM WHITE 40:38: No problem, So Mr. Brown, am I correct in thinking that you are saying that the transaction which preceded this are the ones which are the subject of your complaint, and your complaint is not about the transaction involving Sir John Swan?

MR. CHARLES BROWN 40:55: Our complaint is outlined in our submission in November. Mr. Chairman,

MR. KIM WHITE 41:00: Mr. Chairman, I ask that the witness be directed to answer the question.

HON. WAYNE PERINCHIEF 41:04: I believe the witness could answer in whatever fashion he wishes. And he was well aware that

sometimes Counsel you would like to keep them within certain parameters. But this Commission is more flexible than court. And we allow the witness to expand his answer. And you can ask them another further questions. Thank you. So carry on Mr. Brown.

MR. CHARLES BROWN

41:33 Thank you, Chairman. So as I was saying, when we presented our case in November, our claim in part was that there are fraudulent activities in 1968 and 1969. And those fraudulent activities that we've outlined in our presentation, link directly to this 1970 documentation, did you bring it forth today, it is unreasonable for us to seek to separate what transpired prior to 1970 and to treat the 1970 as a standalone transaction, these transactions, these activities are connected from 1885 straight through until 1972 when my uncle died. So to ask if 1970 is or is not related to previous transaction? The short answer is yes. But the context is important from recent and that there was fraudulent questionable activity in 1968 by Mr. Russel Levi Pearman, when he represented himself fraudulently to the Planning Department claiming ownership to property that he did not own. He misrepresented to John Emmanuel Augustus who supposedly sold the property further down the line to Mr. John Swan, and there was misrepresentation with Sales Agreements and Conveyances is that preceded 1970 until the transaction between my uncle great uncle and Mr. Russel Levi Pearman is questionable. The transaction between Mr. Russel Levi Pearman and John Emanuel Augustus, which supposedly took place on the same day, April 15th, 1969 those three (3) transactions are related to your session today about 1970 and we cannot look at them separately.

MR. KIM WHITE

43:26: Mr. Brown, I've listened very carefully to what you have said. And the one thing you have not said is that John David William Swan was involved in any fraudulent activity, or Conveyance and I accept that.

MR. CHARLES BROWN 43:39: I haven't been asked that specifically. But if you'd like it, I can certainly share additional information regarding 1968 and 1969. Mr. Swan actually visited the property in question with Emmanuel Augustus, along with Stanford Richardson and Mr. Russell Levi Permian prior to Mr. Levi Pearman having a legal claim. Mr. Emmanuel Augustus was advised by his real estate agent.

COUNSEL DIRK HARRISON 44:04: Mr. Brown, you're going too fast. Now, I would like to take a note. Could I just ask you please? Yes, my apologies Mr. White, but I'm just trying to keep up for from my end.

HON. WAYNE PERINCHIEF 44:22: That was heard by the witness I believe Counsel the request from Counsel that you present your evidence in a manner we can record it. Okay. In other words slow down on your rapid fire delivery. Thanks you sir so we can keep pace and keep record

MR. CHARLES BROWN 44:43: Apologies Chairman and Counsel for the pace.

MR. KIM WHITE 44:45: Yes have you caught up counsel?

COUNSEL DIRK HARRISON 44:50: Yes, I have

HON. WAYNE PERINCHIEF 44:52: He is smiling but there's some speech that is a bit rapid and I noticed that Bermudians do speak rather rapid.

MR. KIM WHITE 45:03: I'll ask you to turn to page 59 of your bundle of exhibits.

MR. CHARLES BROWN 45:12: The question of Mr. Swan's involvement, what I was addressing,

MR. KIM WHITE 45:19: You may address but I'm asking you the question, sir that can be a statement. You've given your evidence in chief. And I'm asking you questions now if you don't mind. Okay. Paragraph page 59 of your bundle at I guess, Exhibit 7.

MRS. LISTER (Secty) 45:46: Counsel Mrs. Lister here, we're just waiting to project it on the screen.
Mr. White, can you confirm the page number once again, please.

MR. KIM WHITE 45:55: 59 Exhibit 7 I

MRS. LISTER (Secty) 46:03: I think it was your family presentation.

MR. KIM WHITE 46:05: Or maybe it's the other way around. Sorry I'm looking upside down exhibit four to six.

HON. WAYNE PERINCHIEF 46:12: Yes. Would you just repeat that for my record? Sure.

MR. KIM WHITE 46:15: Exhibit four to six. It appears at page 59 this is your long typewritten stuff.

COUNSEL DIRK HARRISON 46:23: You know, maybe Exhibit CNB4 Thank you Counsel.

