

# Historic Land Losses in Bermuda

COMMISSION OF INQUIRY REPORT 2021

COMMISSION OF INQUIRY INTO HISTORIC LOSSES OF LAND IN BERMUDA

Sofia House  
48 Church Street  
Hamilton HM 12  
Bermuda

31<sup>st</sup> July, 2021

The Hon. E. David G. Burt, JP, MP  
Premier of Bermuda  
The Cabinet Office  
105 Front Street  
Hamilton HM12  
Bermuda

Dear Premier:

**Report of the Commission of Inquiry into Historic Losses of Land in Bermuda**

On 31<sup>st</sup> October, 2019, you appointed a Commission of Inquiry into Historic Losses of Land in Bermuda. As the Chair, I am pleased to submit the Commission's Report.

The Report, its exhibits and appendices as well as the documents on the website, signal the conclusion of the work that Commissioners have undertaken over the past twenty months. Each Commissioner has contributed to the effort to produce this Report which reflects our unanimous views.

I wish to thank you for your support throughout this difficult period which no one could have envisaged. The first shelter-in-place caused by the Covid-19 pandemic occurred only five months after the Commission was appointed; thereafter, at least two other remain-at-home orders were enacted for public safety. On each occasion when the curtains were lifted by the Government, the number of claims submitted to the Commission seemed to increase significantly.

We endeavoured to give audience to each Claimant; it was impossible to do so as some claims did not fall within the remit. Thus, some Claimants wrote to your good self to ask that the time given to the Commission to complete its work be extended, others wrote publicly to question the integrity of the Commission. Be that as it may, the Commission is confident that it has acted within the mandate given and trusts that you will find this Report satisfactory.

All documentation has been sent to the Government Department of Archives in accordance with the Archives protocol.

Thank you for the honour of serving as Chair of the Commission of Inquiry into Historic Losses of Land in Bermuda.

The other six Commissioners appointed to support the Commission in this task were the Hon. Wayne N. M. Perinchief, CPM JP, Mrs. Maxine L. Binns, Ms. Frederica M.C. Forth, Mrs. Lynda

COMMISSION OF INQUIRY INTO HISTORIC LOSSES OF LAND IN BERMUDA

M. Milligan-Whyte, Mr. Jonathan M. Starling and Mr. Quinton Stovell. They have acted as full members of the Commission in all respects.

Yours sincerely,



**The Hon. (Ret'd) Justice Mrs. Norma Wade-Miller, OBE, JP**  
**Chair, Commission of Inquiry into Historic Losses of Land in Bermuda**



**The Hon. Wayne N.M. Perinchief, CPM,**  
**JP, Deputy Chair**



**Ms. Frederica M. C. Forth**



**Mr. Jonathan M. Starling**



**Mrs. Maxine L. Binns**



**Mrs. Lynda M. Milligan-Whyte**



**Mr. Quinton Stovell**

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# FOREWORD

## Report of the Commission of Inquiry into Historic Losses of Land in Bermuda

Pursuant to the section 1A amendment to the Commissions of Inquiry Act 1935, the Commission to Inquire into Historic Losses of Land in Bermuda [COI] was appointed by the Premier, the Honourable E. David G. Burt, JP, MP, following the acceptance of a Ministerial Statement in the House of Assembly on 19<sup>th</sup> June, 2019 and public notification in the Official Gazette of 1<sup>st</sup> November, 2019.

The Notice in the Official Gazette stated that the impetus for the COI's appointment was a Motion of the Honourable House of Assembly [HOA] of 4<sup>th</sup> July, 2014. To clarify, on that date the late C. Walton D. Brown, JP, MP, a member of the Progressive Labour Party which was then the Official Opposition, introduced the Motion which ultimately led to the COI. Aggrieved at community reports of land stolen from citizens of Bermuda, he characterized his vision for pursuing historic losses of land in Tucker's Town in this way:

*"We have an opportunity, Mr. Speaker, to help correct some of the wrongs of the bad old days when justice was a fleeting illusion for many, and where the rich, the powerful and the connected acted with impunity. The theft of land, the dispossession of property, took place in this country on a wide scale and over a long period of time. The villains in these actions, Mr. Speaker, were oftentimes lawyers, real estate agents and politicians, but not exclusively so. The victims were at times the poor and the marginalized, but not always. What the victims shared though, Mr. Speaker, was an inability to secure a just outcome."* (Hansard 2014 p. 2603)

Interestingly, the ensuing Parliamentary debate revealed that not only were there particular concerns regarding the two most well-known expropriations in Bermuda, Tucker's Town and St. David's Island, but also concerns regarding widespread injustices in dealing with losses of land in other areas across the Island.

The Motion approved by the HOA was as follows: *"...to take note of historic losses in Bermuda of citizens' property through theft of property, dispossession of property and adverse possession claims; AND BE IT RESOLVED that this Honourable House calls on His Excellency the Governor to establish a Commission of Inquiry into all such known claims and to determine, where possible, the viability of any such claims and make recommendations for any victims of wrongful action to receive compensation and justice."*

The Motion made in the HOA passed in 2014. However, the then Governor refused to issue an Order establishing a COI and was unmoved by subsequent political demonstrations to force his hand. After the July 2017 General Election, the former Opposition became the Government and re-tabled the 2014 Motion. On this occasion it passed and was acted upon, ultimately leading to the establishment of the COI. The resolution constituted the mandate given to the COI by Premier Burt. The Terms of Reference provided to the COI comprised the five specific tasks which follow:



1. Inquire into historic losses of citizens' property in Bermuda through theft of property, dispossession of property, adverse possession claims and/or such other unlawful or irregular means by which land was lost in Bermuda;
2. Collect and collate any and all evidence and information available relating to the nature and extent of such historic losses of citizens' property;
3. Prepare a list of all land to which such historic losses relate;
4. Identify any persons, whether individuals or bodies corporate, responsible for such historic losses of citizens' property; and
5. To refer, as appropriate, matters to the Director of Public Prosecutions for such further action as may be determined necessary by that Office.

The first Term of Reference is the cornerstone of the COI's mandate, setting the parameters of the Inquiry itself. The immediate task, which the first Term encapsulates as a prerequisite, was to formulate a working definition of the term "historic" as the qualifier for inquiring into losses of property by various means known to conventional law. This Term of Reference also presented the need to qualify the word "irregular" for the practical purposes of undertaking the mandate. The Terms which follow the first are contingent upon and derived from the first.

At this juncture, it may be useful to provide a contextual explanation of how the COI's mandate arose, as such explanation may serve to highlight some of the challenges faced by the COI, as well as some of the technical complexities encountered when defining the task.

One of the primary challenges faced by the COI was to determine its own scope of inquiry, given the breadth of the Terms of Reference. Because the first Term of Reference does not make specific reference to the two particular expropriations with which Bermudians are most familiar, the COI determined that these events should be included generically along with any other matters that fall within the ambit of historic losses of property.

These two historically documented occasions involved forcing entire local communities to relocate from land belonging to them so that their property could be repurposed by others.

The first occasion occurred over a century ago in 1920 when Bermuda witnessed the transformation of the Tucker's Town community, located in Hamilton and St. George's Parishes, ostensibly for tourism purposes. Although legislation was created to legitimize the removal of the residents from their land and although the relocation did in fact take place, the result had devastating consequences. The residents, who were not only forced to give up their land, homesteads and institutions but also their agricultural way of life, their livelihoods, communities and even sacred places of rest, were forced to endure considerable financial and emotional costs. Many descendants of those directly affected by this dispossession still share family stories reflecting the anguish born from this upheaval. They note that, in the main, the loss of property seemed to have occurred without adequate compensation or remedy.

The second occasion occurred in the 1940s and concerned the relocation of residents of St. David's Island, an event which bears hallmarks consistent with the community upheaval theme which occurred in Tucker's Town two decades earlier. Although other locations were suggested, the powers that be of the day determined that St. David's Island was the ideal location for a United States military base which would help protect the world from the scourge of Hitler and Nazi Germany. It appeared that creating a military base in any of the other suggested locations in Bermuda would adversely affect tourism. Thus, homesteads belonging to residents of St. David's Island were razed both to create a United States military base and to protect the tourism industry.

The July 2014 Parliamentary debate revealed that there were instances other than those in Tucker's Town and St. David's Island where residents felt dispossessed of their property. After posting its initial appeal for applications, the COI soon received confirmation that there were indeed persons elsewhere in our community who felt similarly aggrieved.

Therefore, recognizing early on the gravity and potentially extremely wide scope of its mandate, the COI commenced its work, initially meeting in person and thereafter via electronic means following the onset of the COVID-19 global pandemic which began to affect Bermuda in earnest in March 2020. One of the first orders of business undertaken by the COI was to create a Secretariat to provide it with administrative, clerical and other support. It also established its own operational rules and procedures in accordance with section 8 of the Commissions of Inquiry Act 1935.

The pandemic warranted three shutdowns of Bermudian society, exacerbating the already difficult work of the COI. Limitations were imposed on garnering evidence, given the mandated restrictions on the movement of persons as well as restricted access to technical and electronic resources. As a result, scheduled public Hearings could not take place nor could Claimants gain access to helpful materials which might have been archived or otherwise stored. Regrettably, these situations also incurred additional expense and delays. The COI is therefore indebted to the Premier and the Government of Bermuda for understanding the delays and for willingness to approve extensions to the COI's deadlines.

That notwithstanding, the gravity of the tasks at hand transcended all difficulties and it is hoped that despite the various hurdles, the process marshalled and the evidence garnered were befitting of the mandate. Eventually, 72 witnesses were heard by the COI.

Commissioners were well aware that their work could not function effectively or move forward without solid legal guidance. Thus, the COI has benefitted enormously from the efforts of its direct legal advisors. Mr. Ivan Whitehall, Q.C. filled the role of Senior Counsel to the COI from January 2020 through October 2020, when he resigned for personal reasons.

The Commission must acknowledge the work of Ms. Susan Mulligan who very capably took over as interim Counsel to the COI for a short period after the departure of Mr. Whitehall.

In November 2020, Mr. Dirk Harrison from Kingston, Jamaica assumed the role of Lead Counsel to the COI and has successfully completed the major part of the Hearings. Within a relatively short period, Mr. Harrison mastered the contents of the voluminous documents involved and marshalled the evidence, preparing and conducting cases with skill and commitment.

However, because of the large number of very interesting and complex matters that came before it, the COI soon realized that in spite of a paucity of funds, additional research support was needed in order to expedite its investigations. A successful appeal saw a number of veteran investigators step forward, many of whom offered their services pro bono. These investigators were able to carry out important legwork needed to research the detail of some of the claims.

The COI's first public Hearing took place at the Grotto Bay Beach Resort and Spa on 8<sup>th</sup> September, 2020. Although the Commissioners had hoped to begin the Hearings with reports from two local historians, Dr. Theodore Francis and Dr. Quito Swan, such was not to be. Due to the pandemic-induced lockdowns both locally and abroad, they were unable to gain access in a timely manner to the archival material needed to underpin their research. Because of the short notice for the change of plans, the COI truly appreciated its first witness, Mrs. Jean Foggo-Simon who, although resident in Oberlin, Ohio, was able to provide via Zoom a very comprehensive and compelling picture of life in old St. David's prior to the establishment of the military base.

If it became apparent during the evidentiary phase that evidence presented by a Claimant might affect the reputation or fiscal interest of another individual or entity, that individual or entity would be served with a letter of Adverse Notice and invited to make representation before the COI either in person or through counsel. Consequently, at times, a number of lawyers were involved in the Hearings. Given the complexity of balancing their previous commitments with the needs of the COI, a high degree of planning was required which from time to time resulted in scheduling delays.

The COI acknowledges that it received some claims that were refused because they did not fit into the COI's mandate. Regrettably, because their claims were refused, some Claimants and some persons who were engaged by the COI publicly criticized the Inquiry, questioning the integrity of the process and the partiality of certain Commissioners. As a creature of statute and a quasi-judicial body, the COI practised the required judicial restraint and did not engage in public debate when criticized.

It should be noted that except where a Commissioner recused himself/herself from dealing with a particular matter because of a real or perceived conflict of interest or where a Commissioner was excused temporarily for health reasons, Commissioners were fully involved in every step and action taken since the appointment of the COI in November 2019.

It is fair to say that the contributions of the Commissioners to this Report and to the deduction and proposals have been visionary, essential and of immeasurable worth. Without the Commissioners' full support, this Inquiry would have been exceedingly less effective.

While numerous allegations have been made about historic land grabs in Bermuda, it has remained the responsibility of the COI to determine and substantiate the facts and evidence consistent with its mandate. This task was carried out in a systematic manner utilizing quasi-judicial rigour befitting the seriousness of the task.

# COMMISSION OF INQUIRY BUDGET

The Commission of Inquiry was established on 1<sup>st</sup> November, 2019 with an approved budget in the amount of \$325,000.

## MEMBERS OF THE COMMISSION

- **Chairman: The Hon. Justice (Ret.) Norma Wade-Miller, OBE**, retired Senior Puisne Judge of the Bermuda Supreme Court
- **Deputy Chairman: The Hon. Wayne Perinchief, CPM, JP**, retired Assistant Commissioner of Police, former Minister for National Security, Minister of Culture and Human Affairs and Minister responsible for the National Drug Commission
- **Mrs. Maxine Binns, LL.B.**, Barrister and Attorney, Consultant Legal Counsel with the Economic Development Department and Retired Legislative Assistant with (formerly) the Business Development Unit
- **Mrs. Frederica Forth, JP**, Former Vice President of a local bank and experienced realtor
- **Mrs. Lynda Milligan-Whyte, LL.B, JP**, Senior Legal Counsel practising at the Bermuda Bar, former Minister of Legislative Affairs and Women's Issues
- **Mr. Jonathan Starling**, Economic and Cooperative Development Officer, Bermuda Economic Development Corporation
- **Mr. Quinton Stovell**, Professional Land Surveyor

## METHODOLOGY

### COI and the Pandemic

Covid-19 continues to impact dramatically life around the globe, creating what is now known as the “new” normal. Despite her relatively small size, Bermuda did not escape the disruption caused by the pandemic. Once it became apparent that lockdowns/shelter-in-place regimes had become a way of life, the COI strategized and agreed to conduct as much of its internal business as possible by virtual means. In this regard, the COI office was forced to close during the months of March and April 2020.



The pandemic had other impacts. Carefully choreographed and time-bound public Hearings planned for March and April 2020 had to be cancelled and finally omitted from the COI's scheduled work. The plans were reformulated and expected outcomes were dealt with by using the Zoom platform for the previously planned Hearings. However, planned research by or on behalf of Claimants could not be facilitated by various Government agencies including libraries, museums and archives during the period of closure.

Fortunately, every cloud has a silver lining. The Commissioners were able to work from home and, given the 31<sup>st</sup> August, 2020 deadline initially in place for the Final Report, were prepared to move quickly once the lockdown was eased.

The COI's first Senior Counsel was based in Canada. However, because of strict travel restrictions he was unable to come to Bermuda. Fortunately, the COI had also previously enlisted the services of a local Junior Counsel to be "boots-on-the-ground" in Bermuda and had also retained other persons with backgrounds in law, investigation and archival work to carry out research if and as possible. The COI had made these efforts to ensure that it could meet the initial target date for its Report.

## COI and Context

Before the COI could devise a comprehensive approach to its mandate and Terms of Reference, careful consideration had to be given to the context in which the COI was established. Its instrument of appointment authorized it to deal with alleged expropriations in Tucker's Town and St. David's Island, together with alleged injustices which might have occurred in relation to other land matters throughout the Island. However, in considering such matters, the COI quickly recognized the limitations of the time, financial and manpower resources provided to it to research matters that had, in some cases, occurred over a century before.

## Mandate and Approach

Pursuant to its Terms of Reference, the COI decided that it should call for and examine evidence and then determine whether such evidence, taken as a whole, demonstrated a structural problem which was either historic in nature and/or which demonstrated systemic failure. Each case filed before the COI was examined with the COI then determining whether the particular case represented an instance of a historic loss of land by a citizen of Bermuda through "theft or dispossession of property, adverse possession claims or other unlawful or irregular means by which land was lost in Bermuda".

The COI did not have the jurisdiction but could make a recommendation regarding the granting of individual compensation, having identified whether the uncompensated loss was the result of some systemic failure. However, the COI quickly found it necessary to define the meaning of **systemic** issues and relied on jurisprudence on the matter.

The precedent articulated in *Gay et al. v. Regional Health Authority 7 and Dr. Menon, 2014 NBCA 10*, supra suggests that systemic issues arise if it can be shown that the cause of the loss transcends the individual case and demonstrates a legal, political or ethical culture that allows the named

causes for the loss to occur. In this situation, the issue was not the actual negligence of the doctor, but the systemic structural problems, or the systems that were in place to detect negligence. It was determined that in finding a systemic problem, the focus is on the structure rather than on the actual negligence.

After the cases were reviewed, the procedure adopted would confirm that a systemic issue had arisen if it could be proven that the cause of any loss transcended the individual case and demonstrated a legal, political or ethical culture that allowed it to occur.

In each case filed, the COI determined whether there were any structures or systems in place that possibly made it easy for an individual, corporation or entity to perpetuate wrongs. If there were, a systemic problem did indeed exist. Identifying any systemic problems would then enable the COI to make recommendations to the Government that would remedy any systemic problem.

The COI also used as a guiding principle the concept of **fairness** for those who might be affected by its findings and recommendations. Bearing in mind common law fairness obligations which accord a person procedural fairness or natural justice, the COI agreed that if there was likely to be evidence which, in the absence of an explanation, might lead to the conclusion that as a result of misconduct citizens of Bermuda were individually or collectively harmed, then an opportunity must be provided for the alleged mis-doer to be heard. (refer to the internal rules and procedure and also the procedure /guidelines to be adopted in the case of adverse finding being made?)

During the evidentiary phase, if the evidence presented did affect the fiscal or reputational interest of any person or entity in Bermuda, that person or entity was served with a letter of Adverse Notice. Thereafter, the COI did extend an invitation to that person or entity to participate either in person or through their own counsel. Such notice was issued in the strictest of confidence, but in a few instances where all efforts to notify persons had been exhausted, a public notice was published in *The Royal Gazette*. It is important at this point to emphasize that the COI was not a replacement for court. The COI could not, and did not, suggest that one party in a matter might have a good case against another party, primarily because the COI did not have the power of enforceability.

The conclusions of the COI cannot be appealed, but a Claimant can seek judicial review. The COI's conclusions and recommendations can be accepted or rejected by the Government.

## Methodology

Based on the COI's Terms of Reference:

1. Claims were organized into themes to be considered at the Hearings:
  - a. Unfair practices, breach of fiduciary duty or fraud;
  - b. Practices relating to default debts secured by a mortgage of deeds;
  - c. Encroachment between neighbouring properties;
  - d. Expropriations;
  - e. Title issues;

- f. Inheritance; and
  - g. Undervalued property.
2. The COI then decided which evidence was required to explore these themes. Such evidence was available from the material filed by the Claimants and was strengthened by any answers and materials the Secretariat received in response to questions addressed to the Claimants. In some cases, the evidence was further developed through interviews of witnesses, archival or other documentary research.
  3. Decisions were made about how the evidence identified would be brought before the COI at the evidentiary Hearing. For example, the evidence might be presented orally (*viva voce*), by affidavit, by means of expert reports or even by subpoena. Because of the nature of the enquiry, oral evidence was necessary.
  4. Based on a review of the evidence collected, a determination was made whether the COI needed to give notice of possible adverse findings to any person against whom allegations might have been made in order to give them an opportunity to respond.
  5. Closer to the time of the Hearing, the COI decided on the logistical arrangements necessary to hear the evidence, i.e., whether an oral or a digital Hearing would be conducted.
  6. Given that the COI had control over its own proceedings, it decided that in light of the difficult circumstances resulting from the pandemic, it would have Zoom meetings to review the applications filed.
  7. Decisions were made regarding electronic recording and the services necessary for transcribing the proceedings.

## Sources of Information

Understanding that there were reports in the community of a number of family narratives which highlighted dispossession of land, the COI was mandated to tap into these resources. Commencing February 2020, the COI issued several public notices inviting persons to contact the COI if they were aggrieved because of what they considered as unfair loss of land. Persons who had concrete official documentation such as deeds or wills were invited to apply for standing. Those who lacked documentation but were aware of family stories passed from generation to generation were invited to make those stories known to the COI.

When claims were received, each was reviewed individually by Commissioners to determine if the case demonstrated a historic structural problem and, where necessary, further information was requested from the Claimant. In the event that any Claimant felt that he or she required legal representation but did not wish to retain a personal counsel, the Claimant was given the opportunity to meet with the COI's Lead Counsel to discuss his or her position. Some Claimants took advantage of this offer.

The Commissioners determined that any case that had been, could be or was currently being litigated should not be before the COI, except for the purpose of demonstrating a systemic problem.

The COI recognized that stories sometimes changed as they were passed from generation to generation. In order to have factual information regarding Tucker's Town and St. David's Island, the COI engaged two prominent local historians and university professors, Dr. Theodore Francis II and Dr. Quito Swan, to research and submit fact-based reports on the history of the two locales. The COI also heard evidence from other experts, including Dr. Duncan McDowall who shared his published perspective on life in Tucker's Town. Witnesses Mrs. Lynn Winfield and Mr. Cordell Riley of Citizens Uprooting Racism in Bermuda, in addition to speaking about Tucker's Town, spoke specifically about the destruction of Tucker's Town graveyards. Further, the COI heard from descendants of former Tucker's Town residents who spoke of their individual and collective efforts to ensure the protection of what they considered a sacred site.

Mention was made earlier that the COI found itself with a shortage of the manpower needed to carry out effective research into various claims. To that end, the COI made an appeal for volunteers and as a result, several former Police Officers offered to assist. Each was assigned specific cases and after interviewing the Claimants, followed leads which led them to gather information from sources such as the Bermuda Archives and the Land Title Registry Office, once those institutions re-opened.

## **Notification to the Community**

To ensure that the work of the COI was known within the community, a website, [historiclandlossescoi.com](http://historiclandlossescoi.com), was created. The website contained basic information about the background and composition of the COI as well as its operational rules and procedures. To attract further the attention of members of the community who might wish to make claims, the COI placed newspaper advertisements inviting persons to apply for standing or, if they did not wish to have standing, to share information with the COI. To broaden the COI's reach, social media notifications about upcoming hearings were posted and periodic press statements were issued to the traditional media. The COI was gratified that television coverage of proceedings also served to advance the community's awareness of its work.

## **Definitions**

### **Adjudication**

The process of final and authoritative determination of the existing rights and claims of people to land. This may be in the context of first registration of those rights, or it may be to resolve a doubt or dispute after first registration. Adjudication is also a standard procedure prior to the operation of a land registry system or consolidation scheme.

The process of adjudication should simply reveal what rights already exist, by whom they are held and what restrictions or limitations there are on them. In practice, the mere fact of a final and



definitive recording of these rights is a significant change in those jurisdictions where previously there had been uncertainty.

The process of adjudication may be sporadic or systematic, as with registration. Sporadic adjudication is a parcel-by-parcel approach, usually triggered by some specific event, the sale of property for example. Depending on the jurisdiction, sporadic adjudication will then involve demonstrating that the title is basically sound before it is accepted and entered into the registration system.

### **Compulsory Sale or Purchase**

Term used to characterize the transfer of title to property under the exercise of the power of eminent domain, or by reason of judicial sale for nonpayment of taxes, or the like.

### **Conflict of Interest**

Term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them.

### **Conflicting Evidence**

Evidence offered by plaintiff and defendant or prosecutor and defendant which is inconsistent and cannot be reconciled.

### **Discrepancy**

Divergence or conflict between facts, figures or claims which may be material or immaterial.

### **Eminent Domain**

The right of eminent domain is the right of the state through its regular organization to assert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety. In time of peace, the legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defences or providing channels for trade or travel. Eminent domain gives a right to resume the possession of the property in the manner directed by the Constitution and the laws of the state, whenever the public interest requires it.

In the U.S., the Constitution limits the power to taking for a public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken.

This process of exercising the power of eminent domain is commonly referred to as 'condemnation' or 'expropriation'.

## **Expert Evidence**

Evidence (direct evidence or evidence of opinion) admissible to furnish the tribunal with information which is likely to be outside the experience and knowledge of the tribunal. Evidence whereby a witness can only give evidence of facts within his knowledge, that is, of things he or she has seen and heard. It is, however, permissible for a person who is skilled by a course of special study or experience in a particular subject to give evidence of his opinion on matters relating to that subject and based on facts already proved and the jury (in this case the COI) may take that opinion into consideration in arriving at a decision. Such a person is called an expert.

It is to be noted that the COI was not bound to accept the evidence of an expert. The COI could reject the expert's opinion if it felt that the expert was not properly qualified to express that opinion or, if for any reason, the COI did not agree with the opinion expressed.

## **Expropriation**

A taking, as of privately owned property, by government under eminent domain This term is also used in the context of a foreign government taking an American industry located in the foreign country.

## **Fraudulent**

Based on fraud, proceeding from or characterized by fraud; done, made, or effected with a purpose or design to carry out a fraud. A statement, claim or document is "fraudulent" if it was falsely made, or caused to be made, with the intent to deceive. To act with "intent to defraud" means to act willfully and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.

## **Hearsay Evidence**

A statement that is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

## **Inconsistent Statement**

A statement that is contrary to the other. For example: The defendant put forward defences of alibi and self defence to a crime at the same time.

## **Loss of Property by Adverse Possession**

Through trespassing on the land of another or remaining as a squatter in a building through a matter of years, a person may acquire the legal right to ownership of that property. In order to develop a clearer understanding, the COI considered existing jurisprudence. In *Lord Atkin versus Lord Lovat, 1885 appeal cases at 273*, Lord Atkin has this to say:

“... in *Des Barres versus Shey* 1873, 29 L.T. 592, Sir Montague Smith, delivering the judgement of the judicial committee, said at page 595:

*“The result appears to be that **possession is adverse** for the purposes of limitation when the actual possession is found to exist under circumstances which evidences incompatibility with a freehold in the claimant”.*

This was explained in a case called *Newfoundland versus Collingwood* in the Court of Appeal of Newfoundland by Madame Justice Camaril:

*“One of the principles underlying the law relating to limitation of actions in respect of realty is the squatter claiming adverse possession must prove open, exclusive, notorious and continuous possession. The law is that the nature of the possession must be considered in light of the circumstances of each case”.*

### **Loss of Property by Dispossession**

Dispossession is defined as the action of depriving someone of land, property or other possessions. In the mandate provided to the COI, the phrase “loss of property by dispossession” is followed by “or adverse possession or other unlawful or irregular means”. The words ‘unlawful or irregular means’ modify the words that precede them and, therefore, loss of property by dispossession also must be by unlawful or irregular means. The COI found that much depended on the context of the particular cases.

### **Loss of Property by Unlawful or Irregular Means**

Although this definition is also included in Loss of Property by Dispossession above, the COI specifically considered this question with regard to expropriation cases. The COI examined the expropriations from two perspectives: (1) was dispossession unlawful? (2) even if it was lawful on the face of it, was the legislation that was passed irregular? Was the dispossession itself irregular?

In the leading case, *Attorney General versus De Keiser’s Royal Hotel Limited* 1920 Appeal Case 508 House of Lords, Lord Atkinson at page 542 put the rule in his own words and followed with a quotation from Lord Justice Bowen. This is what Lord Atkinson said:

*“The recognized rule for construction of statutes is that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation”.*

Lord Justice Bowen in *London & Northwestern Railway Company versus Evans* said:

*“The legislature cannot fairly be supposed to intend in the absence of clear word showing such intention, that one man’s property shall be confiscated for the benefit of others or for*

*the public without any compensation being provided for him irrespective of what is taken compulsorily from him”.*

Parliament can, of course, override or disregard this ordinary principle if it sees fit to do so, but it is not likely it will be found disregarding it without plain expression of such purpose.

In the same case, Lord Parmour at page 579 put the rule this way:

*“I think that there is no difficulty in applying the ordinary rules of construction but, if there is room for ambiguity, the principle is established that in the absence of words clearly indicating such an intention, the property of one subject shall not be taken without compensation for the benefit of others or the public”.*

## **Recusal**

The process by which a judge is disqualified on objection of either party (or disqualifies himself or herself) from hearing a lawsuit because of self-interest, bias or prejudice.

# **EXECUTIVE SUMMARY**

This Executive Summary outlines the people, policies, issues, actions and decisions involved in the conception, development and execution of the Commission of Inquiry into Historic Land Losses in Bermuda [COI] as presented in testimony and submissions to the COI which are fully detailed and cited in the main body of the Final Report.

## **Background**

During House of Assembly proceedings on 4<sup>th</sup> July, 2014, the late C. Walton D. Brown, JP, MP, a member of the Progressive Labour Party, then the Official Opposition, introduced the Motion which ultimately led to the establishment of the COI. Aggrieved at community reports of land stolen from citizens of Bermuda, he characterized his vision for pursuing historic losses of land in Tucker’s Town in this way:

*“We have an opportunity, Mr. Speaker, to help correct some of the wrongs of the bad old days when justice was a fleeting illusion for many, and where the rich, the powerful and the connected acted with impunity. The theft of land, the dispossession of property, took place in this country on a wide scale and over a long period of time. The villains in these actions, Mr. Speaker, were oftentimes lawyers, real estate agents and politicians, but not exclusively so. The victims were at times the poor and the marginalized, but not always. What the victims shared though, Mr. Speaker, was an inability to secure a just outcome.”* (Hansard 2014 p. 2603)

The Parliamentary debate that followed revealed that not only were there particular concerns regarding the two most well-known expropriations in Bermuda, Tucker’s Town and St. David’s Island, but also concerns regarding widespread injustices in dealing with losses of land in other areas across the Island.

The Motion approved by the HOA was as follows: “...to take note of historic losses in Bermuda of citizens’ property through theft of property, dispossession of property and adverse possession claims; AND BE IT RESOLVED that this Honourable House calls on His Excellency the Governor to establish a Commission of Inquiry into all such known claims and to determine, where possible, the viability of any such claims and make recommendations for any victims of wrongful action to receive compensation and justice.”

However, then Governor Mr. George G Fergusson refused to issue an Order establishing a Commission of Inquiry, stating in a letter read to the House of Assembly: “I have concluded that these concerns are neither so clear nor so urgent as to justify my taking the still unusual step of commissioning an inquiry under the 1935 Act.”

## **Establishment of COI**

Five years later, pursuant to the section 1A amendment to the Commissions of Inquiry Act 1935 which states “(1) The Premier shall, in addition to the Governor, have the authority to issue commissions of inquiry under this Act”, the Commission to Inquire into Historic Losses of Land in Bermuda [COI] was appointed by the Premier, the Hon. E. David G. Burt, JP, MP, following the acceptance of a Ministerial Statement in the House of Assembly on 19<sup>th</sup> June, 2019 and public notification in the Official Gazette of 1<sup>st</sup> November, 2019.

## **Terms of Reference**

1. Inquire into historic losses of citizens’ property in Bermuda through theft of property, dispossession of property, adverse possession claims and/or such other unlawful or irregular means by which land was lost in Bermuda;
2. Collect and collate any and all evidence and information available relating to the nature and extent of such historic losses of citizens’ property;
3. Prepare a list of all land to which such historic losses relate;
4. Identify any persons, whether individuals or bodies corporate, responsible for such historic losses of citizens’ property; and
5. To refer, as appropriate, matters to the Director of Public Prosecutions for such further action as may be determined necessary by that Office.

## Members

**Chairman: The Hon. Justice (Ret.) Norma Wade-Miller, OBE**, retired Puisne Judge of the Bermuda Supreme Court

**Deputy Chairman: The Hon. Wayne Perinchief, CPM, JP**, retired Assistant Commissioner of Police, former Minister for National Security, Minister of Culture and Human Affairs and Minister responsible for the National Drug Commission

**Mrs. Maxine Binns, LL.B**, Barrister and Attorney, Consultant Legal Counsel with the Economic Development Department and Retired Legislative Assistant with (formerly) the Business Development Unit

**Mrs. Frederica Forth, JP**, Former Vice President of a local bank and experienced realtor

**Mrs. Lynda Milligan-Whyte, LL.B, JP**, Senior Legal Counsel practising at the Bermuda Bar, former Minister of Legislative Affairs and Women's Issues

**Mr. Jonathan Starling**, Economic and Cooperative Development Officer, Bermuda Economic Development Corporation

**Mr. Quinton Stovell**, Professional Land Surveyor

## Mandate and Approach

One of the primary challenges faced by the COI was to determine its own scope of inquiry, given the breadth of the Terms of Reference. Because the first Term of Reference does not make specific reference to the expropriations at Tucker's Town and St. David's Island, the two expropriations with which Bermudians are most familiar, the COI determined that these events should be included generically along with any other matters that fall within the ambit of historic losses of property.

The COI decided that it should call for and examine evidence and then determine whether such evidence, taken as a whole, demonstrated a structural problem which was either historic in nature and/or which demonstrated systemic failure. Each case filed before the COI was examined with the COI then determining whether the particular case represented an instance of a historic loss of land by a citizen of Bermuda through "theft or dispossession of property, adverse possession claims or other unlawful or irregular means by which land was lost in Bermuda".

## Notification to the Community

To ensure that the work of the COI was known within the community, a website, [historiclandlossescoi.com](http://historiclandlossescoi.com), was created. The website contained basic information about the background and composition of the COI as well as its operational rules and procedures. To attract further the attention of members of the community who might wish to make claims, the COI placed newspaper advertisements inviting persons to apply for standing or, if they did not wish to have standing, to share information with the COI. To broaden the COI's reach, social



media notifications about upcoming hearings were posted and periodic press statements were issued to the traditional media.

## Focus on Expropriation

1. Tucker's Town and Mid-Ocean Club Limited, including
  - Life in Tucker's Town prior to 1920s and expropriation
  - History of the Bermuda-Furness Withy Agreement
  - Role of Furness Withy/Bermuda Development Company Limited
  - Bermuda Development Company Limited Private Act 1920
  - Development of Bermuda's tourism industry
  - Power of compulsory acquisition
  - Legislation allowing compulsory purchase
  - Role of politicians in the expropriation process
  - Petitions opposing expropriation
  - Impact of expropriation on pre-1920 landowners in Tucker's Town
  - Relocation of original landowners to other parts of the Island
  - Beneficiaries of the Tucker's Town expropriation
  - Mid-Ocean Club Limited
  - Transformation of Tucker's Town into millionaires' playground
  - Bermuda Properties Limited/Rosewood Tucker's Point
  - Expert witness Dr. Duncan McDowall's assessment of Tucker's Town
  - Expert witness Dr. Theodore Francis's Report *Tucker's Town, Tourism and Captured Lands*
2. Land for Bermuda Railway
3. Rosewood Tucker's Point Golf Club and Marsden First Methodist Church, including
  - Concerns of Marsden regarding desecration of graves
  - Ground Penetrating Radar Survey of cemetery
  - Role of Marsden Pastor and Trustees
  - Role of Tucker's Town Historical Society
  - Rosewood Tucker's Point apology
  - Restoration of cemetery
4. St. David's Island, including
  - Life in St. David's Island prior to 1940s and expropriation
  - Expert witness Dr. Quito Swan's history of St. David's Island
  - Mrs. Jean Foggo-Simons on life in St. David's prior to establishment of U.S. military base
  - 1940 World War II "destroyers-for-bases" agreement between the British and United States Governments

- Ms. Elaine Fox’s presentation *Southside, St. David’s – A Lost Way of Life*
- Requirement to establish U.S. military base on St. David’s Island
- Role of commissioners, arbitrators and jurors
- Impact of expropriation on pre-1940 St. David’s Island landowners
- Relocation of St. David’s Island landowners to other parts of St. David’s Island

## Other Areas Relevant to Question of Historic Land Losses

- Black Lodges and Friendly Societies
- Role of Vestries in the Community
- Glebe Lands
- History of Land Recordation in Bermuda
- Banking in Relation to Foreclosure

## COI Counsels

The COI was served by Lead Counsels Ivan Whitehall, QC, Susan Mulligan and Dirk Harrison variously and by Junior Counsel Bruce Swan during the Hearings.

## Expert Witnesses

The COI was the beneficiary of invaluable research and evidence from local historians Dr. Theodore Francis, Assistant Professor of History at Huston-Tillotson University, Austin, Texas, and Dr. Quito Swan, Professor of African Studies, University of Massachusetts, Boston. The COI was also well served by the evidence of a number of other individuals, including Dr. Jeffrey Sammons, Professor of History, New York University; Dr. Duncan McDowall, Professor Emeritus and University Historian, Queen’s University, Canada; Dr. Michael Bradshaw, President, Friendly Societies; Right Revd. Nicholas Dill, Bishop of Bermuda; the Venerable Dr. Arnold Hollis, Archdeacon Emeritus (Ret.), Anglican Church of Bermuda; lawyer Mr. Christopher Swan and Mr. Wentworth Christopher, former Clerk, Pembroke Parish Vestry.

It is to be noted that the COI was not bound to accept the evidence of an expert. The COI could reject the expert’s opinion if it felt that the expert was not properly qualified to express that opinion or, if for any reason, the COI did not agree with the opinion expressed.

## Conduct of Hearings

The COI held 74 Hearings during which members of the public [Claimants] had an opportunity to present claims based on their research, including historic documents that supported their claims. Claimants also had an opportunity to narrate their first-hand experiences of historic land losses in some cases and, in others provide information that had been passed down orally from one generation to the other in their families.

Based on the COI's Terms of Reference:

1. Claims were organized into themes to be considered at the Hearing:
  - a. Unfair practices, breach of fiduciary duty or fraud;
  - b. Practices relating to default debts secured by a mortgage of deeds;
  - c. Encroachment between neighbouring properties;
  - d. Expropriations;
  - e. Title issues;
  - f. Inheritance; and
  - g. Undervalued property.
2. The COI then decided which evidence was required to explore these themes. Such evidence was available from the material filed by the Claimants and was strengthened by any answers and materials the COI Secretariat received in response to questions addressed to the Claimants. In some cases, the evidence was further developed through interviews of witnesses, archival or other documentary research.
3. Decisions were made on the way the evidence identified would be brought before the COI at the evidentiary Hearing. For example, the evidence might be presented orally (*viva voce*), by affidavit, by means of expert reports or even by subpoena. Because of the nature of the enquiry, oral evidence was necessary.
4. Based on a review of the evidence collected, a determination was made whether the COI needed to give notice of possible adverse findings to any person against whom allegations might have been made in order to give them an opportunity to respond.
5. Closer to the time of the Hearing, the COI decided on the logistical arrangements necessary to hear the evidence, i.e., whether an oral or a digital Hearing would be conducted.
6. Given that the COI had control over its own proceedings, it decided that in light of the difficult circumstances resulting from the pandemic, it would have Zoom meetings to review the applications filed.
7. Decisions were made regarding electronic recording and the services necessary for transcribing the proceedings.

### **Loss of Property by Adverse Possession**

Through trespassing on the land of another or remaining as a squatter in a building through a matter of years, a person may acquire the legal right to ownership of that property. In the applicable cases that came before it, the COI did not seek to resolve the land title as a matter between the squatter and the owner of the deed, but rather to examine how the squatting came about. Did the squatter become a squatter by unlawful or irregular means?

## Loss of Property by Dispossession

Dispossession is defined as the action of depriving someone of land, property or other possessions. In the mandate provided to the COI, the phrase “loss of property by dispossession” is followed by “or adverse possession or other unlawful or irregular means”. The words ‘unlawful or irregular means’ modify the words that precede them and, therefore, loss of property by dispossession also must be by unlawful or irregular means. The COI found that much depended on the context of the particular cases.

## Loss of Property by Unlawful or Irregular Means

Although this definition is also included in Loss of Property by Dispossession above, the COI specifically considered this question with regard to expropriation cases. The COI examined the expropriations from two perspectives: (1) was dispossession unlawful? (2) even if it was lawful on the face of it, was the legislation that was passed irregular? Was the dispossession itself irregular?

## Cases Heard

The statutory instrument of appointment authorized the COI to deal with expropriations in Tucker’s Town and St. David’s Island, together with (alleged) injustices or unfair treatment which might have occurred in relation to other historic land loss matters throughout the Island. The individual cases heard by the COI included:

Case #	Claims	Case #	Claims
001	Matter of James Parris	031	Estate of Solomon Thaddeus James Fox
013	Estate of Ainsley Eldie Manders	034	Estate of John Samuel Talbot
014	Estate of Agatha Richardson Burgess	035	Matter of Robert Moulder
015	Estate of John Augustus Alexander Virgil	037	Estate of Fred Hendrickson, Sr.
016	Estate of James Richardson	039	Estate of Emelius Daniel Darrell
017	Estate of Herman Montgomery Bascome Smith	042	Estate of Lemuel Norman Tucker [Combined with Case 029]
024	Estate of Grace Charlotte Philip Oates	044	Estate of Joanna Talbot
025	Estate of Thomas Henry Smith	046	Estate of Joseph Bean Wilson
029	The Matter of Vance Talbot [Combined with Case 042]	049	Estate of Henry Thompson North

## Schedule of Hearings

The COI convened for the Official Opening and First Series of Hearings on 8<sup>th</sup> September, 2020 and adjourned that same day.

- Second Series of Hearings: 19<sup>th</sup> - 30<sup>th</sup> October 2020
- Third Series of Hearings: 18<sup>th</sup> November, 2020 – 4<sup>th</sup> December, 2020
- Fourth Series of Hearings: 14<sup>th</sup> January, 2021 – 8<sup>th</sup> February, 2021
- Fifth Series of Hearings: 15<sup>th</sup> March, 2021 – 28<sup>th</sup> April, 2021

The COI reconvened publicly via video conferencing software on 12<sup>th</sup> and 19<sup>th</sup> May, 2021 to hear two matters where extraordinary circumstances had prevented the parties from attending during the Fifth Series of Hearings.

The COI:

- from April through July 2021, met with numerous experts for assistance in clarifying outstanding queries and giving historical context to practices that might have occurred in the past.
- adhered to all COVID- 19 restrictions in place. Arrangements were made to accommodate those who could not appear in person, including Commissioners themselves on occasion. Video conferencing software was used throughout all COI Hearings.
- held a total of 74 Hearings variously at Grotto Bay Beach Resort, Hamilton Parish; Willowbank Resort & Conference Centre, Sandys; and the Royal Bermuda Regiment, Warwick Camp, Warwick.

## Claims

The COI received a total of 53 Claims: 18 were heard, 15 were denied, 10 were withdrawn and 10 were closed by Commissioners for jurisdiction reasons.

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**Table below shows in numerical order the status of all Claims received by the COI**

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**Colour Code:**

**Claim Withdrawn**

**Claim Heard**

**Claim Closed**

**Information insufficient**

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<b>Claim #</b>	<b>Claimant's Name</b>	<b>Given Standing</b>	<b>Result</b>	<b>Reason</b>
001	PARRIS	Yes	Claim heard	-
002	DUNKLEY	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
003	SANTUCCI	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
004	PAYNTER	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
005	GILBERT	Yes	Claim closed	After investigation, Claims were found not to be supported
006	GILBERT	No	Information insufficient	No jurisdiction
007	GILBERT	No	Information insufficient	No jurisdiction
008	GILBERT	No	Information insufficient	No jurisdiction
009	BUTZ	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
010	BRISTOL	No	Information insufficient	No jurisdiction
011	BEARDWOOD	No	Information insufficient	No jurisdiction
012	ROSE	No	Information insufficient	No jurisdiction
013	SIMPSON	Yes	Claim heard	-
014	CLARKE	Yes	Claim heard	-
015	BROWN	Yes	Claim heard	-
016	LIGHTBOURNE	Yes	Claim heard	-
017	G. ROBINSON	Yes	Claim heard	-
018	SWAN	Yes	Claim closed	Lack of communication from Claimant
019	HILL	No	Information insufficient	No jurisdiction



020	DAVIS	No	Information insufficient	No jurisdiction
021	DAVIS	No	Information nonexistent	No jurisdiction
022	DAVIS	Yes	Claim closed	-
023	D. ROBINSON	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
024	FRANCO	Yes	Claim heard	-
025	MOORE	Yes	Claim heard	-
026	K. SMITH	Yes	Withdrawn	Claimant withdrew Claim without offering a reason
027	R. SMITH	Yes	Claim closed	Lack of communication from Claimant
028	BURROWS	No	Information nonexistent	No jurisdiction
029	TALBOT	Yes	Combined with Claim 042	-
030	GL. ROBINSON	Yes	Claim closed	After investigation, Claims were found not to be supported
031	WARREN	Yes	Claim heard	-
032	JU. ROBINSON	Yes	Claim closed	Lack of communication from Claimant
033	GL. ROBINSON	Yes	Claim closed	Lack of communication from Claimant
034	ADAMS-TALBOT	Yes	Claim heard	-
035	MOULDER	Yes	Claim heard	-
036	STEPHENSON	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
037	J.W. ROBINSON	Yes	Claim heard	-
038	BAILEY	No	Information insufficient	No jurisdiction
039	TEART-DARRELL	Yes	Claim heard	-

040	M. DARRELL	Yes	Claim closed	Lack of communication from Claimant
041	ROBINSON-DOUGLAS	Yes	Withdrawn	Claimant requested that the Claim be withdrawn without offering a reason
042 (&029)	V.P. TALBOT	Yes	Claim heard	-
043	RICHARDS	Yes	Withdrawn	After investigation, Claim was withdrawn because of insufficient evidence
044	JERVIS	Yes	Claim heard	-
045	PRINGLE	No	Information insufficient	No jurisdiction
046	CHENTOUF	Yes	Claim heard	-
047	DOWLING	Yes	Claim closed	Lack of communication from Claimant
048	WHYMAN	Yes	Claim closed	After investigation, Claim was found not to be supported
049	HARLOW	Yes	Claim heard	-
050	MALLORY	No	Information insufficient	No jurisdiction
051	DAVIS	No	Information insufficient	Alleged Claims submitted by another Claimant
052	PIPER	Yes	Withdrawn	Claimant declined an in camera evidentiary hearing
053	DURHAM	No	-	Claimant submitted Claim after application deadline

A summary of each of the above cases and cross-references to related Exhibits are provided in this Report.

# RECOMMENDATIONS

Pursuant to its Terms of Reference, the COI carefully considered reported instances of historic land losses in Bermuda believed by Claimants to be *“through theft of property, dispossession of property, adverse possession claims and/or such other unlawful means.”* Whilst the historic land losses in Tucker’s Town and St. David’s Island are the most widely known and discussed in Bermuda, the COI heard cases involving historic land losses in other parts of Bermuda also. The COI subsequently agreed a number of recommendations that emerge from the concerns raised by persons who claimed that their ancestors’ lands were unfairly taken from them and who, where unfairness was determined, sought just outcomes where possible.

The recommendations that follow are based on evidence heard by and/or presented to the COI from 8<sup>th</sup> May, 2020 to 19<sup>th</sup> May, 2021.

## **I – Historic Land Losses in Tucker’s Town and St. David’s Island**

Having considered whether the actions that caused the expropriations in Tucker’s Town in the 1920s and in St. David’s Island in the 1940s were lawful or unlawful, regular or irregular, the COI concluded that they were lawful as they were based upon provisions of various statutory instruments that received Parliamentary approval. At the same time, the COI concluded that the procedures adopted in dealing with the expropriations were in many instances irregular because the bodies established to oversee the expropriations process exercised their power in an unfair and inequitable manner.

Consequently, the COI recommends that:

- Government establishes a system to determine whether the level of compensation paid to the dispossessed landowners in Tucker’s Town and St. David’s was fair and equitable and, if such is the finding, establish a regime whereby the descendants of the owners of the expropriated property are appropriately compensated.
- Further research be undertaken to determine the total acreage of expropriated land purchased by Mid-Ocean Club Limited, Rosewood Tucker’s Point and any other purchasers in the Tucker’s Town area as a result of the on-sale of all dispossessed lands by Bermuda Development Company Limited.
- Discovery exercises be undertaken in relation to the land upon which Mid-Ocean Club Limited and Rosewood Tucker’s Point are located as a consequence of Furness Withy/Bermuda Development Company Limited’s expropriation/compulsory acquisition of land at the expense of the original landowners and residents in Tucker’s Town.
- Government explores the reason for the lack of enforcement of statutory restrictions or Company policy for on-selling expropriated land in contravention of any statutory

requirements imposed on BDCL in respect of all land expropriated and sold to both Bermudians and alien purchasers. Acquisitions of land in that area by aliens would have been made subject to the restrictions placed on such acquisitions by those statutory requirements and the relevant Alien Act in place at the time of purchase.

