**A COMMISSION OF INQUIRY**

**INTO HISTORIC LAND LOSSES**

**IN BERMUDA**

**COMMISSIONER:**

**JUSTICE NORMA WADE-MILLER**

**TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY 25 NOVEMBER, 2020**

**AFTERNOON SESSION CONTINUED**

**FROM 1:04 pm (b)**

**COUNSEL DIRK HARRISON**  0:01: You have examples of all of those that you shared with us.

**MR. CHARLES BROWN** 0:04: Yes, I have examples. Some of it is written, most of it is recollections. Now, we also may have representation to a former Commission of Inquiry, in the late 70s, Lord Pitt, chaired a commission of inquiry into civil disturbances in Bermuda. And the beneficiaries may have representation to Lord Pitt, back in the late 70s. And I noted some numbers present would be familiar with that time in Bermuda's history. That's a footnote Sir.

**COUNSEL DIRK HARRISON:** 0:47: Thank you.

**MR. CHARLES BROWN**: 0:50: Well, in furtherance of their pursuit of justice, the beneficiaries took a closer look at Uncle John's Will, and they were reminded that it was drawn up in May 1964. And the Bank of Butterfield was appointed as the sole executor. It was governed this is important, the Will is governed by a Trustee Act of 1876: Section 50. And there is Robert Williams again signing off on the Will. However, the bank they claimed that they became the executor of this will of this estate at the time of Uncle John's death in 1972. Now, we can see from the will that they became the executors the date is was drawn up May 21, 1964. So that's what the bank has indicated, but we know different. Have a closer look at the bank's role as it relates to the passing of John Augustus Alexander Virgil, and their responsibilities as the executor and trustee, we move on to Page 49, which is the next slide and we have a closer look. When Uncle John passed away in January 1972. The sole executor as they are required, placed the notice in the Official Gazette. We've all seen these notices calling for clients. So here we are sometime between January and June of 1972, this notice was placed in the Official Royal Gazette. You can see from this notice, names Uncle John Augustus Alexander Virgil, deceased, and it goes on to say pursuant to the Trustee Act 1876: Section 50 -That's important reference. Because the Bank of Butterfield, Bermuda's first bank, they claim to have no obligations under Section 50 of the Trustee Act 1876. In fact, they say in their report, the bank that code short the bank became the executor of the will of John Augustus Alexander Virgil upon his death. Now we saw were Robert Williams signed off in 1964 as sole executor, how is it that the report to the beneficiaries in 1976 and thereabouts in the Butterfield Report that they became responsible in 1972. And then they go on to cite a piece of legislation that's unrelated to the matter. But let's move on to slide 50 and have a closer look at the Trustee Act 1876: Section 50. We won't trouble you with every word but just know that section 50 speaks to the trustees responsibility regarding the distribution of assets once the executor has been notified. It also speaks to the executors’ responsibility to invite claims against the estate and for all claimants to send in your claims. Let us know what interests you have in this estate and for the executor to be at liberty to distribute the assets amongst the parties entitled thereto. So it is very clear in our minds that Section 50 of Trustee Act 1876 requires of the sole executor. How the bank says they did not become his executor until 1972 is a matter for them. We know that they were the executors at the time the Will was drafted. We know they had a fiduciary and a legal responsibility under the Trustee Act 1876: Section 50, as we have just reviewed.

**MR. CHARLES BROWN:** 0:50: And so, having a closer look now at the Butterfield Report now remember the beneficiaries who believe that they had a legitimate claim, these are clients of the sole executor and the sole executor has written to this client in the form of a report on the authenticity of the title of the property that they lay claim to. This is what the bank said to them. The bank said to the beneficiaries that this report is commissioned as a result of complaints made by certain persons, they are talking about the beneficiaries, not the sole executor. Now, it doesn't make it wrong, but it seems extremely discourteous to refer to the beneficiaries, working class people, and clients as certain persons who claim that the title to the land is in error. This is what the bank is communicating to the beneficiaries, they go on to say this is the bank telling the beneficiaries and you are going to direct us later to the document, from which is extracted statement.