MR. KIM WHITE 46:29: 59. You got it?

MR. CHARLES BROWN 46:33: Yes Page 15

MR. KIM WHITE 46:35: No. 8

HON. WAYNE PERINCHIEF 46:36: Yes. If we could give the secretary time to project it on the screen so we can all see it and follow it.

MRS. LISTER (Secty) 47:24: Mr. White, can you please confirm this is the correct slide that you'd like us on

MR. KIM WHITE 47:27: Our conclusions? Yes, that's it. Go down to #8. Have you got paragraph eight there? There we go. Just let me shrink it a little bit. There you go. You can see it now. Paragraph 8? If you're ready, gentlemen. Okay. This says, "The 1962 transaction for the southern portion. (Eric Jones) and the 1969 transaction for the Northern portion. (John W. Swan). You will accept for me that John W. Swan had nothing to do with the 1969 transaction. That transaction did not involve John W. Swan. As a party buying, selling

or otherwise dealing with the property subject to you having said he visited the property which is not denied by Sir John, but he did not have any part to do in any Conveyance in 1969. Is that not correct sir?

MR. CHARLES BROWN

48:41: It is not correct to assert the John W. Swan had nothing to do with the 1969 transaction based on our submission.

MR. KIM WHITE

48:51: With respect, Mr. Chairman, I'm asking specifically about the Conveyances. He was neither a purchaser nor a seller in 1969. Would the witness answer that question?

HON. WAYNE PERINCHIEF

49:02: Put the question to Mr. Brown,

MR. KIM WHITE

49:05: Sir John Swan was not a buyer or a seller in the 1969 transactions. I think there were two.

MR. CHARLES BROWN

49:13: John Swan was a party to the 1969 transaction as far as we were concerned, because the purchase was supposedly made in April or the Conveyance of April 1969 from the late John Augustus Alexander Virgil, to Russell Pearman on April 15 1969, the same day that property was conveyed to Mr. Swans client John Emmanuel Augustus. Mr. Augustus indicated that he was a client of John Swan and he expected that Mr. Swan had already paperwork in order. This is his under oath testimony to the police during their investigation. So we see a connection between Mr. Swan and the 1969 transaction because it is that piece of land that was the subject of fraudulent submissions to the Planning Department, as well as fraud.

MR. KIM WHITE

50:09: At one point the testimony, we have to answer the question, rather than reiterate what they've already given evidence about, and I'm sorry, this is wandering way off the patch.

HON. WAYNE PERINCHIEF

50:23: You can put your question again,

MR. KIM WHITE 50:25: What specifically does John W Swan appear as a buyer or a seller on the Conveyances in 1969?

HON. WAYNE PERINCHIEF 50:34: Mr. Brown, if you could, if you could answer that part, as closely as you may, if you wish to expand then do so afterwards. But I consider that a reasonable request.

MR. CHARLES BROWN 50:47: Certainly. And I've given the context in which we've adopted the position that they are all related, but there is no John Swan's name does not appear on the document that you refer to. Thank you, sir.

COUNSEL DIRK HARRISON 51:17: Mr. White? I'm sorry, I'm still at your abandoned in your earlier question in respect of whether or not it was a party to the transaction, either buyer or seller

MR. KIM WHITE 51:27: I understood Mr. Brown to confirm he was not

COUNSEL DIRK HARRISON 51:31: Just making sure the documents.

MR. KIM WHITE 51:33: He was very specific in his answer. That John W. Swan was not a party on the documents. He suggesting otherwise, in relation to matters, not on the documents.

MR. CHARLES BROWN 51:46: Matters that are relevant to the 1970 claim of ownership are directly connected to our claim of fraudulent behavior in 1968 by Mr. Russel Pearman, and 1969, which connects directly to the 1970 claim of a legitimate illegal transaction. We cannot separate the two.

MR. KIM WHITE 52:10: But you're making no claim, Sir that John W. Swan acted in fraudulent manner in that 1970 Conveyance? And if you are, I would suggest you need to point to evidence of that.

MR. CHARLES BROWN 52:27: We stated our position with respect to that We had stated our position on that question three times. Thank you.

MR. KIM WHITE 52:40 So, I'm correct in saying that there is no evidence offered by the Browns, in respect of that allegation.

MR. CHARLES BROWN 53:02: Chairman, just adding that Mr. Russell Pearman who was the agent, he was representing Mr. John W. Swan in 1968 1969 with this property.

MR. KIM WHITE 53:21: With respect, Mr. Chairman, where's the evidence of that? Where is the evidence of that? It is very easy to throw these things out. But they must be backed up with evidence.