- Government commits resources to locate missing documents in cases of expropriation in Tucker's Town and St. David's Island.
- Government establishes a systematic adjudication process where previous landownership cannot be determined to ensure that the Land Title Register is a reliable resource for obtaining accurate land title details.
- Government finds a practical means whereby the concerns of the community, the people and descendants of those who were uprooted and lost their inheritance in Tucker's Town and St. David's Island might be addressed. The COI suggests that Clearwater Beach, located between both Tucker's Town and St. David's Island, could be designated and renamed to give recognition to the people for the losses they suffered.
- Government ensures that the history of the Tucker's Town and St. David's Island expropriations are memorialized suitably by mandating its inclusion in Bermuda history taught in our schools, its placement in libraries and other repositories and by erection of suitable physical monuments ideally situated in both Tucker's Town and St David's Island.
- Government gives a public apology and acknowledgement of the unjust loss of lands to the descendants of Tucker's Town and St. David's Island families who lost their lands unfairly.
- Government establishes a Heritage Trust specifically for descendants of those Tucker's Town and St. David's Island residents who were unfairly compensated and/or dispossessed of their lands. Funding of such Trust could be done, perhaps in partnership with the Bermuda Economic Corporation, by the creation of another Economic Empowerment Zone using dispossessed land already under the trusteeship of the Bermuda Land Development Company Limited. A detailed rationale for the establishment of the Heritage Trust and how it might function are set out on page 162 of this Report.
- A designated Government body be engaged in a consultative process and authorized to have oversight of the implementation of recommendations set out in the Ombudsman's Reports *A Grave Error* and *Today's Choice, Tomorrow's Cost* and the Ground Penetrating Survey conducted by Dr. John Triggs of the Department of Archaeology and Classical Studies, Wilfred Laurier University, Canada, as may be mutually agreed between all stakeholders.

- With respect to Case 031 -- Estate of Solomon Thaddeus James Fox, St. David's Island,
  - Government considers inviting the United Kingdom to review its position with a view to providing financial assistance to delve deeper into and ultimately resolve the matter of St. David's Islanders who were treated unjustly following the expropriation of their lands upon the creation of the US military base at St. David's Island in the 1940s.
- With respect to Case 034 -- Estate of John Samuel Talbot, Tucker's Town,
  - The matter ought properly to be referred to the Office of the Director of Public Prosecution to take any and all legal actions required in addressing this matter. The COI recognizes that a criminal act may have been perpetrated but for the following reasons: (i) the passage of time, (ii) the identification of those actually culpable and (iii) the fairness of a process one hundred (100) years later, implying vicarious liability to any officer of the BDCL or the BDCL as a corporate body for actions of the company in 1921. However, the COI recognizes also that in all the circumstances it may not be in the public interest to pursue the matter and the DPP may decline to initiate a prosecution or compensation for loss suffered in historic circumstances as revealed in this case.

## **II – Marsden Methodist Cemetery**

The COI recommends that:

- Government ensures the immediate commencement of remediation work at Marsden Methodist Cemetery and that the following measures as agreed between the concerned stakeholders are carried out:
  - Improvement and modification of the golf cart and walking access to the site;
  - Establishment of a protocol for family and guests to access the site and work around the adjacent golf operation;
  - Redirecting a part of the driving range to minimize any errant golf balls coming into contact with the graveyard area;
  - Installation of a canopy netting system over the graveyard area to prevent golf balls from entering site;
  - Cleaning and tidying the landscaping and establishment of a regular maintenance programme for the area;

- Installation of a seating area within the graveyard walls;
  - Establishment of permanent access rights to the site;
  - Erection of a “do not enter” sign to prevent golfers’ access to the area;
  - Implementation of a mechanism to review the improvement, modification and maintenance of the Marsden Methodist Cemetery on a periodic basis;
  - Inclusion of the site in the African Diaspora Trail information; and
  - The historical cemetery is bestowed the honour that the Commonwealth War Graves Commission envisaged.
- Government establishes a designated body to monitor a consultative process with a view to considering the timely implementation of the proposed and agreed next steps to address the concerns of the Marsden Church. The process should be subject to review by stakeholders including, but not limited to, Marsden Church, Tucker’s Town Historical Society and Gencom Ltd.

### **III – Historic Land Losses in Other Parts of Bermuda**

*It is to be noted that some of the recommendations made in individual cases have been collapsed into a single recommendation that appears elsewhere in this section of the Final Report.*

- With respect to Case 001 – Matter of James Parris,
  - the ‘private property’ sign reportedly at the property per evidence at the Hearing should be removed by the public authority responsible for signage and replaced with signs clearly indicating that the dock is public property.
- With respect to Case 014 – Estate of Agatha Richardson Burgess, Hamilton Parish,
  - Government ensures that the stated intention of the Attorney-General in 1956 to grant a right-of-way to the land owned by Mrs. Burgess be carried out; and
  - Government changes the name of Francis Patton Primary School to Agatha Richardson Burgess Primary School.

- With respect to Case 015 – Estate of John Augustus Alexander Virgil, Sandys,
  - Government gives due regard to a mechanism being established to consider an award of compensation for loss through theft of property, dispossession of property or such other unlawful or irregular means by which land was lost in Bermuda. The recommendation is being made acknowledging that this falls outside of the remit of the COI.
  - the Office of the Commissioner of Police is being invited to give due consideration to locating the ‘Investigation original and copy files’ touching and concerning the complaint of Mrs. Barbara Lucille Brown relating to the Estate of John Augustus Virgil and having this investigation file reviewed with a view to considering next administrative steps in light of the fresh and compelling evidence from the Document Examiner. Further consideration should be given by the Commissioner of Police in the interests of justice and with a view to rewriting the unsavoury history of the matter. But more so, the role of the Office of the Commissioner of Police in 1975, that is, must be revisited to correct that Office's glaring omission, forty-five years ago, by failing to obtain the requisite expertise from a Document Examiner at that time rather than closing the file. The COI acknowledges that the likelihood of reconstructing this file is only remotely possible.
  - Government considers making an award for compensation through the appropriate mechanism of the state machinery to the beneficiaries of the Estate of John Augustus Alexander Virgil, in light of the fact that an agent of the state, the Central Planning Authority, played an integral role, tantamount to a corruption enabling mechanism facilitating the theft of land. The Government ought to consider this matter seriously, one which the COI recognizes is outside its remit.
- With respect to Case 017 – Estate of Herman Montgomery Bascome Smith, Pembroke West,
  - the Department of Planning be invited to investigate the matter of subdivision and encroachment of Lot 33.3, 2 Plaice's Point, Pembroke West with a view to restoring the property to the beneficiaries of the Estate of Herman Montgomery Bascome Smith.
- With respect to Case 037 -- Estate of Fred Hendrickson, Sr., Smith's Parish,
  - the Registry General, following consultation with the Attorney-General's Department and the Department of Immigration, further examines the legitimacy of the various Power-of-Attorney documents that it has within its possession with



respect to the sale and purchase of properties within the Estate of Fred Hendrickson, Sr.

- With respect to Case 039 -- Estate of Emelius Daniel Darrell, Southampton,
  - Government instructs that a Civil and Planning assessment be carried out by the relevant Government Departments to assess and correct, where necessary, the survey, planning and land registration issues raised by the Claimants and, contingent upon any discovery of unjust loss of land and or revenue by the Darrell family, consider that suitable, equitable restitution be made to surviving members of the Darrell family.
  - Government considers changing the name of Riviera Estate Road to Wellington Drive in keeping with the land owned by George Wellington Darrell and known as Wellington Lands in 1964.
  - Government considers changing the name of Sunnyside Park Road to Emelius Drive East and Emelius Drive West.

## **IV – Administration**

The COI recommends that:

- Government considers establishing a permanent mechanism to review claims concerning the historic loss of properties. The mechanism should be fully resourced with human and financial resources to address all claims and concerns post this COI, ultimately with a view of having a legal framework in place to facilitate remedies and/or an award of compensation. Furthermore, more research is required, especially of the outcome of relevant Court proceedings initiated to address concerns and disputes. To that end, the COI recommends that the Government provide, at a minimum, assistance to the Claimants sufficient for them to conduct further research. The importance of this recommendation is highlighted by the fact that in many instances, Claimants were restricted from completing their research due to COVID-19 protocols rendering them unable to fully access documents upon which they sought to rely.
- Government ensures the availability of legal aid to qualified persons engaged in property disputes, matters involving expropriation in particular.
- Government gives due regard to the establishment of a mechanism to consider any award of compensation for loss through theft of property, dispossession of property or such other unlawful or irregular means by which land was lost in Bermuda and to consider devising a

formula to calculate the compensation as may be determined to the Claimants, considering prevailing rates.

- Government ensures that the Land Title and Registration Department and the Registry General are adequately resourced to carry out due diligence checks of land title registration documents.
- The electronic and other safeguards put in place by the Land Title and Registration Department to detect and prevent acts of fraud must keep pace of emerging trends. The continuous engagement of the Bermuda Bar Association at a consultative level must be a priority, as the Registry General does not have the capacity to detect or prevent fraudulent conveyancing practices
- The role of the Registry General, the Land Title and Registration Department and all stakeholders is amplified through a continuing consultative process to provide through the Government an avenue for landowners who retain original deeds to come forward and seek redress, even in cases where they have been time-barred. These cases include but are not limited to landowners who have been dispossessed in circumstances other than by adverse possession such as land theft. f emerging trends. The continuous engagement of the Bermuda Bar Association at a consultative level must be a priority.
- Government prioritizes a review the storage and preservation of Government records in keeping with international best practice.
- Government ensures that all pre-1971 Vestry land registration processes and systems are easily accessible to anyone seeking registration records which would establish ownership of property by their ancestors.
- Government conducts an inventory of all public properties (buildings, land, docks, etc.) and identify any cases where public property has been appropriated by private owners. Any incidences of similar encroachment of public property should be addressed and property subsequently returned to public ownership.
- Further, research will also need to be conducted into the Vestry system in place in Bermuda pre-1971 and any other subsequent systems used for the registration of land transfers. This research is necessary to understand fully the impact of an incorrectly recorded transfer or fraudulent transfers on future landownership.
- Government establishes a Truth and Reconciliation Commission with the remit of exploring segregation and race in Bermuda to avoid unfair practices being implemented to the disadvantage of any group.

## **V – Public Legislation**

The COI recommends that:

- An amendment to existing legislation be made to include a “first right of refusal” option for dispossessed owners if the original purpose for which the land (or any part thereof) was dispossessed fails, for whatever reason.
- Government considers restricting the exercise of governmental expropriation powers and oversight of expropriations to statutory authorities or bodies in lieu of their delegation to a private entity or body.
- Government considers the passage of legislative changes and/or the introduction of Regulations that would ensure that the expropriations process is transparent, fair and equitable in all respects for those being impacted by compulsory purchases.
- In order to promote social and economic growth, Government reviews and revises the laws and Regulations that govern the compulsory acquisition of land in Bermuda, mindful of the fact that legislation should protect land rights, facilitate an equitable compensation regime, reduce tenure security and conflicts of interest and guarantee the protection of the more vulnerable members of the community.
- Government amends or modernizes all Bermuda laws to restrict the number of years a corporate entity is able to hold Bermuda lands.

## **VI – Private Legislation/Other Statutory Mechanisms**

The COI recommends that:

- A statutory mechanism be introduced specifically to:
  - identify the location of all land expropriated that will fall under the ambit of a proposed new Act or Declaration as may be determined for the purposes of establishing a remediation process to address such historic losses of land;
  - facilitate the issuance of a formal apology from the Bermuda Government and others, holding a series of public hearings on the destruction of the communities of both Tucker’s Town and St David’s Island and the establishment of a development fund to go towards historical preservation of those lands and social development in benefit of former residents and their descendants; and
  - create a Heritage Trust (Land and/or Accumulation) for the purpose of holding land or any other assets in order to make reparations or monetary distributions

to the descendants of dispossessed landowners or any other eligible beneficiaries of the Trust, as may be determined. One of the objectives of the Trust might be to design a museum and build replicas of the community landmarks that were demolished during the expropriation process, the funds for the purposes of the Trust to be paid out of moneys appropriated for those purposes by the Legislature or in public/private initiatives for the generation of income for the Trust in order to carry out its purposes. Alternatively, funding of such Trust could be done, perhaps in partnership with the Bermuda Economic Development Corporation, by the creation of another Economic Empowerment Zone using dispossessed land already under the trusteeship of the Bermuda Land Development Company Limited.

- An independent Land Tribunal be established to deal with all outstanding legacy issues involving historic losses of land in Bermuda and to make recommendations based on the findings of the COI and any others that may emerge as a result of the findings of the newly established Tribunal.

# Expropriated Land: Tucker's Town and St. David's Island

## Introduction

The Terms of Reference of the COI issued pursuant to the Commissions of Inquiry Act 1935 comprised five (5) specific tasks as stated in the Foreword. It was determined that the COI would hear oral accounts and obtain documentary evidence from interested parties and then make a determination as to whether such evidence, taken as a whole, demonstrated historic losses of land within the COI's mandate.

This Report is intended to be a fact-based exploration into historic land losses “*through theft of property, dispossession of property, adverse possession claims, and/or such other unlawful or irregular means by which land was lost in Bermuda*”.<sup>1</sup> Many people believe that past expropriations had been lawfully carried out in the best interest of Bermuda. Others believe that while it was unfortunate, the landowners and residents of Tucker's Town and St. David's Island were fairly treated and compensated for their expropriated land; they question the need for a COI at this time and how it intends to prove evidence, as presented, of events that took place so long ago. Others believe that being dispossessed of land by expropriation was tantamount to “theft” and that the consequences of such action were unjust and inequitable in a number of ways. If, for whatever reason, such expropriations and consequential issues have never been seriously considered by successive governments, then the dominant narrative as it relates to the economic benefits of expropriations will always prevail at the expense of those dispossessed. For this reason, the COI platform has given voice and visibility to the “invisible” for the first time and, hopefully, their accounts have been accurately captured in this Report.

Further, it is intended that the COI's work, research and reports produced by expert historians together with submissions of lay witnesses, relating to historic land losses in Bermuda will enlighten and also provide a balanced approach as to how one should view historical events regarding past land expropriations. The underlying purposes for which such actions were sanctioned relate specifically to: (i) the Tucker's Town expropriation in the 1920s, in the context of its uniqueness and in terms of the collaborative effort of the Bermuda Government, a British company and old prominent Bermuda families<sup>2</sup>, to institute a large scale tourism development scheme within a relatively short period of time; (ii) land expropriated Island-wide in order to lay tracks for Bermuda's railway system in the 1930s; and (iii) expropriations carried out in St David's Island in order to accommodate the U.S. Base lands in the 1940s.

The first part of this section addresses the views of some Bermudians who continue to believe that expropriations of land in both Tucker's Town and St. David's Island were carried out in accordance with the normal principles of compulsory purchases for public objectives and that continually revisiting such historical events does not allow the scars of the past to heal: <sup>3</sup>

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<sup>1</sup> Burt JP, MP, Premier E. David. “*Issue of commission appointing the chairman and members of the commission to inquire into historic losses of land in Bermuda*”, The Official Gazette, 31 Oct. 2019. <https://www.gov.bm/theofficialgazette/notices/gn12172019>.

<sup>2</sup> Williams, Ronald J. “Holiday.” *Unknown*, 1947.

<sup>3</sup> “Bermuda's Unburied History.” *The Royal Gazette*, 14 July 2014.

*“The Tucker’s Town scenario was played at a time when Bermuda was rushing headlong into the 20<sup>th</sup> century when the foundations of our modern infrastructure were being laid. It was not a deviation from the practice of the time, rather it was an extension of them and cannot be viewed in isolation from our current perspective.*

*It is time to allow the scar of expropriation to begin to heal, to stop picking away at it either out of ignorance or for mercenary, short-term political gain.”*<sup>4</sup>

While such expropriations may have been normal practices of the past, it becomes more apparent and acknowledged from an evidentiary perspective that the past and the future are inextricably tied, especially when they relate to landownership, the rights and privileges that come with such ownership and subsequent losses of the same due to expropriations. One should not be able to speak of the prosperity that we currently enjoy while, at the same time, one dismisses previous historical events that made it possible for Bermuda to prosper and for Bermudians to enjoy a high standard of living (for the most part).

It is therefore incumbent on each of us to take the time to listen to or read accounts of Claimants and other witnesses who appeared before the COI. Such accounts were based on personal experiences and/or recounting historical facts supported by evidence provided to the COI, not merely upon storytelling or “folklore”. It is time to allow the scars of expropriation to begin to heal by first giving recognition and acknowledgment to those families who were involuntarily forced to make the ultimate sacrifice for the benefit of Bermuda as a whole, albeit a century later in the case of Tucker’s Town and over a half-century later in the case of St. David’s Island.

In 2019, the Progressive Labour Party considered it necessary to advance the 2014 Motion laid in the House of Assembly, championed by the late C. Walton D. Brown, JP, MP, by empanelling a Commission of Inquiry for the purpose of exploring historic land losses in Bermuda and providing a platform for Bermudians to come forward and to be heard. It was further mandated that the COI make recommendations in accordance with its Terms of Reference<sup>5</sup>, based on findings ascertained from such Hearings and evidence presented.

## **Oral and Documentary Evidence**

Under Section 9 of the Commissions of Injury Act 1935:

*“(1) Commissioners acting under this Act shall have the powers of the Supreme Court to summon witnesses, and to call for the production of books, plans and documents and to examine witnesses and parties concerned on oath, and no commissioner shall be liable to any action or suit for any matter or thing done by him as such commissioner.”*

Oral accounts were heard and documentary evidence was provided to the COI by various interested parties, some of whom are currently residents and/or descendants of Tucker’s Town and St David’s Island families who either experienced or were told of the trauma of being unceremoniously

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<sup>4</sup> “Bermuda’s Unburied History.” *The Royal Gazette*, 14 July 2014.

<sup>5</sup> Burt JP, MP, Premier E. David supra-No. 1

uprooted from their homes and communities. Compelling accounts were sometimes told through tearful and heartfelt testimonies and, in some cases, spoken publicly for the first time, of the impact of such expropriations on at least two generations of Bermudians.

In support of their stories, various repositories such as Government's Department of Archives and personal safety boxes had been trolled through to produce old maps, wills, deeds, receipts, etc. Some documents were even pulled from brown paper bags; Claimants watched eagle-eyed as their precious documents were being copied for the purpose of submitting them in evidence. Importantly, it was recognized that the contents of these documents were creating the nexus between historical events and the residual impact on the descendants of certain landowners and residents of those two areas. The scars of past expropriations will never heal if the wounds are left to fester. Findings based on evidence presented are intended to assist in formulating the COI's recommendations to the Premier so that consideration can be given to the formulation of policies that, hopefully, will be the catalyst for positive change and resolution for descendants of the original landowners specifically and Bermudians generally. This approach has been followed elsewhere around the world.

In the greater public interest or benefit, there is no time like the present to take the blinders off, uncover our eyes and unplug our ears in order to discover solutions that address the inadequacies of the strict application of a compulsory acquisition order on those dispossessed.

This COI Report, together with all documentary evidence submitted by Claimants and witnesses, will be made accessible to the general public via the Department of Archives.

## **Public Notices to Interested Parties**

The COI published Official Notices in the media inviting interested persons to make submissions of their claims to be considered. Such persons had a right to a democratic process and were given an opportunity to express their opinions or personal accounts on expropriation issues. Proper consultation was undertaken at times agreed with the COI; each party was given adequate time to prepare and submit all relevant supporting documentation at the start of the application process and witness statements relating to the claims were taken by the COI's investigators. Additionally, as part of the information gathering process, expert reports were introduced to the COI prior to the Hearings held and each expert examined on their findings at the Hearings. In some cases, due to closure of Government Departments and/or restricted public access to the same because of the COVID-19 pandemic, Claimants were given an opportunity to enter in evidence beyond the permitted submission date information eventually obtained from those Departments.

During the course of the COI's deliberations, Claimants were reminded at every opportunity that the COI was not a court of law, although it had quasi-judicial powers, and that the Commissioners would be taking their concerns and wishes into consideration. However, Claimants were advised that the outcome may not necessarily alter the course of past events or meet their expectations of a satisfactory outcome.



## Commission of Inquiry Hearings

During the 74 Hearings, Claimants had an opportunity to orate stories from first-hand experiences in some cases and, in some cases, provide information that had been told by their ancestors from one generation to the next in the “Griot” tradition. In the absence of any written accounts of past events, it was important for the COI to hear from Claimants and not to dismiss or diminish the very essence of such accounts as myths or folklore. One could be said to be ignorant of historical facts simply due to a lack of understanding of, for example, the sometimes unwritten or unspoken societal and cultural norms and symbiotic relationships resulting from living in predominantly black, self-sustaining communities like Tucker’s Town and St David’s Island, unless explained. There is also the possibility that some things may actually exist beyond one’s personal realm of knowledge or comprehension.

## Citizens Uprooting Racism in Bermuda (CURB)

Mrs. Lynne Winfield and Mr. Cordell Riley, President and Vice-President respectively of the non-governmental racial justice organization Citizens Uprooting Racism in Bermuda (CURB), attended a COI Hearing on 23<sup>rd</sup> October, 2020 and read from a prepared joint statement on behalf of CURB. The statement was then submitted in evidence. They wished to set the context from both a historical and contemporary perspective as understanding what was happening in Bermuda and in other countries around the same time helped to bring clarity and greater understanding to the oppression and loss of land for Bermudians.

CURB was instrumental in gathering information from descendants of families that had experienced land loss in Tucker’s Town:

*“CURB understands that there is still fear present in our community about economic repercussions and we therefore offer the ability for you to share your story with us, indicating that you wish to remain anonymous. “Oral history is a recognized method of conducting historical research through recorded interviews between a narrator with experience of historically significant events and a well-informed interviewer, with the goal of adding to the historical record.*

*“Understanding what was happening in Bermuda and in other countries around the same time helps bring clarity and greater understanding to the oppression and loss of land for Bermudians. Despite this oppression, black Bermudians fought countless battles to overcome their oppression, to achieve and excel and, despite all the barriers put in their way, still they managed to rise. Buried in this oppressive history is a long and troubled history of land denial and land grabbing in colonial Bermuda”.*<sup>6</sup>

In addition to cases heard by the COI, CURB placed in evidence a document entitled “Collected Submissions: Commission of Inquiry into Historic Landgrabs – Tucker’s Town”, dated July 2020, which records several anonymous oral accounts and evidence of descendants of families that lived in Tucker’s Town and the immediate vicinity. CURB also reported that Frog Lane in Devonshire was subject to possibly two compulsory purchases, the eviction of Bermudians from their homes

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<sup>6</sup> Winfield, Lynne and Riley, Cordell (CURB), ‘Black History in Bermuda’ CURB Exhibit 2, 28 Oct 2020

and change of use of the land to accommodate the central control station for the British Armed Forces and the building of the National Stadium.<sup>7</sup> These expropriations have not been specifically addressed in this Report and may need to be explored in the future.

## **Bermuda Land – A Sacred Trust**

The tenets upon which Bermudians territorially embrace their homeland are based on, inter alia:

1. land in Bermuda is regarded by Bermudians as a sacred trust for their use and enjoyment now and for future generation of Bermudians;
2. the ownership of land in Bermuda should continue to be made subject to acreage limits by section 89 of the Bermuda Immigration and Protection Act 1956 whenever possible\*; and
3. the holding and acquisition of land in Bermuda by non-Bermudians remain subject to licensing requirements for the achievement of the historical purpose behind these limits, to strengthen their enforcement and to prevent circumvention of the licensing system through the use of trusts or schemes.

## **Rights and Obligations of Having Title to Land**

A person who has title to land can exercise all the rights landowners enjoy. These rights include, among others, lawful uses such as the right to:

1. build on land;
2. develop land;
3. sell land;
4. lease or mortgage land; and
5. transfer ownership to someone else.

These rights are subject to restrictions and obligations imposed by laws. Where a person does not have title to a specific piece of land, he may be denied the opportunity to exercise these rights. Having title to land means complying with the legal obligations of landownership. In Bermuda, the main legal responsibilities of all landowners include paying property taxes and following statutory land uses obligations. This has not always been the case, as to own land in Bermuda was, in the past, attached to a voting-franchise which arbitrarily controlled or diminished the rights of black landowners in particular, for example doubling the base value of one's land in order to meet the land-franchise qualification for voting to elect Members of Parliament, increasing the voting age from 21 to 25 and giving certain landowners the right to a second vote, thereby maintaining aspects of the property vote that ensured unequal voting power in favour of white landowners.

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<sup>7</sup> Winfield, Lynne and Riley, Cordell (CURB), “Statement to COI dated 20<sup>th</sup> July 2020”, COI - CURB Exhibit 1

\* The previous Alien Acts of 1907, 1911, 1914 and 1920 (all repealed) were consolidated into the 1926 Alien Act. It is noted that under the BIPA 1956, section 89(1)(b) was repealed in 2012, whereby removing the limit as to the amount of acres of land can be held by an alien. However, the number of acres overall has increased from 2,000 to 2,500 in the aggregate in Bermuda.

## Historic Land Losses by Expropriation

Over the years, there have been a few major expropriations, at least two causing the relocation of entire communities in Tucker's Town and St David's Island; additionally, there was partial dispossession of properties throughout the Island for the building of Bermuda's railway system and for the establishment of Military, Naval and Air Force Bases. Both Tucker's Town and St David's Island are situated in St George's Parish and this becomes more relevant when considering to whom expropriated lands can then be on-sold and the amount of acreage that aliens could hold in each parish and in Bermuda overall. The Alien Acts<sup>8</sup>, in force at the time, continued to impose restrictions on aliens holding land, particularly in St George's Parish. However, the BIPA 1956<sup>9</sup> is currently in place and this requirement has been recently amended to reflect current landholding policies for non-Bermudians. These new landholding policies appear to be more relaxed than in the past.

## Tucker's Town Expropriation

### Tucker's Town People, Politics, Economy

During its lengthy deliberations, the COI invited several professional historians and others to share their knowledge, experience and research with respect to the political and socio-economic conditions that obtained in Bermuda in the 19<sup>th</sup> and 20<sup>th</sup> centuries.

Dr. Theodore Francis, a professional historian and Assistant Professor of History at Huston Tillotson University in Austin, Texas, gave evidence to the COI via Zoom on 19<sup>th</sup> October, 2020. His extensive research into the history of Bermuda from the 1600s covered slavery, politics and religion with a primary focus on the Tucker's Town community. His detailed report, *Tucker's Town, Tourism and Captured Lands*,<sup>10</sup> enlightened the COI with respect to a time in Bermuda's history when a whole community was forced to leave their homes to revitalize the tourism industry. Dr. Francis's report gave a glimpse into life in Tucker's Town from the beginning of the 19<sup>th</sup> century when Tucker's Town was for free black communities, a refuge for runaways and, reportedly, enslaved Africans who had hidden until the eve of Emancipation. It was a period in Tucker's Town's history when the farmers produced food for their families and neighbouring parishes, when fisherman supplied fish to the local market, selling their catch at the wharves or in the Town of St. George's. Before the families of Tucker's Town were dispossessed of their properties, they excelled in agriculture and contributed to the economy of Bermuda by exporting onions and arrowroot to the United States.<sup>11</sup>

There was a strong religious presence in Tucker's Town at that time, as missionaries Reverend John Stephenson and Reverend Joshua Marsden preached to enslaved and free blacks as well as to

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<sup>8</sup> *The Alien Act of 1926*, (Bermuda.)

<sup>9</sup> *The Bermuda Immigration and Protection Act 1956* sc. 89. (Bermuda).

\* Case No. 49, *The Estate of Henry Thompson North*: based upon the historical submission it is likely that Mr. North would have received compensation more reasonable than most others. More importantly the expropriation of the North property without his forewarning, showed the full exertion of power by a small business/political cabal to accomplish its goal.

<sup>10</sup> Francis, Dr. Theodore, (2020) "*Tucker's Town, Tourism and Captured Lands*", COI – Exhibit TF-2

<sup>11</sup> Francis, Dr. Theodore, (2020), *Supra*-No. 10

white colonists. After Reverend Marsden's departure from Bermuda, black converts formed an assembly in Tucker's Town in 1835 and, in 1861, secured land to build a church and school. The British Methodist Episcopal Church (B.M.E.) established a congregation in Tucker's Town in the 1870s and constructed a chapel and graveyard there. In 1885, the B.M.E Church amalgamated with the African Methodist Episcopal Church (A.M.E). A.M.E. Church Trustees, Mr. and Mrs. B. D. Talbot, residents of Tucker's Town and owners of 75 acres of land there, donated land to the A.M.E. Church to build a new chapel and in 1897 the A.M.E. Church relocated to its new chapel. The B.M.E. Church and the A.M.E. Churches worked together to build a strong Tucker's Town community, not only by having regular Sunday Services, but the occasional wedding ceremonies, funerals and baptisms, hosting social events such as bazaars, choral singing and school programmes. In 1920, there were at least two churches and schools in Tucker's Town. Additionally, there was a cricket field where the children and young men would show off their cricket skills during neighbourhood matches.<sup>12</sup>

Soon after the beginning of World War I, Tucker's Town residents established a chapter of the Agricultural Union, a local group aimed at better organizing the Island's food production by working with Government Departments and commercial groups like the Department of Agriculture and the Bermuda Green Vegetable Growers Association. A September 1915 meeting drew forty attendees, with local schoolhouse Trustees Israel Smith and Simeon Trott playing instrumental roles. By 1917, B.D. Talbot was chairman of the Tucker's Town Agricultural Union. He presided over a June meeting of approximately ninety persons that included white elites such as, E.A. MacAllan, Director of Agriculture, and Dr. A.B. Cameron of Christ Church Warwick. At the end of World War I in 1918, Tucker's Town was a sustainable agricultural and fishing community with a majority black residents who contributed to the island's commercial economies, participated in the wage labour system, engaged with community institutions and enhanced the region's cultural life".<sup>13</sup> Dr. Francis's report reveals how against all odds Tucker's Town was a thriving self-sufficient community owning hundreds of acres of property, politically motivated and where residents did their very best to hold on to their freehold properties against a powerful network of white men who appeared to have control in Bermuda at that time.

The political system of local governance established in the 17<sup>th</sup> century remained essentially the same until the 20<sup>th</sup> century. Many of the same families who dominated the House of Assembly in the 17<sup>th</sup> century managed to retain power into the latter half of the 20<sup>th</sup> century, with family surnames such as Astwood, Butterfield, Cooper, Cox, Frith, Outerbridge, Gosling, Hinson, Jennings, Tucker and Trimmingham. Dr. Francis writes: *"Having amassed sizeable estates and wealth from slave trading, privateering, piracy, shipbuilding, smuggling, the carrying trade, wrecking, salt-raking, and an assortment of commercial ventures in North America and the Caribbean, these elites and their descendants dominated Bermuda's political landscape for more than a century after the end of slavery. Consequently, they were known by a number of monikers such as, the 'first families', the forty 'thieves', the 'vested interests' and perhaps most famously 'the oligarchy'. The political power of this small segment of the white population was enabled by the colony's franchise system that granted the right to vote and stand for office only to landowners. Indeed, not just all landowners but those whose property had been valued by parish assessors at forty pounds sterling, although this required value fluctuated over the decades. The land was*

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<sup>12</sup> Francis, Dr. Theodore, (2020) "Tucker's Town, Tourism and Captured Lands", COI – Exhibit TF-2

<sup>13</sup> Francis, Dr. Theodore, (2020), Supra-No. 12

*valued by parish assessors and was required to have a minimum value of £40. The requirements changed over the years, as the political system was designed to keep whites in power, so much so it was quite common for fathers who held seats in the House of Assembly to bequeath their office to their sons. This was unofficial of course but it shows how in their view elections were no more than a formality.”<sup>14</sup>*

Dr. Francis continues: *“At emancipation in 1834, white legislators more than doubled the property qualification required to vote and hold office, a move calculated to bar the majority of emancipated blacks, as well as poor and working-class whites, from political participation and this law remained in effect until 1968. According to Bermudian electoral laws, for males seeking to qualify as a ‘Member of the Assembly, they must “be 21 years of age and to possess a freehold rated at £240 the rating being the actual value of the property and not its annual produce.” This policy reduced the quantity of potential MCPs. Bermudian society during the early 20<sup>th</sup> century had a number of landowners whose farming and fishing businesses produced more than £240 in annual revenue. The revenues described by B.D. Talbot more than qualified him for political office, as his productivity exceeded the £240 benchmark.*

*“The land-based franchise law was exacerbated by the practice of white assessors undervaluing real estate owned by blacks, while overvaluing land owned by whites to further skew the number of eligible voters and/or office holders. For example, in the 1897 general election, only 1,123 people were eligible to vote of which 732 were white and 391 black. The colony’s resident civilian population at the time of the election was 16,098 of whom approximately 6,100 were white and 9,900 were black. Therefore, whites controlled 65% of the vote even though they only made up about 38% of the population. In the light of these facts, the colony’s landed-franchise policy was anything but ‘equal’ in that the system excluded more than 90% of the colony’s residents (regardless of race), however, this was targeted disfranchisement, one that bent political power firmly into the hands of a white landowning minority.*

*“The island’s overarching political conditions gave a deeper meaning to the black landownership and self-sufficiency that prevailed in the area. Living in a colony controlled by a white oligarchy with a historical record of resistance and/or openly hostility to the liberties, progress and ascendancy of black islanders caused many blacks to develop strategies of self-help and mutual aid. Indeed, since the colonial structures that were ostensibly designed to assist all Bermudians were deployed with segregationist biases, things like landownership, agricultural production, fishing, maritime trades, kinship groups and neighbourhood networks of kinship and neighbourhood were important means of protection and development for black Bermudians”.<sup>15</sup>*

## **1920 –Tucker’s Town Expropriation**

The history of Tucker’s Town in the 1920s is often characterized solely as a compulsory acquisition that was rejected by all of the residents, but that is not the case. Some residents considered the offer by the BDCL to be an opportunity to liquidate and to forge new lives. Some residents agreed to the offer made. Others wanted or were resigned to sell, but not at the prices first offered and

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<sup>14</sup> Francis, Dr. Theodore, (2020), Supra-No. 12

<sup>15</sup> Francis, Dr. Theodore, (2020) “Tucker’s Town, Tourism and Captured Lands”, COI – Exhibit TF-2

therefore had to undergo the arbitration process established by BDCL, as sanctioned by the Legislature and Colonial Office.

Of the 510 acres of land requested, mainly black home and landowners were dispossessed, either voluntarily or involuntarily, and provisions were made for them to be fully compensated by standards prevailing at the time. Of those lands identified for expropriation, owners holding a total of 100 acres did not wish to sell at all and, as a result, they suffered through the strong-armed tactics of compulsory acquisition and, reputedly, were the least fairly compensated. Case 049 - Estate of Henry Thompson North illustrates some of the complexities and broad impact of the Tucker's Town expropriation. Notwithstanding Mr. North's Parliamentary standing and participation in voting for expropriation, it seems it was not anticipated by Mr. North who was also a white landowner in the area that he himself would be negatively impacted by the same expropriation process. Mrs. Katherine Harlow, Mr. North's granddaughter, alluded to the psychological devastation and embarrassment that her grandfather experienced. From the evidence heard by the COI, this type of psychological devastation was a common affect and consequence of expropriation on many of the dispossessed landowners. \*

"Echoes of the Past" is an extract from the Ombudsman's Report and a snapshot of the facts relating to the convergence of industry and tourism and, as a consequence, the fate of the residents of Tucker's Town<sup>16</sup>. A number of those dispossessed used their compensation to purchase homes in Smith's Parish, including the Devil's Hole and John Smith's Bay areas, near the relocated Marsden Church and in other parishes. Devil's Hole was deemed important to those dispossessed. One reason, repeated as part of the old narrative, is that it was easier to obtain kerosene fuel for their stoves from Devil's Hole. Another reason touted was that it was far less isolated than in the more remote Tucker's Town area. It was also reported that the new owners promised employment to all able-bodied men on construction sites to help build the hotel and in subsequent hotel maintenance. Additionally, all females who could work were offered employment, not just part-time but regular work.<sup>17</sup>

Until now, the dominant narrative had remained untested against the reality of those who actually felt the full brunt of the exercise of expropriation powers, said to have been done in the greater interest of Bermuda. Putting matters into perspective, who among us as current landowners would have been so understandingly obliging in turning over our, in most cases, hard-earned piece of Bermuda real estate? Bermudians and residents who have invested in real estate in Bermuda should be aware that the Acquisitions of Land Act 1970 provides for the acquisitions by agreement and by compulsory purchase, much like the powers exercised in the past. It is said that "a man's home is his castle", but this is tempered to the extent that one's home/land is not required, for whatever reason, by the Government of the day to carry out any of its national policies. The 1970 Act provides:

*"Purchase by agreements*

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<sup>16</sup> Brock, Arlene, (2012.) "Ombudsman's Report: Today's Choices, Tomorrow's Costs", pg. 29, COI - Exhibit SW-2

<sup>17</sup> Forbes, Keith Archibald. "Bermuda's History 1900 to 1939 Pre-War." *Bermuda Online*, 2020, <http://www.bermuda-online.org/history1900-1939prewar.htm>



- 3 (1) Subject to this Act, where any land is required by the Government it shall be lawful for the Minister to agree with all persons interest in the land, or by any Act or law enabled to sell and convey the land, for the purchase thereof at such price as the Minister may think proper.”; and

“Minister may make compulsory purchase order

- 4 (1) Where the Minister is of the opinion that purchase by agreement -
- (a) is impracticable; or
  - (b) having regard to the urgency of the intended purchase, would cause undue delay,
- he may make a compulsory purchase order in the prescribed form in respect of the land to be acquired.”

In other words, even today no landowner is immune from having his property expropriated if such taking is justifiably in the better interest of Bermuda. One would hope that if compulsorily purchased, the land would be utilized for a strictly public benefit.

The Tucker’s Town expropriation is a part of the history of Bermuda that goes far beyond a resort, a golf course, a church and even a group of descendants. This story goes to the heart of who we are and our evolution to date, acknowledging rather than denying all that may have been caught up in the vortex of our past. This is in fact the untold narrative of neglect, expropriation and disrespect. Moreover, this is the untold narrative of the evisceration of memory and culture – through lands taken, archives emptied, memories lapsed and gravestones eradicated, removing the last vestiges or reminders of a people who once lived and were laid to rest in the Marsden Church Cemetery in Tucker’s Town. There is still so much of our history that must be researched and told. Additionally, this part of our history is neither widely known nor taught in Bermuda’s schools.<sup>18</sup>

## At Last, the Truth about Tucker’s Town

Dr. Duncan McDowall, University Historian at Queen’s University in Kingston, Ontario, Canada, has researched Bermuda’s history and written books and articles on Bermuda. He appeared before the COI via Zoom on 22<sup>nd</sup> October, 2020 and again on 30<sup>th</sup> October, 2020. Dr. McDowall appeared before the COI for the second time after he was recalled in order to clarify and expand upon evidence that he had given at the earlier Hearing which seemed to be contradicted by his article “*Trading Places: At Last, the Truth about Tucker's Town*” which was published in the summer 1996 edition of *Bermuda* magazine. In that article, Dr. McDowall reports on the breathtakingly brazen Tucker's Town land grab that through altruism, or otherwise, marked the beginning of Bermuda's golden age of prosperity. He writes: “*For inbred, read well-bred. Tucker's Town today is as peaceful as ever, but that is where the similarity ends. Perhaps the first point to be made in any attempt to tell the story of modern Tucker's Town is that old Tucker's Town was a community, not a backwater or genetic time-warp. Its roots were, in fact, as deep as those of any Bermuda community...Beyond the coves, Tucker's Town had a fitful existence. Although rocky and windswept in many places, the area, 345 acres as indicated on the early maps, also had pockets of rich soil. In these, settlers experimented with crops as varied as cotton and pineapples, but*

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<sup>18</sup> Francis, Dr. Theodore, (2020) “*Tucker’s Town, Tourism and Captured Lands*”, COI – Exhibit TF-2

*eventually found lasting success with onions, sweet potatoes, parsley and other market vegetables. At first, its agriculture was dominated by white landowners. But that farming, however, was marginal and, throughout the 19th century, the white population of Tucker's Town gradually moved on to greener pastures – greener Bermuda pastures. Black farmers, Lamberts, Smiths and Talbots, took their place. By 1900, Tucker's Town was a tight-knit isolated community. A few whites remained, but it was fundamentally a black society. There were two churches, a general store, a school, a cricket pitch, a post office and a cemetery on the knoll behind the church. Boats were still being built, pigs were slaughtered, potatoes grated, vegetables were dispatched by cart to Hamilton for sale; the rhythms of life were woven through these activities. Children were given the rudiments of education and then when work ceased, of course, there was Frith's rum barrel, an evening of chowder and cards".<sup>19</sup>*

Both Dr. McDowall's article and Dr. Theodore Francis's report painted a picture of Tucker's Town as a vibrant and diversified community; however, the oligarchy of the day painted a different picture of the Tucker's Town community, as evidenced by the following excerpt from Dr. Francis's report: *"After describing the suitability of the land for their project, Furness Withy Company assessed the current condition of Tucker's Town land and its community in the following manner: 'The land which your petitioners desire to acquire has been of little economic value to the Colony and has remained in a backward and undeveloped state for upwards of a century. Less than a third of it is arable. It is sparsely populated, there being far fewer inhabitants to the square mile than in other parts of the Colony'. It is critical to note the terms "backwards" and "undeveloped" used to describe the land and the community of Tuckers Town."*<sup>20</sup>

Thus, both expert witnesses Dr. Francis and Dr. McDowall opined that Tucker's Town was a thriving, sustainable community by the time of the expropriations in the early 1920s. Significantly, Dr. Francis's report made reference to how the people of Tucker's Town had drawn on their own resources and that of others to develop an economically self-sufficient community. One such organization that provided advice, financial assistance and empowerment to blacks before Emancipation and continues to exist today is Bermuda's Friendly Societies.

## **Compulsory Purchases for Public Objectives**

There is public utility in expropriations either by agreement or compulsory purchases. Both land expropriations of the 1920s and 1940s have, however, been a part of the haunting and sometimes unspoken legacy of our Bermudian history. Over the years, steps had been taken to bring these events to the forefront of our minds so that we might at least talk about the injustices of the past, injustices which have repeatedly been said to be ... *"in accordance with the normal principles of compulsory purchases for public objectives"*. The 2014 Motion of Mr. C. Walton D. Brown, JP, MP was passed in the House of Assembly. However, then Governor Mr. George G Fergusson refused to issue an Order establishing a Commission of Inquiry and was unmoved by a political demonstration at Government House to force his hand. Governor Fergusson wrote the following letter to the speaker of the House of Assembly:

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<sup>19</sup> McDowall, Dr. Duncan (1996). "Trading Places: At Last, the Truth about Tucker's Town ." *Bermuda Magazine*, pp. 18–29., COI Exhibit DDM-11.

<sup>20</sup> McDowall, Dr. Duncan (1996)., *Supra*-No. 19



*“LETTER RE: COMMISSION OF INQUIRY INTO LOSS AND DISPOSSESSION OF PROPERTY AND RECOMMENDATIONS FOR VICTIMS OF WRONGFUL ACTION*

*The Speaker: The next order is Messages from the Governor. I do have, Honourable Members, a correspondence, which I received from the Governor yesterday, which I will read to the House for the record. And it reads as follows:*

*“Dear Mr. Speaker: “You have kindly brought to my attention a Motion approved by the House of Assembly on 4 July asking me to establish a Commission of Inquiry into alleged claims of ‘historic losses in Bermuda of citizens’ property through theft of property, dispossession of property and adverse possession claims’; and ‘to determine, where possible, the viability of any such claims and make recommendations for any victims of wrongful action to receive compensation and justice.’ I have considered this carefully.*

*“Under the provisions of the Commissions of Inquiry Act 1935, the Governor ‘may, whenever he considers it advisable, issue a commission appointing one or more commissioners and authorising them, or any quorum of them therein mentioned, to inquire into the conduct of any civil servant, the conduct or management of any department of the public service or into any matter in which an inquiry would in the opinion of the Governor be for the public welfare.’ The decision to appoint a commission therefore falls to the Governor. In deciding whether or not to appoint a commission, a recommendation from the House of Assembly carries considerable weight and I have taken this into account carefully. The Act specifies that fees of a Commissioner will be paid in accordance with the Government Authorities (Fees) Act 1971, which would therefore come from the Consolidated Fund.*

*“In considering this Motion, I have taken into account the debate in the House of Assembly and had discussions with supporters and opponents of the Motion and others and I am grateful to them. It has become clear that there are three main strands of concern reflected in the House’s Motion: “-consequences of the purchase, including compulsory purchase, in the early 1920s of land in the Tucker’s Town area; “-consequences of the purchase, including compulsory purchase, of land in the early 1940s for the purpose of the construction of United States air and naval bases particularly in the area of Longbird, St. David’s and Cooper’s Islands and Morgan’s and Tucker’s Island; and “-consequences of a series of land transactions in the 1950s, 1960s and 1970s in which concerns were expressed in the House about possible injustices arising from systematic collusive behaviour between lawyers, bankers and estate agents. Bermuda House of Assembly [2652 11 July 2014 Official Hansard Report]*

*“I have looked at each of the three categories of cases. “The purchase by compulsory purchase of the land in Tucker’s Town was subject to requirements in the Bermuda Development Company (No 2) Act 1920, that subsequent sales of the*

*land by the Bermuda Development Company of more than 100 acres should be subject to further approval by the Legislature, as should sales to companies not incorporated in Bermuda. There does not appear to have been any legislative requirement made in respect of 'first refusal' offers to former landowners, though the 1954 letter by the then Colonial Secretary cited in the debate clearly suggests that he, at least, regarded this as good practice. The subsequent sales appear to have complied with these requirements. The Ombudsman's recent report, 'A Grave Error', indicated that one resident was subjected to an involuntary eviction. Other purchases were made under the compulsory purchase arrangements set out in the Act, which contained numerous appeal arrangements.*

*"The compulsory purchases and other compulsory land transfers related to US naval and aviation requirements during the Second World War clearly disrupted communities and the Bermuda natural landscape. Compensation arrangements were made. "Both of the major historic compulsory purchases which were highlighted in the debate—the purchases in Tucker's Town in the 1920s and the purchases for military purposes during the Second World War—appear to have been completed broadly in accordance with the normal principles of compulsory purchase for public objectives, with measures in place to help ensure fair prices. In neither of these cases do I consider that there is a specific enough case that injustices were done that would merit the establishment of a Commission now.*

*"The debate in the House showed that there is a broad concern about allegations of a pattern of cases in the 1950s, 1960s and 1970s in which some landholders lost land, or part of the value of their land, through abuses by members of professions individually or in collusion with each other. I have not seen suggestions that such abuses involved civil servants or the conduct or management of a department of the public service in a way which would justify inquiry by a Commission under those criteria. I would need to be satisfied that abuses by non-official agents were pervasive, systematic and on a scale to cause significant injustice to make them the subject of a Commission of Inquiry so long after the alleged events. I would need also to be clear, under the 1935 Act, that such an Inquiry 'would serve the public welfare'. This overlaps with the suggestion in the Motion itself that, if possible, remedies should be proposed if relevant abuses were found.*

*"I have concluded that these concerns are neither so clear nor so urgent as to justify my taking the still unusual step of commissioning an inquiry under the 1935 Act. I am also conscious that such an inquiry would incur expenditure under the 1935 Act, which does not appear to have been the settled wish of the House, from either side of the debate. I note suggestions in the course of the House's debate that, instead of using the 1935 Act, an inquiry might be established with funding arrangements other than those provided for in the Act proposed in the Motion. This may be possible, but would go both beyond the terms of the House's Motion and my own powers. Whatever alternative mechanism for an inquiry might otherwise be looked at, it may be useful to set out for the record that I see no case*

*for asking Her Majesty's Government in the United Kingdom to consider funding an investigation into allegations of commercial transactions not involving the Crown, if such funding is not forthcoming from Bermuda. Bermuda is proud of its high degree of autonomy as a British Overseas Territory. It is a long time since Bermuda's commercial and private land law has been supervised from the United Kingdom and this does not seem to me a compelling issue on which to reverse that.*

*"The debate has raised serious concerns, of public interest. Some may well be worth further examination. But they are not clear or urgent enough to justify a Commission of the kind proposed. I would be open to consider this again, however, if the House gave me clearer references to the kinds of alleged abuses concerned and a clearer mandate for me to incur expenses from the Consolidated Fund.*

*"I am copying this letter to the Premier, the Leader of the Opposition and Mr Walton Brown JP, MP who brought the motion before the House." And it is signed, "[Yours sincerely], George Fergusson."*<sup>21</sup>.