Yes, that report has been submitted to the Commission. This is an excerpt from a report that was submitted. So the bank indicated in their report, we do not direct our minds to the authenticity of any deeds which have been produced to us. Imagine that for a moment, we do not direct our minds to the authenticity of any deeds. Any! So let's delay and interpret that as you choose, but what we have interpreted is that if these documents are in front of us, we think they're good. They go on to say that all documents purporting to be original, appear to be genuine. They appear to be what they purport to be. And we have no reason to doubt that they were signed by the persons whose recorded signatures appear therein. This is in the 60s and 70s, and the bank is telling the beneficiaries it is what we say it is because we say so, and there will be no question. That's how we interpreted these assertions they go on to say that their method of dealing with the land is to show title of the persons who were there now. Imagine not starting at the beginning. Imagine not starting with the ancestors, and when they first took possession of this land. You have not started with the persons who now own. And then the bank goes on to say, with reference to a very important transaction on the southern portion of the property. Remember Eric Jones inserting himself three days after or six weeks after the lot became Uncle Johns. Now, with respect to Eric Jones claim of ownership, the bank in their report, and looking at the authenticity of the title, say the indenture has not been produced to us - It's missing. But we have no reason to doubt its existence. This is incredible. Let's read that again. The indenture has not been produced to us. This is the indenture that confirms the legal transfer of land. And this is the sole executor in their report commissioned by Appleby's Motyer. They claim that the critical document to authenticate the sale is missing. But they have no reason to doubt its existence. Well, we have a lot of doubt. And we have a lot of reasons for that doubt, and we do not believe that that sale was even close to legitimate and we have a lot of reasons to doubt its existence. So that's our view of the Butterfield Report, and as we take a closer look at the Butterfield Report, we see here where they claim on Page 52, in writing, that they became the executor at the time of his death; and clearly we can see from these copies of the Will excerpts mind you, that they became the executor at the time the Will was drafted and they have the responsibility under the Trustee Act of 1876: Section 50. Okay, so that is our view on the banks report. We're now going to take a closer look at some of these statements from the witnesses to some of the transactions that Russell Levi Pearman engaged in. Now the police report is reviewed on Page 53.

**COUNSEL DIRK HARRISON:** 11:44: We pause here to have a look at a police investigation and to critique witness statements that were taken by the police in the course of investigation and you wish to advance as a reason why you say something happened that was on towards.

**MR. CHARLES BROWN** 12:08: Correct. The evidence from the witnesses supports our position of illegal on toward behavior.

**COUNSEL DIRK HARRISON** 12:39: Whereas, I generally have no objection on my part with especially a statement of a witness which should be read together, we're not contending or our challenging your analysis. But I think for us to embark upon this exercise here, I think, we should have the statements before us.

**MR. CHARLES BROWN** 13:11: We have provided.

**COUNSEL DIRK HARRISON** 13:13: Okay, I know but I would say let us study it first and then go to the analysis after.

**MR. CHARLES BROWN**  13:19: This is not an analysis of the interviews, its excerpts, quotes from

**COUNSEL DIRK HARRISON:** 13:26 But the point I am making, as I'm saying, I have no problem with the exercise, now when they are just saying that a statement was read just in its context. So I would like to see what appears the sentence before and the sentence after and I will just ask us to make a note here and let us come back to this part after because I would like to have a look at the statement before we embark on this part. So I will just make a note to come back to this part.

**MR. CHARLES BROWN** 14:06: Okay, so on page 54. We have excerpts from witness statements. Mr. Elgen Conway Doars, a taxi driver, he witnessed the supposed sale between Uncle John and Russell Pearman in 1969. Doars testifies and states to the police that he drove around in a taxi drove and ended up at St. Monica's Mission. He was asked to sign and he said he did, the sales agreement. He was also told by Sgt. Cassin that Cassin had two sales agreements with his signature on it and Doars said that can't be right, I only signed once. And he went on to say, I definitely only signed my signature once. And I'm sure I gave one signature. And if it is two signatures then one was made by someone else. These are accerpts from the witness statement of Mr. Doars. Mr. Doars was a witness to the sale and Mr. John Emmanuel Augustus was supposed to have purchased the property, northern portion we are talking, on the same day April 15, 1969, from Russell Levi Pearman. Mr. Augustus, who is mason by trade, said that Russell Pearman had told him about the land and he also recalls Russell saying, "I'll have to do things my way". We've seen some of that. Mr. Augustus also said that the sales agreement appeared to have a signature on it dated February 9. But Emmanuel Augustus says he could not have signed it because he only went there on the 15th April 1969 not February 19, 1969. And Emmanuel Augustus also says that Russell Pearman never showed him any deeds, sales agreements, anything that would indicate the he owned the property. Emmanuel Augustus says that he accepted that John Swan was dealing as his agent and would know the particulars of what he was getting into. This is what Mr. Augustus has represented to the police during the course of their investigation.