HON. WAYNE PERINCHIEF 53:34: Mr. Brown the Counsel is requesting that you refer to and the others that you've presented or are prepared to present to assert that position. And if you could do that, or not, we'll have to accept something else has been the truth.

MR. CHARLES BROWN 53:57: The police were invited to conduct an investigation into this matter. Sgt. Thomas Cassin was the lead officer at the time. And Mr. Cassin joined the course of his investigation took a statement from Mr. Augustus. And that contents of that statement have been entered into evidence. And in Mr. John Emmanuel Augustus statement to the police during this investigation, he indicated quite clearly that he was a client of John W. Swan, and he was advised by John Swan to purchase the property. He was also escorted by Mr. Swan's agent, Mr. Russel Levi Pearman.

MR. KIM WHITE 54:51: Mr. Brown not to cut you off, but I did specifically you said actually, that Russell, Levi Pearman was a client of Sir John Swan, so you were wrong when you said I

MR. CHARLES BROWN 55:03: Emmanuel Augustus was the client. So you were wrong when you said I was not wrong. I can check the record.

MR. KIM WHITE 55:09: You said Russell Levi Pearman was John Swans client. Am I right? Or am I wrong?

MR. CHARLES BROWN 55:15: What is correct is that Russell Levi Pearman was the agent and Emmanuel Augustus was the client

MR. KIM WHITE 55:23: I am being very simple, sir. Very simple. You said and I'm happy to have the record check that Russell Levi Pearman was John Swan's client. And that's I'm just saying is not correct. And nor are you saying that now it appears. I just want to give you the opportunity. If you said it, it would be wrong, it would be incorrect. Okay. Thank you. I don't want

HON. WAYNE PERINCHIEF 55:45: To avoid any doubt. The document to which you refer to Sgt. Thomas Sutton Cassin Report? Could we have that that report has been submitted could we have that projected on the screen. And if you would refer to this point that you wish to make.

MR. CHARLES BROWN 56:07: We can do this. Project that on one screen, please. And that will be done somewhere?

HON. WAYNE PERINCHIEF 56:40: Is that the document that you refer to the "Bermuda Police Report Statement of Witness John Emmanuel Augustus, IIs that the document to which you refer?

MR. CHARLES BROWN 56:56: Yes it is Chairman.

HON. WAYNE PERINCHIEF 57:02: The evidence number please if someone

MR. KIM WHITE 57:05: I think its exhibit 14 dash 16

MR. CHARLES BROWN 57:08: CNLB14.

MR. KIM WHITE 57:10: There it is at the top of the page said again, CNLB14.

HON. WAYNE PERINCHIEF 57:21: Yes, you may continue Mr. Brown.

MR. CHARLES BROWN 57:28: May I read the statement of Mr. John Emmanuel Augustus?

MR. KIM WHITE 57:34: It has already been entered into evidence. I mean, point out in the statement, I would

suggest in terms of time, what part you're referring to.

- MR. CHARLES BROWN** 57:48: There are a few sections that are relevant to this matter, as it relates to the connection between Mr. Swan, Mr. Augustus and this property.
- MR. KIM WHITE** 58:02: So we're clear we're not talking about Mr. Pearman.
- MR. CHARLES BROWN** 58:07: Mr. Pearman is also included in the police statement as a reference.
- MR. KIM WHITE** 58:14: But we're talking about Mr. Chairman and Mr. Swan, there is no connection or reference in this document is there Mr. Brown by the police to Pearman being related to John W. Swan in any way?
- MR. CHARLES BROWN** 58:28: I believe there is.
- MR. KIM WHITE** 58:29: Okay. Well, point out please.
- MR. CHARLES BROWN** 58:35: Mr. Emmanuel Augustus in his statement says that in 1968,
- MR. KIM WHITE** 58:42: Where about in this statement, sir. On the first page, third line. Mr. John Emmanuel Augustus reports to the police, I believe sometime in November 1968.
- COUNSEL DIRK HARRISON** 58:59: I'm sorry. Could you allow the Commissioners to follow? Secretary could you take us to the first page?
- MRS. LISTER (Secty)** 59:06: Yes Counsel I believe we're there.
- HON. WAYNE PERINCHIEF** 59:10: We have that now highlighted on the screen, yes continuing.
- MR. CHARLES BROWN** 59:19: So we are not reading from the beginning but we're reading from the third line, I believe is underlying, "I believe sometime in November 1968 Russel L. Pearman approached me about some property at White Hill. He said to me, "I have a nice piece of land up Somerset, up by