The following extract taken from Governor Fergusson's statement above has been more closely explored:

*"The debate in the House showed that there is a broad concern about allegations of a pattern of cases in the 1950s, 1960s and 1970s in which some landholders lost land, or part of the value of their land, through abuses by members of professions individually or in collusion with each other. I have not seen suggestions that such abuses involved civil servants or the conduct or management of a department of the public service in a way which would justify inquiry by a Commission under those criteria. I would need to be satisfied that abuses by non-official agents were pervasive, systematic and on a scale to cause significant injustice to make them the subject of a Commission of Inquiry so long after the alleged events."*

Systematic issues, however, arise if it can be shown that the cause of the loss transcends the individual case and demonstrates a legal, political or ethical culture that allows the named causes for the loss to occur. In the case of *Gay et al. V Reginal Health Authority* and *Dr Menon 2014 NBCA 10*, supra, the issue was not the actual negligence, but the systematic structural problems or the systems that were in place to detect negligence. It was determined that in finding a systematic structural problem, the focus is on the structural problem rather than on the actual negligence.

In line with the underlying principle arising in *Gay*, Drs. Theodore Francis and Quito Swan have provided further evidence surrounding the events leading to the Tucker's Town and St David's Island expropriations respectively: the course of the expropriations including relevant legislation and Orders in Council; the structure of the expropriation, for example, notices, timelines, etc.; the process established to compensate the inhabitants of expropriated land; how compensation was established; the amount of compensation paid; and the impact of each expropriation on the families who lived in Tucker's Town and St David's Island. In order for the transactional aspect of the expropriation to be affected, injustices would have arisen from systematic collusive behaviour

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<sup>21</sup> Fergusson, George. "Messages from the Governor" Edited Hansard. 2013/14 Bermuda House of Assembly, 27<sup>th</sup> sess.

between those who may have been involved in the expropriation process as a result of the concentration of wealth and political power and social influence in the hands of a few. In identifying a systematic structural or cultural problem in this instance, focus should be placed on the structural or cultural problems that existed rather than on the resulting land losses, the latter being a historical fact.

Dr. Francis gave evidence specifically in relation to Tucker's Town in support of the findings of such collusive behaviour. He stated that from a historical perspective:

*"there is a distinction between the factual matrix that informed the expropriation at Tucker's Town as opposed to the broad discussion about the history of Bermuda, or slavery in Bermuda, or the nature of the relationship between, white leadership or the merchants class or the politicians of the day." He stated: "...in terms of Bermuda what we want to speak of is particular or distinct about Bermuda is the level of continuity, [right,] because we can talk about the generic flows or generic concentrations of wealth and political power and social influence being concentrated in the hands of largely, as you said, men of upper class standing in this time period. And by this time period I'm speaking about the late 19th and early 20th centuries."*<sup>22</sup>

## **Pre-Expropriation of Land in Tucker's Town**

Before the expropriation by BDCL (a holding subsidiary of Furness Withy), in the 1920s, Tucker's Town was a farming region where most of the residents were freed slaves who made their living from the land and sea as farmers, fishermen, divers and other professions that were germane to that community which was self-sustaining, with very little governmental interest or investment in that area. A foreign investor could, as a consequence of the lack of interest or investment, come to Bermuda and call the area "backward and underdeveloped...of little economic value...sparsely populated" and to propose a grand plan with such high demands, in hindsight, tantamount to a "land-grab". Such epithets and slurs were commonly used to describe black people who were deemed to be "invisible" unless there was some economic or other utility for them. These negative and demeaning comments, coupled with the subjugation of the residents' rights, denigration of character or reputation and being subjected to continuous dehumanizing treatment comprised the prevailing culture for centuries. Furness Withy, whose owners were predominantly British, characterized the land and owner of about 100 acres who refused to sell their land to the company, as:

*"indifferent... (who) failed to grasp the great advantages which will accrue to themselves and their neighbours by the intended development, and in some measure to the agitation of a few who for reasons of their own desire that the district shall remain in its present backward state".*<sup>23</sup>

The dominant thinking and attitudes of Furness Withy had preceded their actual physical presence in Bermuda. The very words used to describe the people themselves, their cultural and social norms and the land which they owned and thrived on as "backward and undeveloped..." reveal the

<sup>22</sup> Francis, Dr. Theodore, (2020) "Tucker's Town, Tourism and Captured Lands", COI – Exhibit TF-2

<sup>23</sup> Furness Withy Company Ltd. "Petition from Furness Withy For the Incorporation of the BDCL" Received by Speaker of the House and Members of Parliament of Bermuda, 23 Feb. 1920., COI – Exhibit TF-3, pp. 22 - 26

superior attitude of foreigners who came to the Island and decided that the land itself was devoid of any intrinsic value unless in their hands - in this case, owners of a British shipping company. The “taking” was indeed not a new approach, but the normal (true, tried and tested) practice carried out in other countries with indigenous people, particularly by the UK in many of its colonized countries. The story of Africville, Halifax, Nova Scotia, Canada, a small community of predominantly black Canadians located in Halifax, Nova Scotia that existed from the early 1800s to the 1920s demonstrates this point. This community was founded by black Nova Scotians from a variety of origins. Many of the first settlers were formerly enslaved African Americans from the thirteen Colonies, black Loyalists who were freed by the Crown during the American Revolutionary War and War of 1812.<sup>24</sup>

The story of Africville is an all too familiar one of expropriation of land or destruction of thriving black established communities. Some Africville residents reported that they were paid to move out of Africville and others reported they were forced out of their homes and told they had no rights to compensation. Some reported that they did not receive fair market value for their land. Residents were relocated to public housing within the city limits and within a year and a half, the post-relocation programme lay in ruins. The residents were treated in a degrading and demeaning manner by the Halifax authorities. There were many hardships, suspicion and jealousy that emerged due to complications associated with land and ownership claims. On 24<sup>th</sup> February 2010, Halifax Mayor Peter Kelly offered an official apology to the former residents of Africville and their descendants as part of a \$4.5 million compensation deal. He said...

*"I'm here today on behalf of Halifax Regional Council to deliver a formal apology to all those whose lives have been altered by the loss of Africville in the 1960s. We realize words cannot undo what has been done. But we are profoundly sorry and apologize to each and every one of you. The repercussions of what happened to Africville linger to this day. They haunt us in the form of lost opportunities for the young people who never were nurtured in the rich traditions, culture and heritage of Africville."*

Similar to the dispossessed residents of Africville, black Bermudians in the main were affected by the expropriation land, including 300 acres in Tucker's Town, land on which the residents and landowners had built homes for their families and schools and churches for their community. These homes, churches and schools were lost to the families and their descendants. The mainly agrarian residents of Tucker's Town, some of whom could neither read nor write, were required to negotiate the value of their Tucker's Town lands with a sophisticated group of business executives involved with the Furness Withy scheme, a group that included Parliamentarians, some of whom sat on the Boards of Furness Withy, the Bermuda Trade Development Board (BTDB) and the acquiring company, Bermuda Development Company Limited (BDCL), despite alleged conflicts of interest and self-dealing. Unlike in Africville, the handling of these historic injustices has not been properly addressed in Bermuda nor has an official public apology been given to the families of the dispossessed residents.

The imbalance in the exercise of power by the oligarchical regime over defenseless people raises issues of systematic structural inequalities in bargaining power. These inequalities have proven to be the underlying reasons for unconscionable but lawful practices of displacement, exclusion and

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<sup>24</sup> McRae, Matthew. "The Story of Africville." Edited by Mallory Richard, *The Canadian Museum for Human Rights*, <https://humanrights.ca/story/the-story-of-africville>

segregation. The issues the COI had to consider focused on the underlying causes of the losses, among other things: the granting of expropriation powers, processes and procedures used to facilitate such expropriations; methods used to determine levels of compensation; the inequalities of bargaining power between the powers that be and landowners and the absence of evidence showing that proper representation, governmental oversight and protections, statutory, legal or otherwise, were in place for those being dispossessed. The causes can be broken down further to cases of duress, undue influence and exploitation of weaknesses.

From an economical and societal perspective, the measure of an individual's or family's financial net worth is paramount, providing various opportunities for families to accumulate wealth. Wealth makes it easier for people to transition seamlessly between jobs, move to new neighbourhoods and respond in emergency situations. It allows parents to pay for or help pay for their children's education and enables workers to build economic sustainability for their retirement. Importantly, it is the most complete measure of a family's future economic well-being and it is the disruption and cost of such disruption that is little understood.

## **Incorporation of Furness Withy/Bermuda Development Company Limited - 1920s**

The Furness Withy Shipping Company of London began to invest in Bermuda's tourism industry and did so by taking over the old Quebec Steamship Company and calling its new service the Furness Bermuda Line. In 1920, with the sanction of the then Colonial Government and the Bermuda Government, a Private Act was enacted for the formation of BDCL with the intention of initially acquiring 510 acres of land in Tucker's Town and immediate vicinity and the right to purchase the old St George's Hotel. When landowners, who were the subject of a Petition to Parliament, failed to part willingly with their land, a second Private Act entitled The Bermuda Development Company Limited Act (No. 2) 1920 (BDCL Act (No. 2)) was enacted and thereunder the Company was granted authority to acquire the 510 acres as requested in their Petition. Neither Act specifically limits the amount of land to be acquired to 510 acres, of which 300 acres could be compulsorily purchased. The original plan was for the company to sell 300 one-acre plots immediately thereafter for private ownership<sup>25</sup>. The on-selling of 300 acres of the initial 510 acres is immeasurably different from the original concept, that is, of developing Bermuda's tourism market. The first part of the Furness Withy scheme actually led to the creation of a larger class of non-Bermudian residents who then no longer fell into the category of transient tourists or visitors. The new non-Bermudian residents now had a vested interest in Bermuda.

## **When the Myth Becomes the Fact**

*The Royal Gazette* of 30<sup>th</sup> July 2020 contains an article entitled "*When the myth becomes the fact*" written by the late C. Walton D. Brown, JP, MP. Following is an extract from that article:

*"The Bermuda Development Company's acquisition ("with limited measures of compulsion") of 600 acres of Tucker's Town in the early 1920s was not the rapacious land grab some have painted it as. Nor was it an entirely tidy exercise*

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<sup>25</sup> Lewis, Sir Frederick. "Untitled Letter" Received by Governor Sir John Asser, 15 Oct. 1923.

*which saw all property owners receive new homes, and generous compensation packages involving prices far higher than the fair market values of the times.*

*It's true a community with roots dating back to 1616 and, as a contemporaneous petition phrased it, "a natural love and attachment for their lands, houses and homes" was uprooted to make way for rolling golf courses, hotels and millionaires' pleasure palaces. It's equally true the project attracted speculators, opportunists and outright swindlers of both races and all social positions who bought up packages of land in Tucker's Town which they quickly turned around and flipped to the Bermuda Development Company for substantial profits.*

*It would require a deliberate policy of dishonesty about (and blindness to) our own history to continue to ignore the events which led to the development of Tucker's Town. There's an old rule of thumb to the effect that when the legend becomes fact, you simply print the legend. In this instance it would be immeasurably more beneficial for Bermuda if the legend was finally dispelled, and the facts aired."*

It was therefore imperative that the COI carefully examine all evidence presented and then share factual information ascertained with members of the public and with the Government for action where required.

## **Synergies between People and Their Land**

The people of Tucker's Town and St. David's Island were two groups of Bermudians that were distinct socially and culturally; they shared collective ties to the land and natural resources where they lived and occupied and/or owned homes from which they had been displaced. Similar to Africville, the land and natural resources on which they depended were linked to their identities, cultures and livelihoods as well as their physical and spiritual well-being. Such communities often subscribe to their own customs that were and, in some cases, are still, distinct or separate from those of the mainstream society or culture.

Lacking in formal recognition over their lands, territories and natural resources and based on Furness Withy's description of the Tucker's Town area as "*backward and underdeveloped...of little economic value...very sparsely populated*", areas like Tucker's Town and St David's Island historically would have been the last to receive public investments in basic services and infrastructure. Additionally, the early residents would have faced multiple barriers to participate fully in the formal economy, enjoy access to justice and participate in political processes and decision making. Conversely, this legacy of inequality and exclusion made communities like Tucker's Town and St. David's Island more self-sufficient and self-sustaining, but lands more susceptible to expropriation to accommodate foreign interests, be they commercial, governmental or otherwise.



## Power of Compulsory Expropriations – A Governmental Tool

As a backdrop to understanding expropriations, particularly those that had taken place in Tucker's Town between 1920 to 1923 and St David's Island in the 1940s, one must first understand the concept of compulsory expropriations, who can exercise such power, when it is exercised and the reasons for it being exercised.

A compulsory expropriation is, essentially, the power of governments to acquire private rights in land for a public purpose or benefit without the willing consent of its owner or occupant. This power is known by a variety of names depending on a country's legal traditions, including eminent domain, expropriation, takings and compulsory acquisition or purchases. Regardless of the label, compulsory expropriation is a critical developmental tool for governments and for ensuring that land is available for essential infrastructure initiatives, a contingency that land markets are not always able to meet<sup>26</sup>.

The rationale for compulsory expropriation may be straightforward when land is acquired by the government for use by a public entity, authority or agency, for example for a public school or hospital or for a new public road or airport. The rationale for acquiring land for a public purpose may also be clear where the land will be held by a private entity but used for a public purpose. For example, government may support private utility companies to acquire land for the infrastructure needed to ensure service to their customers.

Generally, but controversial nonetheless, are cases where private land is acquired by government and then transferred to private developers and large businesses on the justification that the change in ownership and use will benefit the public. It has also been used on behalf of developers (both private, and public-private ventures), in order to change the land use of an area, for example, from residential to commercial use. In such cases, it is argued that the development benefits the wider public by creating economic growth and jobs, maintaining sustainability and by increasing the tax base which in turn allows the government to improve its delivery of public services.

## Controversy in Both Theory and Practice is Unavoidable

Highly controversial are those cases where private land is acquired by government for use by foreign governments and then, when the purpose for which the land was originally taken is no longer required, the land remains in the hands or at the disposal of government. In the second instance, the power of compulsory expropriation is delegated by government to private entities.

Despite being a core and necessary governmental power, compulsory acquisition has always attracted controversy, both in theory and practice. The reasons for such controversy are unsurprising. Whenever people are displaced, the human costs in terms of disruption to community cohesion, livelihood patterns and way of life may go beyond what can be fully mitigated through standard compensation packages, however generous they are thought to be. Such inevitable costs

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<sup>26</sup> PPP Insights: Compulsory Acquisition of Land and Compensation in Infrastructure Projects Vol.1, Issue 3 August 201 and the FAO Land Tenure Studies 10, Compulsory Acquisition of Land and Compensation: <http://www.fao.org/3/i0506e/i0506e.pdf>

\* COI - Case No. 34, Estate of John Samuel Talbot on page 410

\*\* See section on the 'Rule of Law' on page 198



are compounded, sometimes many times over, where the laws, regulations and processes are designed or implemented poorly, reducing tenure security and inequitable compensation.\* Such use of expropriation powers may erode public faith in governance and, as a consequence, the rule of law,\*\* even if it impacts only a small segment of society. This situation occurs when the laws and the administration of justice are determined by and in the interest of a select group of people:

*“The consequences of the breached Rule of Law – resentment, distrust of law, a perception that law is beholden only to power – will continue to negatively impact society and undermine faith in the Rule of Law.”*

Although compulsory expropriation powers are deeply rooted in virtually all legal systems, the establishment of efficient and fair legal and institutional frameworks for exercising this power remains unfinished business in many countries around the world. The task of better defining the principles and processes that govern compulsory acquisition powers and framework is one that is very much alive and at the heart of current land policy debates.

An important dimension of evolving laws and practices relates to the deployment of government-taking powers in respect of public-private partnerships or, as was the case in Tucker’s Town, for private enterprise. However, modernization of such laws and practices cannot retroactively erase the historic losses of land by expropriation, by government or sanctioned by government, as experienced by those who did not have a seat at the table nor proper representation in the decision-making process.

## **When Political and Commercial Objectives Merge**

The Bermuda Colonial Report for 1920, paragraph 11, reflects the support of Furness Withy’s project which sought to establish a “winter playground” for U.S. and British elites and the need to enact special legislation to allow the acquisition of privately-owned lands in Bermuda:

*“a very important project was set forth during the year in the formation of the Bermuda Development Company Limited (BDCL) allied with Furness, Withy & Company Limited, who hold the majority interest, to take up an area of about [500] acres between Harrington Sound and Castle Harbour for the purpose of establishing a “winter playground” including a large hotel, golf courses, boating, bathing and fishing facilities, &c. Good progress is being made with the work which when completed shall add enormously to the attractions of the Islands as a tourist resort. Special legislative facilities were granted to allow the acquisition of privately-owned lands in this area”.*

It is noted that the Bermuda Colonial Report, whilst positive in nature, was silent in relation to the impact of this project on those landowners and residents of Tucker’s Town who would be dispossessed of their properties.

## **Unprecedented: Tucker’s Town Expropriation**

Historically, past projects necessitated the Bermuda Government’s use of its power of expropriation. However, the compulsory expropriation of such a large tract of property in Tucker’s

Town for the benefit of private tourism development was unprecedented in Bermuda's history and has not occurred since. The expropriation did create an indirect benefit for all Bermudians, but in doing so it created divisions in Bermuda society. Similar expropriations by the Government did take place during World War II. Lands in St. David's were expropriated to build the Kindley Airfield, now the L.F. Wade International Airport, and the National Sports Centre. In the past, expropriations had taken place in the case of smaller projects, for example, construction of local hospitals and schools and creation and preservation of open spaces such as parks, beaches and agricultural spaces. In these instances, the expropriations cut across racial and social lines.

There is no doubt that such projects were for the benefit of the public at large, as opposed to the benefit first and foremost for private enterprise as was the case of the BDCL.<sup>27</sup> As a reminder, BDCL was a Bermuda landholding company whose parent was Furness Withy, a British company whose primary business was shipping.

### **Compulsory Purchases by Government for Use by Foreign Governments**

Another example of legislative sanctions in terms of expropriation was in respect of Naval, Army and Air Force bases throughout the Island. The War Department Land Act 1920 (WDLA 1920) provided that:

*“His Majesty’s Principal Secretary of State for War desires that the powers conferred by the War Department Land Act 1904, with respect to the purchase and taking of land in these islands required for Military purposes, otherwise than by agreement, shall be extended and apply to such lands in these Islands required for Military purposes as the said Secretary of State shall, after the passing of the Act of his intention to purchase or take under the Act.”*

The WDLA 1920 granted much latitude to the military, tantamount to an open-ended discretionary exercise of power granted to purchase and take land in Bermuda as and when required for “Military purposes”. Again, that Act is silent as to the processes and procedures that should be taken into consideration regarding the residents or landowners living in those areas, individuals who stood to be tragically impacted because of the exercise of a power about which they would not necessarily have had any say. This power was executed with very little forewarning, as was the case with St David's Island. Some David's Islanders were allowed just ten hours in which to pack their belongings and vacate ancestral homes to accommodate U.S. Base personnel who moved in, in some cases, shortly thereafter. Expropriation of St David's Island land is more fully described in the St David's Island section of this Report.

It should be noted at this stage that some of the formerly dispossessed residents of Tucker's Town had resettled in other parishes, including St David's Island in St. George's Parish. As a result, there are those who may have been dispossessed of land or their relatives for a second time in the 1940s.

### **Who Can Exercise the Power of Expropriation?**

Although compulsory acquisition is a power of government, also of importance are the processes and procedures governing the exercise of such power. It is critical if governments' or their

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<sup>27</sup> Brock, Arlene, (2012.) “Ombudsman's Report: Today's Choices, Tomorrow's Costs”, COI - Exhibit SW-2

delegates' exercise of such power is seen to be efficient, fair and equitable. Normally, processes for the compulsory acquisition of land for project-based, planned development are different from processes for acquiring land during emergencies or for land reforms. Other processes may exist for utility companies and others to acquire easements or servitudes in or over land.

The origins of this type of power or authority are derived from UK law, bearing in mind that expropriation in the UK in the 1900s was typically used in respect of public (not private) ventures:

*“The necessary authority to take or injuriously affect land in England in the early 1900s was obtained from Parliament in either one of three ways: (a) by the passing of a public general act; (b) by promoting a private bill; and (c) by proceeding under existing acts to obtain an order which is commonly referred to as a provisional order.*

*“The Private Bill is where either a public or private corporation or where individuals desire to obtain powers to carry out undertakings, and these powers cannot be obtained under existing statutes, then they apply to Parliament, which grants them the necessary authority. The procedure respecting the passage of a private bill is regulated by the standing orders of Parliament, which are altered and amended annually. Under these orders it has long been necessary, when power is sought to take land compulsorily, for the promoters of the bill to show that notice has been given to persons likely to be affected. Books of reference are deposited showing the lands to be taken, with names of the owners and lessees thereof.*

*“A time limit of three years is usually imposed for the exercise of compulsory purchase, and, in some acts there is provided a further time limit for the execution of the works. Then there are local acts passed in which land not specifically described is authorized to be taken for public improvements from time to time as it is required.”\**

Even a cursory look at the differences in perspectives embodied in the respective Petitions tabled in the House of Assembly by Furness Withy and by twenty-four private landowners (including Anglican Rector L Laud Havard of Smith's and Hamilton Parishes, as the church owned approximately 40 acres of Glebe lands in Paynter's Vale), would reveal that all was not going to bode well for the Tucker's Town community. Extracts follow:

1. The Petition from Furness Withy for the incorporation of BDCL to the House of Assembly dated 23<sup>rd</sup> February, 1920<sup>28</sup> for the expropriation of 510 acres of Bermuda real estate to enable Furness Withy to carry out its scheme:

*paragraph 4:*

*“For the successful accomplishment of the objects of your petitioners it is essential that a site should be acquired capable of providing in on area*

\* An instance of this is what is known as the Michael Angelo Taylor's Act of 1817 (57 George III, Chap. 26). This Act provides for taking of land for the purpose of widening and improving the streets” (Yale Law Journal Vol.XXI, June 1912 “The Power of “Compulsory Purchase” under the Law of England”, By William D McNulty of the New York City Bar).

<sup>28</sup> Furness Withy Company Ltd. “Petition from Furness Withy For the Incorporation of the BDCL” Received by Speaker of the House and Members of Parliament of Bermuda , 23 Feb. 1920., COI – Exhibit TF-3, pp. 22 - 26

*accommodation for the whole of the facilities for outdoor sports referred to in paragraph 2 of this petition, with capacity for extension in future."*

*paragraph 7:*

*"The total area of land required by your petitioners is somewhat less than 510 acres and is coloured pink on the six inch scale plan which accompanies this petition. It includes the whole of Tuckers Town in St Georges Parish, estimated at 300 acres, together with portions of Hamilton Parish to the north and west of Tucker's Town comprising the balance."*

*paragraph 8:*

*"This land which your petitioners desire to acquire has been of little economic value to the Colony and has remained in a backward and undeveloped state for upwards of a century. Less than one-third of it is arable, the remainder being chiefly rocky hills and sand dunes. It is very sparsely populated, there being far fewer inhabitants to the square mile than in any other part of the Colony."*

*paragraph 9:*

*"The locality having been selected, agents of your petitioners began negotiations for the acquisition of the lands from the various proprietors.*

*At first considerable success was experienced, satisfactory agreements to purchase being made for approximately three-fourths of the required area, but later it was found that some owners, especially in the area of Tuckers Town, were opposed to parting with their lands, giving as reasons their unwillingness to leave their homes or to part with their freehold property and votes.*

*Your petitioners are in entire sympathy with these points of view, and it is not their policy to eject a single one of the inhabitants from the district, and your petitioners offered in every case, in addition to a liberal cash payment, to secure to those owners who are opposed to parting with their lands the rights of residence in this homes free of rent for life or to give them other land in exchange in the same area with a suitable cottage in fee simple."*

*paragraph 17:*

*"Unless the above course of procedure or some other procedure which Your Honourable House may consider preferable is adopted your petitioners will be compelled to abandon their intended scheme of development as no other area in the Colony present similar advantages or means of fulfillment of their objects."*

2. The following Petition, dated 23<sup>rd</sup> July, 1920, by the landowners of Tucker's Town is in vivid contrast to Furness Withy's Petition<sup>29</sup>. The landowners were passionately fighting not to have their land expropriated. An extract of their Petition follows:

*Paragraph 3 provides:*

*"Your Petitioners are possessed of and entitled to one hundred acres or thereabouts of the said lands particularly described in the said schedule which the said Company asks permission to acquire; they have built houses and established their homes on these lands; they follow vocations in some respects peculiar to the locality; and in common with most others in these Islands, they have a natural love and attachment for their lands, houses, vocations and homes."*

*Paragraph 4 provides:*

*"Your Petitions do not desire to part with or be deprived of their lands and houses, their present homes and their present vocations under any conditions whatever and they humbly beg to point out that no monetary compensation can adequately recompense them for the loss of their lands, houses, vocations and homes."*

*Paragraph 5 provides:*

*"Your Petitioners humbly beg to draw the attention of Your Honourable House to the fact that although the said Company proposes to use the lands for developing the tourist and hotel business, there is no obligation imposed on the said Company to carry out such object."*

Those landowners had the presence of mind to realize that once they were dispossessed of ownership of their land, Furness Withy had no obligation to carry out the object for which their lands were being taken. Although the landowners' Petition was read in the House of Assembly by T. H. Outerbridge, no steps were taken, neither legislatively nor by an amendment to the BDCL Private Act, that would compel BDCL to do what it had been authorized to do. Further, if BDCL failed to adhere to such obligation, there was no reversionary interest or "first right of refusal" option as a default measure if the original purposes for which the land was dispossessed failed.

Within approximately two years, an entire community in Tucker's Town was dismantled and a new alien landscape of golf and hedonism implanted.<sup>30</sup> BDCL had acquired full ownership rights to the expropriated land; these acquisitions were tempered only to the extent that the Company required prior consent of the Legislature in order to acquire, sell or dispose of expropriated land.

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<sup>29</sup> Furness Withy Company Ltd. "Petition from Furness Withy For the Incorporation of the BDCL" Received by Speaker of the House and Members of Parliament of Bermuda, 23 Feb. 1920., COI – Exhibit TF-3, pp. 22 - 26

<sup>30</sup> McDowall, Duncan. "Another World: Bermuda and the Rise of Modern Tourism", Macmillan Education, London, 1999, pp. 84.

## History of the Bermuda - Furness Withy Agreement

As early as 1910, a syndicate of foreign hotel and railway capitalists in New York had offered to develop all aspects of Bermuda's tourist trade from steamers through advertising to hotels as a package deal. Bermudians distrusted such monopolies, but the BTDB believed that in Canada Steamship Lines Limited (CSL) it had found a strong and progressive British company that would assure Bermuda's future. In the face of opposition, BTDB demonstrated its power and determination to dictate the tourism agenda in Bermuda and a contract was signed.

According to *The Royal Gazette* of 5<sup>th</sup> December, 1918, the then CSL had entered into a tentative proposal with Bermuda:

*"At yesterday's sitting the chief business before the House was the reading of a report by the member sent North as a Committee of one, to investigate the steamship situation. Mr. A. Blackburn Smith reported substantially as follows:— "In company with Mr. J. P. Hand I visited Montreal on the 22nd ult., and met Messrs. Norcross, Haney and Burke, of the Canada Steamship Lines Ltd., at the offices of that Company, and discussed certain proposals regarding which Mr. Hand had previously notified the Bermuda Trade Development Board by cable.*

*The proposals may be divided into four parts, namely: 1. The Steamship service which that Company offered to Bermuda for the next five years. 2. The proposed advertising programme in connection with the passenger service. 3. The purchase of land by the Colony to be given to that Company for the construction of race course, Polo Grounds, and Golf Links. 4. The building of a hotel by that Company on a site to be provided by the Colony. "After a full discussion the following tentative proposals were drawn up and signed by the Canada Steamship Lines Ltd., and a printed copy of the Quebec Steamship Co's freight tariff in effect January 1st, 1917, was attached thereto. Tentative Proposals agreed to by Messrs. Norcross, Haney, and Burke, of the Canada Steamship Lines on November 21st 1918, after discussion with Mr. A. B Smith, representing the Bermuda House of Assembly, and Mr. John P. Hand, representing the Bermuda Trade Development Board."*

Further,

*"In consideration of the above, the Colony may either give the land or pay the Company over a period of five years an amount (not to exceed Sixty Thousand Pounds) sufficient to purchase the necessary land for Golf Links, Race Track, Polo Grounds and the hotel side hereinafter referred to. Should the total cost of the necessary site not amount to Sixty Thousand Pounds the Colony shall be obligated only to the extent of such cost. The payment of this amount may be extended over a period of five years five thousand pounds to be paid the first year; and increasing each year thereafter until the whole is paid. Any privileges granted by the Bermuda Legislature for Golf Club and Racing Association Grounds shall be in perpetuity and will provide that passengers coming to Bermuda by lines other than the Canada Steamship Lines shall not be discriminated against. The Golf Club to have the right*

*to sell liquor to members. No liquor to be sold on the Racing Association Grounds nor bookmakers allowed to operate, but a Pari-Mutuel system is to be permitted. There shall be no discrimination against the enterprise referred to herein owned or controlled by the Canada Steamship Lines as regards taxation, either on property or revenue taxation, either on property or revenue. Construction of the Golf Links, Polo Grounds, and Race Association Grounds, must be begun within three months after the passing of the Act, an execution of agreement providing for same, and work must be carried on continuously until completion of same. The Canada Steamship Lines will be permitted to bring to the Colony all necessary mechanical devices for the construction of the enterprises referred to herein and same shall be subject to duty drawback if exported from the Colony. The Canada Steamship Lines, estimate that the cost of developing the Golf Course, Club House, Race Association Grounds and Polo Grounds, etc., will be at least \$500,000.00. The Government will exercise expropriation rights in connection with the acquisition of necessary land in order that exorbitant prices have not to be paid for same. If, at any time, the Legislature requests or consents to the building of a hotel by the Canada Steamship Lines the same shall be built within two years of date of said request made, or consent given by the Colony, and the site for such hotel shall be given to the company by the Colony.”*

The CSL’s proposal included Bermuda either giving the land required or paying CSL over a period of five years an amount (not to exceed £60,000) sufficient to purchase the necessary land for golf links, race track, polo grounds and the hotel side and should the total cost of the necessary site not amount to £60,000 (Bermuda being obligated only to the extent of such cost) and the cost of developing the golf course, club house etc. would be at least \$500,000. However, by 1918 Bermuda’s relations with CSL were so strained that there was no thought of establishing the Canadian link that had served the colony since the 1870s.<sup>31</sup>

In 1919, Furness Withy and Company was awarded the mail contract for the New York to Bermuda run and, in the same year, took over the Bermuda service from the Quebec Steamship Company which had been operating services to Bermuda from Canada since 1874 as the Quebec and Gulf Ports Steamship Company. The company had been renamed the Quebec Steamship Company in 1880 and in 1913 was taken over by CSL, but continued to trade in its own name. The Furness Bermuda Line, as it was later named, operated for forty-seven years until 23<sup>rd</sup> November, 1966 when the Queen of Bermuda, the last of the sister ships, left Bermuda for the final time. Compare below the tentative proposal of the CSL with the one submitted by Furness Withy a relatively short time after the CSL’s proposal.<sup>32</sup>

Notwithstanding the fact that Bermudians distrusted monopolies, the CSL proposal was obviously superseded by the proposed scheme of Furness Withy, another large British shipping monopoly. The latter’s proposal was much more elaborate and demanding on Bermuda, but desperate times required desperate measures to be taken. Post-World War I tourism, coupled with the fact that the BTDB had heard that Nassau, an arch-rival tourist destination, was considering a similar scheme,

<sup>31</sup> McDowall, Duncan. *Another World: Bermuda and the Rise of Modern Tourism*, Macmillan Education, London, 1999, pp. 77.

<sup>32</sup> Soares, Allen. “Furness Bermuda Line and Two Pairs of Sisters .” *Sea Lines*, <http://furnessbermuline.com/downloads/FurnessProof.pdf>

caused the House of Assembly, egged on by S.S. Spurling, to take the plunge.<sup>33</sup> However, Furness Withy at the very outset gave the government and the BTDB an ultimatum based on the total acreage the company must be able to acquire in order for its scheme to succeed, a guaranteed five-year contract and an annual subsidy of £25,000 for five years (£125,000), among other conditions, in contrast to the CSL's proposal that did not require all of the proposed facilities to be concentrated in one area or 510 acres for its scheme to work:

*“In 1919, the Trade Development Board convinced the UK Furness Withy Steamship line to provide freight and tourist cruise services from New York to Bermuda and granted Furness Withy “a guaranteed 5 year contract, an annual subsidy of £25,000 and the right to purchase land.”*<sup>34</sup>

*paragraph 4:*

*For the successful accomplishment of the objects of your petitioners it is essential that a site should be acquired capable of providing in on area accommodation for the whole of the facilities for outdoor sports referred to in paragraph 2 of this petition, with capacity for extension in future*

*paragraph 7:*

*“The total area of land required by your petitioners is somewhat less than 510 acres and is coloured pink on the six inch scale plan which accompanies this petition. It includes the whole of Tucker’s Town in St. George’s Parish, estimated at 300 acres, together with portions of Hamilton Parish to the north and west of Tucker’s Town comprising the balance”.*

Furness Withy told the powers that be that in order for its scheme to take place, it needed to acquire all land in the Tucker’s Town area and immediate vicinity; therefore, an entire community had to be uprooted from its lands, a church and its members were moved to another area, a school was closed and access roads to the area were closed to the general public to ensure exclusivity for those wealthy British or American elites:

*“The introduction into these islands of a company with a large capitalization means of acquiring large areas of land is an exceedingly dangerous experiment which may eventually result in a serious a curtailment of the political and commercial freedom and independence of the people of this colony as has been brought by powerful commercial organizations in many places of much greater area and wealth than these islands.”*

The 1919 Furness Withy deal may have proven to be the single most important decision Bermuda had made in building its tourism industry. However, the cost to Bermuda was far greater than any of the previous offers made to develop tourism. Instead of 510 acres, Furness/BDCL ultimately owned 644 or more acres of land in Bermuda, the latter figure being confirmed in Sir Frederick’s Lewis’s 15<sup>th</sup> October, 1923 letter to Governor Sir John Asser three years after the incorporation of

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<sup>33</sup> McDowall, Dr. Duncan (1996). “Trading Places: At Last, the Truth about Tucker's Town .” *Bermuda Magazine*, pp. 25, COI Exhibit DDM-11.

<sup>34</sup> Furness Withy Company Ltd. “*Petition from Furness Withy For the Incorporation of the BDCL*” Received by Speaker of the House and Members of Parliament of Bermuda, 23 Feb. 1920., COI – Exhibit TF-3, pp. 22 - 26



BDCL. The result was a much larger area of Bermuda owned and controlled by a foreign corporate entity than first anticipated, taking into consideration landholdings by other foreign corporate entities pre-dating Furness Withy's acquisition in St George's Parish and Bermuda as a whole.



## Looking Backward with 20/20 Vision

Expert witness Dr. Duncan McDowall, appearing before the COI on 22<sup>nd</sup> and 30<sup>th</sup> October, 2020, submitted in evidence a written statement and during the Hearings, references were made to his previous historical works on Bermuda, including his article “Trading Places” and his book “Another World”. In the former, he writes:

*“How a black “backwater” was transformed into a whiter-than-white millionaires’ playground.... “the breathtaking brazen Tucker’s Town land grab that, through altruism or otherwise, marked the beginning of Bermuda’s golden age of prosperity.”<sup>35</sup>*

*“Perhaps the first point to be made in any attempt to tell the story of modern Tucker’s Town is that old Tucker’s Town was a community, not a backwater or genetic time warp. Its roots were in fact as deep as those of any Bermuda community. In 1616 the Bermuda Company instructed newly appointed Governor Daniel Tucker to establish a settlement on the rocky spit that reached out along the southern side of Castle Harbour. The location had both military and commercial advantages, ships could find shelter in its deep bays and reach open water with relative ease.”*

<sup>35</sup> McDowall, Dr. Duncan (1996). “Trading Places: At Last, the Truth about Tucker’s Town.” *Bermuda Magazine*, pp. 19, COI Exhibit DDM-11.

*“Beyond the coves, Tucker’s Town had a fitful existence. Although rocky and windswept in many paces. The area – 345 acres, as indicated on the early maps – also had pockets of rich soil. In these, settlers experimented with crops as varied as cotton and pineapples but eventually found lasting success with onions, sweet potatoes, parsley and other market vegetables.”*

In his book *Another World*, Dr McDowall writes on page 83 that “there was one nagging uncertainty that Sir Frederick Lewis’ entire strategy hinged upon the acquisition of real estate – not some but all of the land in Tucker’s Town.”<sup>36</sup>

On page 84, he states that:

*“Furness Withy told the Assembly, the ‘apathetic or unreasonable attitude of a few small land holders should not be permitted to block an enterprise of such great importance to the development of the Colony as a tourist resort’. The company’s friends in the colony were less judicious in their annoyance. Spurling alleged that Tucker’s Town coloureds were undoubtedly going backwards, the standard of morality, the standard of the people themselves was receding. Thus armed with economic and racial rationales, the majority had its way. In July 1920 a second Development Company Act was passed, setting up an expropriation process by which recalcitrant Tucker’s Towners could be separated from their land.*

Finally, contrast Dr. McDowall’s previous description of “the breathtaking brazen Tucker’s Town land grab” and his witness statement<sup>37</sup> that:

*“In the years since these events, the Tucker’s Town relocation has finally surfaced in the Bermuda consciousness. This has been a healthy thing. I note, however, that it has often been an ill-informed discussion, tending to be based on a mythologized recollection of and hearsay about the past. For instance, the notion that the land was ‘stolen’ is pervasive and overlooks the existence of some effort at due process. It seems to me, for instance, that talk of a ‘land grab’ and ‘theft’ surrounding this issue is predicated on false extrapolation of what Tucker’s Town land would be worth in the hands of its original inhabitants today when in fact it was the expropriation – whether rightly or wrongly – which has given the land its stratospheric present value. Historians greatly value oral evidence, but also are ever cautious about the frailty of human memory. This is why contemporary documentation in archives is so precious as a source of analysis and a tonic for the drift of memory over time. Without careful reconstruction of the past, societies can find themselves in a dangerously divisive situation.”*<sup>38</sup>

Dr. McDowall writes about the intrinsic value and potential prospects of the land in Tucker’s Town on the one hand but later writes that it was the expropriation that gave the land its stratospheric

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<sup>36</sup> McDowall, Dr. Duncan (1996). “Trading Places: At Last, the Truth about Tucker’s Town.” *Bermuda Magazine*, pp. 25, COI Exhibit DDM-11.

<sup>37</sup> McDowall, Dr. Duncan (1996)., *Supra*-No. 38

<sup>38</sup> Winfield, Lynne. “The Presence of White Privilege in Bermuda’s Dominant Narrative: Tucker’s Town Free Black Community (Bermuda 1790-1920)”; McDowall, Dr. Duncan (1996), *Supra*-No. 38

current value. Again, the narrative emphasizes the benefit of expropriation, but in relation to the value of the land once it was developed.

Bearing in mind Bermuda's geographical size, the intrinsic value was and is still in the land itself. Areas like Tucker's Town would have been ideal for development for any number of reasons, if those in power at the time themselves had the foresight and will to develop the type of tourism product offered by foreigner entrepreneurs. As a reminder, Governor Daniel Tucker wanted to move the centre of commerce from St George's Town to Tucker's Town. As Dr. McDowall writes, the latter location was said to have both military and commercial advantages and ships could find shelter in its deep bays and reach open water with relative ease. Also, the area had pockets of rich soil where over the years the residents experimented with crops as varied as cotton and pineapples but eventually found lasting success with onions, sweet potatoes, parsley and other market vegetables. They also developed large fields of Bermuda Easter Lilies which were economically beneficial for the local market and for exporting overseas.

As stated previously, there were other opportunities for developing Bermuda's tourism product; the Furness Withy plan for development Bermuda's tourism market was not the first one to have been considered. It was, however, its investment in the Tucker's Town area which created the exclusivity and "posh residential community where wealthy Americans could winter among their own kind"<sup>39</sup> and which gave the land its "stratospheric" value. Save for the expropriation component, this process is now referred to as "gentrification" – changing the character of a "poor" area, one that has been starved of attention and investments by the powers that be, through wealthier people buying properties at rock-bottom prices, moving in, building or improving housing and attracting new businesses, displacing current residents in the process. This was the first phase of the scheme that was sanctioned by the Governor, Legislature, BTDB and the oligarchy for the development of Bermuda's tourism market.

## Was There Due Process?

It is irrefutable that unethical and inhumane practices of the past are often the underpinnings and foundation of modern-day societies, so deeply ingrained in the fabric of everyday life that they do not need to be reconstructed, but rather deconstructed to the core issues, then those issues dealt with in order to move forward – truth and reconciliation. Those Tucker's Town residents whose lands were expropriated could pose no objection to the taking of their land nor have their MCPs fight to protect their interests, as was the case with the residents in Southampton when the U.S. wanted to create a base in the Riddle's Bay area that included the Great Sound. Area landowners and their MCPs strenuously objected to the proposal while in the case of Tucker's Town voices of those dispossessed were silenced and experiences dismissed. \*

The COI was asked to consider the following question: was there actual due process as was believed to be the case? The BDCL Act (No. 2) set out three procedures to determine the price to be paid to reluctant landowners: (a) that a three-man commission was to be appointed by the

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<sup>39</sup> McDowall, Dr. Duncan (1996). "Trading Places: At Last, the Truth about Tucker's Town ." *Bermuda Magazine*, pp. 25, COI Exhibit DDM-11.

Governor to broker differences between buyers and seller; (b) an arbitration panel to impose a price; and (c) a jury of “peers” to decide a binding price:

*“The Act exuded a sense of British fair play steeped in common law precedent. Yet for all its due procedures, the Act left no doubt that expropriation was the unavoidable fate of the Tucker’s Town die-hards”*

The composition of group of Commissioners presiding over the compulsory purchasing of the Tucker’s Town land was problematic in that it was drawn from the Smith’s, Hamilton and St. George’s Parish Registers of Jurors. These Registers were formed by the same post-Emancipation Act that sought to disenfranchise the newly emancipated blacks and, indeed, the subsequent Commission was composed of three white men, Mr. Reginald Appleby, Mr. Charles E. Astwood and Mr. Jerimiah Scott Pearman. Of these, Mr. Appleby was a police magistrate and the brother-in-law of Mr. Gosling, referred to previously; the other two Commissioners were both lawyers and Members of the Colonial Parliament. In terms of assessing the property of black landowners, one must consider the conflicts of interest as well as the existing racial power structure in existence in terms of the power dynamics involved.\*\*

## Past Practices - Tradition

As noted by W.E.B. Du Bois (1905, 9):

*“To be a poor man is hard, but to be a poor race in a land of dollars is the very bottom of hardships”.*

*“The control of the black Bermudian population through displacement, relocation, and monitored movements allowed the white oligarchy to successfully build the foundation for the cumulative disadvantage of disparity, leaving black Bermudians disenfranchised and systematically polarized within a society that has deemed them to be insignificant.”<sup>40</sup>*

To be a poor race in a land of dollars is the very bottom of hardship. The manner in which practices were enforced whereby citizens were stripped of their most basic rights to land which brings them sustenance and, above all else, dignity, is justification enough to warrant consideration of the issue of expropriation. The crux of the matter is that the loss of such rights, possessions and unfair treatment is deemed to be unethical and inhumane in the context of pre-1968 Constitutional and human rights considerations and the mere fact that such practices were systemic... *“It was not a deviation from the practice of the time, rather it was an extension of them...”*. Therefore, the continuous fixation on the benefits derived from such losses of land by certain residents, is an entirely self-serving, self-righteous and perverse justification for why such expropriations were good for Bermuda. It is the very practices and traditions that facilitated such losses which are of polaric significance in the expropriation equation. As a reminder, it is the principle arising out of the Gay case that is being applied - the focus is on the systems, processes, procedures, practices that facilitated land losses.

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<sup>40</sup> Lister nee Kirby, Alicia. “Memories Lost in the Triangle: An Exploration of Bermuda’s Social Conditioning through Racial Amnesia.” Goldsmiths, University of London, 2018., COI Exhibit AL-00

\* See section on the ‘Rule of Law’ on page 199

\*\* See section on the ‘Rule of Law’ on page 199

Dr. Francis reminds us that:

*“Bermuda history is littered with practices that were legal at one time; however the benefit of hindsight has shown otherwise. Indeed public opinion and legislation now consider practices which one were “legal” as unethical and inhumane; prominent examples include, racial slavery, withholding the vote from women, the landed-franchise, corporal punishment by the birch, hangings and racial segregation.<sup>41</sup>”*

As an example of past discriminatory practices in Bermuda, in 1930 the House of Assembly enacted the Hotel Innkeepers Protection Act giving hotels, restaurants and theatres legal sanction to refuse service to negroes and Jews. It was an extension of the Hotel Keepers Act enacted in 1905. The latter was strengthened to allow hotelkeepers at their discretion to refuse to admit any force that might reasonably be required to eject any guest who would refuse to leave voluntarily. All Bermuda's hotels, most guesthouses and affluent restaurants complied. Only a handful of relatively humble guesthouses chose to cater to coloured visitors.

An extension of such discriminatory practices is perpetuated in the meaning of words used - a systematic use of certain words to convey derogatory meanings. For example, one of the primary objects in both the BDCL Act 1920 and MOCL Act 1951, to which expropriated land was transferred, is that they were both incorporated having as one their objects “hotel keepers” which, although the meaning has evolved, condoned discriminatory and exclusionary practices in the past by discriminating against guests based on their colour or religion. It is noted that MOCL maintains “hotelkeeper” as one of its current objects and discriminatory practices continued, for example, until the first black person was admitted as a member of MOC in 1973<sup>42</sup> – 22 years after MOCL was incorporation. Steven High said of the Hotel Keepers Act 1905:

*“The strict segregation of races occasioned by the shift to tourism set it [Bermuda] apart from other British colonies in the Western Hemisphere. The Act allowed hotel operators in Bermuda to deny services. This... provided the legal foundation for Jim Crow racism. Nonwhites were excluded from tourist hotels, and segregation gradually extended to virtually all other aspects of life in Bermuda.” and*

*“Ruled by and for a white oligarchy, Bermuda was one of the most reactionary colonies in the British Empire. There was no income tax. No inheritance tax. No luxury taxes of any kind. Property taxes were nominal at best. Without a system of direct taxation, the colonial revenues were largely derived from custom receipts. The great beneficiaries of Bermuda's reliance on customs duties were landowners who paid nominal taxes and merchants who paid none. The great loser, by contrast, were working people who paid the price of higher living costs. As virtually everything had to be imported...”<sup>43</sup>*

Landownership in the 1900s came with economic and financial benefits in addition to voting rights and, conversely, the higher living cost for those without, coupled with the exclusion from certain types of business activities and other aspects of life in Bermuda, due to segregation. The loss of land, along with inherent legal rights and privileges due to expropriation or compulsory purchases, with or without compensation, by two well-established black communities in an island the size of

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<sup>41</sup> Francis, Dr. Theodore, (2020) “Tucker's Town, Tourism and Captured Lands”, p.p. 90., COI – Exhibit TF-2

<sup>42</sup> Winfield, Lynne and Riley, Cordell (CURB). ‘Black History in Bermuda’, 28 Oct 2020., COI - CURB Exhibit 2

<sup>43</sup> High, Steven. “Base Colonies in the Western Hemisphere”. Palgrave Macmillan, 2009., COI – Exhibit QS-6

Bermuda would be considered to be of a systematic and structural in nature, as identified in the Gay case.