**MR. CHARLES BROWN** 17:05:

Over to page 55. The police also interviewed three (3) key players. Mr. Moyter. Mr. Wilkinson, Mr. Swan. Sgt. Cassin interviewed Mr. Wilkinson 28 January 1976. On this occasion Mr. Wilkinson refused to cooperate. He would not provide Sgt. Cassin with access to, site of or even a photocopy of the February 1969 Agreement. Now this is an esteemed lawyer. Speaker the House told Sgt. Cassin, "No you cannot see it". I wonder why not. But that's what he told him, no. So it was also a document that we believe would have had Elgin Doars signature on it. Remember Doars said he only signed once and Sgt. Cassin knew that. So if Doar's signature was on two sales agreements, and he signed once, then we got a problem. I wouldn't have said no, but I can understand why it would be withheld. Sgt. Cassin also had an interview with Robert Williams. This was a couple of months before he spoke to Wilkinson. He met Robert Williams, at his office, and said John Virgil came to see him February 19, 1969. He didn't say which John Virgil, but he said John Virgil came to see him. Remember the John Virgil, from Somerset that drew the covenant up with, the imposter, the cousin. We suspect that is the John Virgil that he is referring, but Motyer did not mention a middle name or initial, he simply stated, and it's probably true, that John Virgil came to see him on February 9, 1969. He also went on to say, Virgil told me to send the deeds to Wilkinson. Now with respect to John Swan and the investigation, he was very cooperative either. The report concludes that search has been in progress for a number of months by John Swan Limited for the conveyance dated April 15 - there has been no success. So the Conveyance was produced later on, and we had the sight of the signatures, but it was not produced for the police investigation. And as the police wound up their investigation, this was a conclusion. He said, on Page 56, it is possible that John Virgil never signed the conveyance dated 15th of April 1969, in David Wilkerson's office. He was not known to Wilkinson. And indeed, Mr. Pearman could have brought someone else instead. Goes onto to conclude that without the original conveyance and examination of Virgil's signature, nothing further can be done at present. And it goes on to say the John Swan has started a search for this document, and as of this date there has been no success. And so just adding a bit of color to the pursuit of justice, you should know that the beneficiaries are steadfast in their approach. They wrote to the bank, to Appleby, they even wrote to the regulator of banks, the Bermuda Monetary Authority, asked them for intervention asked them for assistance, and were constantly told “Nothing here Miss Brown, we cannot help you, there is nothing here.” In fact, the cross section of lawyers stated, “….that there is nothing we can do Miss Brown you are causing trouble." "Now, you know, you can't take these people to court." This is what was said to the beneficiaries, as they pursued justice. "Take the money." "But I can't do anything the banks paid me off." Or I just can't do anything for you. Others said, "I always wondered how John Swan got his start." So we've had a series of lawyers, but we've not had the opportunity to be heard, as we are being heard today, which were most grateful.

**MR. CHARLES BROWN** 22:36: Further recollections from this journey Commissioners after 50 years, almost 50 years of pursuing justice, you run into a few obstacles, and my mother has led this charge. And she's run into quite a few obstacles along the way. But as you can see, she's still standing, after 48 years she might be sitting down right now, but she's still standing. This fight continues. This journey has reached a milestone. She pursued justice, David Wilkerson showed up unannounced at the Hog Penny. She said she never seen him done there before but he showed up one night and said, "Ms. Brown you better watch your step" - "You better watch your step Ms. Brown". She watched them and still watching, she went to see the Chief Justice in this country at the time was Mr. Astwood. The chief Justice told Ms. Brown, "You should put a match to those deeds". That’s what he told my mother. Charles Mann, Senior Manager of the bank, BETCO - now you know he did not put this in writing. Charles Mann said, "We can offer you $154,000 to sell this thing.” That's what Charles Mann said to my mother. Sir Dudley Spurling from Appleby, Spurling and Kemp. Sir Dudley Spurling was the chairman of a Lower Reform Committee. They had something to do with this too. We may or may not get to that. Sir Dudley Spurling said to my mother looking over his glasses, thought he was perhaps intimidating her. But he said, "Miss Brown the balls in your court, and you had better be very careful with what you say". Now my mother never played tennis or badminton but I could see her now pushing a two handed back hand back at Sir Dudley Spurling court and here is my move - not intimidated. She approached Eric Jones, and he said to her and I think he was visiting Bermuda at that time. My mother went to see him. And as the young people would say, he dissed her. He said, "I didn't come here to do no business with you," and walked away. When Robert Motyer was approached, "Why you come to me?" The beneficiaries were clear that you were his lawyer. I knew my uncle had land, but we just didn't know about the money. So everybody, here are beneficiaries, beating the pavement, trying to be heard. So they go to the bank, pleading with the Bank of Butterfield as executives to do the right thing. So they leave the bank and come home later on that afternoon, the other bank calls The Bank of Bermuda. They said, "Ms. Brown this is Mr. Dodwell calling from the Bank your loan is due in full by close of business tomorrow". The mortgages was chapter one in the playbooks back in the 60s and 70s when people stepped out of line. So here's Mr. Dudwell saying, “your loan is due by close of business tomorrow.” Well, my mother, knowing her how she likes to speak. She told Mr. Dodwell “Well I tell you what, go ask John Swan, Arnold Francis and David Wilkinson. Go ask them for the money and tell them I sent you.” That is what she told him. Mr. Dodwell called back the next day and said, "Ms. Brown just continue on and carry on no change".