White Hill and it would suit you well". I asked what he would want for it and he said 18 - 20,000 pounds. Next day, I agreed to go up with him in a car in my car to look at the property. When we got there, he showed me the boundaries but there was no stakes there, just wild land. He walked through bushes showing me the area and generally pointing out the boundaries. He seemed to know the layout of the land and did say he was the owner of it. I told him I'd like to get the property and would see John Swan as he had my money invested. Pearman said, "Okay". I did see John's one soon after this. John Swan and a man who worked for him Stanford Richardson went with me to have a look at the property. John said, "It's a good buy", you take it. I went back to Russell Pearman told him I had spoken to John Swan and it was okay". Pearman said, John, I'll have to do this my way. I said, "What do you mean"? He said John Swan likes to keep everything in his office, so what I'm going to do is make out a bill of sale so that I can protect you. Pearman made out what I thought was a bill of sale made on a yellow sheet of paper. And I took this to John Swan to get him to okay it. John didn't like it and wanted it done at his office in the proper way. But if that's what Pearman wanted, it was okay by him. I did not sign this yellow sheet of paper. Shortly after this, it was arranged that Pearman go to John W. Swans' office with me to make the arrangements. I believe there was an agreement made at John W. Swans office, and Russell Pearman said something about leaving PND\$18,000.00 for a year. And he needed money then. Would that be pounds sir?

- MR. KIM WHITE** 1:02:00: Looks like pounds sir.
- HON. WAYNE PERINCHIEF** 1:02:03: Just for the record and for correctness could be 18,000 pounds. Yes, I believe.
- MR. CHARLES BROWN** 1:02:14: I believe there was an Agreement made at J. W. Swans office and Russell Pearman said something about leaving 18,000 pounds for a year and he needed money then. John Swann

paid him some money by cheque. I don't know how much. I didn't sign any agreement at John Swans office. I've been shown a Sales Agreement copy dated 19th of February, 1969. And it appears to have my signature on it . I did not sign this Agreement at Wilkinson's office because I only went there once. And that was on the 15th of April 1969. I didn't sign at John Swans office because the witness W.G. Brown was not there, when I went to J.W. Swan's office with Pearman. W.G. Brown, the witness on this sale agreement is a friend of Russell Pearman. And most of the time hangs around Pearman's place. After this meeting at John Swan's office, a few months later, Pearman asks me to go to MIT.

- MR. KIM WHITE** 1:03:22: Mr. Chairman, this exhibit has been entered. It's being read again by the witness. It is not responsive to the question. I'm just asking how much more this this already read in exhibit is going to be read.
- COUNSEL DIRK HARRISON** 1:03:37: Chairman, in fairness to the witness, the witness had been asked to point out so if it is counsels question is that is there anywhere else that you would point out but in fairness to the witness, he was asked to point out and he's merely read and what he was
- MR. KIM WHITE** 1:03:51: A lot of stuff that has nothing to do with the answer would appear. Is there anything else in this statement that relates to the answer you're being asked to give? And
- MR. CHARLES BROWN** 1:04:01: I could continue there is something could you point out which page there is a
- MR. QUINTON STOVELL** 1:04:07: Point of order, please, Mr. White, can you govern yourself a little more, less hostile, this is not a court. So we're just trying to get an exchange of information. And I think you can pipe it down a little bit. If you don't mind. We're just trying to go through the process. And it doesn't have to be so antagonistic. You're interrupting the Counsel you are interrupting the

Chair, you are interrupting the witness. All I'm asking is that you just back it off a little bit, please. Thank you.

- HON. WAYNE PERINCHIEF** 1:04:43: Can you continue Mr. Brown. Reinforcing. To some extent what Commissioner Stovell has said we are trying an open forum and not as least antagonistic as it can be to elucidate the information it is dated, keeping in mind this did happen many, many years ago indeed he did. The outcome will be determined by the evidence. And I suggest that we do relax and continue the witness statement, you did ask the question, and sometimes, you know, when you sell a pot, you never know what type of fish you're going to catch Mr. White in the Bermudian vernacular. So I suggest that Mr. Brown hasn't strayed too far from the Police Report. And he's trying to develop a point that you did ask him to, to develop and, and timeliness. While it's important. We must get the evidence out, so I'm prepared to let the witness continue at this point,
- MR. KIM WHITE** 1:06:12: The simple point I'm trying to make Mr. Chairman, who is this evidence has already been led. Yes, it's already out. That's all. And it's part of the record. That's that was the only point. It's not the antagonist.
- HON. WAYNE PERINCHIEF** 1:06:25: Suggested it anyway, that is antagonistic. Thank you. So to make sure that we do get all the evidence. You can continue Mr. Brown.
- MR. CHARLES BROWN** 1:06:35: Thank you, Chairman. And so we, we continue. So after this meeting, at John Swan's office this was the meeting of April 15, 1969, Pearman asked me to go to Mr. Wilkinson's office to sign the conveyance of the property. That's the final sale of the property to me. I remember it was in the morning time and I picked up Pearman and took him to Wilkinson's office on Church Street. Wilkinson was not there, and some papers were bought out by a Chinese lady. I remember space on the Conveyance for three (3) people. I, Pearman, and Wilkinson, only me and