The system of white supremacy was clearly used in the purposeful eradication and memory of Tucker's Town. It required a majority of black landowners in the area to surrender their lands to a private company dominated by wealthy whites foreign and Bermuda businessmen and sanctioned by an entirely white governmental structure. The immediate gain was thus a private one, as

*"...the colony's commercial elite equated the project with its own economic agenda." Referencing black history in Bermuda..."In such a society, the outcome was a foregone conclusion, with black folk understanding all too well they had little choice but to sell." Thereafter the story of Tucker's Town's free black community, now home to the rich and famous, disappeared from Bermuda's history and by the mid-50s Tucker's Town's roads disappeared from Bermuda's "handy-maps" to discourage curious visitors." <sup>44</sup>*

Again, addressing such legacy issues involves the process of truth and reconciliation – looking back and dealing honestly with the lingering issues of yesteryear in order to move forward.

Mr. Mark Pettingill, a lawyer representing his clients in relation to a matter before the COI, stated:

*"I think that most recently Black Lives Matter is an indication that the most important and significant thing that white people needed to do as a starting point was to recognize that because of the wrongs of the past, there have been legacy issues that impact on black people up to this day. And once white people are able to acknowledge that we begin then, surely, to take the right steps in the right direction."*

## **Archival Records: Memorializing Events of the Past**

The COI agrees with Dr. McDowall's statement that the way to cure amnesia is by means of reliance on contemporary documentation in archives which are, indeed... "precious sources of analysis and a tonic for the drift of memory over time" because of their importance in capturing and preserving historic events. Therefore, as a part of the research in this area, copies of the old corporate records of the BDCL, newspaper articles, legislation and extracts from Journals of the House of Assembly, among other documents, were retrieved from the Department of Archives and considered by the COI, revealing important records of communications and collaboration between the Office of the Governor, Members of the House of Assembly, the BTDB and the Furness Withy group of companies and their successor companies, from the 1920s to 1966 when Furness Withy wound up its affairs in Bermuda.

A great deal of information was gleaned from the old corporate records of the BDCL. Therefore, it was not necessary to rely on memory alone to ascertain the facts related to the transactional elements of the 1920 expropriation. Of importance, unfortunately, the records of the BDCL Commission of Inquiry established under the BDCL Act (No. 2), comprising details of all land transfers and related Orders, were said to be missing or were destroyed. These records would have

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<sup>44</sup> Lynne Winfield, "The Presence of White Privilege in Bermuda's Dominant Narrative: Tucker's Town Free Black Community (Bermuda 1790-1920)"



provided the names of all dispossessed landowners and the property description and location of each of their respective holdings; such information would have been found in the original deeds turned over to the BDCL Commission under the Compulsory Purchase Order issued by the Commission in exchange for an arbitrated award. There are a number of ways in which to establish landownership, by way of example, the establishment of a systematic adjudication process specifically targeting the verification of previous landownership in the Tucker's Town area from the 1900s. It is to be noted, however, that the establishment of such an adjudication process would depend upon the will of the government of the day to pursue where descendants require such assistance for discovery of ownership purposes.

Further, according to the Journals of the House of Assembly, three similar plans of the proposed Tucker's Town scheme had been prepared for use of the three branches of the Legislature in connection with the consideration of the BDCL Bill, one to the Colonial Secretary for the use of His Excellency the Governor, one to the Clerk of the Legislative Council for the use of the Council and the third for the use of the House of Assembly. These preliminary plans for Mid-Ocean Club, Tucker's Town would have accompanied the Petition of Furness, Withy & Company, Limited<sup>45</sup> that was tabled in the House of Assembly. It is believed that these may have been the same plans that were drawn by Olmsted Landscape Architects, Brookline, Massachusetts, referred to elsewhere in this Report.

The BDCL corporate records, albeit not all of them, contain sufficient information for the COI to ascertain relevant historical information in connection with the Tucker's Town expropriation, notwithstanding the fact that the information is conflicting in certain respects, for example, between the perspective of Furness Withy and that of Governor Sir John Asser. Additionally, these records are of significance because they reveal, in some cases, the very thinking and overwhelming support behind the Furness Withy expropriation of approximately 6.4% of the total acreage of land in Tucker's Town and immediate vicinity and beyond (notwithstanding the fact that at one time the Island had been owned 100% by a Virginia Company). These BDCL records, submitted in evidence by Dr. Francis, form a permanent part of this COI Report.

Certain of the BDCL documents have been included as appendices for ease of reference as the COI also relied on their factual content, without manipulation or interpretation, as a means of informing the public and allowing readers to reach their own conclusion as to whether or not the Tucker's Town expropriation was lawfully effected outside of the statutory instruments passed and whether compensation offered and received was fair and just. The objective of this inclusion should go a long way towards dispelling myths and hearsay about the expropriation, particularly as the concerns expressed at that time are connected to the concerns being expressed today. It is, however, understood and accepted that depending on one's personal, political, social and economic standing or affiliations, the evidence presented may not be sufficiently convincing to change minds, hearts and attitudes. That said, the fact that the expropriations happened cannot be gainsaid. That is the premise upon which the COI considered matters and conducted its proceedings.

It must also be understood that there were strong public concerns expressed by various Members of the Executive Council, at least two Members of the House of Assembly, Dr. T.H. Outerbridge

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<sup>45</sup> Furness Withy Company Ltd. "*Petition from Furness Withy For the Incorporation of the BDCL*" Received by Speaker of the House and Members of Parliament of Bermuda, 23 Feb. 1920., COI – Exhibit TF-3, pp. 22 - 26

and Mr. W.A. Moore, and members of the public. Dr. Outerbridge read the Petition of the landowners in the House of Assembly. The significance of this information is that Mr. S.S. Spurling, not Dr. Outerbridge, was the Member of the House of Assembly for St George's Parish at the time. However, Mr. Spurling was, among other things, the Member who introduced and marshalled the BDCL Bill in the House of Assembly and a staunch supporter behind its approval. He was also a Director of the BDCL, a Director of the BDTB and a local businessman in his own right. In so many instances, there was no evidence of appreciation of the concept of "conflict of interest". It is for this very reason that this type of harmonization between Parliamentarians, businessmen and their personal affairs was at the time taken as accepted, normal practices in conducting business in Bermuda, including the decision to expropriate certain lands in Tucker's Town.

In the context of past expropriation events, these types of dealings would be considered systematic structural issues by the BDCL and its agents alleged to be at the root of the expropriation's design, processes and administration. Strong opposition against Furness Withy's plan did come from white business owners Mr. A.E. Bourne, who actually wrote to His Royal Highness the Prince of Wales,<sup>46</sup> and Mrs. Laura Bluck,<sup>47</sup> to name a few, who also publicly voiced their objections against such expropriation and the impact it would have on Bermuda. They had warned Bermudians to wake up before they lost their rights to foreign companies. As a result of the imbalance of power, however, the die had been cast as to the fate and impact on Tucker's Town as a community and, as a consequence, on future generations of black Bermudian landowners.

## Special Acts Passed for Compulsory Purchases

Bermuda created its own legal system in July 1612, its laws based on English Common Law, Principles of Equity and most of the English Acts enacted from that date were applicable in Bermuda. These laws and principles would have continued to be applicable in Bermuda unless subsequent legislation was passed by Bermuda's Legislature from that date. In light of this, the Statutes of Mortmain remained in force and effect in the 1900s and it was the intention of the BDCL Act (No. 2) to free the land listed for compulsory purchase under the Schedule of that Act from the Statutes of Mortmain, that is, free the Company and the purchasers, with the sanction of the Governor and Legislature, from any restrictions imposed on such land by the application of the said Statutes.<sup>48</sup>

Additionally, as Bermuda laws were based on UK Law, legislation governing the disposal of expropriated land dates back to 1845 when the Land Clauses Consolidation Act recognized the rights of original owners to repurchase property before superfluous lands could be sold by expropriating authorities.<sup>49</sup> The following is an extract from "The Power of Compulsory Purchase" under the law of England:<sup>50</sup>

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<sup>46</sup> Bourne, A.E. "No Title" Received by Colonial Secretary, 7 Jan. 1927., COI – Exhibit TF-4

<sup>47</sup> Francis, Dr. Theodore, (2020) "*Tucker's Town, Tourism and Captured Lands*", p.p. 84., COI – Exhibit TF-2

<sup>48</sup> Attorney General "107". Received by Colonial Secretary, 4 Jan. 1935., COI – Exhibit TF-3., p.p. 5

<sup>49</sup> *Land Clauses Consolidation Act*, 1845, 8 & 9 Vict c 18. sec 127-131, (Bermuda).

<sup>50</sup> McNulty, William D. "The Power of 'Compulsory Purchase' under the Law of England." *The Yale Law Journal*, vol. 21, no. 8, The Yale Law Journal Company, Inc., 1912, pp. 639-54, <https://doi.org/10.2307/784838>.



*“When a special act is passed and includes clauses of the Lands Clauses Acts, the clauses are construed together as forming one act.”<sup>51</sup> The widest publicity is given to these special acts, as where a company is given power to take land for railway purposes, it is required to keep a copy of the act in its principal office of business for the inspection of any person or persons interested, and also to deposit in the office of each of the Clerks of the Peace of the several counties a copy of it.<sup>52</sup> It is the policy of Parliament, particularly in regard to commercial undertakings, to limit the quantity of land that may be taken to such an amount as is reasonably necessary for the purposes of the particular undertaking.”<sup>53</sup>*

*“While many special acts give to promoters of railways compulsory powers of purchase over a large area, they usually limit the land which may be taken to what shall actually be required for the enterprise. Under the standing orders of Parliament these limits are called “Limits of Deviation,” and represent the distance which the central line of the railway may deviate, but do not indicate the outside limits of the railway. (Standing Order, No. 40, House of Parliament). Sometimes promoters acquire more land than they require for their railway, in which case Parliament provides that such superfluous land must be sold within a prescribed period, and the Lands Clauses Consolidation Act contains a series of sections with respect to the sale of this “superfluous lands.”<sup>54</sup>*

*“The object of these sections is to secure to landowners from whom land is taken by compulsion, a reversion as nearly as Parliament can accomplish it, of all lands which is not necessary for the undertaking. Of course these sections do not apply to land bought by a railway company under agreement, nor do they apply to cases where the land has ceased to be required because of the partial or total abandonment of the undertaking, unless ten years has elapsed as provided in the Lands Clauses Act.”*

*“The Special Acts for compulsory purchases does address the fact that it is the policy of Parliament, particularly in regard to commercial undertakings, to limit the quantity of land that may be taken to such an amount as is reasonably necessary for the purposes of the particular undertaking.”<sup>55</sup> While many special acts give to promoters, for example, of railways compulsory powers of purchase over a large area, they usually limit the amount of land which may be taken to what is actually required for the enterprise. Further, sometimes promoters acquire more land than they require for their railway, in which case Parliament provides that such superfluous land must be sold within a prescribed period, and the Lands Clauses Consolidation Act contains a series of sections with respect to the sale of this “superfluous lands.”<sup>56</sup>*

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<sup>51</sup> Sec. I, Land Clauses Consolidation Act of 1845 (LCCA 1845)

<sup>52</sup> Ibid Sec. I5I, LCCA 1845

<sup>53</sup> Ibid Sec. 18, LCCA 1845

<sup>54</sup> *Land Clauses Consolidation Act*, 1845, 8 & 9 Vict c 18. sec 127-132, (Bermuda).

<sup>55</sup> Ibid Sec. 18, LCCA 1845

<sup>56</sup> *Land Clauses Consolidation Act*, 1845, 8 & 9 Vict c 18. sec 127-132, (Bermuda).

It should be noted that such limitation was not imposed by the Bermuda Legislature in the case of Furness Withy. Additionally, the Bermuda Legislature did not see fit to impose in the Private Act of BDCL a provision which would have incorporated processes and procedures compelling the sale of land in access of the need of the objectives of Furness Withy to former landowners. Instead, BDCL was able to transfer expropriated land to both MOCL and Tucker's Point; this meant the perpetual alienation – in “dead hands” – of Bermuda lands from future generations of dispossessed Bermudians. The failure of the Government of Bermuda to secure this type of provision for the residents of Tucker's Town shows a complete dereliction of duty to those who suffered at the hands of a foreign private enterprise, with the Government's blessings, for it was Government that had the primary responsibility for ensuring that affected owners and occupants did not suffer injustice as a result of such acquisitions.

## Private Acts of the Furness Withy Group of Companies

Another source of historical relevance is the various Private Acts passed in 1920 onward in order to achieve Furness Withy's objective lawfully. "The Private Bill" is:

*“either a public or private corporation or where individuals desire to obtain powers to carry out undertakings, and these powers cannot be obtained under existing statutes, then they apply to Parliament, which grants them the necessary authority. The procedure respecting the passage of a private bill is regulated by the standing orders of Parliament, which are altered and amended annually. Under these orders it has long been necessary, when power is sought to take land compulsory, for the promoters of the bill to show that notice has been given to persons likely to be affected. Books of reference are deposited showing the lands to be taken, with names of the owners and lessees thereof. A time limit of three years is usually imposed for the exercise of compulsory purchase, and, in some acts there is provided a further time limit for the execution of the works.”<sup>57</sup>*

On 4<sup>th</sup> August, 1920, Mr. S.S. Spurling moved that the Bill pass the House and that it be entitled “The Bermuda Development Company Act (No.2) 1920”. That Bill was affirmed as follows:

### Ayes 19

Messrs. C E Astwood	T.H.G. Outerbridge	S.S. Spurling
A.W. Bluck	J.S. Pearman	H.V. Smith
O. Cooper	H.A. Peniston	M. Wainwright
J.W. Cann	A. Peniston	H.W. Watlington
N.W. Hutchings	J.H.P. Patterson	J.H. Watson
H.G. Hill	W.S. Perinchief	E.F. Zuill
H.T. North		

<sup>57</sup> McNulty, William D. “The Power of ‘Compulsory Purchase’ under the Law of England.” *The Yale Law Journal*, vol. 21, no. 8, The Yale Law Journal Company, Inc., 1912, pp. 639–54, <https://doi.org/10.2307/784838>.

## Nays 2

Messrs. W.A. Moore, T.H. Outerbridge

Although the Private Act of BDCL was passed, two Members of the House of Assembly expressed concern that lands acquired from owners who did not wish to sell be safeguarded from speculation and introduced an amendment “*that the Company shall not sell, mortgage, lease or otherwise dispose of any lands compulsorily acquired accept with the previous sanction of the Legislature*”. The majority felt that the suggested amendment was too restrictive but conceded that the Company should not outright sell the land without consent of the Legislature.

In addition to BDCL’s Private Act, other Private Acts were enacted by way of petitions by Furness Withy to purchase land and carry out other activities in order to realize its objective. These Private Acts showed the foresight of the Members of the Executive Committee and Legislature and the influence of local businessmen in keeping the status quo by refusing to adopt a Companies Act in the 1920s. As a result, a company could be formed in Bermuda only by a Private Act which could be approved or refused by the Legislature and afterwards, if so desired by the U.K. Government, disallowed by the Colonial Office.<sup>58</sup> The importance of such bespoke Acts is that they memorialize the intent, purpose and statutory powers granted in order to manifest the determined will of the Legislature of the day and aims and objectives of the Petitioner in each case.

A chart of the Petitions and Private Acts was prepared showing the various Acts passed by the Legislature during a span of three years and beyond in order to accommodate Furness Withy’s vision of a “winter playground”. Additionally, in order to carry out this vision, the Frederick Law Olmstead (FLO) architectural firm of Massachusetts, USA was contracted by the BDCL to design the Mid-Ocean Club and its surrounding buildings (tennis courts and stables, etc.) as well as the holiday homes referenced in the Mid-Ocean brochure.\*\* In 1923, FLO also did work on the St George’s Hotel on behalf of BDCL/Furness Withy. The FLO collection is extensive and can be researched online.^ It should be pointed out that one of the maps will actually show that certain Bermudian families were purchasers of expropriated land immediately after owners had been dispossessed. Land taken from one class of Bermudians for the immediate benefit of another class of Bermudians is unjust and inequitable. Notwithstanding the appearances of due process enshrined in Private Acts, the COI was required to consider the circumstances and evidence submitted by Claimants in relation to alleged unjust and inequitable treatment and expropriations generally.

Based on the premise that all Private Acts were lawfully enacted, it is extremely important to examine the powers granted via the BDCL Act (No. 2) and who was authorized to execute such powers of expropriation within the permitted areas and acquisitions made outside of the authorization granted.

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<sup>58</sup> Dill, T.M. “Bermuda Laws and Franchise” Journal of Comparative Legislation and International Law, Vol. 14, No. 4, 1932

\* List of Petitions and Private Acts passed relating directly or indirectly to the Furness Withy’s scheme

\*\* Dr. Theodore Francis provided the link to Frederick Law Olmstead’s, architectural firm, collection of maps and plans of work done for BDCL/Furness Withy: [https://www.flickr.com/photos/Olmsted\\_archives/albums/72157683477958205/page1](https://www.flickr.com/photos/Olmsted_archives/albums/72157683477958205/page1)

^ FLO collection of maps and plans of work done on the St George’s Hotel: <https://www.nps.gov/frla/olmsted-archives-collections.htm>

## Powers Granted under the BDCL Act (No. 2)

In order for the Furness Withy group of companies to acquire 644 acres of land, it took a concerted effort by those involved in the policy and decision-making process to give effect to this acquisition, making the entire process “legitimate” and in some cases having to be legitimized actions taken by the company after the acquisition of land had already taken place. Such landholdings included land in Tucker’s Town, the Town of St George’s and in Pembroke Parish.

The acquisition of land in Tucker’s Town and its immediate vicinity was authorized by both the BDCL 1920 and the BDCL Act (No. 2) 1920, empowering the company as follows:

1. By section 9(1), the BDCL 1920 Act had the power to acquire and hold land as the Legislature authorized; and
2. By Section 28 of the BDCL Act (No.2):

(1) The Company is hereby empowered to purchase or acquire under the provisions of this Act, *for carrying on the business of the Company* under the powers contained in the previous Act, the lands in these Islands described in the First Schedule to this Act (300 acres, see description below in Schedule), subject to the exceptions specified in such Schedule, and to hold by its corporate name the lands so purchased or acquired.

(2) The Company is hereby empowered, *with the previous sanction of the Governor-in-Council, but not otherwise, to purchase or acquire* by agreement with the owner or reputed owner any other land in these Islands bona fide required for carrying on the business of the Company under the powers contained in the previous Act, not exceeding in the whole fifty acres, but nothing herein contained shall be construed to authorized the Company to acquire, except by private purchase, any lands in these Islands other than those described in the First Schedule to this Act.

(3) The Company *shall not, without the previous sanction of the Legislature of these Islands sell, or otherwise dispose of*, except by mortgage, or by lease for terms not exceeding twenty-one years, more than one hundred acres of land purchased or acquired by the Company under the compulsory provision of this Act, nor shall the Company, without the like sanction, sell or otherwise dispose of, except by mortgage or lease as aforesaid, any of the said lands to any Company incorporated elsewhere than in these Islands.”

(4) In the event of the Company acquiring by purchase or under the provisions of this Act, or partly in one mode and partly in the other, the tract of land constituting the Glebe ...”

(Note: By 1921, Hamilton and Smith’s Parish Glebe Lands were vested in the Synod of the Church of England, in trust, for the benefit of the living of the incumbent. In

1926, BDCL, the fee simple conditional owner, took ownership of 40 acres of Glebe Lands in fee simple absolute)<sup>59</sup>:

### **“FIRST SCHEDULE**

ALL THAT TRACT OF LAND DELINEATED AND COLOURED PINK ON THE PLAN FORWARDED BY THE Agents Of the Company to this Honourable House of Assembly on the fourteenth day of July, 1920, a duplicate of which plan was on the same date delivered by the Agents of the Company to the Clerk of the Honourable the Legislative Council for the use of the Council and another duplicate of which plan was on the same date deposited by the Agents of the Company with the Colonial Secretary for the use of His Excellency the Governor, WHICH TRACT OF LAND COMPRISES (1) The whole of that part of the parish of Saint George known as Tucker’s Town and (2 Two portions of land in Hamilton Parish, one lying North and the other West of the said land at Tucker’s Town, the latter portion including Trott’s Pond coloured blue in the said plan, WHICH TRACT OF LAND is bounded on the NORTH partly by the other lands in Hamilton Parish coloured yellow in the said plan, partly by Harrington Sound and partly by Castle Harbour, on the EAST by Castle Harbour, on the SOUTH PARTLY BY THE ocean and partly by two lots of War Department land coloured green on the said plan and on the WEST partly by the Westernmost of the said War Department lots, partly by the Eastern boundary line of Smith’s Parish, partly by Mangrove Lake and partly by other land in Hamilton Parish coloured yellow, together with all houses buildings walls fences rights easements and appurtenances respectively appertaining to the several parcels of land comprised in the said tract of land or therewith held or enjoyed as part thereof or appurtenant thereto SAVE AND EXCEPT the public roads and the War Department road which traverse the said tract of land and the several small lots or parcels of land coloured green on the said plan with the buildings thereon designated respectively “A.M.E Church”, “School House,” “Methodist Chapel,” “Methodist Cemetery” and “Cable House” and the three lots of War Department land also coloured green on the said plan and thereon designated by the letters “W.D.”

The purchase by compulsory purchase of the land in Tucker’s Town was subject to requirements in the BDCL Act (No 2) that subsequent sales of more than 100 acres should be subject to further approval by the Legislature, as should sales to companies not incorporated in Bermuda. Further, it is important to remember that the lands expropriated by the BDCL as described in the First Schedule are the same lands that were subsequently divided, for the most part, between Mid-Ocean Club Limited in 1951 (as to 200 acres) and BPL then to Tucker’s Point in 1958 (as to 287 or more acres). For the sake of clarification, a distinction must be made between Mid-Ocean Club (the trade name of the Furness Withy and the name of its Bermuda project) and Mid-Ocean Club Limited, a separate entity subsequently formed in 1951 which continued to use the trade name

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<sup>59</sup> “The Glebe”, The George’s and Hamilton Parish Act; Dill, Bishop Nicholas. “Witness Statement of Bishop Nicholas Dill”, COI - Exhibit ND-1

“Mid-Ocean Club”. (See separate sections in this Report specifically relating to MOCL and Tucker’s Point.)

## **Compulsory Acquisition for Public and Private Benefit**

The extent to which private end-users should be allowed to be beneficiaries of compulsory acquisitions has long been an issue and laws vary as to how they define and circumscribe the potential involvement of the private sector. The issue has become more acute as governments and their development partners increasingly emphasize the importance of leveraging private investment for activities that have traditionally fallen within the public domain.<sup>60</sup>

To put matters into perspective, Bermuda’s physical land mass in the 1900s consisted of five main islands, forming a chain along the lines roughly of an elongated “S”. Beginning at the top there are in order St. David’s and St. George’s Islands, then the so-called mainland and then in the tail of the “S”, Somerset and Ireland Islands. The lines of the “S” from tip to tip measure approximately twenty-two miles and the average width from sea to sea is perhaps a little less than a mile. The total area of the islands at that time was estimated at substantially 19 1/3 square miles, or 12,373 acres (prior to the 1940’s US Base land reclamation in St George’s).

Considering the total area of Bermuda, Furness Withy was initially desirous of acquiring over 4% of lands in Bermuda to use in its own private commercial venture<sup>61</sup>. The Company’s approximate landholding was, in the aggregate, 6.4% ( $12,373/644 = 6.4\%$ ) of Bermuda’s total land mass. This acquisition was in addition to other foreign-owned landholdings particularly in St George’s Parish by foreigners. At that time, the total landholdings by aliens could not statutorily exceed 400 acres in any one parish and 2,000 acres overall in Bermuda, as prescribed under the Aliens Acts.

## **Expropriations: Lawful or Unlawful**

The exercise of power of expropriation of land in Tucker’s Town and St. David’s Island may or may not have had the approval of a large segment of the Bermudian public, but the fact remains that compulsory acquisitions by the Government or its approved agents are legal. Such acquisitions constitute one of the oldest traditions in British common law. Beginning in the 19<sup>th</sup> century, both Bermudian and British authorities routinely engaged in the expropriation of private property on the Island and it cannot be argued that such acquisitions did not serve the greater public interest.

Also, historically Crown Colony governance meant that final authority rested in the hands of Governors appointed by the Colonial Office; the Governors in turn established small councils to execute the political, economic and social agendas established by the Colonial Office and/or Parliament.<sup>62</sup> Currently, a specific Minister is designated and empowered to authorize the functions associated with compulsory acquisition. Also, relevant laws and regulations clearly identify the authorized government bodies in order to reduce opportunities for abuse of power. This seemingly was not the case in the expropriation of land in Tucker’s Town. For instance, the

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<sup>60</sup> Lindsay, Jonathan Mills. “PPP Insights.” *World Bank: Public-Private Partnerships Legal Resource Centre*, Aug. 2020, <https://ppp.worldbank.org/public-private-partnership/>.

<sup>61</sup> Francis, Dr. Theodore, (2020) “*Tucker’s Town, Tourism and Captured Lands*”, COI – Exhibit TF-2

<sup>62</sup> Francis, Dr. Theodore, (2020) “*Tucker’s Town, Tourism and Captured Lands*”, p.p. 10, COI – Exhibit TF-2

current Acquisition of Land Act 1970 specifically states that the power may only be exercised by the responsible Minister or delegate. Although the power may be delegated, the Minister would still be the statutorily responsible holder of such power, however exercised. This was not an issue in the St David's Island expropriation as the land was purchased by the Bermuda Government for the purposes of establishing the U.S. Base lands.

It is further noted that the 1970 Act speaks only to land acquisitions by the Government and does not take into consideration the delegation of such power to a private entity. That Act does at least provide for the subsequent sale of acquired land by Government to be offered to former owners before such sale. Section 23 provides:

*“Where any land compulsorily acquired by the Government under this Act, or any enactment repealed by this Act, is subsequently intended to be sold, then the authority empowered to sell shall, as far as is practicable and subject to any Act or law governing the sale of land which is the property of the Government, cause the land to be offered for sale, at a price to be determined by a competent valuer agreed by both parties, to the person from whom it was acquired before entering into any agreement for the sale of the land to another person or selling the land at auction.”*<sup>63</sup>

The Acquisition of Land Act 1970 seeks to address some of the areas of concern that pre-dated that Act (which does not have retroactive effect) that the COI was tasked to address.

The process of acquisition and appointments under the provisions of the BDCL No. 2 Act are called into question as the power of expropriation, appropriate levels of compensation and all related activities concerning the exercise of such power are usually functions carried out by a government authority or a legal entity owned, managed or controlled by the government and created to undertake commercial activities on behalf of the Government. Any and all monies paid out in respect of such activity should have been proper expenses of the Government. This was not the case with the BDCL which instead of Government paid fees of all Commissioners who then paid expenses of both Arbitrators and Jurors

The following questions were considered by the COI:

- (a) Was it lawful for Parliament to delegate its powers and discretion to a non-governmental body under the laws of Bermuda, that is, to the BDCL, Commission and other related adjudicating bodies established under the BDCL Act (No. 2) 1920 to determine the proper (financial) compensation?
- (b) Would such activity be considered unlawful in that it breached “the non-delegation principle” or the “presumption against delegation principle” which is characterized as follows:  
*“whenever general powers granted by Parliament are presumed to only be exercisable by the body which is given those powers and can not be delegated.”*

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<sup>63</sup> Acquisition of Land Act, 1970. (Bermuda).



In a major UK case, *Barnard v National Dock Labour Board* [1953] 2 QB 18, it was held that the delegation of disciplinary powers originally granted to the London Dock Labour Board to the port manager was unlawful. In his judgment, Lord Denning confirmed that the power of suspension was a judicial function. This case confirmed that the delegation of judicial functions could be considered unlawful. One could apply the principle of the *Barnard* case to the Tucker's Town acquisition and confirm that valuations of land should have been a judicial matter and any such delegation of judicial function to anyone else or body, for example, Commissioners, Arbitrators or Jurors not appointed by the Government to deal with such matter would then be unlawful. As well, conflicts of interest by those involved in these transactions were present. For instance, Mr. F. Goodwin Gosling resigned his position as Assistant Colonial Secretary and was appointed Secretary of BDCL. He also actively participated in the valuations of various expropriated land and gave evidence before the jury when the landowner was not satisfied with his or her award. The system used to determine valuations was an issue raised by the Claimants in Case 034, the Estate of John Samuel Talbot, and in other cases heard by the COI.

## Appointment and Role of Commissioners, Arbitrators and Jurors

In addition to his executive role in the passage of the Private Act, Governor Willcocks approved the appointment of the three commissioners to supervise and carry out land acquisitions for the BDCL.<sup>64</sup> Governor Willcocks, as well as successive Governors, sanctioned corporate activities so that homes built on expropriated land had to be approved by the Mid-Ocean Club's admissions committee and the Governor in office at the time. The question arising for the COI: Who was responsible for monitoring and enforcing the Aliens Act requirements for landownership by prospective purchasers of land in that area? This matter was a real concern for Governor Sir John Asser.

On 20<sup>th</sup> September, 1920, Commissioners the Wor. Reginald Woodfield Appleby, JP, Charles Erastus Astwood, Esq, MCP and Jeremiah Scott Pearman willingly accepted office of member of the Commission. These Commissioners were also prominent members of the oligarchy and representatives of some of the old Bermudian families. The proceedings of the BDCL Commission followed a trial in the Supreme Court of Bermuda and Commissioners were granted discretionary powers to vary such procedure to such extent and in such manner as was desirable in the circumstances attending any such inquiry, similar to the powers granted to the current COI:

Section 21 of the BDCL Act (No. 2) makes provision that..."*the procedure at the inquiry shall follow as nearly as practicable the procedure on the trial in the Supreme Court of Bermuda in a civil action tried with a jury, but the Commissioners shall have a discretionary power to vary such procedure to such extent and in such manner as they deem desirable in the circumstances attending any such inquiry*".

However, unlike the BDCL, the current COI cannot make any determinations as relates to compensation. This power was not delegated to the current COI and therefore it can only make recommendations to the Government to execute or address.

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<sup>64</sup> In accordance with Section 2 of the BDCL Act (No 2) 1920. (Bermuda).

\* BDCL corporate records: On 28<sup>th</sup> February, 1930 His Excellency Lieutenant General Sir Alexander Hood, GBE, KCE, Governor and Commander-in-Chief of Bermuda, by virtue and in exercise of the power in that behalf vested in me by Section 2 of "The Bermuda Development Company Act, 1931 was able to sanction the purchase and acquisition by the BDCL of land situate in Pembroke Parish.

The BDCL Commission was appointed to broker differences between buyer and seller. Additionally, the Commission appointed arbitrators to impose a price and a jury of their peers to decide a binding price. Commissioners, Arbitrators and Jurors were then remunerated by the BDCL:

- (a) In the BDCL Petition, the Governor is said to be acting pursuant to the power granted under section (2) of the BDCL Act (No. 2) instead of pursuant to the powers granted by his official office; \*
- (b) Section 14 provided that Jurors may be appointed from the names of persons listed on the St George's, Hamilton and Smith's Parish Registers. Commissioners Appleby, Astwood and Pearman had the power to then select as Commissioners 36 persons who in their opinion were specially qualified to perform the duties of Jurors for the purposes of land acquisition by compulsory purchase. Commissioners were further empowered to relieve any Jurors from service and decide their remuneration and travel expenses, all from monies paid to the Commission's account by the BDCL; and
- (c) Further, section 13 incorporated the provisions of sections 15 to 25 of the Public Land Act 1880 having the same extent in all respects as if the same were incorporated in the BDCL Act ( No. 2), with substitution of "Company" for "Colonial Surveyor" and "Commissioners" for "Governor" in section 15, "Company" for "Public Treasury" in section 23, "Company" for "Colonial Surveyor" in section 24 and the expression "the Special Act" in any of the said sections shall be construed as referring to this Act.

Powers normally reserved for public officers appointed by Government were granted to BDCL and delegated to non-governmental officials to establish the BDCL Commission, Arbitrators and Jurors who would carry out official responsibilities.

## **Beneficiaries of the Tucker's Town Expropriation**

By the mid-1920s, BDCL and its financier Furness Withy had acquired over 644 acres of land (130 acres over their original request). Sir Frederick Lewis stated the following in a letter to His Excellency the Governor, Sir John Asser, GCMG, KC dated 15<sup>th</sup> August, 1923:

*"When we acquired the property it never occurred to us that any more stringent interpretation of the Aliens Act would be made then had existed in previous years. In round figures I think there are about 640 acres of land acquired, about one half of this was purchased outside the Expropriation Act and we always considered we had an unrestricted right, subject to the terms of the Aliens Act, to dispose of the 300 acres of land acquired, in addition to the 100 acres we are allowed to sell under the Expropriation scheme. Not that I think we should ever want to sell this amount, as our present plan is to sell 300 separate sites of about one acre each, although in some instances possibly the acreage may be increased and the number of sites*

*reduced, i.e. we may come across a purchaser who wants two or three acres instead of one but, generally speaking, that is our scheme.*

*One of our very definite regulations in regard to the Club House, and which it was also intended should very strictly apply to the sites, is that no membership to the Club and no sale of the sites should be permitted to any but an approved person and under no circumstances was it the intention of the Company to sell land to any persons of the highest social and financial standing.*

*“Whilst I was fully aware of the existence of the Aliens Act, I always understood that the policy in dealing with applications from Aliens was governed by considerations of character and social standing of the applicant and so long as this position was reasonably safeguarded there would never be any object to the sale of any of the sites.*

*The policy of the Bermuda people appears to me to be laid down in the Aliens Act which permits the sale of 400 acres of land in each parish to aliens with the previous approval of the Governor in Council. So long as this Act continues in force this appears to be the authorized policy of the Bermuda Parliament and people and if it was the intention of Bermuda to restrict the application of this Act in our case we ought, as a matter of equity, to have been so advised at the time the purchases were made.*

*I could quite understand local opinion resenting the sale of expropriated land at a profit but such has never been our intention. The price at which we have fixed the 300 building sites is one which, if realized, will give us back 3/4ths of the capital we have expended on the purchase of the property, the erection of the club house and the making of the golf course, with all the other attendant improvements. For the remaining quarter we will have to look to the subscriptions to the golf course and the profits of the Club house to provide and I know sufficient about it to be perfectly satisfied in my own mind that it is very unlikely that we shall ever get an adequate return on that portion of this enterprise.”*

It must again be remembered that the tourism development scheme was to aid in the primary and profitable objectives of Furness Withy's business which was shipping.<sup>65</sup>

## **Statutes of Mortmain: Corporate Landholding Powers - in Perpetuity**

As far back as 1279, “mortmain” refers to property being held by ‘a dead hand’ and is therefore inalienable. At that time, Kings and barons objected to persons granting their land to a religious institution and receiving it back, having shed, in the process, their military and other feudal obligations. The provisions of Westminster (1259) declared against alienation of land without the lord's permission. King Edward I's statute of 1279 forbade such transfers on pain of forfeiture, to the chagrin of the clergy.

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<sup>65</sup> McDowall, Dr. Duncan (1996). “Trading Places: At Last, the Truth about Tucker's Town .” *Bermuda Magazine*, pp. 28, COI Exhibit DDM-11

Historically, the laws of the UK became the laws of Bermuda upon settlement by the colonists.<sup>66</sup> It is important to bear this in mind as the *Statutes of Mortmain* were relied upon to empower corporate entities, such as the Furness Withy group of companies, to own land in Bermuda in perpetuity by the enactment of a Private Acts for landholding purposes. Once purchased, the land became an asset of the Company and was alienated in perpetuity.

According to *The Royal Gazette* of 23<sup>rd</sup> January, 1930, Mr. S.S. Spurling stated in the House of Assembly, that...

*“he would divide his remarks into two parts, speaking first of the history of the Colony and then of the Constitution as it exists today. There were no inhabitants in Bermuda when it was first colonized, and it has been held that in a “settled colony” English settlers brought with them the whole of British Statute and Common Law, which could only be modified by Statute either of the Imperial Parliament or of the local Legislature allowed by H.M. the King. At the end of every session it is still announced that “His Majesty has been pleased not to exercise his power of disallowance with respect to the following Acts of the Legislature of Bermuda.” It was found for example that the Company, such as Furness Withy, could under the ancient Statutes of Mortmain, hold land in Bermuda, and a special enactment was required to enable them to do so.”*

A trading company fell within this category and was not exempted from the Mortmain Acts and could not without special Act or consent of the Bermuda Legislature own land. Again, the intention is farseeing, so as to keep out speculators forming realty companies to buy land in order to keep the profitable industry of tourist and hotel to trade. The well-to-do families in Bermuda have been traders settled here for centuries.

Granting permission for Furness Withy to set up shop in Bermuda in direct competition with existing local businesses was carried out with the full cooperation of government and those old Bermudian families who were in some cases one and the same. It is also noted that a number of the well-known old local businesses were established to support this newly engrafted tourism product. A list of such Private Acts passed by the Legislature for schools, banking, retail, hotel and other types of businesses was established in addition to the sole proprietary, white-owned businesses which continued to service the local and international markets. In this respect, it cannot be argued that the presence of Furness Withy in Bermuda was a welcomed addition to the oligarchical structure.

The principle derived from the Statutes of Mortmain was still relevant in the 1920s. This permitted the transferring of legal ownership of such acquired lands with the sanction of the Legislature to various corporate entities within the Furness Withy group of companies. The lands were to be held in perpetuity, that is, during the life of the company, its successors and assigns. Governor George Fergusson stated that...

*“There does not appear to have been any legislative requirement made in respect of ‘first refusal’ offers to former landowners, though the 1954 letter by the then Colonial Secretary*

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<sup>66</sup> Francis, Dr. Theodore, (2020), Supra-No. 68 p.p. 8-12; Dill, T.M. “Bermuda Laws and Franchise” *Journal of Comparative Legislation and International Law*, Vol. 14, No. 4, pp. 220-221. 1932

*cited in the 2014 debate clearly suggests that he, at least, regarded this as good practice. The subsequent sales appear to have complied with these requirements.”*

Because there was no legislative requirement of ‘first refusal’ offers, the transfer and loss of land resulted in a transfer or loss of potential, that is, the ability to accumulate wealth as well as political and economic power shifts from one group of people to another. There is a clear indication that there is a systematic pattern which identifies that those individuals and institutions with money, influence and power took land from those persons who were probably land rich and cash poor and whose rights of ownership were not recognized. Raising the issue of the lack of legislative requirement for “first refusal” and acknowledging the same as “good practice” merely because it was raised as a concern and nothing further facilitated the complete alienation of rights in such land.

The effect of the lack of “first refusal” rights is that original owners of expropriated land would forever be lawfully alienated from their expropriated lands should BDCL’s primary purpose for which such land was taken had failed, for whatever reason. Dispossession with no opportunity of repurchasing expropriated land effectively disrupted the accumulation of generational wealth of those dispossessed and disenfranchised and disinherited descendants of such owners.

## **Power to Purchase Land**

The ruling made by the then Government is that an incorporated company cannot purchase or hold land in Bermuda without the previous sanction of the Legislature. This was made based on the Statutes of Mortmain or the Common Law, or both, which alienates the land transferred to the company in perpetuity. Based on the calculation below, approximately 45 acres of land were purchased by both Furness Withy and BDCL without prior sanction of the Legislature.

Section 28(2) and section 28(3) of the BDCL Act (No. 2) require prior consent for acquisition or sale of lands in Bermuda:

Under section 28(1) of the Act, the BDCL was empowered to purchase or acquire under the provisions of that Act, for the business of *carrying on the business of the Company* under the power of the original Act, the lands described in the First Schedule (300 acres);

Under section 28(2), BDCL was empowered, with the previous sanction of the Governor-in-Council, to purchase or acquire by agreement with the owners or reputed owner any land bona fide required for carrying on the business of the Company, not to exceed fifty (50) acres and does not authorize BDCL to acquire any lands other than those described in the First Schedule to that Act. Purchase by private purchase an exception;

It should be noted that Section 28(3) of the BDCL Act (No. 2) empowers BDCL, with the sanction of the Legislature, to sell or dispose of 100 acres.

As a consequence, it was necessary for Furness Withy to petition the Legislature for the passing of an Act to provide for the validation and confirmation of the title of that Company and BDCL to certain lands in Bermuda purchased in the belief that they had the right to hold real estate in Bermuda, without first having to obtain prior consent. Sir Frederick Lewis, notwithstanding the latitude already afforded to Furness Withy by the government, was of the mistaken belief that they were entitled to acquire land at will, similar to the powers granted to the military.

As a result of this acquisition of land in Bermuda without consent, the Furness Withy and Company Land Act 1928 was made operable on 30<sup>th</sup> January, 1928 in order to validate and confirm those previous actions carried out by both Furness Withy and BDCL in respect of the lands identified in the excerpt below. Furness Withy as a UK registered company was not itself required to have presence in Bermuda at the time of purchase of the land or at any time thereafter. The outcome was that at least 6.4% of the land in Bermuda became foreign owned within a relatively short period of time.

*“WHEREAS Furness, Withy & Company, Limited, of London, England, a Company incorporated under the laws of Great Britain, has petitioned the Legislature for the passing of an Act to provide for the validation and confirmation of the title of that Company to certain lands in Bermuda purchased by the Company in the belief that it had the right to hold real estate in these Island:*

- (a) The title of Furness, Withy & Company, Limited to three parcels of land, as described in the First Schedule to the Act is hereby validated and confirmed to the same extent in all respect as if the Company had acquired the same with the previous sanction of the Legislature:*
  - (i) eleven (11) acres commonly called “Rose Hill”, (together with the Hotel St George), St George’s Parish purchased 23 May, 1921;*
  - (ii) five (5) acres and two rods or thereabouts in the Town of St George’s, (together with the dwelling house and all other buildings etc), St George’s Parish;*
  - (iii) seven (7) acres one rod and twenty-four poles (together with all houses buildings etc.), in the Town of St George, St George’s Parish;*
  - (iv) the Company was authorized to acquire and hold in its corporate name, with the sanction of the Governor any land in St George’s Parish not in the whole exceeding Twenty-five acres, bona fide required for the purposes of constructing a golf course, and also, with the same sanction, a further amount of land not exceeding fifteen thousand superficial feet in the City of Hamilton; and five acres elsewhere in Bermuda, bona fide required for the purposes of the Company (and not for the purposes of its business); and*
- (b) further, title to land described in the Second Schedule to the Act, known as “Paynter’s Vale” containing twenty-two (22) acres or thereabouts situated in Hamilton Parish was also validated and confirmed.*

The fact that Furness Withy was seeking retroactive approval is evidence that the acquisition of approximately 45 acres was not carried out lawfully. These acquisitions were done without prior sanction of the Legislature and until such action was ratified by the Legislature, were deemed to be unlawful. Additionally:

1. Any land said to have been acquired pursuant to section 28(2), identified in the First Schedule, without the previous sanction of the Legislature was unlawfully done. According to section 28(3), BDCL could sell or dispose of 100 acres of the 300 acres. However, and more importantly, the on-selling of the remaining 200 acres should have been considered adverse to the objects of the Company, as this land was not being used for commercial or operational purposes of the business and was, therefore, unlawful.
2. The Aliens Act defines the meaning of “alien” which does not include a corporation. Therefore, the applicability of this Act was significant as Sir Frederick Lewis had informed Governor Sir John Asser that it was the intention of Furness Withy/BDCL to sell 300 one-acre lots or more to private owners. Additionally, BDCL had the ability to sell a further 100 acres of land for the purpose of its business. The on-selling of such lands to aliens would have been a concern if, in accordance with the Aliens Act, no consideration was also given to whom those lands were being sold
3. The 1907 <sup>67</sup>, 1911, 1915 and 1921 Alien Acts were subsequently incorporated into the 1926 Act but did not change the requirements for aliens purchasing Bermuda land. The statutory criteria in place at that time mandated that an alien cannot hold more than fifteen thousand square feet of land, which is equal to 0.34435262 of an acre (or one-third acre). Any purchase over and above that criterion was unlawful. Therefore, the selling of 300 acres of one-acre lots to aliens was unlawful.
4. As the lands stated above are situated in St George’s Parish, if any of those 45 acres or any other land acquired or expropriated by BDCL had been subdivided into acre lots, the sale of those lots to aliens would have exceeded the permissible one-third acre holdings. The transfer would have been in breach of the statutory landholding criteria of the Alien Acts. Further, no alien could hold property without the prior consent of the Governor-in-Council, or if he or she became possessed of it, he or she would have had to dispose of any land purchased within three years of purchase, if there was adherence to such criteria:

The Aliens Act 1907:

*“Section 3(1)(b) provides that: ... “the Governor-in-council shall not give his sanction to the acquisition by aliens of land by deed to an extent of more than two thousand acres in the whole, or to a greater extent than four hundred acres in any one parish exclusive of allotments made in the City of Hamilton or the Town of St George; and*

*Section 3(1)(c) of the Aliens Act 1907, that no alien shall acquire land by deed and hold the same to a greater extent at any one time than fifteen thousand superficial*

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<sup>67</sup> *The Alien Act, 1907. (Repealed).* (Bermuda.)



*feet if the land is situated in Hamilton or St George's, or to a greater extent than twenty-five acres if situated elsewhere."*

5. An amendment was made to the BDCL Act (No. 2) 1920 by the BDCL Act 1923 to widen the Company's powers to deal with (1) cases of owners, or part owners, who by reason of some legal disability are unable to dispose of their interest and (2) the cases of owners, or part owners, who either decline to treat with the Company or to conform in other respects of the provision of the Act.<sup>68</sup>

Notwithstanding the above unlawful purchases of land, with the sanction of the Governor, Legislature and support of local businessmen Furness/BDCL was able to acquire 644 acres (or more), an acquisition which was unprecedented for a holding company of a foreign-owned entity, Furness Withy, to then on-sell lots to a select clientele of foreigners and Bermudians.

## Opposition to Compulsory Acquisition

The following correspondence, taken from the BDCL corporate records, is evidence that there was also strong opposition or concern about the compulsory purchase of land in Tucker's Town. The numbers in brackets are the numerical references and order of each document in the BDCL files:

- (24) Letter dated 13<sup>th</sup> December, 1920 from the Colonial Secretary to Mr. A E Bourne, a concerned Bermudian, informing him that as the legislation authorizing the compulsory acquisition of land in the Tucker's Town area by the BDCL had been decided by the Legislature of the Colony, it does not appear to be one in which the Secretary of State would be able to intervene.<sup>69</sup>
- (26) Letter dated 7<sup>th</sup> January, 1921 from Mr. A E Bourne to the Colonial Secretary stating that he was never in favour of the compulsory acquisition of the land. With respect to a parcel of land which he purchased in 1913, he does not acknowledge that the property had passed to the Development Company. He also stated that he had notified the Development Company that he would not surrender his deeds until it had been officially published that His Majesty the King had not exercised his power of disallowance to the Act in question. He points out that:

*"he is only one of the great majority of Bermudians who are strongly apposed to this force Legislation for private purposes, it having no precedent in the whole of the British Empire, and instead of benefiting the inhabitants of these Islands, except a chosen few, it will be the means of creating a monopoly that eventually will destroy the agricultural industry of these Islands. The industry is and always has been the backbone of Bermuda. The Tourist business puts a lot of money in the hands of a few, and large part of them are foreigners; it is true that a certain quantity of cash is circulated, but an investigation will prove that the "benefit to all" statements are grossly exaggerated by those interested in the Hotel question."*

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<sup>68</sup> *Bermuda Development Act (No.2), 1923.* (Bermuda.)