**MR. CHARLES BROWN** 27:16:

Arnold Francis, Yes, called my mother up one day when we had five digits 20286. He said "Ms. Brown what you trying to give my client John Alfred a heart attack?" And my mother, I heard she's smart when she is ready. She said "He should have one". I do not think that she meant ill on him but it was frustration at the time. She even called John Swan at his house one evening. The young man answered the phone and the next thing you heard. "Daddy,” and he came to the phone. My mother says John said to her, "I ain't having no meeting with you people, and don't you ever call here again?" It is not funny. It is sad, "Don't you ever call here again. Claiming ownership to property that you have the title deeds to.” More recently, the bank to Miss Richardson. She said what? In discussing the matter with my mother. You just don't understand. What you speak to a woman who's coming to you as a client, with a 45 year old complaint and you're just about 45 years old yourself speaking to this woman in this manner. Unacceptable.

Kiernan Bell from Appleby asked my mother, the beneficiaries. If they're trying to say that Appleby did something wrong. He engineered a lot. Now here's one of the residents of the property today as of today said, “Miss Brown, if I show you my deeds then John Swan would not give me no more work.” That's what time it is, that's what we've been hearing during the course of our pursuit of justice over the years. And with that Commissioner, I bring you to the penultimate page of our presentation today, where we share our conclusions with you, based on the evidence we've presented, and our understanding of it. Eric Jones, the family lawyer conspired with cousin John Alfred, and Robert Motyer from Appleby to defraud John Augustus Alexander Virgil of his four (4) acres of land in Spring Benny. Robert Motyer was the engineer behind this scheme to take advantage of unsuspecting peoples client that in own land. He worked closely with David Wilkinson and others to execute this plan. Lawyers of Appleby and Cox & Wilkinson who were hands on with this fraudulent scheme, and they use others to execute.

**MR. CHARLES BROWN** 30:37:

There are two major transactions one in 1961/62 and another in 1968/69. Both of these transactions are fraudulent and clearly do not meet the legal standard for a legitimate property transaction. The major players to this scheme, they obstructed justice and denied access to due process. Legalism was used to prevent anyone from being held to account. The Bermuda Police Service concluded that signatures were forged, documents were withheld, and David Wilkinson never met John Augustus Alexander Virgil. Despite claiming he signed a sales agreement and conveyance with his client Russell Levi Pearman. The sole executor of the Will does not acknowledge the Trustee Act 1876: Section 50, which outlines their fiduciary legal responsibilities to sole executive to the May 1964 Last Will and Testament. The 1962 transaction for the southern portion and the 1969 transaction for the northern portion where John Swan is involved; both of these transactions are rooted in fraudulent and illegal actions. And consequently, all transactions lack legal credibility, all of them. The beneficiaries are entitled to justice, and compensation for being victims of this scheme. Lastly, the Virgil family have held the title deeds this property since 1885, and to this day the beneficiary remain in possession of the deeds and they claim rightful ownership to this property willed to them by their Uncle John Augustus Alexander Virgil. And with that, ladies and gentlemen, we submit that these players Butterfield, Cox and Wilkinson, Appleby, Eric Arthur Jones, David Wilkinson, Robert Motyer, Russell Levi Pearman, Edward E.T. Richards, John William David Swan, John Alfred Virgil from Somerset, Arnold Francis and Leslie Earl Ming, work together to deprive these people Uncle John of his wishes and his seven nieces and nephews, what was rightfully theirs, as outlined in his Will of May 21 1964. And with that Chair, I conclude on behalf of my ancestors and the beneficiaries my presentation. Thank you for today.