Pearman signed. I have been shown a Conveyance dated April 15 1969. And I believe this is the document I signed. I signed my name John Augustus. I was in the office only 10 minutes. I signed only once I never gave Pearman any money during any part of this transaction. I had no idea the land belonged to John Virgil, Pearman told me he was the owner of the property. He didn't read the Conveyance for sale to me I just signed. I did know John Virgil, but I never realized it was his property. I was buying from Pearman, Pearman never at any time showed me any deeds, sales agreements or anything else showing that he owned the property. I accepted that John Swan was dealing as agent for me, and he would know this.

MR. CHARLES BROWN

1:08:21: When I went to the property there was nothing there. There were no stakes there which and it goes on to say I'm sure this was November and before December 1968. Then Pearman approached me and showed me the property. When John Swan went with me to the property that was before Christmas 1968 before anything was put on the land. I would further say that with regard to the sales agreement, dated 19th of February 16 1969. I don't remember ever signing such agreement. Because this man Brown was never present at any time. I do remember the yellow sheet of paper I took to John Swan. This was a small sheet of yellow paper. On the 25th of October, I obtained

HON. WAYNE PERINCHIEF

1:09:17: There is a year there as well.

MR. CHARLES BROWN

1:09:21: On the 25th of October 1976. I obtained from Peter Smith Barrister, a copy of Conveyance dated 21st May 1970, and a sketch plan of the property. I have handed these documents to Sgt. Cassin. I have also handed to Sgt. Cassin a letter copy dated April 25 1969 from Russell Pearman to David Wilkinson. A letter dated 20th June 1969, from John Swan to Wilkinson, an original agreement between myself and John Swan dated 17th of July 1969. Also a document

dated October 1, 1969. An Agreement between John Swan and myself. On May 21, 1970, and agreement which me and John Swan had a bug this property was finished, and he took complete control of the property for payment to me of \$60,000. This was handled by Peter Smith's office.

- MR. CHARLES BROWN** 1:09:21: The document dated 15th of April 1969, (copy conveyance) handed to Sgt. Cassin, and I got from D. Wilkinson's office on the 22nd of October 1976. I would further say that Mrs. Brown contacted me, I went to Wilkinson's office on the 22nd of October 1976. I saw the girl at the office who was present 15th of April 1969. I told her I remember her but she denied to say she wasn't working there at the time. She said I must have made a mistake. Because these papers must have been done at Appleby, Spurling & Kempe. And Ken I knew she was the lady me and Pearman dealt with on the 15th of April 1969. This same lady bought out the conveyance the 22nd of October 1976, which she had bought out to me and Pearman the 15th of April 1969.
- HON. WAYNE PERINCHIEF** 1:11:33: Would you read the completion at the bottom of the letter.
- MR. CHARLES BROWN** 1:11:38: Signed: John Augustus
Signature witness by: T Cassin Sgt. 55.
- HON. WAYNE PERINCHIEF** 1:11:48: Mr. White.
- MR. KIM WHITE** 1:11:50: We have no further questions of these witnesses.
- HON. WAYNE PERINCHIEF** 1:11:53: You have no further questions of this witness Mr. White
- MR. KIM WHITE** 1:11:55: No.
- HON. WAYNE PERINCHIEF** 1:12:01: Counsel
- COUNSEL DIRK HARRISON** 1:12:05: Yes, Chairman, just by way of a matter, which arises from the questions that have been asked.