<sup>69</sup> Colonial Secretary. "No Title" Received by A.E. Bourne., 13 Dec. 1920., COI – Exhibit TF-7, p.p. 4

*“Bermuda is a small place, foreigners under Act of Legislation already have been permitted to own a big slice of it, and now acres of the most valuable land from an agricultural standpoint are being taken for private emolument. Any extra revenue to be derived by these developments will have to be used for roads and other things not now foreseen, but the benefit to be derived by the people in general will be extremely limited and not justifying the taking away of a Britisher’s birthright”*<sup>70</sup>

## **Governor Sir John Asser’s Concern and Other Concerns about Sale of Expropriated Land to Aliens**

- (75) In a letter from Governor Sir John Asser to Sir Frederick Lewis dated 27<sup>th</sup> July, 1923, he expressed his concerns that although he finds in the BDCL Act (No. 2) that the Company may sell 100 acres of the expropriated land for the purposes of the business of the Company, there was nothing in the Act about the on-sale of such land to aliens.<sup>71</sup> For the sake of clarification, the BDCL divided up the expropriation process whereby two Private Acts were enacted: one to facilitate the formation of the Company with the general authority to purchase land (original 510 acres) and the second to facilitate the expropriations of originally 300 acres of land in Tucker’s Town and immediate vicinity, Town of St George’s (and in Pembroke) and further, 100 acres by compulsory purchase.

Under the BDCL Act (No. 2), the Company was authorized to purchase 50 acres of land\* for the purposes of its business. That Act does not include the power of sale or disposal of compulsorily purchased land save for 100 acres of the 300 acres permitted by section 28(3). Again, the Alien Acts imposed statutory limitations on who could hold Bermuda lands and prescribe the amount of such holdings that could be held by aliens within each of the nine parishes and in total in Bermuda. The definition of “alien” in the Alien Acts does not include corporations. The BDCL therefore, having a foreign majority shareholder, was able to have unrestricted rights to own land in Bermuda:

*“...we have a strong public opinion in favour of retaining everything it possibly can for the Bermudian and resenting the intrusion of an alien”*. The musing by the Governor is also evidence that there were voices against the expropriation other than those of the Tucker’s Town residents and two Members of Parliament. Other Bermudians, black and white, were opposed to the expropriation.

Governor Sir John Asser’s concern about the expropriation led him to write to Mr. S.S. Spurling on 26<sup>th</sup> July, 1923 inviting him to discuss the alien issue. He referred to an Executive Council Meeting held on 25<sup>th</sup> July, 1923 when the Council wanted to know the wishes of the House of Assembly with respect to the amount of land that could be held by aliens. By a draft Bill, 70 acres per parish was being proposed, a considerable decrease on the then current allowance to the whole of Bermuda. Governor Asser stated that *“It would help towards a solution of the Tucker’s Town question if this was increased.”* Governor Asser was seeking a solution that might address the BDCL’s unlawful purchasing and

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<sup>70</sup> Bourne. A.E. “No Title” Received by Colonial Secretary, 7 Jan. 1927., COI – Exhibit TF-7, p.p. 1

<sup>71</sup> Asser, Sir John. “No Title” Received by Sir Fredrick Lewis, 27 Jul. 1923., COI – Exhibit TF-6, p.p. 4 – 5

\* Petition of BDCL to have its landholding increased from 50 to 75 acres that could be acquired for business purposes

selling of land in Tucker's Town and in St George's Parish generally in excess of the permitted requirement and selling to aliens land from which Bermudian owners had been dispossessed.

The COI was unable to find any evidence on file that indicated that the information requested by the Governor regarding details of purchase and sales was ever provided to the Executive Council. The mere fact that this alien issue was still being raised by the Governor supports the view that the Tucker's Town expropriation clearly did not sit well with him nor with certain members of the Executive Council.

- (76) Letter of 26<sup>th</sup> July, 1923 from His Excellency the Governor Sir John Asser to Mr. S.S. Spurling...

*"My dear Mr Spurling. This question of sale of land in Tucker's Town is going to be a very important one and has given me food for thought for some time past. I am very anxious to find a solution which will be satisfactory to a business concern that has sunk much money here and undoubtedly very considerable aided the Colony to reach its present state of prosperity, and at the same time be satisfactory to the people of Bermuda. The situation is a very peculiar one and you have such a grasp of it that is unnecessary for me to go into the detail of it, but you will, I am sure have realized that it places the Executive Council in rather a difficult position and that a big responsibility falls on us. Of course our first consideration is the people of Bermuda, but we have to be fair to the Company so I am anxious to find a course that will meet both these requirements. As I said at the Council Meeting yesterday, the first thing we wish to know is the wishes of the House as regards the amount of land that may be held by Aliens. That will give us something to go on. I see by the draft bill that 70 acres per Parish is proposed. That is a very considerable decrease on the present allowance to the whole Island. It would help towards a solution of the Tucker's Town question if this were increased. The Council will then need to know some particulars such as:- 1. The number of houses that were expropriated. 2. The acreage that was taken by expropriation. 3. What of 1 and 2 are outside the limits of the golf course and the actual grounds of the club house buildings. 4. How much of 3 it is proposed to sell to Aliens. 5. The price that was paid for the expropriate of 4. 6. Whether any of the present objections come within 4. With this information we may possibly be able to steer a course which will keep us off the rocks. Meanwhile it is desirable that you as a Director should warn your Board that altho' the Act allows them to sell 100 acres of the expropriated ground there is a snag ahead in the shape of the Aliens Act and that I am most anxious that collision should be avoided, and that pending an understanding it will be advisable for them to refrain from sale of expropriate land to Aliens...."*<sup>72</sup>

- (78) Letter of 15<sup>th</sup> August, 1923 from Sir Frederick Lewis to His Excellency the Governor Sir John Asser...

*"When we acquired the property it never occurred to us that any more stringent interpretation of the Aliens Act would be made than had existed in previous years. In round figures I think there are about 640 acres of land acquired, about one half of this was*

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<sup>72</sup> Asser, Sir John. "No Title". Received by S.S. Spurling, 26 Jul. 1923., COI – Exhibit TF-6, p.p. 2 – 3

*purchased outside the Expropriation Act and we always considered we had an unrestricted right, subject to the terms of the Aliens Act, to dispose of the 300 acres of land acquired, in addition to the 100 acres we are allowed to sell under the Expropriation scheme.”:*

*“...so far as the second point is concerned, a small community 600 miles away from any main land is necessarily very insular and very conservative in their ideas. It was soon apparent to me that they were not prepared to develop the Island themselves, at any rate, not until they had seen the advantages that could be derived from a wider outlook. It was consequent upon that necessity that we acquired the Tuckerstown property for the purpose of creating something like a country club with golf course, tennis courts and other attractions. The original purpose was somewhat varied and I think the scheme improved by the change of plan.”*

*“Whilst I was fully aware of the existence of the Aliens Act, I always understood that the policy in dealing with application from Aliens was governed by consideration of character and social standing of the applicant and so long as this position was reasonable safeguarded there would never be any objection to the sale of any of the sites.*

*The policy of the Bermuda people appears to me to be laid down in the Aliens Act which permits the sale of 400 acres of land in each parish to aliens with the previous approval of the Governor in Council. So long as the Act continues in force this appears to be the authorized policy of the Bermuda Parliament and people and it was the intention of Bermuda to restrict the application of this Act in our case we ought, as a matter of equity, to have been advised at the time of purchases were made.”*

*“I would like to say here in further justification of our position what I have always stated, that if the community like to take over Tucker’s Town at any time at the actual cost we paid for it we are quite prepared to do it, and that position still applies.”<sup>73</sup>*

- (105) Letter dated 31<sup>st</sup> December, 1934 from the BDCL (Mid-Ocean Club) to the Hon. Colonial Secretary raising the question of the Company’s position for repurchasing land sold to Mr. Henry Curtis Blackiston of New York and a Director of the Company, specifically:

*“Some years ago it was ruled by the Bermuda Government that an incorporated company cannot purchase or hold land in Bermuda without the previous sanction in each of the Legislature, the ruling being based on the Statutes of Mortmain or the Common Law, or both, and that land purchased without such consent was liable to be escheated to the Government.*

*The questions which arise in the present case are whether the Company, having acquired certain land under the authority of Act No. 25 of 1920, and having sold a portion of it, can legally re-purchase such portion of land without obtaining the sanction of the Legislature, and whether the re-purchase of the land without such sanction would render the land liable to escheat.*

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<sup>73</sup> Lewis, Sir Fredrick. “No Title”. Received by Sir John Asser, 15 Aug. 1923., COI – Exhibit TF-5, p.p 27 - 30

*It would appear on the face of it that the Company, having already received legislative sanction to hold the two parcels of land in question, may sell them and re-purchase them without transgressing the law...”*<sup>74</sup>

Note: It was determined that BDCL had the power to purchase then sell land and, later, repurchase the same land without breaking the law because of prior consent had been given on the first sale, based on the Statutes of Mortmain.

As previously noted, many residents of the Tucker’s Town community opposed the decision to dispossess them of their freehold properties and did everything they could to prevent their leaving their homes, their communities. They had invested in their properties, operated stores and had contributed to the economy of Bermuda by exporting produce. They were happy in their community, as evidenced by Dr. Theodore Francis’s report which was presented to COI on 19<sup>th</sup> October, 2020. Dr. Francis’s report points to how the residents of Tucker’s Town and Bermudians who lived elsewhere in the Island came together in an effort to block passage of the Bermuda Development Company Act and to prevent the expropriation of their lands. By way of example:

- B.D. Talbot, one of the largest landowners in Tucker’s Town, with some 75 acres of property strongly voiced his position. *“Talbot continued to say that as a fisherman as well as a small farmer and the site he holds is of value to him because it gave him access to the beach. Neither did he wish to bring up his boys as golf caddies but preferred that they learn a trade or become farmers.”* For residents, the location and lifeways of Tucker’s Town were recognized as an intrinsic part of the land’s wealth – that could not be replaced by jobs in the tourist industry. Talbot continued, *“He dislikes the idea of having his land arbitrarily valued by a committee and being forced to take their award.”*<sup>75</sup>
- Ms. Laura Bluck penned a letter to the editor of the *Gazette* in March 1920 warning Bermudians to wake up before they lost their rights to foreign companies!”<sup>76</sup>
- Dr. T.H. Outerbridge warned his colleagues that it was *“improper to dispossess a man from his freehold in a country where the franchise is in the nature of the freehold”*.<sup>77</sup>
- *“Resistance to the BDCL tourism project was common for all Tucker’s Town residents. Yet the comments of Osborn Talbot shows that their resistance transcended merely losing their ancestral homes but also touched the loss of culture and lifeways. Such losses could never be replicated, thus demonstrating the inadequacy of monetary compensation for many residents”*.<sup>78</sup>

Some three weeks after the BDC Act became law, twenty-four landowners and residents of Tucker’s Town presented a petition to the House of Assembly protesting the second Bermuda Development Company Act, titled “Petition of Residents of St. George’s and Hamilton Parishes against the Bill Entitled, “The Tuckers Town Scheme” [*The Royal Gazette* 11<sup>th</sup> March 11, 1920].

<sup>74</sup> Gosling, T.G. “No Title”. Received by Colonial Secretary, 31 Dec. 1934., COI – Exhibit TF-4, p.p 14 - 15

<sup>75</sup> Francis, Dr. Theodore, (2020) *“Tucker’s Town, Tourism and Captured Lands”*, COI – Exhibit TF-2, pp. 84

<sup>76</sup> Francis, Dr. Theodore, (2020)., Supra-No.92, pp. 83-84

<sup>77</sup> Francis, Dr. Theodore, (2020)., Supra-No.92, pp. 84

<sup>78</sup> Francis, Dr. Theodore, (2020)., Supra-No.92, pp. 84

A white minister and parish rector was among those who expressed problems with the proposed development in Tucker's Town. The following individuals signed the petition: Reverend L. Laud Havard, Rector of Hamilton and Smith's Glebe, Melbourne Smith, Oliver Constantine Lambert, Osmond Charles Talbot, Stewart Hastings Lambert, Oscar Anderson, Essie Lambert, Thomas Smith, Ainslie Lelilia Dansmore Manders, Ada Permelia Simmons, William Orlando Hilgrove Smith, Henry Thomas Harvey, Nancy Mayew Simons, Clarkson Frederic Burgess, Eliza Harriet Talbot, Dinna (Dinah) Smith, Alpheus Smith, Jabez Smith, Ellen Smith, Rosa Ann Lambert, Walter L. Smith, Oliver Selorn Lambert, Minnie Andrew Palmer and and Henry Nelves.

Dr. Theodore Francis writes:

*"The petitioners owned approximately one hundred acres of land and they stated that they did "not desire to part with or be deprived of their lands and houses...under any conditions whatever." Regarding the promises of 'liberal' compensation from FWC, the petitioners stated "no monetary compensation can adequately recompense them for the loss of their lands, houses vocations and homes." Their statement attempted to articulate the irreplaceability of their community. Unfortunately, their arguments fell on deaf ears. In the wake of the unsuccessful petition ,the "Honourable House" passed the second Bermuda Development Company Act and it became law on August 26th 1920".<sup>79</sup>*

The CURB report, presented by Mrs. Lynn Winfield and Mr. Cordell Riley to the COI on 23<sup>rd</sup> October, 2020 supports why arguments to save the communities in Tucker's Town may have fallen on deaf ears: *"In the Bermuda context, historical research clearly shows that laws and legislation were manipulated to achieve the personal and economic aims of the oligarchy throughout history and the 20th century".<sup>80</sup>*

F. Goodwin Gosling, the driving force behind the expropriation process wasted no time in putting things into motion. In September 1920, he notified the Colonial Secretary and requested that the Governor appoint Commissioners.<sup>81</sup> On 13<sup>th</sup> October 1920, the Commissioners began their first public hearings at the former home of the C.W.W. Walker family who had sold and vacated their property located near Mangrove Lake, Hamilton Parish. Prior to the COI Hearings, the property was occupied by Seth J. Raynor and his wife. Raynor was an American golf course designer working under C. B. Macdonald to develop the Mid-Ocean course. However, Raynor's accommodations at the former Walker home demonstrated the dynamics of the FWC project in that Bermudians were being dispossessed to make room for wealthy foreigners. The Walkers must have experienced trauma and/or frustration upon seeing someone else living in their former home.<sup>82</sup>

The Tucker's Town land grab was the beginning but not the end for many black families who thereafter experienced similar traumatic experiences and in some cases dehumanization by the oligarchy who took advantage of their vulnerability and placing power over people. The similar phenomenon was experienced by St. David's Island landowners two decades later and by some landowners in other parts of the Island. To this day, the descendants of unfairly dispossessed

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<sup>79</sup> Francis, Dr. Theodore, (2020)., Supra-No.92, pp. 49

<sup>80</sup> Winfield, Lynne and Riley, Cordell (CURB), 'Black History in Bermuda' 28 Oct 2020., COI – Exhibit CURB-2

<sup>81</sup> Francis, Dr. Theodore, (2020) *"Tucker's Town, Tourism and Captured Lands"*, COI – Exhibit TF-2, pp. 56

<sup>82</sup> Francis, Dr. Theodore, (2020)., Supra-No.99, pp. 58

landowners experience emotional trauma and difficulty as a result of their ancestors' experiences. Indeed, a number of Claimants who appeared before the COI expressed their pain and suffering while presenting their evidence. The emotional effect of an expropriation that took place over a century ago in Tucker's Town or in later years in other parts of the island has had an ongoing emotional effect felt by generations of families.

Witness Mrs. Alicia Lister, who holds a master's degree in anthropology, appeared before the COI on 27<sup>th</sup> and 28<sup>th</sup> October, 2020 to address the subject of 'racial amnesia'. In this regard, she referenced her master's dissertation entitled "Memories Lost, in the Triangle: An Exploration of Bermuda's Social Conditioning Through Racial Amnesia". She describes racial amnesia as pushing the bad experiences back into the recesses of their mind.<sup>83</sup> In order to enhance one's understanding of the psychological effect of expropriation of families, she writes:

*"Structural racism is considered normative and is sometimes legislated, but it is evident in material conditions and in power relations. The effect of informal and formal institutions, policies and practices that result is disparities in access to resources and services based on the criteria of race, creates a marginalized and disenfranchised population. Whilst the degree of socioeconomic status is relative to historical events, the associated grievances are sustained and perpetuated by postmodernist social frameworks. The persistence and lasting effects of structural racism cause a generational disparity that operates in a vicious cycle of reinforcing institutional practices and public attitudes and behaviors regarding people and places. Henceforth, structural racism cannot be substantively availed through economic stimulation or elapsed time, rather the processes, attitudes, values, and behaviors which created the disparity must be addressed..."*<sup>84</sup>

Mrs. Lister continues: *"However, racial amnesia operates as a fundamental element in the psychology of colonialism. It calls to question frameworks which have actively debilitated populations through repressions and prefigurations of memory to allow for the preservation of the colonialist state."* Chapter Four of her dissertation, 'Missing in Memory, Forgotten Bermuda History', illustrates a brief timeline of Bermuda's slavery past and racialized historical events which are often forgotten in modern society. The final chapter, Chapter Five, 'The Conceptualization of Bermudian Memory', aims to analyze which social, political and economic unequivocal elements are formulated and exacerbated due to racial undertones. This section seeks to explore critically the ways in which; language and narratives, identity, racial/spatial imaginaries, the repression of the black power movement and cultural competency have been manipulated and used as methods of racial amnesia in support of Bermuda's institutionalized racism."<sup>85</sup>

## **Compulsory Purchase of Land for Public Benefit – Bermuda Railway**

Compulsory acquisition is commonly associated with the transfer of ownership of a parcel of land in its entirety. This may occur in large scale projects. However, compulsory acquisition may also be used to acquire part of a parcel, e.g. for the construction of a road or railway tracks as in the case of the Bermuda Railway Company. In some cases, the acquisition of only a portion of a land

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<sup>83</sup> Lister nee Kirby, Alicia. "Memories Lost in the Triangle: An Exploration of Bermuda's Social Conditioning through Racial Amnesia." *Goldsmiths, University of London*, 2018. pp. 14

<sup>84</sup> Lister nee Kirby, Alicia. (2018). *Supra*-No. 83., pp. 14 - 16

<sup>85</sup> Lister nee Kirby, Alicia. (2018). *Supra*-No. 83., pp. 2-3

\* See COI - Claim No.14: The Estate of Agatha Richardson Burgess



parcel may leave the remainder of the land intact. The remainder may be large enough for continued use by the owner or occupant despite its reduced value or it may be so small that the person can no longer use it to maintain a living. In other cases, a new road may cut through the middle of the parcel, leaving the remainder divided into several unconnected pieces, some of which may be without access routes.\*

The Government paid Mrs. Agatha Richardson Burgess, Claim 014, 1000 pounds sterling plus a small portion of adjacent land, approximately 128 of an acre, during a compulsory acquisition of a portion of her property in Hamilton Parish. The northern boundary of Mrs. Burgess's remaining waterfront property was bisected by the Bermuda Railway Company which had also acquired some of her land previously. As access to Mrs. Burgess's remaining waterfront lot was now blocked, she requested a right-of-way or easement over the land previously owned by her and now acquired and owned by the Government.

The following article, entitled "Bermuda's unburied history" and set out below in its entirety, appeared in *The Royal Gazette* of 15<sup>th</sup> July, 2014:

*"Tucker's Town is only one example of locations in Bermuda where land acquisition schemes were carried out. It was followed almost immediately by the scheme to create the Bermuda Railway in the 1920s, which affected landowners from Sandys to St George's.*

*In our opinion just as the unswerving route of the old Bermuda Railway cuts across the landscape like a long, straight scar, so the story of controversial land expropriations mars Bermuda's modern history.*

*Before construction could begin on that foredoomed single-track, standard-gauge railway in the late 1920s, what was then among the largest and most contentious land acquisition schemes in Bermuda's history had to take place.*

*Rich man, poor man, black or white, every land owner with property along the proposed 21-mile route from Sandys to St George's had to surrender some of their real estate in return for compensation from the Bermuda Railway Company. That British-backed concern was incorporated by an Act of Parliament in 1924 to survey and construct a modern transportation system for the then automobile-averse island.*

*The Bermuda Railway Company expressly planned its line to follow a coastal route, minimizing the amount of private property the firm would have to purchase (which is why the gasoline-powered trains crossed so many trestle bridges built over inlets and bays while wheezing their way from one end of the island to the other). Nonetheless, some private property was still required for this massive public undertaking and numerous real estate transactions took place to incorporate the necessary Owners were generously compensated for their sacrifices. Indeed, the original budget for construction of the Bermuda Railway more than doubled between the time the company was created and when the first rolling stock went into service in 1931, partly as a result of the cost of such acquisitions.*

*But property owners were faced with what amounted to Hobson's choice when it came to handing over their land – a nominally free decision in which only one option is offered. And Hobson's choice, of course, means they really had no choice at all.*

*The Bermuda Railway project followed directly on the heels of the 1920-23 expropriation of land in Tucker's Town earmarked for Furness Withy Line's exclusive enclave for the very rich. But the building of the railway was a far more contentious topic at the time than the shipping company's plan for a glamorous mid-Atlantic playground for the East Coast elite. Involving as it did landowners spanning the length of the entire island and cutting across all social and racial lines, the grumbling and griping surrounding the railway was longer-lasting and more intense than had been the case in Tucker's Town (where, by the end of 1923, what were described as a "a lunatic and three hold-out owners" were the only title holders not to have accepted compensation packages determined either through arbitration or the courts). But Tucker's Town, involving as it did the touchy issues of class, race and privilege, remains synonymous with what critics are calling "the historic theft and dispossession of land" in Bermuda. Meanwhile the other cases of wholesale compulsory acquisition, including the building of the Bermuda Railway, are largely forgotten or ignored.*

*A community, like the individuals who comprise it, is the sum total of all its experiences: dramatic, prosaic and traumatic. Also, as is the case with individuals, the unburied aspects of a community's past will continue to haunt the present until properly interred. There is no doubt the circumstances which led to the creation of the luxurious Tucker's Town sanctuary remain both painful and little understood. They desperately need to be laid to rest after more than 80 years.*

*And the empanelment of a bipartisan commission of inquiry with a remit to study the history of land expropriations, as recently proposed by Parliament, might be the best vehicle for achieving this end.*

*We have an obligation not just to history but to our present and future to explain, examine and learn from our past. This requires us to place controversial subjects in their proper context because some issues cannot be properly understood without a simultaneous understanding of the times which gave rise to them.*

*Henry Truman once said the only thing new in this world is the history you don't know. And the fact is too many Bermudians simply aren't familiar with whole swathes of their own history, lacking even the most fundamental grasp of how our people and our community evolved.*

*Any number of myths need to be expunged, chief among them the casually levelled and quite incendiary charge that those required to part with their land because of expropriation were victims of theft. Compulsory purchase orders have certainly been used in both a cavalier and sometimes immoral manner in Bermuda and elsewhere. But the fact is compulsory acquisition by the Crown or its approved agents is not only legal, it constitutes one of the oldest traditions in British common law. Beginning in the 19<sup>th</sup> century, both Bermudian and British authorities routinely engaged in the expropriation of private property on the Island if it could be argued such acquisitions would serve the greater public interest.*

*Beaches once in private hands found their way into what is now the Bermuda Parks System based on compulsory acquisition. Road improvements to modernize the*

*glorified cart tracks which served as Bermuda's highways well into the 20<sup>th</sup> century required the shaving off of what eventually amounted to dozens of acres of private property adjoining the old Tribe Roads, trails and footpaths crisscrossing the island. And of course, most of the British military's fortifications were built on large tracts of expropriated land as were the US bases constructed at the East End and in Southampton during the Second World War.*

*The Tucker's Town scenario was played at a time when Bermuda was rushing headlong into the 20<sup>th</sup> century when the foundations of our modern infrastructure were being laid. It was not a deviation from the practices of the time, rather it was an extension of them and cannot be viewed in isolation from our current perspective.*

*It is time to allow the scar of expropriation to begin to heal, to stop picking away at it either out of ignorance or for mercenary, short-term political gain.”<sup>86</sup>*

The building of the Bermuda Railway in the late 1920s was not a welcomed event even though it no doubt provided better transportation for all Bermudians.

## **Findings of Fact – Expropriations Generally**

Based on the evidence presented:

1. The COI is of the opinion that BDCL had unfettered discretionary powers to acquire 644 acres (or more) of land in Bermuda and a limited right of compulsory purchase of 300 acres of such land. There is no evidence to show the total amount of land ultimately acquired. This will need to be determined by further research. How much acreage did the Furness group of companies actually own and was able to transfer to MOCL and BPL?
2. The COI agrees that the “stratospheric” present value of the land in Tucker's Town is due to foreign investment in Bermuda in the 1900s. Nevertheless, it is clear that the land acquired had been the subject of an expropriation and, in some cases, by way of compulsory purchase. The taking of land from original owners to give to other Bermudians and non-residents of the highest social and financial standing calls into question whether such sales were done lawfully.
3. The COI is of the opinion that Furness Withy, a foreign entity, local businessmen and their peers had complete control of the process to acquire 6.4% of land by expropriation, sanctioned by the government rather than governmental authorities having control of the process. This situation reflects conflicts of interest for those persons who played multiple roles in the transactional part of implementing the scheme.
4. The COI is of the opinion that political accountability is the counterbalance to the exercise or delegation of broad expropriation powers for purchasing private lands. For this reason, further in-depth legal research is required regarding the delegation of expropriation powers to a company that had conflicting interests in that it stood to benefit when dealing with valuations of Tucker's Town property. Further, there is an element of unjust treatment

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<sup>86</sup> “Bermuda's Unburied History.” *The Royal Gazette*, 14 July 2014.

particularly experienced by the predominantly black landowners who were forcibly removed from their homes.

5. The COI agrees with Sir Frederick Lewis and Mr. Edmund Gibbons that expropriated lands were sold on to certain old Bermuda families immediately after dispossession. This is evident from one of the Olmstead plans that shows that during the drafting stage certain lots had been assigned (by surnames) Butterfield, Triminigham, Wallace, Gosling, Horan, Bluck and Schurman, among others.
6. The COI agrees with the twenty-four landowner Petitioners that, for all intents and purposes, a part of Furness Withy's plans appears to be more of a real estate acquisition scheme used to finance the development of a tourism product, a new line of business for Furness Withy. Additionally, as time passed, Furness/BDCL was authorized to sell or dispose of 400 acres of its 644 acres of land expropriated. Up to 1951, BDCL was holding 644 acres and sold 200 to MOCL. In 1958, BDCL sold 287 acres to BPL. That is, a total of 487 acres were sold. The COI would like an accounting to be done for the remaining property held by BDCL and the manner in which it was disposed.
7. The COI agrees that further research would need to be done to piece together events from the past to determine the current status of all expropriated lands, always respecting the rights of any bona fide purchasers, as there was insufficient information in the archives relating to the BDCL Commission or its records.
8. The COI is of the opinion that the aggregate amount of acreage actually owned by the Furness Withy group of companies, recorded as 644 acres, could not be confirmed as there is a difference of at least 134 acres over the initial request of 510 acres in the original Furness Withy Petition which was presented for sanction by the House of Assembly. Although the Private Acts of the respective companies in the group state how many acres of land could be purchased for their respective business purposes, from the information made available to the COI it can be seen that further acquisitions with and without prior sanction of the Legislature had taken place. However, it could not be determined if this was the extent of Furness Withy's total landholdings in Bermuda.
9. The COI considered the statement of Sir Frederick Lewis who, by his own admission, was fully aware of the existence of the Aliens Act, but always understood that the policy in dealing with applications from aliens was governed by considerations of "*character and social standing*" of the applicant and that as long as this position was reasonably safeguarded, there would never be any objection to the sale of any of the sites. The COI agrees that BDCL thought it had the absolute discretion to decide who could buy land from the Company, that the Government did not need to concern itself with this process and that the application of immigration and landownership laws and policies should be suspended for foreigners to whom BDCL wished to sell property.
10. The COI also took into consideration the views of Sir Frederick Lewis who stated that he understood local opinion resenting the sale of expropriated land at a profit, but he said that such was not Furness Withy's intention. The price at which it was proposed to fix the 300

building sites is one which, if realized, would give the BDCL a return of 3/4ths of the capital it had expended on the purchase of the property, the erection of the club house and the making of the golf course, with all the other attendant improvements. At this stage, it was the intention of Furness Withy to acquire as many acres as it possibly could and then sell off 300 acres or more to private owners. The COI is of the opinion that fears of the opponents of this initiative had been realized and that the major part of the scheme was strictly a real estate speculative venture - buying and selling land in the hope of getting some return on the same. The COI concludes that there was no intention to construct homes for the new owners; the intent was merely to on-sell Bermuda land to the highest bidder.

11. The COI noted Sir Frederick Lewis's comments that for the remaining quarter of all land expropriated for the purpose of creating a "winter wonderland", it was intended to look to the subscriptions to the golf course and the profits of the club house, knowing that it was very unlikely that Furness Withy would ever get an adequate return on that portion of the enterprise.
12. The COI agrees that in the absence of clear legislation, responsibilities of the government normally cannot be delegated to a private entity like BDCL. Further, the COI agrees that the appointment and remuneration of commissioners and jurors are just a few of the structural processes and procedures that were open to question because there was no apparent objectivity, facilitating conflicts of interest and subjectivity in the acquisition process.
13. The COI agrees that it cannot be determined with certainty which landowners who had purchased land from BDCL were Bermudians or who were aliens. Further research would need to be done specifically to ascertain this information. Since the Corporate Bodies' Lands Act (No.2) 1936 requires the Registrar of the Land Title Office to keep a register by parish of land held by bodies corporate in Bermuda, it is hoped that this information may now be ascertained from that authority or from any other archival sources.
14. The COI considered and agrees that:
  - (a) the original inhabitants of Tucker's Town were not adequately compensated for their property, for being dislocated from their place of abode and for any hardship suffered as a result, as Newfoundland authorities had done for their landowners who were dispossessed of their land in order to accommodate frontline U.S. Bases; and
  - (b) compensation ought to be paid to the descendants of the inhabitants of Tucker's Town who were required to give up their property, reflecting the hardship, economic and other losses suffered by the community, recognizing that compensation should not be the only monetary consideration. Dr. Theodore Francis in his report, explains the disparity of the compensations awarded to various landowners in great detail.
15. The COI notes that the Bermuda Government did not limit the amount of land purchased by Furness Withy nor did it seek to secure for landowners a reversionary interest, as nearly

as Parliament could accomplish, in all lands which were expropriated but which were not necessary for the primary undertaking. Further, because of the operation of the Statutes of Mortmain, putting title of expropriated land in the ‘dead hands’ of corporate entities in perpetuity caused alienation of land from former owners and their descendants, unless a remote opportunity arose for former landowners to re/purchase any land in Tucker’s Town at prevailing market prices.

16. The COI could not determine whether the corporate landholding policy in place at the time of the Tucker’s Town expropriation took into consideration the status of the land currently in the hands of corporate entities, purchased prior to the institution of such policy.
17. The COI is of the opinion that expropriation of more land than required for “the greater public interest” could be deemed to be an unjustified encroachment of the rights of previous landowners. The COI agrees that Furness Withy was, in part, a land speculator having the ability to acquire land by agreement and compulsorily purchase and then to sell or dispose of such land as it wished. The COI agrees that it is not difficult to envision how such circumstances could encourage the expropriation of more land than was required.
18. The COI agrees that similar measures as taken in Africville should be considered in the case of Tucker’s Town and St David’s Island. The COI notes that in May 2005, the New Democratic Party of Nova Scotia MLA Maureen MacDonald introduced a bill in the provincial legislature called the *Africville Act*. The bill called for a formal apology from the Nova Scotia government, a series of public hearings on the destruction of Africville and the establishment of a development fund to go towards historical preservation of Africville lands and social development for the benefit of former residents and their descendants. It should be noted that the Bill has only had a first reading in the Nova Scotia House of Assembly and that it has not as yet been enacted, for whatever reason. Notwithstanding the fact that the Bill has not yet become legislation, the suggested proposals contained therein, including the issuance of a public apology to the people of Africville and the implementation of other remedial or restorative actions, have already been initiated by the Government of Nova Scotia in acknowledgement of unjust aspects of the expropriation of land in Africville.
19. The COI agrees with the Claimants that they should be more than just compensated as, essentially, for two or three generations their communities have suffered financially and socially and that financial compensation alone would not be able to put them whole again.

# Mid-Ocean Club Limited and Rosewood Tucker's Point

## Private Act: Mid-Ocean Club Act 1951

The Legislature had passed a Bill entitled "Mid-Ocean Club Limited" (MOCL) authorizing a limited liability company to be formed with the power to carry on the club and golf course business and to purchase the 200 acres of land from BDCL. This section has been prepared to address matters relating specifically to MOCL, owners of 200 acres of expropriated land formerly owned by the BDCL. As a consequence of such transfer, MOCL remains directly connected to land which was expropriated in Tucker's Town by Furness Withy/BDCL in the 1920s.

An Adverse Notice was sent to Mid-Ocean Club Limited on 5<sup>th</sup> October, 2020 for the attention of Mr. Austen Gravestock, General Manager, advising that the COI would be holding a second series of Hearings on Monday, 19<sup>th</sup> October 2020 to hear evidence from Dr. Theodore Francis as well as evidence from representatives of both Citizens Uprooting Racism in Bermuda and the Historical Society of Tucker's Town. The COI believed that the evidence given by such witnesses might adversely affect Mr. Gravestock personally or MOCL and, therefore, both would be given an opportunity to make application to the COI seeking standing to be heard in this matter.

A Hearing was held at the Royal Bermuda Regiment Camp, Warwick on 19<sup>th</sup> November, 2020. Mr Ben Adamson of Conyers, Dill & Pearman attended on behalf of the MOCL. Mr. Ben Sullivan, President and Director of MOCL, was in attendance also. After the preliminary process, Mr. Sullivan confirmed as follows:

*"I am President and a director of the Mid-Ocean Club Limited (MOCL) and on behalf of MOCL, I attach and tender to the Commission of Inquiry a copy of the Private Act of the Bermuda Legislature, Bermuda 1951, No. 70, title "The Mid-Ocean Club Act, 1951" which incorporated (and brought into existence) MOCL. If the Commission wishes to know more about the history of MOCL, how MOCL came into existence and how it come to buy the property from the Furness Withy Steamship Company, there is a short history on our website...."*

COI Counsel Mr. Harrison asked Mr. Sullivan a series of questions relating to the historic purchase of land in Tucker's Town by MOCL from BDCL in general. Mr. Sullivan responded that he did not know enough to speak to the matter and that if he knew anything at all, it was something he may have read in the press, whether it be in *The Royal Gazette* or *Bernews*, something along those lines. He confirmed that he did not have enough general knowledge to speak to or know anyone in MOCL who was knowledgeable about the history of the land that the club now occupied. He also said that he was not aware of the technicality relating to the requirement that upon the acquisition of land and for the land to be transferred, a survey of some sort needed to be carried out.



COI Counsel asked Mr. Sullivan specifically:

1. *“In the simplest form, are you aware before now that Bermudians are quite upset in respect of the history of their forefathers and lands which have been lost. Are you familiar with that history?”*

Mr. Sullivan responded that he was not sure he could comment on that and that he did not have an awareness, knowledge or familiarity with the history; and

2. *“Are you concerned about the image or the perception of MOCL as it relates to Bermudians, black and white, having been dispossessed of land going back 30 years, even before you were owners?”*

Mr. Sullivan responded that he did not think he was in a position to answer that question.

This line of questioning continued until Mr. Adamson interjected and stated he was not sure how this assisted the COI. He stated that by asking such questions, the COI Counsel was seeking to humiliate or embarrass his client who wasn't alive at the relevant time.

After a brief exchange with Mr Adamson, the COI Counsel asked Mr. Sullivan if there were files in his office to indicate what transpired prior to acquisition of expropriated land by MOCL from BDCL in the 1950s, to assist the COI in understanding the antecedent history of ownership of such land. Mr Sullivan responded that he did not believe so.

The COI Counsel then put the following questions to Mr. Sullivan:

1. *“Part of the responsibility of this Commission is to get to the truth. So, what we would also like to do is get the information from Mid-Ocean about subsequent development and use of land expropriated. Can you advise us if you, MOCL, obtained more property and we like to determine or if you can advise us if it was used for tourism as spelled out in your Act. We would like to determine if those conditions have been met.”*

Mr Adamson replied that it would be helpful if he liaised with COI Counsel to get a list of specific questions for MOCL to respond to, as they did not know more about the events of the past as relates to historic land acquisition/compulsory property by BDCL.

2. *“As an esteemed club such as yourselves, such as Mid-Ocean Club, with lawyers, Members of Parliament, and persons of some stature would retain records of meetings, certainly, if they acquired such land, transferred land, acquired shares, etc., and should this Commission request copies of those records or sight of those records, would they be made available?”*
3. *“Does Conyers Dill & Pearman have any relevant information or knowledge pertaining to the property prior to 1951? Where is the response to this question?”*

4. *“Are you familiar with any part of the history as it relates to the expropriation of land? I’m going to read an extract from a document which appears on the websites of the Government of Bermuda and also the Commission of Inquiry website. It’s under the heading of Commission of Inquiry into Historic Losses of Land in Bermuda. The scope of the Commission here is “to inquire into historic losses of citizens’ property in Bermuda through theft of property, dispossession of property, adverse possession claims and such other unlawful or regular means by which land was lost in Bermuda”. At the end of the process, the Commission will “collect and collate any and all evidence and information available related to the nature and extent of such historic losses of citizens’ property; and prepare a list of all land to which historic losses relate and identify any persons, whether individuals or bodies corporate, responsible for losses of citizens’ property.” And it continues, “...those are the general terms of reference for the inquiry.” Have you ever heard that before?”*

In response to the question above, Mr. Sullivan responded: *“Not before you read it to me.”*

5. *“Mr. Sullivan, do you know why you’re here today?”*

Mr. Sullivan responded: *“To represent the Mid-Ocean Club Limited.”*

6. *“And you are representing them against what, may I ask?”*

Mr. Sullivan responded: *“Not sure I can answer that. I was asked to be here.”*

At this juncture, Mr. Adamson informed the COI Counsel that he was willing to provide assistance. He said that if there were specific questions to which the COI wished answers, then they might be put to him in advance and he would prepare responses. He made the point that Mr. Sullivan and he had not come to the Hearing prepared to answer specific questions. The COI Counsel thanked Mr. Adamson for his offer of assistance in this regard, reiterating that earlier he had stated that if there were any questions that Mr. Sullivan was unable to answer, the information could be provided at a later date.

The COI Counsel went on to explain that the day before, the COI had heard from lawyer Mr. Mark Pettingill who represented Tucker’s Point in a matter unconnected to MOCL. However, the COI Counsel explained, he was sharing this information as it concerned the old Marsden Cemetery which was located in an area within the Tucker’s Point golf course and was a matter connected to the BDCL’s expropriation of land in that area.

The COI Counsel continued: *“As I said, unconnected to you, but more particularly connected to Tucker’s Point [and Tucker’s Town generally, on behalf of Tucker’s Point Mr. Pettingill, here in my words, stopped short of apologizing on behalf of the owners for wrongs that have been committed against Bermudian blacks and a few whites where lands had been expropriated and these Bermudians lost everything (in relation to lands lost). Some of whom were handed cash and some got cash and land. There’s a debate, as understood, that there was no consistency as relates to the*

*compensation that was offered to the dispossessed Bermudians. Are you aware Mr. Sullivan, have you ever heard of Bermudians who had occupied lands on which Mid-Ocean is now situated? Have you ever heard of Bermudians being dissatisfied with the compensation that was offered to them having been dispossessed of lands, which I know on which Mid-Ocean is situated, have you ever heard that?*

Mr. Sullivan responded: *“I am not familiar with any specifics.”*

The questioning continued in the same vein until Mr. Adamson and the COI Counsel agreed that the COI Counsel would prepare and send a list of questions to the MOCL. Subsequent to the Hearing, Mr Adamson had occasion to remind the COI that such questions had not been received. In a letter dated 7<sup>th</sup> May, 2021, the COI then sent the questions as agreed.<sup>87</sup>

The letter of 24<sup>th</sup> May, 2021 from Ben Adamson, Director, Conyers Dill & Pearman Limited, to the Commission of Inquiry into Historic Losses of Land in Bermuda re the Mid-Ocean Club Ltd. refers:<sup>88</sup>

*“Thank you for your letter of 17 May 2021*

*As regards the numbered questions set out in your letter dated 17 May 2021, our client responds as follows:*

- 1. After the purchase of land previously held by Furness Withy in Tucker's Town by Mid-Ocean Club Ltd, was the land sold to Bermudian purchasers?*

*MOCL's understanding has always been that it owns all the 194 acres originally purchased in 1951, subject to minor boundary adjustments that have been made over the years. As part of the investigations into the Commission's questions, MOCL has noted that three relatively small parcels of land aggregating approximately three acres in total appear on the 1951 Plan but (according to MOCL's current surveys) are not now owned by MOCL. MOCL has no other record of having owned, transferred or sold these parcels.*

- 2. What criteria was used by the Mid-Ocean Club Ltd. to determine who could purchase said land?*

*N/A.*

- 3. Was there any Legislation or Policy condition which required that previous Bermudian landowners be given first refusal to purchase said land?*

*N/A.*

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<sup>87</sup> Commission Secretariat. “Re: Mid-Ocean Club Limited”. Received by Ben Adamson. 7 May 2021

<sup>88</sup> Adamson, Ben. “The Mid Ocean Club Ltd. (“MOCL”)”. Received by COI Secretariat. 24 May 2021

4. *May you provide a list of Members of the Mid-Ocean Club that can provide a historical context to the Club's practices in 1951 or before?*

*MOCL is unaware of anyone alive today who was a member in 1951.*

6. *May you provide the 1951 Acquisition Plan of Mid-Ocean Club and/or the 1951 Master Plan of Mid-Ocean Club?*

*MOCL is not aware of documents entitled the '1951 Acquisition Plan' or the '1951 Master Plan', but does have a copy of the plan which MOCL believes was attached to the 1951 conveyance. Enclosed is a copy of an affidavit from Mr Robert Clarke attaching this plan.<sup>89</sup>*

7. *What were the names of the attorneys for Mid-Ocean Club for the 1951 Acquisition Plan?*

*The law firm in 1951 was the firm Conyers Dill & Pearman. All the partners alive in 1951 have since died. To the best of our client's knowledge and belief, all attorneys involved in 1951 would also have since died. Conyers Dill & Pearman ceased representing MOCL in relation to property transactions many decades ago and passed its files to another law firm. After the transfer to this different law firm, MOCL's deeds (and many of its files) were lost.*

8. *By the Mid-Ocean Club Act 1951, Mid-Ocean purchased 200 acres of Tucker's Town property from the BDCL and since that initial purchase, did Mid-Ocean purchase any other property, which increased their landholding in Tucker's Town (proper) and/or in the immediate vicinity?*

*MOCL did not purchase 200 acres. It purchased approximately 194 acres. MOCL has since 1951 purchased / secured the purchase of an additional approximately four acres of land adjacent to the golf course to improve/protect the course. The said acquisitions are as follows:*

- 1. Half Way House (approximately an acre and a half);*
- 2. Troon (approximately two acres);*
- 3. Humdinger (approximately half an acre);*
- 4. A vacant lot of land (by way of land swap, not purchase) next to Fairway 6.*

9. *Was any additional property purchased by Mid-Ocean or in the name of any other person, corporate entity or by Private Act, for and on behalf of Mid-Ocean?*

*As above.*

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<sup>89</sup> Adamson, Ben. "The Mid Ocean Club Ltd. ("MOCL")". Received by COI Secretariat. 24 May 2021

10. *Historically, how many of the 200 acres of the property purchased from BDCL were originally obtained by compulsory purchase? MOCL did not purchase 200 acres. It purchased approximately 194 acres.*

*MOCL does not know and has no way of knowing how many of the 194 acres was obtained by compulsory purchase: any compulsory purchases would have taken place in the 1920's prior to MOCL's incorporation in 1951.*

11. *In addition to the 200 acres, how many additional acres of property acquired by Mid-Ocean were originally obtained via compulsory purchase, if at all?*

*MOCL did not purchase 200 acres. It purchased approximately 194 acres. It currently owns 198 acres. MOCL does not believe it ever owned more than 200 acres of land. MOCL did purchase additional properties in order to protect/improve the golf course, see answer to question 7, none of these were by compulsory purchase.*

12. *From whom were the additional acreage purchased (individuals and/or company), total acreage purchased and the year of purchase?*

*MOCL only has complete transaction records for the purchase of Troon (first part purchased in 2014 and the second in 2021) and Humdinger (purchased in 2018). The acreages for these parcels are as stated previously. The previous owners of Humdinger were James Gibbons, Luciano Aicardi and Edith Conyers as trustees of the Crimic Trust. The previous owner of Troon was (1) William Von Albrecht and (2) the Bank of N.T. Butterfield & Son Limited.*

13. *Approximately, how many acres of property owned by Mid-Ocean were located in each adjoining St George's, Hamilton and Smith's Parishes? Has there ever been a boundary adjustment in either Parish since Mid-Ocean's ownership?*

*The Commission is asking for an analysis of land holdings over a 70 year period. MOCL does not have the historical records, see above. There may have been minor boundary adjustments over this period. We enclose land surveys of MOCL's current landholdings.*

14. *Have there been any amendments made to the Mid-Ocean 1951 Act and the reason for such amendments?*

*Yes, The Mid-Ocean Act Amendment Act 1965, copy enclosed. The purpose of the amending Act was to permit MOCL to acquire additional landholdings by inter alia the introduction of subsection 2(h).*

15. *By the 1951 Act, Mid-Ocean had the power to acquire by purchase or otherwise as a going concern the whole or any part of the undertaking and business then carried on by the BDLC. Have there been any restrictions of any kind imposed on Mid-Ocean or the land itself with respect to its original or subsequent purchases of property or on-selling of such property to Bermudians or Non-Bermudians?*

*The 1951 Act and its Amendment Act contain detailed restrictions, requiring approval from the Governor for additional acquisitions and a cap on such additional acquisitions. The Commission has previously been provided with the original 1951 Conveyance which sets out the restrictions on selling/on-selling. We enclose a further copy of the 1951 Conveyance for ease of reference. In addition, there is the usual Government restriction on sales of land to non-Bermudians in the Immigration Act.*

*MOCL is unaware of additional restrictions.*

16. *What is the total acreage of property currently held by Mid-Ocean? What is the total acreage of the golf course (including property on which Club House is situated)?*

*MOCL owns 198 acres. We attach a current survey.*

17. *How many acres designated as residential have been retained by Mid-Ocean and can be sold off in the future, if necessary, for development? Would the opportunity to purchase such property be equally available to both Bermudians and non-Bermudians?*

*MOCL retains the following parcels of land zoned residential from the original purchase of approximately 194 acres:*

- 1. A parcel of land of about a third of an acre containing a building built in 1898 and described in the 1951 conveyance at page 5 as a dormitory. The plan of the relevant building is on page 19 of the 1951 conveyance. The building is used for staff housing;*
- 2. A vacant parcel of land of about half an acre between the 1st and 15th fairways;*
- 3. A small vacant parcel of land (i.e. less than half an acre) just off Hexham Drive.*

*MOCL has no intention of selling these plots for residential development. MOCL does not believe this has ever been contemplated and cannot comment on whether it is feasible.*

18. *Was prior consent required from any government authority on each subsequent purchase or sale of Mid-Ocean property for residential development? Was this*

*consent always obtained prior to each purchase or sale of property? If not, how many instances was retroactive approval sought from such authority in respect of the purchase by Mid-Ocean for its purposes or sale by Mid-Ocean of property to Bermudians or Non-Bermudians?*

*N/A.*

19. *In the past, was there a requirement that before purchasing such residential property one would have to be or become a member of Mid-Ocean? Is this still the case?*

*N/A.*

20. *Further to a request made of Mr. Sullivan, President of the Mid-Ocean at the Commission of Inquiry Hearing on November 19, 2021, please provide the Commission with copies of any and all correspondence between Mid-Ocean Club Limited, The Bermuda Development Company Limited and the (Acting) Colonial Secretary, in connection with the sale of Tucker's Town property to Bermudians and Non-Bermudians. A letter dated 20th October 1954 from the Colonial Secretary to MOCL enquiring into the sale of property as stated was referred to in the House of Assembly on 14 July 2014.*

*MOCL has no records of this 1950's correspondence other than the copies provided by the Commission. We will provide the following documents via workshare/separate emails:*

1. *The 1965 Amending Act 2;*
2. *The 1951 Conveyance 3;*
3. *The affidavit of Mr Clarke with the original 1951 plan 4. Land surveys."*

## **Inheriting Expropriated/Compulsorily Purchased Land**

Unfortunately, the COI was unable to obtain the full records of the BDCL Commission's records of expropriated land and the identities of the dispossessed landowners. A separate exercise would need to be undertaken to research archival records of other possible repositories which may have been involved in preparing legal documents on behalf of Furness/BDCL. In any case, whether by agreement or by compulsory purchase, landowners were compelled to hand over their original property deeds. If over half of the 600 acres was said to be done outside of the expropriation provision, these records should be housed with the law firms which actually assisted with the drawing up of conveyances to the BDCL in exchange for compensation.