**JUSTICE NORMA WADE-MILLER** 33:56: Thank you, counsel. Do you have any questions at this stage?

**COUNSEL DIRK HARRISON**  34:00: I have many, I proposes that we continue on Monday,

**JUSTICE NORMA WADE-MILLER** 34:05: On Monday, would we have the adverse.

**COUNSEL DIRK HARRISON**: 34:11: I'm not certain, but I propose that we not wait on that. That we provide them with a transcript. We provide and once we continue, and we get an opportunity to answer so either the attending person to put questions or the transcript and show to them and they can answer and the answers provided to the commissioners prior to our report.

**JUSTICE NORMA WADE-MILLER**  34:39: Of course we have to bear in mind, justice operates both ways and we will have to give them sufficient time to study so they're not able to come in on Monday the, you’re not proposing that.

**COUNSEL DIRK HARRISON**  34:53: I was not proposing for them to come in on Monday either, because even for them to come in, they still will need a transcript before Monday to come in on. So I was thinking for us just to proceed, and then when we get to that point we will deal with it.

**JUSTICE NORMA WADE-MILLER**  35:07: I take the commissioners will have some questions as well. So what we propose to do, because we have matters scheduled for tomorrow. We will resume for the rest of the week, and we will pick up with your matter Monday morning shall we say 9:30 am.

**COUNSEL DIRK HARRISON** 35:16: 9:30 am Thank You.

**JUSTICE NORMA WADE-MILLER** 35:23: We normally start at 10 o'clock, because matters are fairly lengthy, we will start at 9:30 am, So that we can do a bit more, and give everyone more time

**COUNSEL DIRK HARRISON**  35:43: Importantly, Madam Chair the earlier exhibits, the one which references and exhibits A thru to N and exhibits one thru to eight and all those have to be just put in a schedule which all those exhibits have to be tendered which support the evidence. So we have quite some way to go.

The tender will take some time Madam Chair. So what we have to schedule in, I think for the context of evidence to flow, I would like to direct the witness's attention to the evidence and then tender the documents. So I prefer to start afresh on Monday, because this will take us some time.

**JUSTICE NORMA WADE-MILLER** 36:31: Very well, so 9:30 am Monday morning, Messrs. Brown. Please remember that you're under oath. And so I'm asking you not to discuss the matter over the weekend and we will see you Monday morning. You know, if, in fact, you're testifying, and in the midst of your testimony, the matter is adjourned, then you ought not to discuss it with anyone. So I'm asking you, and brother and other beneficiaries not to discuss it.

**MR. CHARLES BROWN** 37:33: My mother has not yet been sworn in.

**JUSTICE NORMA WADE-MILLER** 37:37: How many more witnesses do you have?

**MR. CHARLES BROWN**  37:39: I don't anticipate any more than three (3) of us in total. My mom may have testimony. So it will be three of us.

**JUSTICE NORMA WADE-MILLER** 37:50: So brother will be speaking on Monday.

**MR. CHARLES BROW** 37:52: Well it depends on the questions. So since we don't know what you would like to know, we would like to have the team available

**JUSTICE NORMA WADE-MILLER** 38:02: We certainly would like to know everything

**MR. CHARLES BROWN** 38:04: We will provide you with everything.

**JUSTICE NORMA WADE-MILLER** 38:11: Right. So mother maybe testifying as well?

**MR. CHARLES BROWN**  38:14: Yes.

**JUSTICE NORMA WADE-MILLER** 38:15 Okay. So it will be your brother and mother, anyone else you anticipate.

**MR. CHARLES BROWN**  38:23: No

**JUSTICE NORMA WADE-MILLER** 38:21 Okay. So we will see you on Monday morning at 9:30 am.

**MR. CHARLES BROWN**  38:24: Thank you.

**JUSTICE NORMA WADE-MILLER** 38:25: Thank you.

END OF TRANSCRIPTION NOVEMBER 25, 2020 AFTERNOON (b) AT 38.28