And just prior to Counsel. well, probably I should allow Chairman the other I have questions which arise but probably I should allow, Counsel, Mr. Hanson, as also Ms. Virgil to go first if there are any matters which arise and then I will ask the allowed to ask questions which arise

- HON. WAYNE PERINCHIEF** 1:12:44: At this point on the advice of Counsel, I would request Mr. Michael Hanson, who is representing The Bank of N.T. Butterfield & Son Limited to put any questions that they may wish to put to the witnesses. Mr. Brown and I noticed that is Mr. Kyle Masters of Carey Olson present as well. Yes. In that case, either one or both. may ask questions of the witnesses Charles and George Brown.
- MR. MICHAEL HANSON** 1:13:35: Thank you. Thank you, Mr. Chairman. Can I check that everyone can hear me?
- COUNSEL DIRK HARRISON** 1:13:39: Clearly
- MR. CHARLES BROWN** 1:13:41: Thank you.
- HON. WAYNE PERINCHIEF** 1:13:43: Yes we can hear you
- COUNSEL DIRK HARRISON** 1:13:45: Thank you.
- MR. MICHAEL HANSON** 1:13:46: Could I also request just as an administrative point, we are hearing the Commission's mic. The mics of the witnesses and counsel are muted. So it's sometimes it's a bit hard to see. So when you we managed to hear you because you speak so well, all of you. But if you could, someone could figure out how to unmute your mics when you speak. It would be really helpful to us here.
- HON. WAYNE PERINCHIEF** 1:14:10: And you're talking about you're talking about console. Harrison. Is that correct? Mr. White? Are Mr. White? Yeah. He's muted his mic at this. Yeah, it's on No. Okay.
- MR. MICHAEL HANSON** 1:14:26: And the second sort of housekeeping one, I mean, our bundle received doesn't quite match

up in some cases. And I just wanted to check the commission. And the witnesses seen the review of the Georgian trial ground submissions report by Carlton Adams.

- HON. WAYNE PERINCHIEF** 1:14:47: Say again, sir, the last,
- MR. MICHAEL HANSON** 1:14:49: We received a document in a pack from the commission, titled review of the Jordan Charles Brown submissions to the Commission of Inquiry into historic land loss. November 2020, submitted by Carlton Adams.
- HON. WAYNE PERINCHIEF** 1:15:04: Yes, that was the Commission's Investigating officer. That is correct. Yes. Thank you
- MR. MICHAEL HANSON** 1:15:11: Did Messrs. Brown see that report?
- HON. WAYNE PERINCHIEF** 1:15:17: Just a minute. Mr. Hanson, I'm taking a query from Mr. Kim White. Mr. White, I believe you would have received the same bundle. Mr. Adams is our Investigating Officer who put together who was collating officer if you like, we've gathered the evidence, and it would have been put in a bundle and sent to all of the persons who receive as notice all of the bundles should have been exactly the same. But I'll get a response from our secretary.
- MRS. LISTER (Secty)** 1:15:54: Mr. Chairman, Mrs. Lister here, from the secretary, I can confirm that all of the bundles were provided via the USB stick, and they were the same contained the same evidence. So it should be
- HON. WAYNE PERINCHIEF** 1:16:05: I provided to all Mr. Hanson. If you would indicate verbally that you accept that all of the all of the bundles are sent by USB stick. And they are the same. If you do that verbally, so that we can put it on the rack. And I see you nodding your head.
- MR. MICHAEL HANSON** 1:16:21: Yes. So we did receive the USB stick. It's just that this report wasn't in the in this pack in terms of the exhibits. That's all and so I wasn't sure whether Mr. White had seen. I want to make

sure Mr. White, and the witnesses had seen the report by Carlton Adams that that was all I was just checking.

- HON. WAYNE PERINCHIEF** 1:16:40: They should all okay,
- MR. KIM WHITE** 1:16:42: I can confirm that.
- HON. WAYNE PERINCHIEF** 1:16:45: Mr. White says he has not seen a document
- MR. KIM WHITE** 1:16:52: I will go back and check the USB stick.
- MRS. LISTER (Secty)** 1:16:56: Just acknowledging the positions of Mr. Brown and Mr. White, the Secretary can now share one with them. And in lieu of that.
- HON. WAYNE PERINCHIEF** 1:17:06: Mr. White, you can actually check directly with our secretary as a sidebar, nevertheless, to see if you if there was anything that was admitted, and you'd be a allowed to read of to resubmit and any evidence or put any questions that you wish, just for an abundance of caution to make sure you we're correct. Yes. All right. Mr. Hanson, you may carry on.
- MR. MICHAEL HANSON** 1:17:30: Thank you, Chairman.
I am happily, or unhappy, perhaps the only sort of clarification question I have is in respect of Mr. Brown's statement about standing behind the Caribbean Engineering report. And my question on that relates to the report by Mr. Adams. So could I check, Mr. Brown that you have access to that report, or you can see that report in front of you?
- MR. CHARLES BROWN** 1:17:57: The Caribbean Report?
- MR. MICHAEL HANSON** 1:18:00: This is the Commission's Investigator Report by Mr. Carlton Adams. Recently 2020 of last year.
- MR. CHARLES BROWN** 1:18:13: Now, just for clarification, you say a report from Mr. Adams, and I'm hearing a bundle of evidence is presented and packaged by Mr. Adams. Is that one in the same?