From BDCL records, some of which appeared to be missing, and reports of the experts, BDCL expropriated approximately 644 acres in St George's Parish and further purchased 1.178 acres in Pembroke Parish. The Bermudiana Hotel was then built on the 1.178 acres in Pembroke Parish.

The COI learned that the land on which Mid-Ocean Club is situated is a part of the dispossessed lands. It is unclear, however, if any part of that land was also obtained by compulsory purchase. In any case, after the World War II when the tourism business was no longer lucrative, Furness Withy began to sell off its assets in Bermuda and in 1951, the BDCL sold 200 acres expropriated to MOCL which was incorporated by three Bermudian businessmen:

“Whereas the Honourable Sir William James Howard Trott, the Honourable Sir Eldon Harvey Trimmingham, the Honourable Harry Durham Butterfield and Edmund Graham Gibbons have presented petition to the Legislature setting forth that they are desirous of forming a joint stock company to be called the Mid-Ocean Club Limited for the purposes therein expressed and that the petitioners are desirous of having the said Company incorporated by an Act of the Legislature... and to confer on the said Company certain powers necessary for the carrying on of its business...”

“Section 4:

- (a) to acquire by purchase or otherwise as a going concern the whole or any part of the undertaking and business now carried on by the Bermuda Development Company Limited, a company incorporated by an Act of the Legislature of these Islands on the premises described in the Schedule to this Act and known as the Mid-Ocean Club; and
- (b) to acquire by purchase or otherwise from the Bermuda Development Company Limited and hold in its corporate name the land more particularly described in the Schedule to this Act together with all its appurtenance.”

The Schedule to that Act provides as follows:

#### **“Schedule”**

##### **Description of Premises Authorized to be Acquired by the Mid-Ocean Club Limited**

*All those several parcels of land situate partly in Hamilton Parish, partly in Smith’s Parish and partly in St George’s Parish in the Islands of Bermuda not exceeding in the whole two hundred acres bounded Northerly and Easterly by the land retained by the Bermuda Development Company Limited, Southerly by the waters of the Atlantic Ocean, and Westerly partly by the waters of Mangrove Lake and partly by land of Henry Thompson North, together with the Club House known as the Mid-Ocean Club house and the several cottages and buildings erected on the premises together with the beaches appurtenant thereto (except the beach known as East Beach) with all rights of way and appurtenances thereto.”*

Because of the Statutes of Mortmain and the previous restrictions imposed on the BDCL, sanction of the Legislature was required on each subsequent sale or disposal of land, irrespective the size (as stated by Governor Sir John Asser<sup>90</sup>). Further, the selling or disposal of such lands, in particular to Bermudians and non-Bermudians, was also of

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<sup>90</sup> Asser, Sir John. “No Title” Received by Sir Fredrick Lewis, 27 Jul. 1923., COI – Exhibit TF-6, p.p. 4 – 5



particular concern for the Governor, Executive Council and a few MCPs, in addition to the strong opposition to the Furness Withy scheme from members of the public.

The only restrictions in the MOCL Act, however, specifically related to any physical changes being made to fairways or greens of the golf course itself:

Section 5 of the MOCL 1951 Act provides that... *“the company cannot without the prior approval of both Houses of the Legislature,*

- (a) dispose of the whole or any part of any land which immediately before the commencement of this Act was being used as a fairway or a green of the golf course commonly known as the Mid-Ocean Golf Course; or*
- (b) use the whole or any part of any such land as aforesaid for any purpose other than the purpose of a fairway or green of a golf course.”*

These restrictions relate only to the disposal of land forming a part of the golf course and not on any of the remaining acreage held by MOCL. Thus, land not forming a part of the golf course could be sold without the prior consent of the Legislature, whether to Bermudians or non-Bermudians.

Further, it should be pointed out that the first object of the MOCL Act was “to acquire by purchase or otherwise as a going concern the whole or any part of the undertaking and business now carried on by the Bermuda Development Company Limited”. It is understood from Mr Adamson’s response to COI questions<sup>91</sup> that this section of the MOCL Act has not been amended; therefore, the restrictions placed on the BDCL with respect to the expropriated land should have been imposed on MOCL for all of its holdings. However, the Act is silent in this regard. d. Although 200 acres of expropriated land were sanctioned to be purchased by MOCL, it was confirmed that only 198 acres are currently being held<sup>92</sup>. It could be argued that once the land was sold to MOCL by BDCL, BDCL and the land were freed from any disabilities placed on both by the Statutes of Mortmain.

In accordance with section 28(2) of the BDCL Act (No. 2), the 300 expropriated acres were sanctioned as land acquired or expropriated in connection with the carrying on of the business of the BDCL and because of section 4(a) of the MOCL Act 1951, the 200 acres acquired from the BDCL should continue to be used in connection with the carrying on of the business of MOCL. Additionally, no land should then be on-sold without the sanction of the Legislature, although the MOCL Act is silent on this point. Given the circumstances around the expropriation, MOCL should not have had the right to sell or dispose of any of the expropriated lands to Bermudians and residents of Bermuda without prior sanction of the Legislature to conform with the original purposes for which the land was compulsorily acquired or otherwise sanctioned.

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<sup>91</sup> Adamson, Ben. “The Mid Ocean Club Ltd. (“MOCL”)”. Received by COI Secretariat. 24 May 2021

<sup>92</sup> Colonial Secretary’s letter dated 20<sup>th</sup> October, 1954, submitted as a part of Exhibit TF-2

## Bermuda Properties Limited/Rosewood Tucker's Point

Other than the 200 acres sold to MOCL, BDCL retained title to a large portion of expropriated land and sold the hotel and residential properties to Bermuda Properties Limited (BPL), now owned by Rosewood Tucker's Point ("Tucker's Point"), in 1958. However, concerns expressed regarding the sale of expropriated lands by the Colonial Secretary's letter of 20<sup>th</sup> October, 1954 sent to MOCL should have also been addressed to BDCL ("Mid-Ocean Club") and BPL, as the latter company was still a significant owner of expropriated land in Tucker's Town. This matter needs to be researched further to determine whether or not BPL or, later, Tucker's Point was also required to respond to a similar enquiry from the Colonial Secretary, since part of the original plan for a "winter playground" included land which Tucker's Point now owns.

The above concerns were expressed by Governor Sir John Asser and members of the Executive Council in connection with the policy and obligations of the Mid-Ocean Club relating to expropriated land from original Tucker's Town residents. These concerns appear not to have been addressed. The following documents from the corporate folders of BDC show the historical exchanges between persons involved in the policy and decision-making process and concerns regarding the purchase of expropriated lands by Bermudians and Bermuda residents:

1. (125) In the Minutes of the Executive Council dated 8<sup>th</sup> September, 1954, the Hon. N.H.P. Vesey informed Members of the concern felt in some quarters as a result of the acquisition and possible future acquisitions of land in the Tucker's Town area by Bermudians and local residents. The Acting Attorney-General also intimated that similar expressions of concern had been communicated to him and it was determined as follows:

*"IT WAS ADVISED that the original petition of the Bermuda Development Company, Ltd., should be circulated and that particulars of Bermudians and local residents presently owning land in that area should be obtained for future discussion in Council."*<sup>93</sup>

The Executive Council further considered the on-selling of land in the Tucker's Town area to Bermudians and residents of Bermuda.

2. (128) Minutes of the Executive Council dated 15<sup>th</sup> September, 1954:  
*"IT WAS ADVISED that (i) the policy of the Mid-Ocean Club and the Bermuda Development Company, Ltd., in respect of such purchases and (ii) the obligations of the Company to the Mid-Ocean Club and vice versa in regard to the sale of their respective lands, should be ascertained; and that the matter be again considered by council when this information was forthcoming."*
3. (129) Letter dated 18<sup>th</sup> September, 1954 from the Acting Colonial Secretary to the Manager of BDCL informing him that... *"I have been directed to refer to purchases of land in the Tucker's Town area for your Company by Bermudians and residents of Bermuda and to request that you be good enough to inform me of the general*

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<sup>93</sup> COI – Exhibit TF-3, pp. 21

*policy pursued by your Company when considering applications for such purchases. I shall be also grateful to learn whether your Company observes any obligations to the Mid-Ocean Club in the sale of any lands.*"<sup>94</sup>

4. (131) Letter of 22<sup>nd</sup> September, 1954 from Mr. J.A. Papps, Resident Manager of the Mid-Ocean Club, to the Acting Colonial Secretary advising of the intention to put the latter's letter of 18<sup>th</sup> September, 1954 forward to the Executive Committee at its next meeting and the intention to communicate again at a later date.<sup>95</sup>
5. (132) Letter of 27<sup>th</sup> September, 1954 from Mr. J.W. Butterfield, ACA, Secretary of BDCL, to the Acting Colonial Secretary:

*"The position in regard to purchase[d] of land at Tuckerstown has become complicated by the sale by this Company of the Mid-Ocean Club to an independent company. Originally the sale of lands in the area of the Club was intended to establish a residential area for Club members. Thus all purchasers of lands in the Club area and immediately bordering on the Club golf course had to be members of the Club or become members in the usual way by nomination to a Committee of members. Purchasers covenanted to use the house in this area for residential purposes only. Since the split between the two companies, there is only one area of land left unsold which borders on the Mid-Ocean Golf course – namely Glebe Hill. This company has an agreement with the Mid-Ocean Club Ltd, that land on Glebe Hill will only be sold to persons acceptable to the Mid-Ocean Club. Any other lands now belonging to this company are saleable without reference to the Club and my directors have not stated any fixed policy in respect to their sale, and will naturally consider any applications as they occur. The amenities of the Castle Harbour Hotel will be preserved intact."*<sup>96</sup>

6. (133) Letter of 7<sup>th</sup> October, 1954 from the Mid-Ocean Club to Mr Edward Smith, Colonial Secretary's Office, in response to letter of 18<sup>th</sup> September, 1954 which was placed before the Club's Executive Committee on the same date:

*"Since the information asked for concerns the Mid-Ocean Club. Ltd, and those people interested in this operation, my Executive Committee would be grateful if your office could state in detail the reasons for requesting the information as stated in your letter. The Executive Committee wishes to cooperate at all times with your office and will be happy to consider your request on receipt of the above details."*<sup>97</sup>

7. (134) Confidential letter of 20<sup>th</sup> October, 1954 from the Colonial Secretary to Mr. J.A. Papps, Resident Manager of Mid-Ocean Club Ltd.:

*"I am directed to refer to your letter of the 7<sup>th</sup> October in connection with the sale of land at Tucker's Town to Bermudians and non-residents of Bermuda.*

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<sup>94</sup> COI – Exhibit TF-3, pp. 19

<sup>95</sup> COI – Exhibit TF-3, pp. 17

<sup>96</sup> COI – Exhibit TF-3, pp. 20

<sup>97</sup> COI – Exhibit TF-3, pp. 16

*Your Executive Committee will appreciate that if there is any change of policy the persons who were forced to sell their properties may well have genuine grounds for complaint. It is for these reasons that His Excellency the Governor-in-Council is seeking a clarification of the present position. I am also to enquire whether as a matter of policy all persons to whom land within the Club's property is sold are required to be members of the Mid-Ocean Club.*

*To enable the project to get started, former residents of the Tucker's Town area were forced to sell their properties and had to seek other homes in the Colony. There have recently been several sales of property in this area to Bermudians and it is doubtful whether this conforms to the original purposes for which the land was compulsorily acquired.*

*Your Executive Committee will appreciate that if there is any change of policy, the persons who were forced to sell their properties may well have genuine grounds for complaint.*

*It is for these reasons that His Excellency the Governor-in-Council is seeking a clarification of the present position. I am also to enquire whether as a matter of policy all persons to whom land within the Club's property is sold are required to be members of the Mid-Ocean Club.*

*I am, Sir, Your obedient servant, Colonial Secretary.*"<sup>98</sup>

8. (135) Letter of 22<sup>nd</sup> October, 1954 from Mr. J. A. Papps, Resident Manager of the Mid-Ocean Club Ltd., to the Office of the Colonial Secretary:

*"I have to acknowledge receipt of your letter of October 20<sup>th</sup>. The contents will be put before the Executive Committee of Mid-Ocean Club at their next meeting which will be held in the near future."*<sup>99</sup>

9. (136) Letter of 18<sup>th</sup> December, 1954 from Mid-Ocean Club President Mr. Edmund Gibbons to the Colonial Secretary:

*"In reply to your No. 2302/2, dated 20<sup>th</sup> October, 1954, and subsequent discussion with Sir Howard Trott and the writer in connection with the sale of property in Tucker's Town area, kindly note as follows:-*

1. *No property within the area under discussion may be sold by the Bermuda Development Company or present individual owners without first having secured the approval of the Mid-Ocean to such transaction.*
2. *The Directors of the Mid-Ocean are aware that the sale by Americans and English residents to Bermudians of property in this area causes, by transfer*

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<sup>98</sup> COI – Exhibit TF-3, pp. 15

<sup>99</sup> COI – Exhibit TF-3, pp. 14

*of ownership, loss of revenue which has hitherto been accruing to the Colony due to the residence of the people concerned in the community. It is well, however, to point out that several Bermudians were among the original purchasers of property in this particular area.*

3. *A fair number of property sales which have taken place in recent years has been due to the difficulties which house owners have experienced in securing domestic help. The domestic help in question are only prepared to give a very indifferent service and demand a, relatively speaking, high wage in return.*
4. *Economic considerations in other countries, particularly in the United States, have also been a factor in persuading American residents to sell the large homes which they own at Tucker's Town due to their costly upkeep.*
5. *The Mid-Ocean Club during the past two years, and in particular this year, has spent and is spending considerable sums to improve and bring up to date the golf course and to re-furnish and re-equip the Club House itself, feeling sure that the amenities offered will induce other English and American people to establish homes in this area and replace those which are moving out.*
6. *Finally, it is felt advisable to point out that it was the intention of the Bermuda Development Company to sell to the highest bidder the Mid-Ocean Club property. Very fortunately for Bermuda, it was found possible to raise the necessary funds among English and American property owners at Tucker's Town and more particularly among Bermudians and thus preserve to the tourist trade in establishing and maintaining a standard which otherwise could not exist.*

*I am, Sir, Very truly yours, (signed) Edmund Gibbons President".*<sup>100</sup>

10. (142) Notation re letter dated 14<sup>th</sup> February, 1955:

*Regarding applications for the acquisition of land at Tucker's Town, we spoke. Please see (128) – (137) in conjunction with relevant correspondence on Prohibition of Land Interest File. The Governor-in-Council will not sanction applications for the acquisition of land in Tucker's Town until the Mid-Ocean Club has notified this office that the applicants are acceptable with the Club or have been elected members thereof."*<sup>101</sup>

One fact made crystal clear is that it was always intended by Furness/BDCL to sell expropriated land to persons of the "*highest social and financial standing*", whether Bermudians and or non-Bermudians, *as* stated in Sir Frederick Lewis's letter to Governor Sir John Asser.<sup>102</sup> Confirmation by the Mid-Ocean Club that the applicants were acceptable with the club or were elected members of the Club was all that was required for the acquisition of land. The system for selling expropriated land was controlled by Furness Withy/BDCL. What then was the Legislature's role in this process?

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<sup>100</sup> COI – Exhibit TF-3, pp. 12-13

<sup>101</sup> COI – Exhibit TF-3, pp. 9

<sup>102</sup> Lewis, Sir Frederick. "Untitled". Received by Governor Sir John Asser, 15 Aug 1923., COI – Exhibit TF-5, pp. 30

Secondly, by the powers granted under the BDCL Act (No. 2) 1920, it was intended to sell 300 one-acre plots for private ownership:

*“The entire strategy was to create an exclusive winter golf club and residential playground for families on the east coast of the US, which hinged upon the acquisition of the land in Tucker’s Town. No rich American...was going to buy expensive mid-Atlantic building lot if there was the slightest chance that their serenity might be troubled by Saturday night rum and chowder parties by local coloured farmers and fishermen”*

The above has been explored to show that although the expropriation of land by Furness/BDCL may have been a Parliamentary-sanctioned activity and for all intents and purposes lawfully approved, it was nevertheless unprecedented. The manner in which the expropriation was carried out had the hallmarks of a systematic and structural exercise of power, a classic “taking” done in accordance with the normal practice of the dominant powers which involved extinguishing the rights of others in order to obtain title to such land. The BLDC’s sale of land to MOCL and then to BPL may have been lawful, but MOCL did not have the same primary objective as BDCL which, supposedly, should have had the greater public interest as a primary object. Instead, MOCL was an exclusive private members’ club. BPL’s objects, on the other hand, more closely resembled those of BDCL.

The change of ownership from BDCL and use of land do not alter the fact that dispossessed land was sold on to MOCL, a majority-owned Bermuda company. The concern of Governor Sir John Asser was that former landowners in the Tucker’s Town area were forced to sell their properties and to seek homes elsewhere in the Island, that several sales of that land were to Bermudians and that it was doubtful whether this conformed with the original purpose for which the land was compulsorily acquired, that is, the development of a “winter playground” for British and U.S. elites.<sup>103</sup>

Paragraph 2 of Mr. Edmund Gibbons’s letter of 18<sup>th</sup> December, 1954<sup>104</sup> also confirms that Bermudians were among the original purchasers of dispossessed property in the MOCL area. Further, Mr Gibbons stated that it was very fortunate for Bermuda to be able to raise the necessary funds among English and American property owners at Tucker’s Town and more particularly among Bermudians and thus preserve to the tourist trade in establishing and maintaining a standard which otherwise could not exist.

There seems to be confusion between Governor Sir John Asser’s understanding that expropriated land was not to be sold to Bermudians and Furness Withy’s intention to sell expropriated land to persons of the “*highest social and financial standing*”, as stated in Sir Frederick Lewis’s letter to him. What Furness Withy’s letter does not say is whether sales would be restricted to British and U.S. elites only. Was this omission intended to be deceptive on the part of Furness Withy, as one of the original plans drawn up by Olmstead of the initial MOC plan clearly shows Bermudian

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<sup>103</sup> COI – Exhibit TF-3, pp. 16

<sup>104</sup> COI – Exhibit TF-3, pp. 12-13

\* From one of the Olmstead plans. It indicates in the drafting stage several names had been assigned to various lots:: (by surnames) Butterfield, Triminingham, Mrs. Wallace, E C Gosling, Horan, Bluck and Schurman

families being first owners of dispossessed land? Was this arrangement made with certain members of the oligarchy as a part of the scheme, a dividing-up of the bounty?

Of note, Mr Gibbons states that a fair number of property sales which had taken place in recent years had been as a result of the difficulties which house owners had experienced in securing domestic help. It seemed that the domestic help in question were prepared to provide only indifferent service and demand a, relatively speaking, high wage in return. Ironically, the domestic help about which Mr Gibbons speaks may have been the owners or the descendants of the owners of expropriated lands as, in certain instances, such persons would have been employed as domestic help as promised under Furness Withy's plan for job creation.

Whilst the historic losses of land in Bermuda are significant, of greater significance are the systemic mechanisms by which such losses were facilitated and perpetuated. Mr. Gibbons wrote that old Bermudian families were able to purchase land in order to "*preserve to the tourist trade in establishing and maintaining a standard, which otherwise could not exist*".

Average Bermudians or tourists, unfortunately, would not have been able to take advantage of the amenities offered by MOC/MOCL/BPL unless they became members of MOCL or owned land in the area, nor would they have been able to access parts of Tucker's Town due to public road closures in the Tucker's Town area.

## **When Public Roads Became Private Roads – In Perpetuity**

Despite its apparent isolation, Tucker's Town featured in the broader life of Bermuda at the beginning of the 20th century. It did not escape the attention of Bermuda's Legislature with plans being passed in 1901 to improve the roads leading to the region.

Notwithstanding the creation of access roads to Tucker's Town,<sup>105</sup> the Board of Public Works had recommended, in view of the work being undertaken by the BDCL, the alteration of the lines of certain roads in or near Tucker's Town. This meant the closing of portions of existing public roads and the construction of new public roads, with other conditions and stipulations to be carried out by BDCL. For instance, those roads listed in the First and Third Schedules of the Tucker's Town Road Acts 1923 were permanently closed to the public.

The following are extracts of a series of exchanges relating to the request that the once public access road to Castle Point, Tucker's Town be opened for the use of private cars and taxis for sightseeing purposes. It is to be borne in mind that the taking over of the roads in the Tucker's Town area was to promote tourism in the greater interests of Bermuda as a whole, that is, as a "public benefit". Instead, the response to that request was that "*the property in the area concerned is owned by a type of people Bermuda has been trying to encourage, and the opening of it to sightseeing would lessen the value of the property*":

1. (138) Minute from the Director of Public Works to the Honourable Colonial Secretary dated 4<sup>th</sup> March, 1955 re Private Roads – Tucker's Town...

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<sup>105</sup> *The Tucker's Town Roads Act, 1923.* (Bermuda.)

*“At the meeting of the Board of Public Works held on 15 February, 1955, it was recommended that the Bermuda Development Co. be asked if the road to Castle Point might be opened for the use of private cars and taxis for sightseeing purposes. This road is the property of the Bermuda Development Co. and was surfaced at their expense in 1949.”*<sup>106</sup>

2. (139) – Letter dated 8<sup>th</sup> March, 1955 from the Colonial Secretary to the Secretary, Trade Development Board, Exhibit 15.

*“I am directed to inform you that the Board of Public Works has recommended that the Bermuda Development Company be asked to consider opening the road to Castle Point for the use of private cars and taxis for sightseeing purposes. The Road is the property of the Company and was surfaced by the Public Works Department at the Company’s expense in 1949. I am to enquire whether the Board’s recommendation is supported by the Trade Development Board.”* (signed E T Smith) <sup>107</sup>

3. (140) – Minute from Mr. J.N. Mowbray, Secretary, Trade Development Board, to the Colonial Secretary...

*“I am directed to inform you, for the information of His Excellency the Governor in Council, that my Board does not agree with the recommendation of the Board of Works regarding opening the road to Castle Point for sightseeing. There has been a relaxation of the “no trespassing” several times and those who went sightseeing in the area abused the privilege. The property in the area concerned is owned by a type of people Bermuda has been trying to encourage, and the opening of it to sightseeing would lessen the value of the property and in time a number of these people will sell their homes and move to other resorts.”*<sup>108</sup>

4. (141) – Minute dated 20<sup>th</sup> April, 1955 from the Colonial Secretary (signed by E T Smith) to the Director of Public Works...

*“I am directed to refer to your minute No. 901/PWD/55 of the 4th March, recommending that the road to Castle Point Tucker’s Town, be opened for sightseeing purposes, and to inform you that the Trade Development Board is opposed to this recommendation. I enclose for your information a copy of the minute received from the Secretary to the Board.”*<sup>109</sup>

Thus, the road to Castle Point, Tucker’s Town was permanently closed to private cars and taxis for sightseeing purposes and, effectively, closed to most Bermudians.

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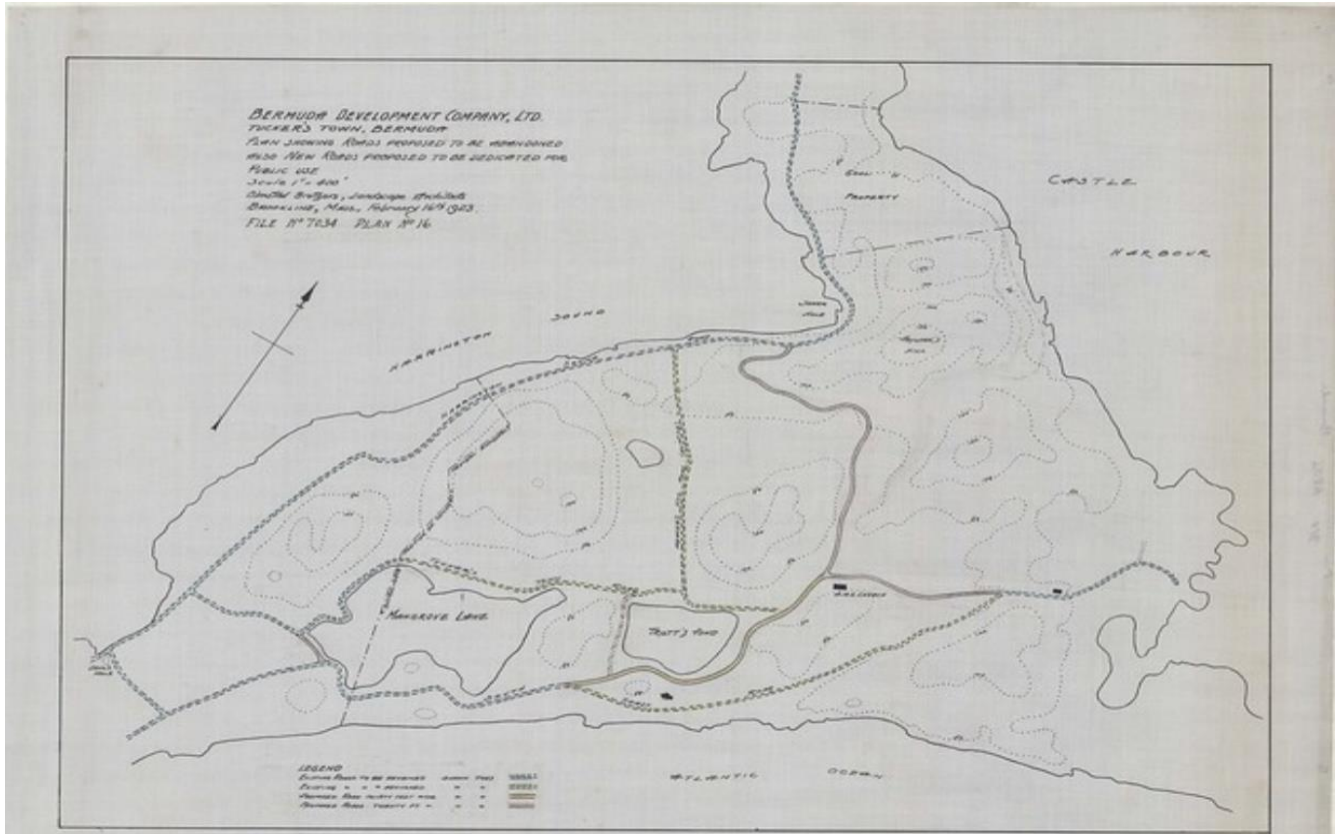
<sup>106</sup> COI – Exhibit TF-3, pp. 10

<sup>107</sup> COI – Exhibit TF-3, pp. 10

<sup>108</sup> COI – Exhibit TF-3, pp. 9

<sup>109</sup> COI – Exhibit TF-3, pp. 9





## Findings

1. MOCL intended to acquire or otherwise purchase as a going concern the whole or any part of the undertaking and business then carried on by the BDCL and to hold in its corporate name the land, more particularly the land described in the Schedule to this Act. MOCL was not granted a power of sale or disposal of such expropriated land purchased from BDCL. The 200 acres authorized for purchase by MOCL could only be used for the business of the company. The MOCL Act is silent on selling any land that does not form a part of the land comprising the golf course and club but which is owned by them.

MOCL has confirmed that it retains the following parcels of land zoned residential from the original purchase of approximately 194 acres:

1. A parcel of land of about a third of an acre containing a building built in 1898 and described in the 1951 conveyance at page 5 as a dormitory. The plan of the relevant building is on page 19 of the 1951 conveyance. The building is used for staff housing;
2. A vacant parcel of land of about half an acre between the 1st and 15th fairways; and
3. A small vacant parcel of land (i.e., less than half an acre) just off Hexham Drive.

MOCL also confirmed that it had no intention of selling these plots for residential development. MOCL does not believe this has ever been contemplated and cannot comment on whether it is feasible.

2. Furness Withy intended to sell expropriated land to persons of the “*highest social and financial standing*” as stated in Sir Frederick Lewis’s letter to Governor Sir John Asser, whether Bermudians or non-Bermudians.<sup>110</sup> As acquiring and selling Bermuda real estate became one of the primary objects of the company and not merely acquiring land for the purposes of its business operations, this acquisition may not have been lawful although sanctioned by the relevant authorities.
3. When governments compulsorily acquire land, they have an obligation to ensure that the process is completed in an equitable and transparent manner. People should not be impoverished as a result of the acquisition of their land. Such should have been the case when government delegated the relevant power to a private entity. Equitable and transparent procedures are also needed for economic growth: compulsory acquisition can destabilize an economy if investors perceive that their rights to land are not adequately protected by the government.
4. In addition to the 194 acres confirmed by MOCL, Mr. Ben Adamson in paragraph 8 of his response of 24<sup>th</sup> May, 2021 to the COI stated that MOCL now owned a total 198 acres. It is highly likely that because of the close proximity of those properties identified as having been purchased by MOCL, the land on which those homes sit may have been as a consequence of the Tucker’s Town expropriation/compulsory purchase in 1920.
5. Mr. Adamson stated that Conyers, Dill & Pearman ceased to represent MOCL in relation to property transactions many decades ago and had passed the MOCL file on to another law firm. Mr. Adamson further stated that after the transfer of the file, MOCL’s deeds (and many of its files) were lost.
6. The Land Registrar may be able to exercise powers under the Land Title Registration Act 2011 to carry out further investigation in order to establish a proper system of land title registration specifically relating to the Tucker’s Town area and to establish good title where it is disputed.
7. The COI was unable to ascertain the names of the landowners and the location of their properties that had been compulsorily purchased pursuant to the BDCL Act (No. 2) 1920 as the original records of the BDCL’s Commission are said to be missing,

## **Transformation of Tucker’s Town into Millionaires’ Playground**

After the expropriation in Tucker’s Town was completed, a community, culture, society and landscape disappeared and the area became a gated community principally for wealthy individuals from other countries from other countries.

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<sup>110</sup> Lewis, Sir Frederick. “Untitled”. Received by Governor Sir John Asser, 15 Aug 1923., COI – Exhibit TF-5, pp. 30

It appears from Dr. Theodore Francis's report to the Commission, that the initiative to dispossess the people of Tucker's Town of their properties derived from the need to make the steamship company of Furness-Withy profitable and not the need for Bermuda to enhance its tourism product. Evidence set out in Dr. Francis's report to the COI supports this view:

*"Sir Frederick Lewis, the British owner and managing director of Furness-Withy, believed that the profitability of his shipping firm depended on the desirability of the ports his ships visited. His launching of the Furness-Bermuda Line in 1919-20 was based around this vision and he expressed sentiments to this effect in a 1923 letter to Governor Asser: "Our business is a Steamship one pure and simple. It should never have been necessary for us to go beyond this, but the success of the Steamship business depended upon the attractions of the Island." With these thoughts in mind, Lewis guaranteed financial backing for a hotel and attractions in Bermuda.*

*"Before investing, Sir. Frederick Lewis wanted to see Bermuda for himself and visited with his wife in early November 1919 aboard his private vessel, 'The Moorish Prince'. The commercial purposes of the visit were apparent given that Lewis was accompanied by guests to assist his decision-making process: Henry Curtis Blackiston, the manager of the Furness-Withy's North American operations; Charles Blair Macdonald, one of America's most famous golfers; and Charles D. Wetmore a New York architect from the Warren and Wetmore architectural firm, who had designed the New York Yacht Club and Grand Central Station Terminal. Given that Sir Lewis hoped to find a site for a hotel and golf course, he invited Macdonald. However, Sir Lewis invited Macdonald not only for his golf course design expertise, but also because Macdonald had floated ideas of building a course in Bermuda to his friends following one of his previous visits to the island. Upon receiving Lewis' invitation, Macdonald asked to bring Wetmore because in his words, "Charlie Wetmore was aware of the desire of a number of our friends to buy some property in Bermuda and build a golf course." Lewis then hired Wetmore to provide architectural advice on any potential sites they visited. [Royal Gazette Tuesday November 4th 1919. C.B. MacDonald, Scotland's Gift, Golf: Reminiscences by Charles Blair Macdonald (New York: C. Scribner & Son, 1928), chapter 12].*

*"From their arrival, the Furness Withy Company (FWC) group was received by the island's ruling class with a dance and reception at the Princess Hotel attended by Governor Willcocks, R.N. Admiral Morgan Singer, members of the TDB, and several MCPs. On Wednesday November 5th Sir and Lady Lewis, along with the FWC party, were guests of honor at an invitation-only garden party and tea at Government House, hosted by Governor and Lady Willcocks. They also made speeches about their plans at a meeting of the Chamber of Commerce, attended by members of the House of Assembly. During the meeting Sir Lewis declared his intentions to finance tourist projects in the island: "we have been advised that there are two or three things that might be done for the benefit of the colony... First and foremost I believe increased hotel accommodation is necessary... Another matter is the provision of a modern 18-hole golf course."*

*"Associations with Bermuda's leaders helped to establish the political connections and relationships that Furness Withy Company would later rely on to enact their plans. "During the visit, TDB members F. Goodwin Gosling and S. Stanley Spurling led the group around the island looking for a suitable location for the proposed golf links, clubhouse and hotel. Historians such as McDowall affirm that Gosling led Sir Lewis and his group to Tucker's Town because he was*

landowner in the region, having purchased a 100 acre estate in 1907 known as “The Clearing”. The coastal landscape of Tucker’s Town, lined with farms, cedar forests and residences impressed the visitors, particularly Macdonald, who remarked that: “we found desirable property at Tuckers Town, of which we were told 500 acres could be bought for \$150,000 to \$200,000. Tucker’s Town district was inhabited mostly by the native negroes...”

“The unnamed informants were most likely their guides, Gosling and Spurling, who provided the visitors with an overview of real estate prices. The November 20th 1919 Gazette quoted an exchange rate of \$4.6 US dollars for one pound sterling, so the estimate provided to Macdonald was between £32,608 and £43,478. Based on these figures, the price per acre ranged from £65 to £87. 43. These early speculations, or similar quantities, would be reflected in future evaluations, offers and compulsory purchases. The group set their plans into motion almost immediately, with Macdonald noting, “I at once asked Mr. S.S. Spurling, the leading administrator on the island, to obtain options on the property. This he did on a large acreage. My intention was to have ten or fifteen men put up £15,000 or £20,000 apiece. In time develop our purchase for a playground.... Charlie Wetmore said he could not go along with me in the purchase unless Sir Frederick Lewis would consent to his doing so, as he was there in professional capacity. Sir Frederick proposed that his partner, H.C. Blackiston, Charlie and myself should buy the property together.” Over the ensuing months the group devised a plan to build a golf course, club house (with accommodations), a hotel, and also a ‘cottage colony’ where foreigners could rent or purchase winter homes (or plots of land for building homes), so that seasonal residents (i.e. foreign landowners) would stimulate tourism all year round; utilizing Furness-Withy ships to arrive and depart the colony. According to Macdonald, “The purchase of the property was left in Furness Withy’s hands owing to their having agents in Bermuda”. So beginning in November 1919 Furness ‘agents’ Spurling and Gosling, corresponded with Lewis, Blackiston, Macdonald and Wetmore to execute the plans”.<sup>111</sup>

On 19<sup>th</sup> April 2021, the COI considered evidence from Dr. Jeffrey T. Sammons, a professor of history at New York University, who wrote:

“Although 1919-1920 marks the beginning of the period of great change, the process of transformation was long in the making. Although I have not found direct evidence of communications or a relationship, Stanley Spurling seemed to be on same page as Charles Blair Macdonald. When the golf course architect and friend of Macdonald, Seth Raynor was to arrive in Bermuda to assess properties, his greeting party included Spurling, J.P. Hand, and E.C. Gosling. Future developments would suggest that Macdonald had only one property in mind—the one in Tucker’s Town overlooking the South Shore, Harrington Sound, and Castle Harbour. Soon a supposedly independently arrived at interest in Bermuda’s development led to an alliance between Macdonald and Furness Withy. The partnership would be formalized in the Bermuda Development Company supported by at least three major acts of the Bermuda legislature and almost unfettered access to land owned and/or occupied by individuals and institutions. It would set into motion a series of private and government partnerships, including Riddell’s Bay Golf and Country Club and Shore Hills Golf Club among others. Furness Withy even petitioned the House for limited powers of compulsory acquisition. What it did get was “oversight” by a legislature appointed commission that would review transactions, set “fair” prices, hear disputes, and appoint arbitrators. The

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<sup>111</sup> Francis, Dr. Theodore, (2020) “Tucker’s Town, Tourism and Captured Lands”, COI – Exhibit TF-2, pp. 26-28

*courts would have final jurisdiction in unresolved matters. It was clearly a process that favored those with resources and, undoubtedly, powerful connections.”*

*“In all of the press coverage, there appears virtually no sympathy for the displaced who were necessary sacrifices for the common good. A common attitude and practice in white minority settler environments is that only they know how to make best use of resources, including land. In fact, that area in question was referred to as “a veritable wilderness” and even the “Jungle” Bushell’s Handbook.<sup>112</sup>*

Thus, the seed was planted. The exclusive Tucker’s Town residential area, often referred to as a millionaires’ playground where some homes cost tens of millions of dollars and where access by non-residents is generally prohibited, is the large tree that grew, unfettered, it appears, over the next century.

## **Rosewood Tucker’s Point Golf Club and Marsden First United Methodist Church**

### **Marsden Methodist Memorial Cemetery at Tucker’s Point**

Pastor Joseph F. Whalen, Jr. and Mr. Craig Tucker, representatives of the Marsden First United Methodist Church (“Marsden”), attended the COI Hearings on 28<sup>th</sup> October and 19<sup>th</sup> November 2020 and on 14<sup>th</sup> January, 2021, producing in evidence a number of Exhibits upon which they wished to rely. The basis of their claim and of others related to ongoing issues and outstanding maintenance regarding the Marsden Methodist Memorial Cemetery (“the Cemetery”) located on property now owned by Rosewood Tucker’s Point Golf Club (“Tucker’s Point”) in Tucker’s Town.<sup>113114</sup>

As set out in in *A Grave Error*, the Report of former Ombudsman of Bermuda, Ms. Arlene Brook, *“The land upon which the original Methodist Chapel stood was exchanged for land at Harris’ Bay, Smith’s on which the BDCL built the new Methodist Church in 1923. There is no evidence of a purchase or conveyance of the Cemetery and this would be consistent with the 1880 Methodist Church Act which prohibited the sale of “any burial grounds or lands which shall have been used for burial purposes”. In 1927, both the Methodist and the African Methodist Episcopal Church Chapels had completed the necessary legal work to convey their lands. A full historical account of the Marsden Cemetery historical facts is set out in A Grave Error.<sup>115</sup>*

Consideration of the history of Tucker’s Town required an investigation into the demolition of tombs at the Cemetery. As part of the Ombudsman’s investigation, she and others visited the Cemetery located just below the Tucker’s Point Golf Club and practice tee, built pursuant to 1995 and 2000 Special Development Orders.

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<sup>112</sup> Sammons, Dr. Jeffery T., “Report to the COI”. 19 Apr. 2021., COI – Exhibit JS-1

<sup>113</sup> Statement to COI submitted by Joseph Franklin Whalen Jr. dated 17<sup>th</sup> November, 2020

<sup>114</sup> Statement to COI submitted by Craig Darren Tucker (unsigned)

<sup>115</sup> Brock, Arlene., “Ombudsman’s Report: A Grave Error”, (2014.), COI - Exhibit SW-1, pp. 48

On 10<sup>th</sup> February 2012, *Today's Choices: Tomorrow's Costs-- a Systemic Investigation into the Process and Scope of Analysis for Special Development Orders (SDOs)* ("*Today's Choices: Tomorrow's Costs*"),<sup>116</sup> the Ombudsman's Report containing a number of recommendations for the then Ministry of the Environment, Planning and Infrastructure Strategy, was tabled in the House of Assembly. In *Today's Choices, Tomorrow's Cost*, the Ombudsman noted that "*the golf course remains a source of considerable angst especially among some descendants of the owners from whom the lands were expropriated*". In the middle of the golf course, below the practice tee, lies the original graveyard which was lost in bush for many years. Tucker's Point initiated the project to fund and clear the area and rebuild graves and walls. Tucker's Point also allowed archaeological research in the area using non-invasive imaging technology. However, the golf balls that rain down daily onto the graves from the practice tee above detract from the site's sacred purpose. The Cemetery does not simply prove that a community existed. It is a testament to a vibrant, well-organized community comprised of free blacks before Emancipation and their descendants for almost a century, a community that met its own social, economic and cultural needs.

Descendants of Tucker's Town landowners, the members of Marsden and the Tucker's Town Historical Society ("TTHS"), united in the view that the Cemetery must be restored and preserved, appeared before the COI in order to address legacy issues relating to the desecration of the Cemetery.

The Commissioners visited the Cemetery on 17<sup>th</sup> August 2020 in order to enhance their understanding of the claim being made in relation to the Cemetery and its location in relation to the Tucker's Point Golf Club and practice tee, said to be the cause of the desecration of the Cemetery.

An extract from Pastor Whalen's statement to the COI follows:

*"I am a graduate of Howard University in Washington DC; Yale University in New Haven, CT, (M.Div.) and Wesley Theological Seminary in Washington DC (D.Min.). I have served as the Pastor of Marsden First United Methodist Church for over twenty (20) years."*

1. *Marsden endeavoured for many years to work with Tucker's Point to resolve several issues concerning the Cemetery.*
2. *Marsden partnered with the Tucker's Town Historical Society in addressing concerns pertaining to the Cemetery.*<sup>117</sup>
3. *Marsden also worked with CURB on these issues.*
4. *The former Ombudsman's Report, A Grave Error, clarifies much of the misinformation concerning Marsden and the Cemetery.*
5. *However, the former Ombudsman erred in claiming that the church had been complicit in the desecration of its own graveyard.*
6. *In hindsight, the church regrets not including TTHS and other concerned stakeholders in the decision to restore the Cemetery.*

<sup>116</sup> Brock, Arlene, (2012.) "*Ombudsman's Report: Today's Choices, Tomorrow's Costs*", COI - Exhibit SW-2

<sup>117</sup> COI - Exhibit CURB-4

7. *Marsden's primary concerns have been for the upkeep and maintenance of the graveyard; resolving the impact of the driving range; guaranteeing access to the Cemetery by descendants and working collaboratively with all stakeholders to ensure a proper restoration and memorial of cemetery."*

## CEMETERY TIMELINE

(Provided in evidence by Pastor Joseph Whalen, including information gained from *A Grave Report*)

2007 – June: Pastor and representatives of Marsden met with members of TTHS, CURB and representatives from Tucker's Point. A number of grievances and concerns were presented to Tucker's Point and discussed. Chief among these was the desecration of the graveyard by the driving range depositing numerous golf balls there.

Subsequent meetings, written communication and a documentary film failed to resolve the matter, despite verbal and written assurances from Tucker's Point that certain key issues would be addressed. Tucker's Point had failed to fulfil its agreement to stop the continued desecration of graveyard by installing a sufficiently protective netting.

2011 – 13<sup>th</sup> July: A letter from Marsden was sent to two Government Ministers, the Hon. Derrick V. Burgess, JP, MP and the Hon. Wayne N.M. Perinchief, JP, MP and the Member of Parliament for the constituency in which Marsden was located appealing for assistance in Marsden's efforts to resolve issues with Tucker's Point concerning the Cemetery. The letter was also sent to representatives of Tucker's Point, Messrs. Brian Young and Ed Trippe.

The following is an excerpt from that letter:

*"As we plan to hold our 150th Anniversary, Marsden intends to invite the community to gather at the Old Tucker's Town Graveyard. It would be a shame for the community to gather and witness the continuation of a disregard for a people's heritage and one of their holy grounds. We anticipate once again a community outcry over this issue."*

2011 – 30<sup>th</sup>, 31<sup>st</sup> August: A Ground Penetrating Radar Survey was conducted on the grounds of the Cemetery. The project was directed by Dr. John Triggs of the Department of Archaeology and Classical Studies, Wilfrid Laurier University, Waterloo, Ontario, Canada and two of his associates. Dr. Edward Harris served as the project coordinator. This historic work was done with the consent and support of Tucker's Point. The resulting Ground Penetrating Radar Survey Report ("GPRSR") documented numerous graves, mostly within the walls with a few outside the walls.

- Of equal importance, the GPRSR documented the transition via aerial photos taken in 1973 (showing no monument tops) and in 1997 (showing the tops). These monument tops were added only 16 to 20 years ago and there are no records to indicate that approval was ever given by the church to put these sarcophagi in place. More importantly, the report proved that these concrete tops were not a part of the original graveyard



- Accordingly, accepting the recommendation of the GPRSR to remove the “false sarcophagi tops”, the Trustees of Marsden decided to restore the graveyard to its original state, that is, as it existed circa 1920.
- To the knowledge of the Trustees, none of the graves had been violated. Certainly, the Pastor nor any Trustee would ever have consented to violation of the graves as the ancestors of many of Marsden’s members were buried there.
- It is important to note that no one from Marsden was involved in overseeing the removal of the gravestones (sarcophagi). Neither the Pastor, the Trustees nor any other member of the church participated in any manner with the attempted modifications of the Cemetery.
- Dr. Edward Harris’s involvement with the Cemetery issue was at Marsden’s request. Tucker’s Point initially rejected the proposal to conduct a ground penetrating survey. It was only Marsden’s insistence that Tucker’s Point agreed to the survey; however, Tucker’s Point imposed restrictions upon the extent of the survey.
- It was Marsden’s understanding that Dr. Harris would oversee the work of extending the boundary wall to include the newly discovered graves and the removal of the “false sarcophagi” to restore the area to its original state. Dr. Harris gave the church assurances that the integrity of the graves would not be violated.
- As the Ombudsman Ms. Brock documents in *A Grave Error*, Marsden’s Trustees were not aware of the historic protection designated for the Cemetery. The Department of Planning was not alerted to Marsden’s custodianship and therefore did not consult with the church during the zoning process.
- Ms. Brock notes that the graves underground at Tucker’s Point were not disturbed by the activity of mid-October 2012; “it was the tombstones above ground that were demolished.”<sup>118</sup> With regard to the decision that Marsden should go with the recommendations from the GPRSR, as presented by Dr. Harris, Ms. Brock notes: “*There is no reason to disbelieve Marsden and Tucker’s Point. Had they had any indication at all from the Department prior to mid-October that the Department was taking steps to list the Cemetery in accordance with an Ombudsman recommendation, they would not have proceeded with the demolition.*”<sup>119</sup>
- Ms. Brock writes further: “*The decision to remove the ancient tombstones was made by agreement of:*
  - *Owners of the property – Bermuda Properties Ltd./Castle Harbour Ltd.; and Managers – Rosewood Hotels & Resorts*
  - *Marsden First United Church*
  - *Dr. Edward Harris, Director of the National Museum and Bermuda’s premier archaeologist.*

*The decision was based on the mistaken assumption that the graves were “false”. This mistaken assumption was based in part on aerial photographs taken in 1962 did not reveal the Cemetery which was completely obscured by vegetation. However, aerial photographs from 1973 show partial*

<sup>118</sup> Brock, Arlene., “Ombudsman’s Report: A Grave Error”, (2014.), COI - Exhibit SW-1, pp. 3

<sup>119</sup> Brock, Arlene., “Ombudsman’s Report: A Grave Error”, (2014.), COI - Exhibit SW-1, pp. 7



*clearance and some visible burials. Aerial photographs of 2003 revealed a Cemetery comparatively free of overgrown vegetation with whitewashed sarcophagi. Ms. Brock documents that concrete tops were indeed added to the ancient graves.”*<sup>120</sup>

2011 – October: Marsden held a Memorial Service at the Cemetery.