MRS. LISTER (Secty) 1:18:24: Yes. Let me give clarification from the secretary. It's Mrs. Lister here. Our investigator Mr. Carlton Adams, he compiled a report. I believe it is a

HON. WAYNE PERINCHIEF 1:18:38: Counsel

MRS. LISTER (Secty) 1:18:39: It's a 14 page document Chair. So we can now share on the screen if Mr. Hanson would like but it's just based on his

COUNSEL DIRK HARRISON 1:18:50: Mr. Lister you cannot tell what the content is. What do you think it is?

MRS. LISTER (Secty) 1:18:55: It's just an internal report I was not going to share.

COUNSEL DIRK HARRISON 1:18:58: Yes. Well, it has to be shown to everybody, please project this project manager. And Chairman with regards to the document that Mr. Hanson makes reference to and as you indicated, Counsel, Mr. White all persons to be given an opportunity to question a witness on any matter which arise; but based on the length of the document, Counsel can best advise how he wishes to treat it, and when he wishes to put these matters to the witness.

HON. WAYNE PERINCHIEF 1:19:33: Counsel I'm taking it that the report submitted by Mr. Carlton Adams, our investigator It is now projected on the screen and should any matters arise from that report. You are suggesting that Mr. White or any other person to whom address notice has been sent. We'll be able to put further questions to the witness from that report?

COUNSEL DIRK HARRISON 1:20:01: Correct Chairman because it being fourteen (14) pages as good as Mr. White is I'm not sure if he wants to digest all of that no, or if he wishes another occasion to do so. But he can certainly speak for himself. Chairman.

HON. WAYNE PERINCHIEF 1:20:16: Yes, Mr. White, if you would give us an indication now, whether you wish to do it now or later, after a perusal of that report,

COUNSEL DIRK HARRISON 1:20:24: I would have to say, counselors correct. 14 pages will take some time to digest but it can be

done overnight. And but we can allow Mr. Hanson? Sir, I may suggest to proceed with this question. And not to delay things unduly.

HON. WAYNE PERINCHIEF 1:20:42: Yes, you could, perhaps piggyback for one of another read on Mr. Hanson's questions or perusal of that document.

COUNSEL DIRK HARRISON 1:20:51: And I noticed and also Chairman, I see the witness raising his hand probably before Mr. Hanson, I'm not trying to intervene. But I'm not certain if the witness has seen the documents. So therefore any question is put to the witness probably that could be ascertained to

HON. WAYNE PERINCHIEF 1:21:10: Witness Brown either of you have you seen this report from Mr. Adams?

MR. CHARLES BROWN 1:21:16: No,

HON. WAYNE PERINCHIEF 1:21:18: It appears Counsel that the report put in by Mr. Adams was not submitted as evidence per se, from any of the persons from evidence had been gathered. It was a covering report. And for some reason, it appears that the witnesses haven't read it. And certainly, Mr. Kim White has not read it. I'm prepared if you guide me to have the document put up on the screen. And should there be any questions arising that they be dealt with?

COUNSEL DIRK HARRISON 1:22:07: Chairman, I would recommend that

HON. WAYNE PERINCHIEF 1:22:09: I've got a clarification from the secretary. That this was not an actual fact this was an internal document for the direction of the Secretary and our process. So it was an encounter document, not one that was submitted as evidence. And in actual fact, Mr. Hanson in that case, perhaps should not have actually had this report as part of his bundle.

COUNSEL DIRK HARRISON 1:22:45: I'm sorry. I'm sorry, Chairman, that I have to take the side of Mr. Hanson on this occasion, that unfortunate situation has happened, but Counsel has had it now. And if there is material in it, which will, which is useful in respect of his

claim, or the adverse notice that he has been served, he ought to be given the opportunity to utilize the document. It's unfortunate, and in terms of the rules, we would have to deal with the error we made and Counsel be allowed to proceed.

HON. WAYNE PERINCHIEF 1:23:29: Very good. Mr. Chairman, very good Counsel. We have to proceed with you Chairman. I was. I'll take one more comment from Mr. White.

COUNSEL DIRK HARRISON 1:23:43: Thank you just before Mr. White give his statement. Just indicate in terms of the proposal that you are advancing, Chairman, in terms of the document now being projected and shown, I am not certain but I wonder if we could adopt another approach because it is 14 pages. I would ask that, if there are any other questions, probably counsel, Mr. Hanson could direct them both in relation to this document, especially based on what the witnesses has said, I've not seen it. I think properly speaking and the witness would need to read it first, before any question is directed to him? Probably we could adopt another approach. Yeah.

HON. WAYNE PERINCHIEF 1:24:30: Counsel in the light of the disclosure that there is another bundle of what could be evidence coming from an internal document, which has, prepared by one of our investigators for our Commission's eyes at the time. It has been, as you say, disclosed to one of the persons to whom adverse notice has been sent, I'm going to take a short recess to discuss that particular matter. Nevertheless, it flows into our period when we have our lunch. And I would suggest that this is an appropriate time to adjourn and to resume the business of the commission at one o'clock. I'm going to take some advice from my fellow commissioners to see whether there's a problem with that.

MS. MYRA VIRGIL 1:25:42: May I offer a comment? Myra Virgil.

HON. WAYNE PERINCHIEF 1:25:46: Yes, Miss Virgil. I'm now acknowledging you as the person to which adverse notice has been sent, yes, madam

MS. MYRA VIRGIL 1:25:54: Thank you, Chair. Just as I'm hearing this, I haven't seen the document either. But as you are all referring to it as it sounds like it was a document commissioned to potentially inform the findings of the commission of inquiry. And it does sound like it was mistake that it would have been sent to Mr. Henson. But if it is a document that then starts to reflect on the outcomes of the case, some of which may not have been presented by either of the parties. My concern would be that new evidence might be introduced, that's not actually submitted by the parties in question, and that, that no party should have an or reference it.

HON. WAYNE PERINCHIEF 1:26:37: Yes, thank you Ms. Virgil. And at this point, we will recess. I'll take one more comment, Mr. White, but we will recess and deliberate on exactly how we will handle this situation. Because as you said, this particular document has not been entered in as an exhibit, the person who prepared it has not been sworn as to the accuracy of veracity of it. And as such, none of the commissioners have seen it. None of the witnesses have seen it. And it should not, I believe, at this point simply be launched. As a document in this hearings at this time but we will recess,

MR. MICHAEL HANSON 1:27:27: Mr. Chairman, my sincere apologies, just to be clear, the basis of our submission of the 18th of January 2021, which went to the Commission or submission being on behalf of the bank. You know, this, document is almost the spine of what opposition was. So I think it shouldn't be too much of a shock the information they're in. But I just wanted you to be aware of that this thing that has already been submitted by us in January of 2018. But nevertheless,

HON. WAYNE PERINCHIEF 1:27:59: But nevertheless, Mr. Hanson, in fairness to the process, everyone should be on the same page.

MR. MICHAEL HANSON 1:28:06: I totally agree

HON. WAYNE PERINCHIEF 1:28:08: When it comes to having access to all of the information or withdrawing access, if you'd like, some information that should not be actually solicited. So at this point, Mr. White, you can make a comment briefly, briefly, and we'll have a recess. And then we'll go into our lunch period and return at one o'clock,

MR. KIM WHITE 1:28:29: Sir, I support what Ms. Virgil was actually saying anything that's going to be considered by the Commission should be shared with the party. Yes.

HON. WAYNE PERINCHIEF 1:28:37: And at this point, it has not been shared with the Commission, and you clarify that I'm grateful. So however, it does appear that it forms the spine, I think Mr. Hanson says of their submissions, which will be submitted to the commissioner. So to borrow a phrase, the horses at the gate, would appear to me that the only way forward to deal with this would be to share it with the other parties who have not seen it. And to proceed on that basis. Otherwise, it would be prejudicial and unfair. And I'm laying a marker down on that, in that respect, if we don't get it. Thank you.

We'll make that decision. And upon return, we'll let you know what the decision is. Mr. Brown and Mr. Brown.

MR. CHARLES BROWN 1:29:24: I have a question Chairman, thank you. I'm not sure if I heard the representative from The Bank of Butterfield indicate that a January 18, 2021 submission.

COUNSEL DIRK HARRISON 1:29:35: Just a moment Mr. Brown, Chairman, I think we should just wait. Mr. Brown before any questions are asked. The point that we're at now is that I think Mr. Hanson, has alerted us to a document I think everybody should get the

document. And we hold upon the clarification
Mr. Brown, respectfully?

MR. CHARLES BROWN 1:29:57: Certainly.

HON. WAYNE PERINCHIEF 1:29:58: Yes. We'll go into deliberation or on the disposition of that document. So at this point we'll have a 15 minute recess. In actual fact, we're going to adjourn at this point. During the time we'll deliberate we return at one o'clock.

END OF TRANSCRIPTION MARCH 25 (MORNING SESSION A) AT 1:30:25