2012 – 15<sup>th</sup>, 16<sup>th</sup> October: The gravestones were removed from the Cemetery and a section of the boundary wall was knocked down to be extended to include newly discovered graves.

2012 – 29<sup>th</sup> October: Marsden held a meeting requesting input from the community on how the gravesite should be memorialized.

2012 – 6<sup>th</sup> November: A meeting attended by Marsden’s Pastor, the chairman of Marsden Trustees, the chairman and two members of TTHS and Dr. Edward Harris was held to discuss a submission to the Department of Planning

2013 – 24<sup>th</sup> January: Marsden submitted an application to the Department of Planning.

2013 – 9<sup>th</sup> March: CURB launched an appeal for an in-depth consultative process on how the Tucker’s Town gravesite should be memorialized.

2013 – 13<sup>th</sup> March: A Government spokesperson informed *The Royal Gazette* that the “*Department of Planning anticipates that the process to enable the Minister to consider the listing of the site as a historical monument pursuant to Section 30 of the Development and Planning Act 1974 would be concluded by 30 June 2013*”.

2013 – 18<sup>th</sup> March: The Ombudsman issued a press release announcing her investigation into the disappearance of the gravestones

Meeting organized by the previous Ombudsman, Ms. Arlene Brock, with stakeholders - representatives of Marsden Church, TTHS, the Department of Planning and Bermuda National Museum. Ms. Brock sought to have Dr. Janet Ferguson, Executive Director, Lifelong Learning Centre, Bermuda College, and Mr. Glen Fubler, retired educator, to serve as arbitrators in leading the process of healing and reconciliation.

2020 – 18<sup>th</sup> September: Current Ombudsman, Ms. Victoria Pearman, met with the Marsden Pastor and Bro. Sinclair White and representatives of TTHS to discuss a way forward in addressing concerns about Tucker’s Point and restoring the Cemetery.

## IN SUMMARY

- 1) It is unfortunate that other stakeholders were not consulted before the concrete grave tops were removed;

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<sup>120</sup> Brock, Arlene., “Ombudsman's Report: A Grave Error”, (2014.), COI - Exhibit SW-1, pp. 9

- 2) Marsden finds the unsubstantiated claims that “*the graves were dug up and bodies removed*” repugnant and counter-productive to the process of healing and reconciliation;
- 3) Marsden supports efforts to determine the actual physical scope of the Cemetery by determining the graves beyond the current boundary walls;
- 4) Marsden supports a broad-based coalition of stakeholders to collaborate on the way forward. Marsden is willing to work with all stakeholders to work towards restoring the Cemetery and reconciliation of the community; and
- 5) Marsden advocates redirecting the driving range as this will benefit everyone:
  - a) Efforts to provide a protecting netting have totally failed.
  - b) The continued desecration posed by the driving range goes against the spirit of the initial intent to preserve the site.
  - c) Redirecting the driving range will help promote efforts to bring restitution and a step towards the needed healing for the black community.

Mr. Craig Tucker gave evidence in support of Pastor Whalen’s submission on behalf of the members of Marsden. He also gave evidence of his familial connection with Tucker’s Town:

*“My family roots are in Tucker’s Town. My ancestors are the Talbots. The Talbot Brothers had a set of twins who were buried in the Cemetery in Tucker’s Town. My great grandmother was Mamie Lambert. She married my great grandfather Osmond Talbot. They lived in a house in Tucker’s Town called “Atlanta By the Sea”. Numerous ancestors from Tucker’s Town are associated with Marsden members: the Talbot family, the Burgess family, the Richardson and Steed families, the Smith family the Musson family and the Trott family.*

*I have been a life-long member of Marsden Memorial Methodist Church. I served as the Chairman of the Trustee Board of Marsden Memorial Methodist Church for over fourteen years and was a key player in its transition to the United Methodist Church in 2001 (hence the name change to Marsden First United Methodist Church). I was the trustee chairman when the Ground Penetrating Survey and subsequent alterations to the Cemetery were done.”*

## Further Evidence

1. “Historical Highlights” presented by Mr. Steve Smith on the occasion of the 150<sup>th</sup> Anniversary of Marsden First United Methodist Church, Sunday, 14<sup>th</sup> October, 2007;<sup>121</sup>
2. *A Grave Error* prepared by Ombudsman Ms. Arlene Brock. This Report sought to clarify some of the suspicions, misconceptions and even recrimination in the community regarding the motives and actions entailed in the demolition of the tombs.<sup>122</sup>

<sup>121</sup> COI - Exhibit JFW-7

<sup>122</sup> Brock, Arlene., “Ombudsman’s Report: A Grave Error”, (2014.), COI - Exhibit SW-1

3. Photographs showing golf balls in and outside the gravesite<sup>123</sup>;
4. Summary Offences Act 1926;
5. Criminal Damage Act 1971;
6. Court of Appeal (Criminal Division) re David Raymond Smith in connection with the destruction of or damage to property belonging to another<sup>124</sup>;
7. Statement to COI submitted by Craig Darren Tucker (undated); and
8. *The Royal Gazette* article dated 17<sup>th</sup> October, 2012: ‘Restoration work at graveyard upsets custodian group’.<sup>125</sup>

## Response of Tucker’s Point to Marsden’s Concerns about Maintenance Issues at the Cemetery

On 14<sup>th</sup> April, 2009, Tucker’s Point sent a letter to Mr. Craig Tucker, addressing Marsden’s concerns about maintenance issues related to the Cemetery and the perception among some people that the Cemetery was being desecrated because of its proximity to the Tucker’s Point driving range, as set out in more detail in Pastor Whalen’s letter of 13<sup>th</sup> July, 2011.

The following letter of 13<sup>th</sup> July, 2011 was sent by Pastor Whalen to various people seeking assistance in resolving the issues of the Cemetery<sup>126</sup>:

*“Greetings*

*I am writing to solicit your help in redressing some unresolved issues regarding the Old Tucker’s Town Graveyard*

*“This year in October, [Marsden] will celebrate its 150<sup>th</sup> year anniversary. Our history has its roots in the Tucker’s Town heritage. Landmarks such as an old chapel, school house and community store, still standing today as private residences. These structures, and most importantly, the old graveyard, are all that remain of the old predominantly black rural community. In 1996, the graveyard was rededicated to honour those who are buried there. The descendants are not only members of Marsden but are individuals from across our island home.*

*As you may know, the Old Tucker’s Town Graveyard exists in the middle of the Tucker’s Point golf course – more specifically, below the Club House in an area used as a driving range. There is too much history for me to cover in this letter, so let me get straight to the point.*

*In June 2007, the Pastor and designated representatives from Marsden met with members of the Tucker’s Town Historical Society, Citizens Uprooting Racism in Bermuda and representatives from Tucker’s Point Club (TPC). A number of grievances and concerns were presented to Tucker’s Point and discussed (see*

<sup>123</sup> COI - Exhibit Marsden-003

<sup>124</sup> COI - Exhibit Marsden-011 (CoA, 9<sup>th</sup> Nov 1973 page 320)

<sup>125</sup> Brock, Arlene., “Ombudsman’s Report: A Grave Error”, (2014.), COI - Exhibit SW-1

<sup>126</sup> Whalen Jr., Joseph F. “Untitled”. 13 Jul 2011., COI-Exhibit JFW-5

*attached document dated June 2007). Chief among these was the desecration of the graveyard by the driving range depositing numerous golf balls.*

*Subsequent meetings, communications, and documentary film have failed to resolve the matter. This despite verbal and written assurances from Tucker's Point that certain key issues would be addressed (see attached letter from Tucker's Point dated April 14, 2009) Tucker's Point has defaulted on the following:*

- 1. TPC agreed to stop the continued desecration of graveyard. They promised to sufficiently protect the area with a net. This has not been done. They were told over two years ago that the flimsy net that is by the hedges is totally inadequate which they acknowledged and promised to replace. Anyone who visits the graveyard on any given day will find the site desecrated by numerous golf balls.*
- 2. TPC agreed to replace the plaque which Marsden erected on the wall of the graveyard that was severely damaged by their machines. This has not been done.*
- 3. TPC agreed to repair the damaged wall. This also has not been done.*
- 4. TPC agreed to allow for scanning of the area so that a determination can be made to the location of the remains of the deceased. Mr Ed Harris, the Director of the Maritime Museum, informed me in June of this year that Tucker's Point refused to give him access to the area.*

*Over four years after our meeting to resolve these issues, and more than two years after TPC agreed to rectify key issues, nothing has been done. The attached pictures were taken on Tuesday, July 12, 2011. Although the picture quality is not the best, they do provide an accurate visual representation of the situation.*

*As we plan to hold our 150<sup>th</sup> Anniversary, Marsden intends to invite the community to gather at the Old Tucker's Town Graveyard. It would be a shame for the community to gather and witness the continuation of a disregard for a people's heritage and one of their hold grounds. We anticipate once again a community outcry over this issue.*

*On behalf of our congregation, and the many across this island who are concerned about these issues, I solicit your assistance."*

## **Restoration Work at Cemetery Upsets Custodian Group**

On 12<sup>th</sup> February 2013, a letter was sent to the Department of Planning by Botelhowood Architects on behalf of the Marsden First United Methodist Church-Cemetery making a planning application for the installation of a proposed monument, small extension of the Cemetery wall, removal of

existing poles and netting and installation of new poles and netting and providing the reasons for having to do so.<sup>127</sup>

*The Royal Gazette* article of 17<sup>th</sup> October, 2012 reporting on the reaction of the custodian group, TTHS, to the work conducted on the Cemetery: <sup>128</sup>

*“The Tucker’s Town Historical Society (TTHS) are looking for answers after claiming they were left out of the loop in discussions between the Marsden First United Church and Dr Edward Harris of the National Museum of Bermuda to restore a sacred cemetery.*

*The Old Tucker’s Town graveyard is on the Tucker’s Point golf course and holds the remains of past residents of the Area.*

*Work is being done at the site to remove the false sarcophagi and to extend a portion of the eastern wall under the supervision of Dr. Harris and overseas archaeologists which begun Monday. The Tucker’s Town Historical Society are the active custodians of the interest of the descendants of Tucker’s Town that have been moved out of the residence in 1923 and believe that they should have been included in meetings.*

*“We represent the people that lived here before, therefore we should have been in any discussions that were held in regard to the cemetery,” said TTHS chairman Denny Richardson.*

*“They have a backhoe at the site and that is much different from a mattock or shovel.*

*When did they make up their minds to actually this procedure because they had previously said that they would sit down with us to discuss anything that they would be doing and it was joint responsibility by both parties to be together in any decision.*

*“This hasn’t happened and we are now trying to get to the bottom of this.”*

*Pastor Joseph Whalen, of the Marsden First United Methodist Church, however, insists that the church nor the trustees owe anything to the TTHS and agreed to work being done on the graveyard with the Rosewood Tucker’s Point (RTP) and Dr Harris.*

*During a memorial service held on October 1<sup>st</sup> of last year, Dr Harris made a presentation on the ground-penetrating x-ray of the cemetery and the immediate area that will been carried out, while greetings were made by management director of RTP, Brian Young.*

*“They’re not responsible for the graveyard, they have an interest in it but that’s it, “said Mr. Whalen.*

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<sup>127</sup> COI - Exhibit JFW-6

<sup>128</sup> COI - Exhibit Marsden 002

*“The graveyard is in the custodianship of the Marsden First United Methodist Church, and because it is on the golf course at Tucker’s Point we have been negotiating with them about doing work. It’s not like their society is responsible for the actual site or anything of that nature.*

*“We have been working with Dr. Harris and talking to him and individuals regarding Tucker’s Point coming to an agreement that some work should be done to restore the site.*

*“You can’t bring everyone into the loop so to speak because they aren’t the principal players in determining what happens.*

*“Information should be given out in due time and that was going to be done to bring everyone up to speed and this will still be done”.*

*“The Trustees of Marsden agreed to having the following work done by RTP for protection and preservation of the old graveyard including the late false sarcophagi being removed, the eastern wall of the cemetery being extended to include the probable graves noted in the Ground Penetrating Report, as well as the cemetery being protected by using monofilament netting supported by several tall palm trees.*

*“Dr Harris has been a friend of the project to protect and preserve the Old Tucker’s Town Graveyard.*

*“The church and RTP are profoundly grateful for his work on behalf of the interests of the broader community, which has historical ties to the graveyard.”*

*Dr Harris added: “With the agreement of the parties and paid for by Rosewood, in August last year, we conducted a ground penetrating survey of the cemetery and areas surrounding it to ascertain if there are any possible graves outside the present boundary walls of the cemetery.*

*“A survey was also conducted within the cemetery and a number of possible graves were apparent in the graphs recorded by the radar equipment*

*“As a result of that survey, some possible graves were located to the northeast of the cemetery, but no possible graves, or any other cuttings were found in other adjacent areas.*

*“At a meeting with Reverend Joseph Whalen and Rosewood it was agreed. At their expense, that Rosewood would extend the boundary wall of the cemetery to include those possible or probable grave sites.”*

## Tucker's Town Historical Society – Demolition of Graves

The three founding members of TTHS, Mr Jerry Keith Dubois, Mr Mervin “Denny” Richardson and Mr Eugene M. Stovell, attended COI Hearings at the Grotto Bay Hotel, Hamilton Parish and submitted in evidence a letter dated 5<sup>th</sup> November 2012. Extracts from that letter follow:

*“The next event that brought attention to this graveyard was the” Big Conversation March 2007. “It was during this: Big Conversation” that the issue of the Compulsory Acquisition Act of 1919 and its attendant heartbreaking and treacherous outcome greatly stirred the audience’s interest so much so that it attracted the attention of the two busloads of interested parties who wanted to see for themselves this graveyard of the short changed mistreated ancestors of Tucker’s Town folks even in the 20th century.*

*The visitors were moved to tears to hear that story. I was emotionally charged and had to fight back the tears as I related the stories told to me my father James S.E. Richardson who was nine years old, and his first cousin Chauncey Charles Smith, when they were unceremoniously moved from Tucker’s Town. A videotaping of the narration is available from the Department of Cultural Affairs.*

*More recently the Department of Tourism classified the graveyard as a site to be visited along the African Diaspora Trail. And that some sort of recognition be given to the people of Tucker’s Town who through the part they played in helping to advance the cause for the early development of tourism, however skewed the trickle-down effect that would have been and still is today.*

*The troubling part about this is that the site has been long established as an historic landmark. However, not so dignified. When in the event that some of the previous visitors return to that site they would hardly be able to recognize it in its altered state. Therefore, as far as it is possible we need to preserve as much of this site and markings as possible in their original state. The absence of human remains should not justify the wanton destruction of those relics left behind.*

*Previously the members of the Tucker’s Town Historical Society suspected that there were graves outside of the enclosure walls. That was found to be true. The investigation of the site could have been carried out with the same level of finesse and professionalism inherent in good archaeological searches or forensic investigations. The approach, however, was like taking cannon to kill a fly. Brute force and ignorance might have worked when we were simple and unschooled. Today, we are supposed to be better educated; hence, we should be more sophisticated.*

*The behavior that has been displayed, recently, at the gravesite, has left a lot to be desired. The fact that the work was not properly supervised and the person in charge being uninformed and inexperience or, just did not care, in part accounted for the haphazard fashion in which the work was done. There was no concrete proof that there were no traces of human remains in what was termed false sarcophagi. On the*

*admission of the supervisor, Dr. Ed. Harris PhD, the reason was that no core samples were taken or any other more genteel methods/approaches taken, like (carbon testing from samples), for procuring samples of real evidence.*

*The radar equipment used did find places where some bodies might have been laid, both inside and outside of the walls. These graves could not be seen with the naked eye so the scanner was useful. Remember that this radar only showed the outline of what was felt was a grave and not necessarily that there were bodies in these cavities that were identified. Again they are going on assumption, speculation, and conjecture. Do we entertain this? The assumed empty graves were probably emptied when previous attempts were made to make the site more pleasing to the eye; sacred no less?*

*Therefore, it is deemed necessary or expedient that all persons that have a vested interest, be it historic or just plain caring for their loved ones buried there should be included in determining the outcome of these affairs. Is there something wrong with that? It was determined in a recent meeting October 29 2012 that the Tucker's Town Historical Society had gathered a great deal of information that could have assisted the archaeologist and investigators in defining their approach to uncovering material. Had the other parties involved been inclusive of the TTHS, the emotional stress and public outcry would have been not so intense. It is felt that by leaving out some of the other interested parties that they, the archaeologist, Tucker's Point management and the Marsden Group were trying some tricks. By keeping them, the Tuckers Town Historical Society, out of the loop they would have fulfilled their ill – intent.*

*What was their intention? Deviousness! They were hoping to have been able to remove the graves, grass the area over and erect the obelisk to mark the burial ground. That way they could still drive the golf balls down there and they would not be dropping on the tops of the graves, but would only occasionally bounce off the monument. That might not seem so evil, wicked or nasty and the Tucker's Town Historic Society would just go away. Not so! We are going to stay this course.*

*If the reports coming from the Planning Department were true, then Dr. E Harris should be taken to task for overstepping his bounds. In fact, the Marsden Trustees and their Pastor should likewise be charged, jointly or severally, with violating the ordinance concerning the classification of the site and the protection order for securing and maintaining the antiquity, sacredness and the dignity ascribed to this burial ground. No less has been ascribed to the burial ground at Prospect or in Dockyard, Ireland Island or any other sacred resting place for the dead.*

*Therefore, in keeping with and showing good faith, it is requested for consideration and in keeping with a good relationship that those demolished graves be rebuilt, the wall be extended to include those grave outside and proper visible makers be place to indicate such graves”.*



Derek Dechabert

Published Oct 17, 2012 at 8:00 am (Updated Oct 16, 2012 at 11:20 pm)



**Inspecting:** Keith Dubois, Denny Richardson and E Mcneal Stovell stand in the Tucker's Town Methodist Community Graveyard which has been undergoing restoration work. ((Photo by Glenn Tucker))

TTHS members also gave their personal accounts of their connection with the people of Tucker's Town and the Cemetery where their loved ones were buried. The following Witness Statements were introduced and oral testimonies given at the COI Hearing held on 28<sup>th</sup> October, 2020:

### **Evidence - Jerry Keith Dubois**

Mr. Dubois read to the COI his written statement which was tendered in evidence. Mr. Dubois saw first-hand the destruction of the graveyard and recounted that,

*“When we arrived I cannot explain how horrified I was when I saw the destruction. I was physically sick. The Tucker's Town Historical Society had met with the Marsden Church about x-raying the graveyard. Edward Harris was in attendance at that meeting and no one had called us, meaning anyone from the Tucker's Town Historical Society, about the decision to tear up the graves.*

*I saw holes in the ground where previously there were graves. Even some of the perimeter walls has been knocked down. All the gravestones were uprooted and placed on the side of the graveyard. The three of us, Denny Richardson, Eugene Stovell and I, were silent, extremely silent. totally speechless and upset at the sight of this destruction.*

*The graveyard did not just belong to the Marsden Memorial Church, it also belonged to the descendants of the people that are buried there. My grandfather among them.*

*As we left the scene and drove away, the three of us were sad and completely silent.*

*Subsequently, I signed a complaint which our Society made to the Police relating to the destruction of the Tucker's Town graveyard. We made the complaint in July of 2014, two years after we had seen the destruction done. For a long time, we could not talk about it. Denny has family buried in the graveyard as does Eugene Stovell and myself.*

*It has been suggested that the graveyard is a lot bigger than the present area that is apparent. There are just under two hundred people buried in the graveyard when you account for the people that are unaccounted for that lived in the community.*

*There seems to be no respect for the Tucker's Town graveyard or the former residents who are buried there. The graveyard always seems to be in a state of disrepair. There is also the issue of Tucker's Point Golf Club turning the graveyard into a driving range. If that doesn't show disrespect, I do not know what does."*

## **Evidence - Eugene McNeil Stovell**

Mr. Stovell tendered in evidence a Witness Statement dated 27<sup>th</sup> October 2020.<sup>129</sup> At the COI Hearing, he confirmed that he was the direct descendent of Josiah Smith and that his genealogical line to Josiah Smith who died in 1876 could be found on page 1 of the Exhibit accompanying his Witness Statement.<sup>130</sup> He confirmed that Josiah Smith was a branch pilot, later becoming a Queen's Pilot, and that he was involved in the whaling industry in Tucker's Town. His brother, Daniel Smith, was also a pilot who lost his entire family, his pregnant wife and four children in a tornado that came through Tucker's Town in December 1875. Mr. Stovell said that he was a direct descendant of Josiah Smith through his daughter Caroline Smith, one ten children. Mr. Stovell also conducted extensive research of the name, age, date of death and parents' names of those residents who were buried in Tucker's Town from 1866-1928. Mr. Stovell gave evidence of the events leading to his visit to the Cemetery with other members of the TTHS.

Mr. Stovell said the following to the COI:

*"On or about 16<sup>th</sup> October, 2012, I received a telephone call at work from someone informing me that the Cemetery was being destroyed. I cannot now remember who called me, but from what was said to me, I thought to myself: "What the hell is this? This doesn't make any sense!" In any event, I travelled to Tucker's Town with Keith DuBois and Denny Richardson. I was completely in shock by what I saw. All the gravestones and tombs had been removed. I saw a backhoe parked outside the Cemetery. Someone called The Royal Gazette and a photographer and reporter arrived on the scene, resulting in an article being published the next day, (17<sup>th</sup> October, 2012.. The article quoted Rev. Joseph Whalen of the*

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<sup>129</sup> COI - Exhibit EMS-1

<sup>130</sup> COI - Exhibit EMS-2

*Marsden Church as saying that Dr. Harris, Tucker's Point and the Church were responsible for the excavations and removal of the gravestones, which he referred to as "false sarcophagi".<sup>131</sup>*

## **Evidence - Mervin Denny Richardson**

Mr. Richardson gave evidence about his ancestry and familial connection with Tucker's Town:

*"My ancestors are the Smiths and Talbots from Tucker's Town. BD Talbot was my great-great grandmother's brother. My fathers' great-great-great great aunts were sisters Lydia Smith and Julia Talbot. The remains of their brother BD Talbot, BD being short for Benjamin Darrell Talbot, are buried at Holy Trinity Church in Bailey's Bay...*

*Lydia Smith and Julia Talbot owned land in Tucker's Town. They owned 35 acres each. BD Talbot owned 70 acres. All told between then they owned 140 acres of land. When the expropriations began, BD Talbot wanted £25,000 for his land but this was refused by the tribunal and was reduced to £8,000, working out to be a third of what he wanted. The sisters Lydia Smith and Julia Talbot received a nominal sum for their property, less than half each of what BD Talbot got. The two sisters used the proceeds of their land and bought land on Knapton Hill where many of their descendants, members of my family, still live today.*

*BD Talbot was a businessman who owned the only general supply store in Tucker's Town. He had horse drawn vehicles, carts and carriages and supplied people in the Tucker's Town community and in Hamilton Parish. Hamilton Parish. Lydia Smith and Julia Talbot farmed their land and raised crops. Tucker's Town at that time was not a place where people went to be nosy and they were able to conceal runaway slaves. Everyone who had lots of land like them had places where they could conceal someone, feed them and provide them with work and a place to sleep.*

*After losing his land, BD Talbot purchased the land in Devil's Hole, erected a building and had his grocery store and residence in that building. His residence was upstairs and the grocery store downstairs. The building still stands today. It is located on the roadside in Devil's Hole. There is a lane on one side and beyond the lane is Devil's Hole Club, Harrington Workmen's Club. Lydia and Julia, after losing their land and growing too old to farm, divided the property they purchased in Knapton Hill among their grandsons and that is how my father got property in Knapton Hill.*

*My mother lived and worked in Tucker's Town; she grew up there and went to school there. The school building still stands today. It is the residence or dormitory for employees working in that area. The church is still there and it's also a dormitory. The buildings were appropriated to interested parties, either Mid-Ocean or Castle Harbour.*

*Before you reach these buildings, there is the entrance on the left called the Stables where BD Talbot kept his horses. Today, there are workshops where the stables once were kept. This was all a part of BD Talbot's land and today they repair golf carts there.*

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<sup>131</sup> COI - Exhibit EMS -1 pp. 15-20

*Dinah Smith was the niece of BD Talbot and she owned property in Tucker's Town. Her property was taken by a tribunal even though she resisted and did not leave her house. The negotiators, Seaward Toddings, Goodwin Gosling and one other whose name I forgot, went to her and asked why she was being stubborn not wanting to move out of her house. Dinah poured a pot of hot soup on one of these men. The Police were sent for from St. George's and they removed her kicking and screaming. She was highly emotional about it. As a result, she was placed in another house. All of her belongings were outside and rotting. She would not go into the house and stayed outside until she died of exposure from the elements not long after she had been removed from her land.*

*I had three great uncles, all of whom served in the first World War. One had lost his leg while overseas. They replaced it with a cork prosthesis, and he was sent back to Bermuda. He was alive when I was a little boy. When they returned to Bermuda, they could not return to Tucker's Town where they had lived before going overseas.*

*The travesty is that they had served the British Government in time of war.*

*I am familiar with the Marsden graveyard. It was at back of the Marsden Church. All that remains of it today is the small area surrounded by a stone wall that serves as a token marking of what appears to be an official graveyard. The graveyard was much larger than what can be seen today, that which I have just described. The Savage map will indicate the extent of the original graveyard removed to make way for a fairway as part of the Castle Harbour Golf Course.*

*That graveyard, the Marsden Methodist graveyard where some of my ancestors were buried as well as other residents of Tucker's Town, was not given the degree of respect deserving of the dead.*

*As a descendant of the Tucker's Town residents, I have always been interested in the history of that community and the events leading up to the removal of those families. During my adult life I was a member of the Tucker's Town Historical Society. One of the things we did was question a statement made by lawyer Peter Smith. It has been reported in The Royal Gazette that Peter Smith had defended his father's decision as to what had been paid to the residents of Tucker's Town when their lands were taken away from them. Peter Smith claimed that his father had said that the people of Tucker's Town were treated fairly. This would have been sometime after 1998.*

*I and a number of the descendants of Tucker's Town were infuriated by Peter's remarks with which we completely disagreed. This is how the Tucker's Town Historical Society came into being. We had continuous meetings about how to deal with the results of the compulsory acquisition of Tucker's Town land.*

*We became involved with the Big Conversation and we took two busloads of people, the descendants of former residents and other interested parties, down and spent the day touring the area and pointing out old landmarks and residences occupied by previous Tucker's Town people. Uncle Ben's house, BD Talbot's House, still stands. BD Talbot is Uncle Ben. That's what children called him. Adults called him BD. Today that house is lived in by Dr. Ian Campbell.*

*Our group has also done research using various sources, some outside Bermuda. We researched Furness Withy's role in the acquisition of the land. They are the ones that introduced Castle Harbour and Mid-Ocean Club. Blacks could not go to those clubs.*

*At this juncture, we can draw in other participants who were members of the Tucker's Town Historical Society. This would be icing on the cake. I would like to turn the cake into something meaningful, repossession or fair prices to be paid to the descendants of the Tucker's Town residents for what was unfairly taken."*

## **Evidence - Ms. Helen Wainwright, Aged 97, Oldest Displaced Former Tucker's Town Resident**

A *Bermuda Sun* article dated 14<sup>th</sup> October, 2011 was introduced into evidence. That article is headed: "I wish I still lived in Tucker's Town, at 97, Helen Wainwright was the oldest survivor of one of the most contentious episodes in our history": <sup>132</sup>

*"A smile still flashes across Helen Wainwright's face every time she mentions her beloved Tucker's Town. She was just seven years old when her family was turfed off the land they had worked for centuries. But her happy memories of life growing up in 'the most beautiful part of Bermuda' are as vivid now at the age of 97 as they were when she was a young child bunching vegetables. Today, Ms. Wainwright is the last of the original Tucker's Town residents still alive, after Etta Courtney, 88, and Mai Smith, 93, passed away within the last two weeks. All three were born on the land and their families forced to leave their homes when government passed a compulsory acquisition order on Tucker's Town in 1920 to attract rich American businessmen to Bermuda.*

*Ms. Wainwright has many fond memories of helping with the harvest and fishing with her friends. She said: "I was born in the house. There was no hospital or anything like that back then. Our house was close to the public wharf down at the end of Tucker's Town and we used to go fishing on the docks with the sun on our backs. "We had a fire in the house and I remember every day after school we would have to pick up wood on the way home to keep the fire going so our parents could cook our meals.*

*"As children we were not allowed to run all over the place. We had to stay in the home. But no one got in any trouble. Nobody wandered into other people's homes. People were just nice and got on with each other. It was the best part of the island. It was quiet and peaceful place with a real feeling of community. It was beautiful with cedar trees, fields and livestock everywhere.*

*"Our parents worked on the farm and we used to sell the extra vegetables to America. In the summer the children would help. I remember bunching parsley, onions, carrots and beets as a child. It was hard work but everyone liked it.*

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<sup>132</sup> COI - Exhibit MDR-2



Ms Wainwright and her family begrudgingly left Tucker's Town in 1923. They settled a few miles up the road in Knaption Hill. She went on to have one son, Joseph Wainwright, who has given her ten grandchildren. Ms. Wainwright said: *"I was very young when we moved out of Tucker's Town. I think I was only around seven. There was my stepfather, Ashton Smith, my mother, Josephine, and my two brothers James and Fred Richardson. But I remember my stepfather was not happy to leave at all but they told him he had to go. None of us wanted to leave our home. Everyone was happy in Tucker's Town. It was a great place to grow up. I know I felt sad to leave Tucker's Town and I have wanted to go back home ever since."*

*"To me what happened back then was out of order. But I still tell people I am from Tucker's Town. That is my home and I still wish I was in Tucker's Town. When I look at Bermuda today and see what is going on I sometimes wish I was not here to see it. The thing that hurts is when we go to Tucker's Town these days you have to show a pass to get to where I was brought up. Most of the houses there today are empty and that is a real shame."*

Asked what it means to be the last of the original Tucker's Town residents, Ms. Wainwright replied: *"It is difficult to say what it means to me. All I can say is I am still here until the good Lord takes me. What I do know is that I wish I was still living in Tucker's Town."*

Mr. Richardson said that Ms. Wainwright represented *"a tower of strength"*. He continued: *"She has had to live with those challenges from a little girl and she will take them to her grave. We are coming to the end of an era now and Ms Wainwright is the last of the original Tucker's Town residents who was born on the land. We should not forget our history. There were around 600 people living in Tucker's Town before they were forced to leave in the 1920s. They were cheated out of the homes and the future they deserved. We can trace their families back to 1811, before the abolition of slavery, to the days when the residents would go out and pilot the ships in. This was a significant community in Bermuda's history."*

## **Adverse Notices**

Adverse Notices were sent to Tucker's Point and Dr. Edward Harris, MBE, Ph.D, FSA on 5<sup>th</sup> October, 2020 advising that COI Hearings would be held at Grotto Bay Beach Resort, Hamilton Parish on Monday, 19<sup>th</sup> October, 2020 to hear evidence from various people.

Marsden Memorial Methodist Church Cemetery  
Ground-Penetrating Radar Survey  
Rosewood Tucker's Point  
Tucker's Town, Bermuda

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September 2011  
Report Prepared for Rosewood Tucker's Point

Dr. John R. Triggs, Ph.D.  
Department of Archaeology and Classical Studies  
Wilfrid Laurier University  
Waterloo, Ontario, Canada

Dr. Harris appeared before the COI on 1<sup>st</sup> December 2020 at the Bermuda Royal Regiment, Warwick Camp, Warwick Parish, in connection with the Marsden Memorial Methodist Church Cemetery Ground-Penetrating Radar Survey at Tucker's Point, Tucker's Town. The Report was submitted in evidence.

Dr. Harris, former Director of the National Museum, was questioned by the COI Counsel on matters that touched and concerned the removal of the sarcophagi/tombstones at the Marsden Memorial Methodist Church Cemetery and the ground-penetrating radar survey project referred to in the Ombudsman's Report *A Grave Error*. At page 16 of *A Grave Error*, the Ombudsman states that... "*the destruction of the tombs has struck a nerve and evokes an entire history of pain of slavery and a legacy of structural racism and white privilege in Bermuda. Let me just repeat the destruction of the tombs has struck a nerve and evokes the entire history of pain of slavery and the legacy of structural racism and white privilege in Bermuda.*"

The COI Counsel drew Dr. Harris's attention to page 9 of *A Grave Error* regarding the decision to remove the ancient tombstones made by agreement of owners of the property Bermuda Properties Limited, Castle Harbour Limited, Managers of Rosewood Hotels and Resorts and Marsden First United Church. Citing page 9 of *A Grave Error*, COI Counsel stated that the decision "*was based on the mistaken assumption that the graves were false. This mistaken assumption was based in part on aerial photographs. Aerial photographs taken in 1962 did not reveal the Cemetery which was completely obscured by vegetation; however, aerial photographs from 1973 revealed partial clearance and some visible burials. Aerial photographs of 2003 revealed a Cemetery comparatively free of overgrown vegetation with whitewashed sarcophagi.*" The COI Counsel asked Dr. Harris if he agreed with the Ombudsman's statement that the decision to remove the

ancient tombstones was based on the mistaken assumption that the graves were false. In response, Dr. Harris stated that he believed that later in her Report, the Ombudsman agrees that many of the sarcophagi were, in fact, modern creations of the hotel, with the result that he did not agree entirely with her statement. He stated that the material was approximately 24 years old and that he did not make a museum record of what happened on the day of the heavy equipment removing the modern material from the grave site to indicate to the people of Marsden United Church of Bermuda generally what happened on that day.

The COI Counsel asked Dr. Harris if the destruction of the lands had struck a nerve and whether it evoked an entire history and pain of slavery and the legacy of structural racism and white privilege in Bermuda. Dr. Harris replied, *“No, sir; I would not like to comment on that statement.”*

The COI Counsel asked Dr. Harris if he thought it important for historians to have documented a record of what took place on the day of the removal of the tombstones at the Cemetery as it was a very important part of history. Dr. Harris agreed that the removal should have been documented. It was his contention that Marsden was part of a decision-making process to remove tombstones from the gravesite. He added that the objective was to place a monument in the middle of the graveyard and that Marsden had made a planning application for the erection of a monument following the removal of the sarcophagi. He said that Marsden had agreed to replace the sarcophagi with a monument, a dedicated monument bearing an inscription to mark the site of the graveyard. However, Dr. Harris said that he could not recall whether removal of the tombstones in order to facilitate the erection of the monument had been part of the discussion with the Marsden members.

The COI Counsel read from the evidence of Mr. Eugene Stovell, given on 20<sup>th</sup> October, 2020 when he appeared before the COI:

*“Reverend Joseph Whalen Jr. and also Tony Robinson, Mr. Thomas Smith, great grandson of Dianna Smith. Mr. Brian Young, Managing Director of Rosewood Tucker’s Point Dr. Ed Harris, Director of Maritime Museum, Mr. Denny Richardson, Vice Chairman Tucker’s Town Historical Society, solo selection by Ms. Tony Robinson.*

*The reflections by Reverend Joseph Whalen Jr. and then laying of the wreath was Mrs. Helen Wainwright. She was one of the oldest living descendants of Tucker’s Town at the time when she may have been in her 90s at that point, but when she went and her group went and had an interview with her. She was about to turn 100. I’m getting to rustle with times and days. I told my friend the other day, I’m sorry, I didn’t keep a time log of these things. You know, now, this is a time that it’s important to have those time logs. Only some stuff I have is dated.”*

COI Counsel said that in his statement Mr. Stovell continued with his recollection of events at the Marsden Methodist Church Memorial Ceremony that had taken place at the Cemetery, relying on two photographs that he had taken personally and the programme of the Memorial Ceremony.



*“The person on the left here I think is Reverend Whalen holding the wreath. The lady in the centre is Mrs. Wainwright. Mrs. Helen Wainwright, And next to her is Mr. Denny Richardson. Yes, yes. While I was at work doing my chores, and while I was there working, I had my phone there and the phone went off and I picked it up. And somebody was on the other end screaming. Hey, you got to come down here to the cemetery, man. They’re down there desecrating the cemetery. They’re pulling it apart. I couldn’t believe it. You know, I say what? They just restored the thing. What do you mean? They’re down here desecrating it? Yeah, man. They’re pulling up there. Everything is pulled up down there. They’ve dug it all up. So I said, Oh my gosh. Well, at first I had to go down there and see what you know what the person was talking about? So then me and Denny, and Mr. Duvall managed to get down there because and then when we got there, this is this is what we saw. Well my understanding was that there was a decision made between Dr. Harris, and the Methodist church people. That is what I heard.”*

The COI Counsel continued his questions to Dr. Harris: “Did you, based on the instructions that you gave to the operator of heavy-duty equipment, either destroy or desecrate parts of the gravesite?”

Dr. Harris: “*We destroyed, yes*”.

COI Counsel: “And what was destroyed. I’m no archaeologist, so please tell me what was destroyed.”

Dr. Harris: “*The sarcophagi. The stonework under which there are no apparent graves.*”

COI Counsel: “In archaeological terms, and please guide me in asking a question I certainly don’t want the answer to, is there an importance attached to modern materials that are 24 years old [somewhat] so that you would seek to restore them or keep them?”.

Dr. Harris: “*Not generally.*”

COI Counsel: “So these things were probably thrown away?”

Dr. Harris: “*Probably.*”

COI Counsel: “Do you think, as an archaeologist and as Director of the Museum of Bermuda, in line with sentiments which had been expressed by residents of Marsden United Church, do you think looking back now that it was a prudent decision to make?”

Dr. Harris: “*No, they wouldn’t have appreciated the depth of the political situation at the graveyard.*”

COI Counsel: “Do you appreciate it now?”

Dr. Harris: “*Yes, sir.*”

COI Counsel: "You don't know what happened to the modern material that was taken from the gravesite? you don't know what has happened to it?"

Dr. Harris: "*No, sir.*"

COI Counsel: "No, sir... it should not have been kept? Did you agree with me a while ago that there was actually destruction?"

Dr. E. Harris: "*Yes, I did, sir.*"

COI Counsel: "And if you destroy something, that means that something that was a part of something is no longer there, agreed?"

Dr. Harris: "*Yes, sir.*"

COI Counsel: "So why would you not keep what was there for 24 years that was part of the history of a church for over 100 years? Would you like for me to repeat the question?"

Dr. Harris: "*Oh, yes, sir.*"

COI Counsel: "Let me start again. At the time that you gave instructions to operate the heavy machinery, the machinery that destroyed parts of the gravesite, you were not aware at that time of the political underpinnings that existed in Bermuda, vis-à-vis, vis-à-vis that Cemetery. Is that what you just said?"

Dr. Harris: "*Yes, sir.*"

COI Counsel: "You had not been aware that the congregation, especially the Historical Society with whom you had met, were concerned that that gravesite had graves of persons who were their forefathers dating back 100 years. You are not aware of that?"

Dr. Harris: "*Of course I was aware.*"

COI Counsel: "So what political... my word... opinions were you not aware of at the time that you gave instructions to the operator of heavy machinery to remove the graves' modern material. What political underpinnings were you not aware of?"

Dr. Harris: "*The depth of conflict created around the Cemetery Had I been aware of it, I probably would not have become involved in the project.*"

COI Counsel: "Sir, are you Bermudian?"

Dr. Harris: "*I am.*"

COI Counsel: "You have lived here all your life?"

“Dr. E. Harris: *“Except university.”*”

COI Counsel: “And you’re saying that what you know now, or what came to your attention sometime around 2011, and I use that time... you were not aware of and you used the word... ‘political’, but were not aware of the political landscape?”

Dr. Harris: *“I was not aware of the instances of the depth of the political landscape.”*

COI Counsel: “And define ‘political’ for me because I have been speaking about social, cultural. I’ve been speaking about social, economic in terms of the persons who had their forefathers buried in graves, some graves, some parts, they don’t know where the graves are, you’re saying that’s what you call ‘political’ because I recall social cultural, social geographic, social economic. You’re saying that’s what you refer to as ‘political’?”

Dr. Harris: *“I’m just referring to general sort of context and background.”*

COI Counsel: “What is your understanding of the context and background... touching and concerning the Cemetery...the Marsden Cemetery? What is your understanding?”

Dr. Harris: *“That for many years it lay derelict and then when the golf club was built, attention was brought to it by several members of the community.”*

COI Counsel: And when you say it lay derelict, are you trying to say the Marsden Church did not look after it? Is that what you’re trying to say? Is that what you mean when you say derelict. Because even from Dr. Triggs’s report, he was saying aerial photographs did not assist anybody to see it. So how would you say derelict ... are you saying that the church...”

Dr. Harris: *“Unattended. The graveyard was unattended. No attention was paid to it until the 1990s.”*

COI Counsel: “So the statement by the Hon. Ombudsman that the destruction of the tombs has struck a nerve, and evokes the entire history of pain and slavery and the legacy of structural racism and white privilege in Bermuda, is that a politically correct statement?”

Dr. Harris: *“I can’t speak for the Ombudsman, sir.”*

COI Counsel: “And I don’t want you to, but I’m trying to put into context your definition of ‘political’ because we have certainly seen the destruction of tombs which you have agreed has occurred, correct? We agreed as to the destruction of the tombs, sir?”

Dr. Harris: *“Yes, sir”.*

COI Counsel: “After 2011, you agree that persons were actually quite upset, especially persons whose forefathers were buried there or whose forefathers lived in Tucker’s Town or had been removed from Tucker’s Town? You became aware of that fact, sir?”

Dr. Harris: "Yes, sir."

### **A few pertinent questions were posed to Dr. Harris by Commissioners**

Commissioner: "When it came to the activity that was undertaken at the Tucker's Town burial site, were best practices and principles adhered to?"

Dr Harris: *"Yes, sir, in terms of doing the ground penetrating radar. We could have done a better job on the sarcophagi."*

Commissioner: "Okay, fair enough. In your opinion, in your professional opinion of your thirty-seven years as the Director of the National Museum of Bermuda, what is the historic significance of the Tucker's Town burial ground?"

Dr Harris: *"Well, it's one of the two known graveyards which were dedicated to a few people of recent African origin. If you tie it into a more global picture, then it stands as a part of such graveyards, say in the eastern United States, so it does have significance. We have a lot of other things in Bermuda that have significance, many of which have been destroyed since the Second World War and our record, generally speaking, of preservation of historical material up to and including, I might add, houses on St. David's is not a good one."*

Commissioner: "Okay, and connected or related to that significance, how impactful would you consider the expropriation of Tucker's Town and St. David's within the anthropological and cultural perspective of Bermuda?"

Dr. Harris: *"Okay, speaking to St. David's first. The use of expropriation of the land in St David's to build the airfield which gave us a major advance over other small islands and countries after the Second World War cannot be gainsaid. Without that airport, we would never have developed a successful tourism industry which gave employment to many people in Bermuda after the Second World War. The other aspect of it is from a sociological point of view and I was only discussing the other night that I think I'm going to do an article on this. I'm going to show what Bermuda would have been like had the Americans gone ahead with their original plans to bulldoze half of Warwick Parish into the water towards Darrell's Island to make the airfield there. It would have divided Bermuda in two. You would have had to wait at stoplights like they do in Gibraltar to get across the airfield. Fortunately, some of the leaders in Bermuda at the time appreciated the disaster this would have on the sociology of Bermuda, if you will, and they went to London to advocate the move to save the people of St. David's who lost out. But the fact of the matter is that the benefit in that particular case has been enormous."*

*"In the case of Tucker's Town, obviously, you're dealing with a private company doing something as opposed to the central authorities. Historically, there's been a lot of displacement, major displacements in Devonshire and in Pembroke, people's houses taken away from them for no reason, etc., etc. So again, I would suggest that maybe a further commission to look into other areas so that we all understand how things happen and how they develop. Sorry to go on."*

Commissioner: “To put a finer point on it and not to speak in generalities, what were the commonalities with regard to both those populations in St. David’s and Tucker’s Town? From a cultural, from a sociological makeup, what did the two communities have in common, you know, business, cultural family, you know, what were the common threads?”

Dr. Harris: *“Well both of them were sort of a unique communities, and certainly people in St. David’s thought that of themselves. Until the Severn Bridge was built, they thought that they had nothing to do with the rest of Bermuda. So there are two unique communities that have grown up in those areas. I’m looking forward to your report because I would like to see some decent figures on population size, houses, conveyances in both areas. And so, what was actually there at the time of transfer; so looking anthropologically, as Mr. Starling said, these are very interesting areas of Bermuda. There are, of course, other interesting areas as well that haven’t been studied. So, hopefully, you could use Ph.D. students to look at the development of the land through time over the last 400 plus years.”*

Commissioner: “For any type of work like that, you would need to have permission? Do we know to whom permission was granted, who was in charge of the project, who would have been granted that permission?”

Dr. Harris: *“In terms of ground penetrating radar?”*

Commissioner: “Working around a burial ground. Under the Public Health Act, there are criteria that you would have had to follow in terms of getting permission for any sort of excavation of a burial ground.”

Dr. Harris: *“Yeah, that’s very possible. A lot of work takes place in graveyards all the time, as you probably know. We reuse them time and time again. And there probably are health requirements.”*

Commissioner: “Okay, this was done in what year, the excavation, on the...”

Dr. Harris: *“In 2012.”*

Commissioner: “Okay, this Act was 1949, so these provisions actually applied.”

Dr. Harris: *“Yes, madam.”*

The full transcript of the Hearing can be found on the COI website.

## **Private Act: Bermuda Properties Act 1958**

Part of the lands expropriated from Tucker’s Town residents was transferred from BDCL and is now in the ownership of Rosewood Tucker’s Point, now owned by Gencom Ltd. The description of the properties transferred as set out in Bermuda Properties Act 1958, a Private Act, follows:

*“WHEREAS Sir William James Howard Trott, Sir Eldon Harvey Trimingham and Edmund Graham Gibbons the elder have presented a petition to the Legislature setting forth that they are desirous of forming a joint stock company for the purposes therein expressed and that the petitioners are desirous of having the said Company incorporated by an Act of the Legislature limiting the liability of the shareholders to the amount unpaid on their*

*respective shares and praying that an Act may be passed to enable the said Company to become incorporated and to confer on the Company certain powers necessary for the carrying on of its business and it is deemed expedient to pass an Act for such purposes. Thereafter BPL purchased from BDCL as set out in the Schedule of the BPL Act 1958:*

- 1. 287 acres 2 Roods and 20 Perches together with all buildings thereon all rights of way and the appurtenances;*
- 2. lot or parcel of land designated number Five commonly called Rose Hill situate in the Parish of St George's estimated to contain 11 Acres or thereabouts together with the Hotel St George and dwelling house thereon erected;*
- 3. parcel of land situate in the Town and Parish of St George containing by estimation 5 acres and 2 Rood or thereabouts together with all buildings thereon;*
- 4. parcel of land in the Town and Parish of St George estimated to contain 7 Acres 1 Rood and 24 Poles;*
- 5. parcel of land known as Secretary Hill or Cemetery Hill estimated to contain 7 Acres 1 Rood and 24 Perches;*
- 6. parcel of land situate in the Town and Parish of St George estimated to contain 18 Acres or thereabouts together with all buildings thereon; and*
- 7. lot of land in St George containing 8 acres and 20 perches."*

*(together approximately 345 acres of land)*

## **Development of Expropriated Lands by Rosewood Tucker's Point in 2011**

In 1958, Furness Withy sold the hotel and its remaining property in Tucker's Point to Bermuda Properties Limited (BPL), the parent company of Castle Harbour Limited and related companies, which purchased 240 acres from Furness Withy. Section 7 of the Bermuda Properties Limited Act 1958 required Legislative approval to dispose of any part of the golf course or use it for any other purpose than fairways or greens. In her February 2012 Report entitled *Today's Choices, Tomorrow's Cost*, Ms. Arlene Brock, Ombudsman of Bermuda, writes:

*"The land was taken from Bermudians in the 1920s and there were no future guarantees that it would not move further away from them in the years to come. The past and its emotional ties could not be forgotten but MPs had to move with the times for the good of the country. We have spent a lot of time on the emotional side of this subject but that happened nearly 80 years ago. I can only hope that what we do today will not be detrimental to future generations"*

*"The Government is very mindful of Bermuda's history and the legacies that continue to this day... The Island's sustainability needed a balanced appreciation and attention to not only our environmental history and future, but also our economic and social history and future. Government [has] sympathy for descendants of families who were forcibly removed from Tucker's Town in the*

*1920... We are unable to undo the past but we can certainly take steps to ensure the future well-being of our people".*<sup>133</sup>

On 14<sup>th</sup> October, 2020, the COI issued an Order to TP Holdings Limited granting standing for the company to be heard by the COI in relation to matters concerning expropriated land in Tucker's Town generally and, more specifically concerning land purchased from BDCL by Rosewood Tucker's Point and Marsden Cemetery located on the said property.

By a letter of 13<sup>th</sup> October, 2020, lawyer Mark Pettingill, in support of the application for standing submitted by his client, TP Holdings Limited, provided the COI with scanned copies of his client's Certificate of Incorporation and the Special Development Order related to the Tucker's Point Residential Development 2011. TP Holdings Limited was incorporated on 25<sup>th</sup> September 2015. In 1958, Furness Withy sold 287 acres of expropriated land to Bermuda Properties Limited, predecessor of Rosewood Tucker's Point.

The Schedule to the Tucker's Point Resort Residential Development<sup>134</sup> relates to the development and subdivision of, among other properties, various lots, the larger ones being listed below:

1. The creation and development of three individual lots for single dwelling residential use at Glebe Hill, Hamilton Parish comprising 3.279 acres;
2. The creation and development of three individual lots for single dwelling residential use at Paynter's Hill in St George's and Hamilton Parishes comprising 2.758 acres;
3. The subdivision and development of the land at White Crest Hill, Hamilton Parish comprising 40.53 acres for the development of 50 residential, amenity and conservation lots; and
4. further, development of sites known as the Stables site at Tucker's Point and Paynter's Road, South Road and Harrington Sound Road in Hamilton Parish;
5. it was noted that various lots were transferred to the Bermuda Government (44 acres) under that Order as areas of conservation.

Under the Furness Withy Company Land Act 1928, the Legislature verified and confirmed BDCL's title to "Paynter's Hill" consisting of 22 acres because prior consent had not been sought beforehand as was statutorily required. What is unclear without further research is whether this land was acquired by BDCL through compulsory purchase from residents of Tucker's Town. If so, such lands identified in the 2011 Order would fall into the category of lands that the originally dispossessed Tucker's Town residents would have a claim against, as stated by the Colonial Secretary in his letter to Mid-Ocean Club in 1954,<sup>135</sup> if these lands were developed and sold to the "highest bidder", Bermudian or non-Bermudian. This general concern also relates to land formerly owned by BDCL and now in the hands of Rosewood Tucker's Point.

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<sup>133</sup> Brock, Arlene, (2012.) "Ombudsman's Report: Today's Choices, Tomorrow's Costs", COI - Exhibit SW-2 p. 47

<sup>134</sup> Brock, Arlene, (2012.) "Ombudsman's Report: Today's Choices, Tomorrow's Costs", COI - Exhibit SW-2

<sup>135</sup> Francis, Dr. Theodore, (2020) "Tucker's Town, Tourism and Captured Lands", COI – Exhibit TF- 1, Appendix 13

## Rosewood Tucker's Point's Apology

Mr. Mark Pettingill, appearing at a COI Hearing on 19<sup>th</sup> November, 2020, informed the COI that the owners of Tucker's Point, Gencom Ltd., apologized to all concerned and had offered to address outstanding matters for the restoration and preservation on the graveyard. He said that the owners had also agreed to meet with all concerned with a view to fostering better relationship around this historic issue. Below are extracts from the verbatim record of the statement that was read to the COI by Mr Pettingill:

*"Thank you. It's a privilege and a pleasure to be here. I think it's important that I respectfully set out why I'm here. And why, with the greatest of respect, humility, I've been chosen to be here on behalf of the Gencom Ltd., which owns the Tucker's Point property... Just by way of background. I am the former Attorney-General of Bermuda. I am currently an Associate Justice of the Supreme Court. I am the Senior Partner, Manager of the law firm Chancery Legal and was appointed to sit on the Lower Form Commission last year, which I currently do in regard to a review of the Island's laws.*

*"Part of my mandate in that particular role has been to look at and review any laws that are of concern with regard to bias, particularly with regard to racial bias. I recently brought before the Supreme Court an application that related to jury bias which, I'm pleased to say, was successful in the sense that the Government acted expeditiously in bringing about a change to the jury selection process as a result of the events of that case and also as a result of the historical legacy with regard to jury selection. And I have been involved in a number of other very high-profile human rights cases. And I had in fact caused amendments to be brought to the Human Rights Act during my tenure as the Attorney-General and have advocated throughout my career in relation to human rights issues. I say all that with as much modesty as I can muster in the sense as to why I was sort of instructed by the owners who wanted to have who they saw as potentially the right person to speak on their behalf.*

*"I say all that to say that I'm not here in the capacity of a corporate lawyer...speaking on their behalf. The owners are an extremely reputable and socially conscious company who internationally are considered as good corporate citizens and they have an outstanding record with regard to community support. They have come to Bermuda with a view to enhancing the Island's image. And I must say...they are the second largest employer of Bermudians on the Island and are dedicated to the training and advancement of Bermudian hotel professionals. And I can assure you, if you get the opportunity to ever be down at the resort, it is heartening indeed to see the level of Bermudian involvement of the hotel, the level of training of Bermudians that is taking place.*

*"They purchased Tucker's Point only a few years ago. And this is key because at the time of the purchase, they were entirely unaware of the situation concerning the history related to Tucker's Town and more disconcerting to the issues related to the gravesite on the property for locals at the time, that purchase was in 2017. They are a company that acknowledges fully the historical wrongs of the past, in both America and Bermuda and the impact that this has had on the black people. I think that most recently Black Lives Matter is an indicated that the most important and significant thing that white people needed to do as a starting point was to recognize that because of the wrongs of the past,*



*there have been legacy issues that impact on black people up to this day. And once white people are able to acknowledge that we begin then surely to take the right steps in the right direction...*

*"And indeed, obviously, that is what this is about, this very important, commissioned work. But most importantly, I need to submit to the Commission that Gencom are entirely cognizant of that. They themselves are a diverse group of owners that are able to very clearly recognize that. I am pleased to indicate that when the issue really became complicated in relation to the owners, they immediately began to put things in place in that regard. I became involved on an informal basis. Sometimes I am a member of the Club and this was brought to my attention this year that they were suddenly apprised that there was a significant issue here. There was immediate concern and immediate recognition that something had to be done and the approach to the best way to go about that.*

*"I'm pleased to inform you that they have had significant conversations with the MP for the area, Anthony Richardson. We're currently working to establish the best possible solution for the graveyard areas situated on the Tucker's Point property. It is our intention, with the help of Mr. Richardson, to put together a remediation plan for the site which will reflect it as hallowed ground. It is, let me just pause there because I did have the opportunity to see the submissions that were made before the Commission today.*

*"... I'm here to show you that, and I take it as a personal undertaking, I'm here to show you with counsel for the others that I have instructions that not only is it the intention to take action, but to take immediate action with regard to remediation and addressing this very disconcerting issue that they obviously recognize has gone on for too long and also recognize that it must not be forgotten.*

*"So, the first step in that was discussing the local area. They are prepared to work with the church, with members of the community, for their input with regard to what they would like to see occurring short order at the site and measures are underway, I can inform you, to address these concerns. They have listened as an ally to all of the submissions that have been made...they are about bringing proactive and positive change is something to not just the question of the lip service of plants, but to real action that is transpiring before the time of day before the commission with a view to expeditious have real action with the input of what they regard as the stakeholders of the area, which would be the people that have the history are understandably effective and troubling and sad because of the obscurity of historical security, if you will, that that site has fallen into.*

*"So, having settled that, that is what my undertaking on behalf of the owners' team is. It is my personal invitation to be involved in that as counsel, to continue to be involved and invited to be involved in that regard to ensure that things happen expeditiously. And at least on that basis, the recognition will hopefully bring some solace, some comfort and indeed some forgiveness for the facts that have been ignored for so long. So, as the relatively new owners, they are surely prepared to do all they can to ameliorate for the future. I'm happy to address anything that I can."* <sup>136</sup>

The full Hearing transcripts can be viewed on the COI website.

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<sup>136</sup> COI - Unedited Transcript File "MCTR-5". 19 Nov 2020.

## Rosewood Tucker's Point Proposal

Mr. Pettingill appeared before the COI with respect to the remediation of the Marsden Church Cemetery. He referred to a letter dated 12<sup>th</sup> January 2021 from his clients, Tucker's Point, who offered to remediate the long-standing issues with respect to the Marsden Church Cemetery. They agreed to :<sup>137</sup>

- “1. *Improve and modify the golf cart and walking access to the site;*
2. *Establish a protocol for family and guests to access the site and work around the adjacent golf operation;*
3. *Redirect a part of the driving range to minimize any errant golf balls coming into contact with the graveyard area;*
4. *Install a canopy netting system over the graveyard area to prevent golf balls from being able to enter the site from both the first tee and the driving range;*
5. *Clean and tidy up the landscaping and establish a regular maintenance program for the area;*
- 6 *Install benches or seating area within the graveyard walls;*
7. *Confirm and establish permanent access rights to the site;*
8. *Designate the area as out of bounds with a “do not enter” sign with regard to golfers in the area;*
9. *Include the site in the African Diaspora Trail information.”*

## Marsden's Response to Rosewood Tucker's Point Proposal

Pastor Whalen:

*“Good morning, Justice and Commissioners, Commission Counsel, Mr. Pettingill and everyone. I want to thank Mr. Pettingill for bringing these nine items before the Commission so that we might move forward in terms of bringing some healing and resolution, closure on the Marsden cemetery issue. I have reviewed, myself and Mr. Craig Tucker who is the former Trustee of the Marsden Church, who was the Trustee Chair for numerous years in dealing with the matters with regard to the cemetery is quite knowledgeable and he will have some questions and input.*

*“I would like to respond and ask some questions with regard to your presentation. The first is, I have no objection to some of the items with regard to access, the pathway, to management and upkeep of the cemetery. However, I have some, some deep concerns. Part of the narrative that has been heard and presented to the Commission with regard to the overall Tucker's Town situation has been a sense that those in power and those with the abilities of executing their will have not always heeded or taken into consideration the voices of everyone. And so, as a church, we're very concerned in our own recent involvement and our history with regard to the cemetery, to make sure that key stakeholders are included. And towards that end, the current Ombudsman, Ms.*

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<sup>137</sup> COI - Exhibit Marsden-004

*Victoria Pearman, has undertaken with no alliance to any particular side, but just in terms of trying to have this matter, which has a historical significance and also ongoing significance to the Island as a whole, brought to the table. And she has done this. She has started a process.*

*“There’ve been meetings that began with the former Ombudsman, Arlene Brock, in terms of trying to bring stakeholders to the table to address this. And in my presentation to the Commission, I made this awareness. And so, my question. Are the Rosewood Tucker’s Point owners going to allow for the input and voices to be heard with regard to all of those who have a vested interest, Tucker’s Town Historical Society and others, along with the church, with regard to our viewpoint as to what should happen and consensus to be reached? I ask this because if you’re moving expeditiously and you are actually on the site making a determination to put benches in the area, that may be an affront to individuals who may want to have their viewpoint as far as how best to memorialize and honour those who are buried there. So that’s a concern that would be actually presented and, you know, I don’t mean any disrespect, but it kind of feeds into this narrative that ‘we know best’ and ‘we’re just going to go ahead and do what we think is best’ without actually getting the input of all of those stakeholders. I know that the intent is well-intended and I have no reason to question the new owners. But I would really ask, on that point, that the stakeholders weigh in and that Ms. Victoria Pearman, the current Ombudsman, help facilitate that process or, to continue the facilitation of that process, because I think it’s key, essential and important. The other thing that I think is missing, that has been strongly voiced is...”*

Mark Pettingill:

*“On the first one, thank you, Reverend. I think I addressed that this morning, with respect, in my submission. The wish list, if you will, was taken from the original wish list of the church in the 2007 letter that was laid out and the evidence that was heard before the Commission. I think that some things are pretty obvious and would need very little input. In other words, you’ve got to move the, you know, the driving range over. Those are things you’ll be ad idem on. You know, the staking of the out of bounds area and everything I said, I think those are things that are, with respect, no-brainers. But the other matters that I did raise with regard to, you know, the bench, the planting and so on, I think I indicated that there’s other things that obviously, with respect for what you’ve just said, nobody would want to do those without the input of the church or, whoever you know, should have input in relation to that. So those are line items.*

*“There’s no intention to go along at all...and just stick a bench somewhere in there if you don’t know where particularly it’s going to go or, how best it should be placed, or so on. So that is, as I’ve said, something that I think should involve, you know, further and important dialogue. Same thing with the path and with the other items that I would say directly impact on the reverence and the aesthetics of the site itself. So, no question of just going ahead and doing those things, saying that has to be done. I think you know we set that out in the original letter and this letter and that’s what I’m saying today. And I’ll give you that assurance myself. So that’s a question of, you know, Ms. Pearman, and I was the first person I ever served in office with. We go back a long time. And I would think she would know that she can certainly have a discussion with me, reach out with me and have dialogue with regard to any concerns like that. And we can proceed from there. I certainly deliver that message and, more importantly, ensure that it happens in accordance with what is best desired.”*

Pastor Whalen:

“So I take it that you and the owners are open to having a meeting with the Ombudsman and the stakeholders?”

Mark Pettingill:

*Entirely. We are open to having a meeting with, you know, whoever wants to attend a meeting with the owners...The main point of that is being the church that was invited before. I mean, if the Ombudsman or Ms. Pearman is part of, you know, that church process, then I am certainly open to participating in any type of meeting along that line. I have the authority to do that so, you know, so 100%..”*

Pastor Whalen:

*“Okay. Thank you.”*

Craig Tucker:

*“Just for clarity. Please recognize that in Tucker’s Town...”*

COI Counsel:

*“I’m sorry. Just for the record, just to ensure that Mr. Craig Tucker is now asking a question. Yes. The record should reflect it. I’m just asking that the record would reflect that Mr. Tucker is now asking a question.”*

Madame Chair:

*“Yes. If you would state your name just for our record.”*

Craig Tucker:

*“Sorry, Craig Tucker. I just want to be clear that Marsden Church was down there, the Methodist Church would have been down there at that particular time. There was an A.M.E. Church that was also down there at that time. And I think there were people that lived there that may have either gone to St. Peter’s or St. Mark’s at that particular time. So, Marsden has the graveyard but, however, other people that lived in the area, we’re not 100% sure, within that boundary of graveyards that there may still be additional bodies buried in that area. And I just want to add to what Reverend Whalen had said. That’s why the concern will be around benches and things like that, because at some point, we’re going to have to have the property looked at to make sure that there aren’t any other burial grounds in the area. But people that may not be associated with Marsden Church may have also been buried somewhere in that graveyard as well.”*

Mark Pettingill:

*“Mr. Tucker, I can, I can fully appreciate that and then, if I may, I think that obviously Marsden is the point of interest for this, if you will, or the point person as I guess I’m the point person, you know, for, Tucker’s Point. And so I, while I’m open to any form of meeting and you know, these things going backwards and forwards, that’s, I think, you know, a sensible approach and that perhaps would be best filtered through you with regard to any of those stakeholders and*

*what their views are... If I may, that's a better way to have things accomplished with the less people that you have in the room that are delivering the message for consideration in order to get it done. But I give you my assurance that I'm prepared and I'm instructed to take that role and address any concerns like that."*

Craig Tucker:

*"Well, we just want to be cautious, just to make sure that there are other parties out there and that they're involved in the process. Marsden has an issue in terms of the graveyard, but we make sure that people that don't actually attend Marsden and who have people that are buried in that graveyard, that group has also been associated with any changes or things that you want to make. And I think that's probably why Reverend really wants to make sure that the Ombudsman has the ability to bring everybody together and that when we come up with a common process in terms of what we want to do, that she can receive all the information and make sure that what's done is correct, just."*

Mark Pettingill:

*"Sure. I understand this entirely. I would suggest, it's an open letter to the Commission, it's in evidence. It's up to you or you're copied in. Obviously, it's a matter for you to share that letter, my letter on behalf of the owners, with whoever you wish and, you know, if it's a case of anybody writing directly back to me or to you and raising further things for consideration, let's do that. What we wanted to do, I think what we are doing something which wasn't done in the past is ensure that things happen immediately. I tend to think of myself as a results type of guy and I'm pleased to say that so do the owners. You know, it's like something needs to be done. You know, they found it atrocious, as did I, that this letter of 2007 sat around for 13, 14 years and that even the simple things, you know, didn't seem to occur. Well, they have now. But one fully appreciates that when it comes to, you know, as I indicated, the planting or benches and so on, that it's the real stakeholders' property. It just happens to be an island in the midst of the other things. So, what has been offered is, you know, as part of that acknowledgment the owners will ensure that there's this perpetuity that hasn't existed before. We, the owners will ensure that the site is maintained, you know, at their expense. And, you know, on an ongoing basis. And that's something that should carry on, for whoever owns it as well. But that type of thing. And that's all with the input of the stakeholders, which I see is the pivot point being the Marsden Church but, you know where else, ever else you are rightly taking input from and all you have to do is just direct that, if you would, in my direction."*

Craig Tucker:

*"I think just for clarity, we want all of the bodies that are involved, if they have questions or issues, we want that to come essentially through the Ombudsmen."*

Mark Pettingill:

*“Okay.”*

Craig Tucker:

*“Okay? So, we have issues at Marsden Church, that’s the process we’re going to go through. If the Tucker’s Point Historical Society has issues, they can, but she will be the one that will bring everything together to make sure that everything is addressed. We don’t want stuff coming to Marsden Church for us to deal with. We will offer our own opinions in terms of what we want to do. But Tucker’s Point, Historical Society may have additional issues or people outside that area may have different issues. We just want to make sure that the person that’s going to be bringing it together will be essentially the Ombudsman.”*

Mark Pettingill:

*“Well, I certainly undertake, Madam Chair, Commission, to be the point person for the receipt of that information and for actioning it. And I would suggest, Mr. Tucker, that if there’s anything further, to contact me. I can assure you that I tend to be good at this dialogue and I will come back to you or whoever after I speak with the clients, which I have done promptly on each occasion, as I will continue to do and say, you know, this is, this position has been raised and in the meantime, the things that we can agree on...we can actually move forward on. The ones that are more sensitive, which everybody can appreciate, like the benches and so on within the graveyard walls, absolutely, that’s a matter for input, you know.”*

Craig Tucker:

*“Thank you.”*

Pastor Whalen:

*“Mr. Pettingill...”*

COI Counsel:

*“Just for the record, Reverend Whalen is now asking another question.”*

Pastor Whalen:

*“Ah yes, Joseph Whalen. So on the big issue, which I’m happy to see, there is a plan to redirect the driving range. I’m a little bit confused as to how that actually works. I know where the current driving range is and the reason is because under number three, you say redirect a part of the driving range to minimize any errant golf balls coming into contact with the graveyard. And then number four, the canopy netting to prevent golf balls from being able to enter this. So, from the first tee and the driving range, I’m confused as to how this issue which we’re concerned about, golf balls coming into the cemetery, is actually being corrected. How is it? Can you explain this redirecting of a, you say a part of the driving range because, I mean, we would have wanted no golf balls...”*

Mark Pettingill:

*“Yes.”*

Pastor Whalen:

*“Coming in there, at all.”*

Mr. Pettingill then spent some time explaining the measures that Tucker’s Point would take to prevent errant golf balls from entering the gravesite. He said that the gravesite must not look like

*“some type of camouflage battlefield tank site with netting over it”*, emphasizing that the canopy proposed at point 4 of the letter of 12<sup>th</sup> January 2021 from Tucker’s Point would be aesthetically pleasing whilst at the same time preventing gold balls’ access to the gravesite. He assured Pastor Whalen that the existing tee boxes [teeing areas] that affected the gravesite could be angled differently so that golf balls would *“fire away from the graveyard position”* to minimize the likelihood that an errant golf ball would end up in the gravesite. However, he acknowledged that Tucker’s Point was not able to guarantee that a golf ball would not enter the cemetery again, even with the new safeguards in place, although every effort would be taken to prevent that occurrence. *“It’s about minimizing risk,”* Mr. Pettingill stated. In response to Mr. Tucker’s submission to the COI that Pastor Whalen, he and the Marsden Trustee Board should be provided with the opportunity to see and comment upon any adjustments that Tucker’s Point might make to the driving range *“for keeping the golf balls out of the burial grounds”*, Mr. Pettingill agreed unequivocally and affirmed that response in his answer to the following question from Pastor Whalen: *“Am I to understand from your comments that the timeline that you indicated, the sense of moving forward expeditiously, is not going to happen without the consultation from the church and the stakeholders?”* Pastor Whalen added: *“There’s a concern to have a determination as to if there are other graves in that area. And there is the concern with regard to this whole issue that Mr. Tucker just mentioned, in terms of how the desecration issue of the golf balls is actually going to be put to bed. So, I appreciate that.”* Mr. Pettingill reiterated that no changes would be made without consultation with the Marsden group. In particular, he responded as follows to Pastor Whalen’s expressed concern about the possible installation of benches inside the gravesite and his citing a Commissioner’s suggestion that an area outside the gravesite instead might be set aside for benches and reflection: *“I can certainly indicate to you and undertake fully that the owners will not do anything within the walls of the graveyard or anywhere else by way of benches or a bush or a plant, unless there is the input from the church and the other stakeholders.”*

The dialogue continued.

Pastor Whalen:

*“You know, it’s really not your call to say what happens, you know, on that burial ground. It’s really those who have the vested interest in that site. And there’s an emotional bond. And that’s the only way that true healing is going to happen with this, so I hope you just take it in the spirit that I was saying it.”*

Mark Pettingill:

*“With respect, I think that I do. I totally, you know, I entirely and utterly from the very core of my being appreciate that, as I believe the owners do. They, we, I have come to the table on the basis of what was sought before and put it out there with regard to what you wish to have. So, you know, by my placing of suggestions or questions, if you will, on the table with regard to what we’re willing to do or not willing to do is entirely on the basis of you giving the input, as you have done back...If you decide that is where you’d like to have a bench positioned, then that’s what can be done. If you don’t want to have that, then that won’t happen. And that’s the end of that. So, it’s like, it’s kind of really an open book with regard to what you wish to have by way of those types of things. And I think it’s accepted fully that you should have great input with that regard you know, including the path that gets put in going across from Tucker’s Town,*

*from the club which becomes an easement and a path even on that basis. The owners aren't saying, we're just going to put a path flowing down, the way that we like to access it, the way that we want to, whatever. It's entirely a matter for you to say like, thank you, you know, we appreciate that this is a suggestion of a path, we don't want a path or we want the path to look like this or we think the path should be like that. Fantastic."*

Craig Tucker:

*"I would just like to say that we appreciate the immediate response that we've had and also that we've – and no offense to Mr. Pettingill – heard this before in terms of what they were going to do. And that's why I'm mentioning about the emphasis that we go through, that the Ombudsman gets involved in it because we make sure that whatever is going to be done is actually going to be carried out this time in terms of what we agreed to being done, for the protection of the graveyard. But we certainly appreciate your response. And we certainly look forward to working with you, along with the other bodies that may be involved. And please, also understand that the descendants from that area stretched the whole length of Bermuda. There are people living in Somerset. People that were MPs, like Reggie Burrows whose family came from Tucker's Town. There's a whole group of people. So, what we want to do is to make sure that somebody is in the middle trying to coordinate all the information that's coming in and that the bodies can agree in terms of what's going to be done for the protection of the graveyard."*

Mark Pettingill:

*"Well with that, we certainly are, Mr. Tucker, ad idem. I think it's the coordination that is key because I think you've got to have people that are on point. I've undertaken to do this as a lawyer. But, you know, I would regard myself as an interested party. I've given sworn evidence here, you know, and as a Bermudian who is aware of the history and acknowledges it, that you know the key is to have that coordination. And that's why I've made that invitation, you know, the Ombudsman and all the rest of it, to have a person on point who is going to direct that, gather that information, because, as you know, if you just leave it out there... without coordination, it's like herding cats. And you may have some people putting input in over here that, to the Reverend's point, you don't agree with. And so, it is the coordination of what people want to see. So, I think that's why that needs to be, that people on point like myself and the owners, and whether it's Ms. Pearman or yourself with regard to coordinating the stakeholders, that I keep calling them. Not just the church. Thank you."*

Madame Chair:

*"Thank you."*

Craig Tucker:

*"Thank you very much."*



## Findings of Fact

- (I) The Schedule to the Tucker's Point Resort Residential Development (Hamilton and St. George's Parishes) Special Development Order 2011 relates to the development and subdivision of, among other properties, various lots which includes expropriated lands formerly owned by BDCL - transferring 287 acres or more of land in Tucker's Town to BPL in 1958.
- (ii) Such expropriated lands should have been subject to the same obligations and restrictions imposed on BDCL regarding the selling or disposal of land acquired under the BDCL Act 1920;
- (iii) The same restrictions and obligations of BDCL as to whom such land could be transferred and the amount of acreages, as required by the 1907 to 1914 Alien Acts, should have continued to be relevant on transfer of any land to BPL;
- (iv) The query of the Colonial Secretary in his letter to MOC dated 20<sup>th</sup> October, as a consequence applies, equally to the Tucker's Point land transferred from BDCL; and
- (v) In respect of the Marsden Methodist Cemetery, Dr. Edward Harris confirmed that the sarcophagi had been demolished and that no records had been made of the events relating to the cemetery.

## Remediation

On behalf of Tucker's Point owners, Mr. Pettingill advised that:

*"I have instructions, not only is it the intention to take action, but to take immediate action with regard to remediation, and addressing this very disconcerting issue that they obviously recognize has gone on for too long, and also recognized that it must not be forgotten. So, the first step in that was discussing the local area. They are prepared to work with the church with members of the community for their input, with regard to what they would like to see occurring short order at the site, and measures are underway, I can inform you to address these concerns. They have listened as an ally to all of the submissions that have been made in relation to published, not just the graveyard, but the entire issue ...*

*"And I think that those materials have obviously resonated greatly with regard to their understanding to address this issue in the best way possible. They are about bringing proactive and positive change to something, not just the question of the lip service of plans, but to real action that is transpiring before the Commission, with a view to expeditiously have real action with the input of what they regard as the stakeholders of the area which would be the people who have the history (who) are understandably affected and troubled and sad because of the obscurity of historical security, if you will, that that site has fallen into.*

*So, having settled that, that is what my undertaking on behalf of the owners' team is. It is my personal invitation to be involved in that as counsel, to continue to be involved and invited to be involved in that regard to ensure that things happen expeditiously. And at least, on that basis, the*

*recognition will hopefully bring some solace and some comfort and indeed, some forgiveness for the fact that it has been ignored for so long. So as the relatively new owners, they are surely prepared to do their best, to do all they can, to ameliorate as best as possible, and at least be a very, very positive (?) for the future. I'm happy to address anything that I can."*

## **Expropriation Recommendations**

The COI in its deliberations considered the circumstances surrounding the two instances of land expropriations in Tucker's Town and St. David's Island. The COI, having considered whether the actions that caused the two expropriations were lawful or unlawful, regular or irregular, concluded that the expropriations were lawful as they were based upon provisions of various statutory instruments which received Parliamentary approval. At the same time, the COI concluded that the expropriations were irregular because, for instance, it appears that the Bermuda Development Company exercised expropriation powers in an unfair and inequitable manner.

For the purposes of remediation of historic land losses:

### **1. Public Legislation**

The COI recommends that:

1. Government should consider restricting the exercise of governmental expropriation powers and oversight of expropriations to statutory authorities or bodies.
2. Government should consider the passage of legislation, rules or regulations that would ensure that the expropriations process is transparent and equitable:
  - (a) In addition to the Acquisition of Land Act, make a recommendation to establish regulations, rules, protocols and systems for expropriations and ensuring first right of refusal option for dispossessed owners is a key component;
  - (b) consider, and if determined, make a recommendation to restrict the exercise of expropriation powers to statutory authorities or bodies; and
  - (c) consider making changes to any existing legislation as may be required in respect of any future expropriations so as to make the process more transparent and equitable, in conjunction with section 13 of the Constitution, Acquisition of Land Act 1970 and related 1956 Regulations;
3. In-depth legal research be conducted specifically as relates to the delegation of discretionary powers to a company that had conflicting interests in that they stood

to benefit, as purchasers, when dealing with valuations of Tucker's Town expropriated property.

4. An independent compensation regime should be set up in cases of expropriation.
5. By reason of the circumstances that led to the Tucker's Town expropriation, a regime should be established to compensate the original owners or descendants, for such expropriation by the BDCL and hardship suffered by residents at the time of expropriation and, subsequently, by their descendants, as appropriate;
- 6.. Original owners of any compulsorily purchased property for the benefit of the public should be automatically granted the first right of refusal in respect of such property compulsorily purchased;
7. Generally, there should be a more transparent system of valuation of land and compensation for any future land expropriations, for whatever reason, and related processes and procedures for the targeted landowners and public at large.

## 2. **Private Legislation or other Statutory Mechanisms**

The COI recommends that statutory mechanisms be introduced specifically to:

- (a) identify the location of all land expropriated that may fall under the ambit of any proposed Act or Declaration, for the purposes of establishing a remediation process to address such historic losses of land;
- (b) facilitate the issuance of a formal apology from the Bermuda Government and others, holding a series of public hearings on the destruction of the communities of both Tucker's Town and St. David's Island and the establishment of a development fund to go towards historical preservation of those lands and social development in benefit of former residents and their descendants;
- (c) hold public Hearings:
  - (i) meet with all interested parties connected with Tucker's Town and St. David's Island, to discuss ways in which legacy issues can be mutually resolved;
  - (ii) meet with the descendants and interested persons of both Tucker's Town and St. David's Island, after reviewing the findings of the COI, with a view to publicly acknowledging and recognizing the sacrifice made by dispossessed landowners;

- (iii) take into consideration any recommendations of any tribunals or statutory bodies established to address legacy issues of expropriation; and
- (iv) file a report to the House of Assembly.

### 3. **Heritage Trust**

The COI recommends that Government establishes a Heritage Trust specifically for descendants of those Tucker's Town and St. David's Island residents who were unfairly compensated and/or dispossessed of their lands, the funding for the purposes of the Trust to be paid out of moneys appropriated for those purposes by the Legislature. Alternatively, funding of such Trust could be done, perhaps in partnership with the Bermuda Economic Development Corporation, by the creation of another Economic Empowerment Zone using dispossessed land already under the trusteeship of the Bermuda Land Development Company Limited.

The Trust is to be used for the purposes as set out below:

- a) historical restoration, interpretation and preservation of dispossessed land not in the ownership of bona fide purchasers of such land;
- b) social development to benefit former residents of dispossessed land and their descendants; and
- c) development of infrastructure that benefits specifically former residents of dispossessed land and their descendants and achieves the objectives set out in clauses (a) and (b).

In order to achieve and sustain such proposal, it will be necessary to:

- d) designate communities as Economic Empowerment Zones and encourage the economic and social empowerment of residents and businesses operating in the Zones;
- e) provide for the granting of certain exemptions and fiscal incentives to persons engaging in economic activities in the designated Zones;
- f) promote the renovation and restoration of property and structures in a designated Zones; and
- g) encourage the principles of corporate social responsibility within the Zones or partner with any other interested local or international persons or entities to achieve the viability of such Trust.

#### 4. Land Tribunal

The COI recommends to the Government that an independent Land Tribunal be established to:

- (a) conduct research into the missing BDCL Commission documents in order to establish accurate records of all landholdings by owner in Tucker's Town area, pursuant to the powers of the Registrar under the Land Title Registration Act 1918, to establish a proper system of land title registration as it relates to that area;
- (b) ascertain the names of the landowners and location of their properties that had been compulsorily purchased pursuant to the BDCL Act (No. 2) and any land subsequently transferred to new owners, given that the records of that Company cannot be located;
- (c) review the BPL Act and the MOCL Act to determine if they require amendment to include the same restrictions imposed on BDCL, that is, requiring the prior consent of the Legislature before selling or disposing of any of its acquired, if deemed to be compulsory purchased land, given the fact that MOCL has in the past acquired four residential properties in the immediate vicinity of the Club;
- (d) identify all compulsorily purchased land as the descendants of the original owners of such land may have legitimate claims against the government in both instances of expropriation;
- (e) increase penalties as a deterrent for non-compliance with statutory landholding and reporting requirements;
- (f) determine how many acres of land the Furness Withy group of companies actually owned as the amount of acreage held differs in the various resource documents;
- (g) ascertain if any part of the "MOC plan" was designated for residential purposes;
- (h) explore statutory restrictions or Company landholding policy for on-selling expropriated property in contravention of any statutory requirements previously imposed on BDCL in respect of all land expropriated and the Alien Acts or amending any existing legal requirement to address remediation issues, if required;
- (i) identify which families were involved in the purchase of expropriated land, particularly having also participated in the expropriation process, and who among them benefited immediately from the expropriation of lands in the Tucker's Town area;

- (j) explore the establishment of a systematic adjudication process specifically where previous ownership in 1900s cannot be determined to ensure that the Land Title Register is a reliable resource for obtaining land accurate land title details;
- (k) determine the current status of such expropriated lands. For completeness, it would be prudent for a forensic audit in this respect to be conducted to determine which parts of the area have not as yet been disposed of by the original owners;
- (l) determine the appropriate action to be taken to acknowledge and memorialize the sacrifices made by those dispossessed landowners;
- (m) establish a system to determine levels of compensation to be paid to descendants of former owners of expropriated land, as applicable; and
- (n) determine the appropriate action to take and make recommendations for seeking redress for losses of land from the UK Government in the case of St David's Island. [The relevant section on St, David's Island follows in the Report.]

## 5. **Marsden Methodist Cemetery**

The COI recommends that Government oversee the remediation process, as agreed by the Marsden Church, the Tucker's Town Historical Society and Rosewood Tucker's Point, to ensure the immediate commencement of remediation work at Marsden Cemetery and the establishment of the following measures:

- (a) improvement and modification of the golf cart and walking access to the site;
- (b) protocol for family and guest to access the site and work around the adjacent golf operation;
- (c) redirecting a part of the driving range to minimize any errant golf balls coming into contact with the graveyard area;
- (d) installation of a canopy netting system over the graveyard area to prevent golf balls from entering site;
- (e) cleaning and tidying the landscaping and establishment of a regular maintenance programme for the area;
- (f) installation of a seating area within the graveyard walls;
- (g) establishment of permanent access rights to the site;

- (h) erection of a “do not enter” sign to prevent golfers’ access to the area;
- (i) inclusion of the site in the African Diaspora Trail information; and.
- (j) that the historical cemetery is bestowed the applicable honour as the Commonwealth War Graves Commission (CWGC) envisaged and that a mechanism is established to constantly review the improvement, modification and maintenance of the Marsden Cemetery on a periodic basis.

## 6. Consultative and Oversight Processes and Procedures

The COI recommends:

- (a) a designated Government body be established to be engaged in a consultative process and authorized to have oversight of the implementation of recommendations set out in the Ombudsman’s Reports *A Grave Error* and *Today’s Choice, Tomorrow’s Cost* and the Ground Penetrating Survey conducted by Dr. John Triggs of the Department of Archaeology and Classical Studies, Wilfred Laurier University, Canada, as may be mutually agreed; and
- (b) that any recommendations made in the former Ombudsman’s Reports *A Grave Error* and *Today’s Choice, Tomorrow’s Cost* which have not been addressed be implemented, as may be mutually agreed between all relevant parties.

## St. David’s Island

The COI invited professional historian, Dr. Quito Swan, Professor of African Studies at the University of Massachusetts-Boston, Director, William Monroe Trotter Institute for the Study of Black Culture, to research and present evidence about the St. David’s Island expropriation for the purpose of the United States Base during World War II.

### St David’s Island: Pre-World War II

Following are excerpts from Dr. Swan’s report, *Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base, Bermuda Government Commission of Inquiry into Historic Land Losses*.

*“Historically speaking, the development of St. David’s Island was intricately linked to the Atlantic slave trade and the enslavement of African and indigenous American Pequot communities in the seventeenth century stemming from “King Philip’s War” in Massachusetts. In 1637, the ship Desire brought enslaved Pequot persons to Bermuda in exchange for enslaved Africans. In February 1638*

it returned to Boston with “cotton, tobacco and Negroes.”<sup>138</sup> These Pequot people were enslaved in St. David’s, and along with enslaved African persons, forcibly worked in the industries of tobacco, livestock, shipbuilding, fishing and whaling”...<sup>139</sup>

“This geographical isolation and mixed racial heritage led to popular perceptions of St. David’s Islanders as being outsiders, “country,” “different” or backwards. Writing in *The Bermudian* in 2018, St. David’s Island’s historian, St. Claire Tucker asserted that St. David’s was completely isolated in those early days...The Native Americans of St. David’s welcomed African and West Indian slaves into their community, but Bermuda’s white population often looked down on them. This stigma caused the people of St. David’s to intermarry over the course of the ensuing centuries...it was common for a native, in previous generations, to live his entire life without leaving St. David’s Island.<sup>140</sup> St. David’s Islanders looked different and sounded different; they had different accents, and they dressed differently...Education was not a priority. They were strong, clannish and hardworking. ‘Town’ people made fun of them. It still exists a bit today...St. David’s Islanders have known of their heritage because of ridicule. Pejoratively referred to as “Mohawks,” these negative and misperceptions of St. David’s Islanders influenced the process in which their land was appropriated for the building of the base. Yet, St. David Islanders were critical members of the cultural life of black Bermuda. These negative perceptions stretched beyond Bermuda”...<sup>141</sup>

“At the time of WW II, St. David’s was a thriving agricultural hub for Bermuda. The black community was comprised of largely fishermen and farmers who raised gardens, kept piggeries, cultivated fruit trees, and grew crops such as arrowroot, cassava, potatoes, Easter lilies, and a variety of other vegetables. The Southeast part of the island was home to forty of the sixty St. David’s islander families of “modest income.” They either owned or rented small plots and subsisted on their lands. Farmer Archibald Fox was the island’s largest cassava grower. As cassava was not a critical export crop, Fox likely engaged a largely domestic market.<sup>142</sup> Solomon and Rose Fox’s family lived off of fifty banana trees, five orange trees, four lime trees and a grapevine. The fishing industry in St. David’s was a complex cultural and community ecosystem, whereby fisherman shared waters. The island boasted of generations of whalers, perhaps none more popular than Tommy Fox who had done so since the nineteenth century. Three of St. David’s farms produced half the total amount of lilies grown in Bermuda. In 1940, lily bulbs represented 12% (13,000 USD) of Bermuda’s domestic exports, which went mainly to Canada and the United States. From 1929-1940, they were Bermuda’s second largest export (7%, 145,000 USD). In 1939 some 1.5 million lily bulbs were planted—500,000 of this total were exported and one million replanted. As such, over 750,000 lily bulbs were planted in St. David’s.”<sup>143</sup>

Mrs. Marlene Warren, granddaughter of Solomon Fox and Rose Fox as mentioned in Dr. Swan’s report, was the Claimant in COI Case 031. She gave documented evidence that her grandparents lived off fifty banana trees, five orange trees, four lime trees and a grapevine.<sup>144</sup>

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<sup>138</sup> Swan, Dr. Quito. “*Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base*” (2020)., COI - Exhibit QS-1

<sup>139</sup> Swan, Dr. Quito. (2020)., Supra-No.138, pp. 6-10

<sup>140</sup> Swan, Dr. Quito. (2020)., Supra-No.138

<sup>141</sup> Swan, Dr. Quito. (2020)., Supra-No.138, pp. 8-9

<sup>142</sup> Swan, Dr. Quito. (2020)., Supra-No.138,

<sup>143</sup> Swan, Dr. Quito. (2020)., Supra-No.138

<sup>144</sup> COI - Exhibit MW-10



## Southside of St David's, A Lost Way of Life

Ms. Elaine Fox, appearing at the COI Hearing on 11<sup>th</sup> March, 2021, gave a presentation entitled "Southside of St. David's, A Lost Way of Life". She provided for the COI a compelling account of life in St. David's prior to the expropriation that preceded the construction of the US military base there. Explaining that she had spent most of her life living in St. David's, she said that she was speaking on behalf the dispossessed community of St. David's Island. She said that her parents had been born in the mid-1920s and that she had often heard them reminiscing with family and friends about what life was like before Kindley Air Force Base was constructed in Bermuda. She said that conversations with my parents and their friends would often begin with, *"During the War..."* They would go on... *"Before the War...do you remember when?"* and add, *"Until the Base came..."*

Ms. Fox informed the COI that as she listened to the conversations between her parents, other family members and friends, it became apparent to her that during those days the nucleus of the St. David's Island Southside community was Ruth's Bay which was owned by Victor Fox, the son of Tommy Fox. She said that Ruth's Bay, located directly across from the present-day Clearwater Beach and just below the present-day white-washed water catchment which had been constructed by the U.S. military, was a magnificent beach which in the early 1940s was lined with Bermuda cedar trees. She said that during the summer months, Ruth's Bay was a renowned picnic area attracting visitors from not only St. David's, but also from other parts of the Island, even from as far away as Somerset, who would visit St. David's via boat to enjoy their picnics, parties and social gatherings. Ms. Fox also explained that Ruth's Bay provided easy access for fishermen who wished to go directly out to sea for fishing and whaling, adding that prior to the formation of the Pilots Association, pilots could go directly out to sea in their swift sailboats and gigs to assist incoming ships.

Ruth's Bay - 1939



Janet Fox, Ralph Kennedy, Brancman, Aubrey Fox, Eva Lark

- “Beautiful Ruth's Bay was where the Base authorities decided to locate the Base dump. It was literally burnt out of existence”.



Following are excerpts from Ms. Fox's presentation to the COI:

*"Southside consisted of several islands and large and small homes. Some of the islands were connected by narrow wooden bridges. There were numerous beaches, coves and mangrove swamps. The soil was rich and there were farms, large and small. There were lily fields and a cricket field. The whole area was part of Castle Harbour, making Tucker's Town the closest neighbour. St. David's was isolated from mainland Bermuda until the Severn Bridge was built in 1934. The people of St. David's, like their neighbours in Tucker's Town, were self-sufficient. They were expert carpenters, masons, boat builders, sailmakers, chefs, farmers, fishermen and pilots, to name a few of their skills.*

*"Henry Mortimer, Tommy Fox and his brothers and sister owned a large portion of land on St. David's and in particular on Southside. The land was inherited from their father, Charles Styles Fox. Most of their homes were wooden but built of cedar, including the porches, blinds, doors and floorings. Some homes were built of stone. One such cottage had been in the Fox family for over 250 years.*

*"Some St. David's Island entrepreneurs had businesses on Southside, such as restaurants "The Happy Hit" owned by Mrs. Doris Minors, "The Quarry" owned by Mrs. Evelyn Bowden and a dance hall and recreation centre, "Eastern Star Casino", owned by Mr. Charles War Baby Fox."*

Ms. Fox informed the COI that in 1903, a group of St. David's Islanders and their Tucker's Town neighbours decided to organize a cricket match which was played in 1904. Today, that match is known as the Eastern Counties County Match. Whilst it originated between friends and family of Tucker's Town and St. David's Island, Bailey's Bay and Platt's were invited to participate a year or two later. The COI heard that there were two social clubs in St. David's prior to the arrival of the U.S. Base, "Rainbow Social Club" and "Bluebird Social Club". The COI also heard that the St. David's Island community organized concerts, plays and maypole displays for bazaars and held fundraisers for their respective churches and schools. Additionally, the COI heard that several schools existed in St. David's Island before the construction of the U.S. Base there, including Ms. Eva Minors's School on Mission House Hill which was established in 1932. Commissioners were interested to hear Ms. Fox's anecdotal information that during the visit to Bermuda by the Prince of Wales, later King Edward VIII, he was taken to the Battery in St. David's to visit the troops there and that Ms. Minors and her students picked wild flowers which they presented to the future King. The COI also learned that there was a building behind the A.M.E Church where many St. David's Island children were taught by Mr. Hilary Minors.

In Ms. Fox's words:

*"There was a war and tiny Bermuda, strategically located in the middle of the Atlantic Ocean, became a prime location for a United States military base. It was decided that Southside, St. David's would be the best location for this military base.*

*"There was great urgency with very short notice given to the residents. They were told that their properties would be required to create this military base and they would get stone houses to replace their lost homes and property.*

*“For King and Country, being good loyal subjects some of the residents of Southside, St. David's willingly complied while others such as Mr. Benjamin Melville and Mr. Red Benny Lamb did not. Mr. Lamb absolutely refused to leave his property and home. He was moved by a piece of construction equipment which lifted part of the room and the chair he was sitting on out of the way, then demolished his house.*

*“Men and equipment were waiting as a family put their belongings in a horse driven cart. The cart was barely moving away when the wrecking ball was demolishing their home. The mother was crying and the father was upset seeing their home destroyed.*

*“The building of the Base was of such urgency that sorting out the homes for the displaced St. David's Islanders was not a priority at the time. Families were moved into barracks in the Cashew City area. They were long wooden barracks on the northern side of present-day Cashew City Road. Behind these buildings on the rocky shoreline were the out-houses. Each family had three rooms, but there were often nine to ten in a family. I am not certain of the number of families per building. Old and young were moved there. Babies were born and people probably died. These families lived in the barracks for nine months to a year before they were able to move into their permanent locations.*

*“The authorities built little stone cottages for the displaced St. David's Islanders. These generic cottages were built in the area of present-day Texas Road, St. David's. Some were also built in other parts of St David's. The new cottages did not have large tracts of land for farming or provide access to the sea. Today, many of the cottages have been renovated and are now part of larger homes.*

*“Beautiful Ruth's Bay was where the Base authorities decided to locate the Base dump. Ruth's Bay was literally burnt out of existence. The U.S. Base decided to build an open pit incinerator, in addition to the incinerator, the sewage system was there and also the evaporation plant for creating water when there was a drought. Liquid sewage was also pumped out in the area of the Group of Arms. Group of Arms was blown up and destroyed. When the Base was being built, there was war. There was a threat of German U boats being all around Bermuda and the Base military dropped depth charges and blew up the Group of Arms, the reefs and everything around. The Ruth's Bay Base Dump has been replaced with large granite boulders and a forest of casuarina trees.*

*“Fisherman Mr. Stanley Pitcher and his sons lost their way of living completely and then had the horror of standing or even going up the lighthouse and looking over and seeing probably hundreds of pounds of fish destroyed.”*

*“Mr. Pitcher was unable to fish off the Clearwater seas when, prior to the dispossession of lands, he was able to travel from Annie's Bay and Ruth's Bay and go straight out to sea. He had to find another other way to travel out to sea, which was from Black Horse, off Paget Island, off the northwestern side of St. David's which wasn't as plentiful as where they had fished for generations.*

*Mr. Pitcher and his sons were some of the best hand line fishermen in Bermuda. They owned two dinghies, most likely they built them themselves, but they owned two dinghies, one for fishing and one for the fish nets. They used lobster for bait and they fished in what the St. David Islanders called the Group of Arms, just a short distance from the current Clearwater Beach. They caught rockfish, groupers and other choice fish. They would leave in the morning and go out in search of lobster. They'd haul the lobsters and use that for bait and catch the fish. They would come ashore early afternoon, normally at Annie's Bay which was the work bay. They would clean the fish and then cart it from Annie's Bay, straight over the hill down to where St. David's Liquor Store is now and around the road to the dock where the Black Horse is located, take the ferry and cart the fish to the St. George Hotel. They supplied St. George Hotel with fish".*

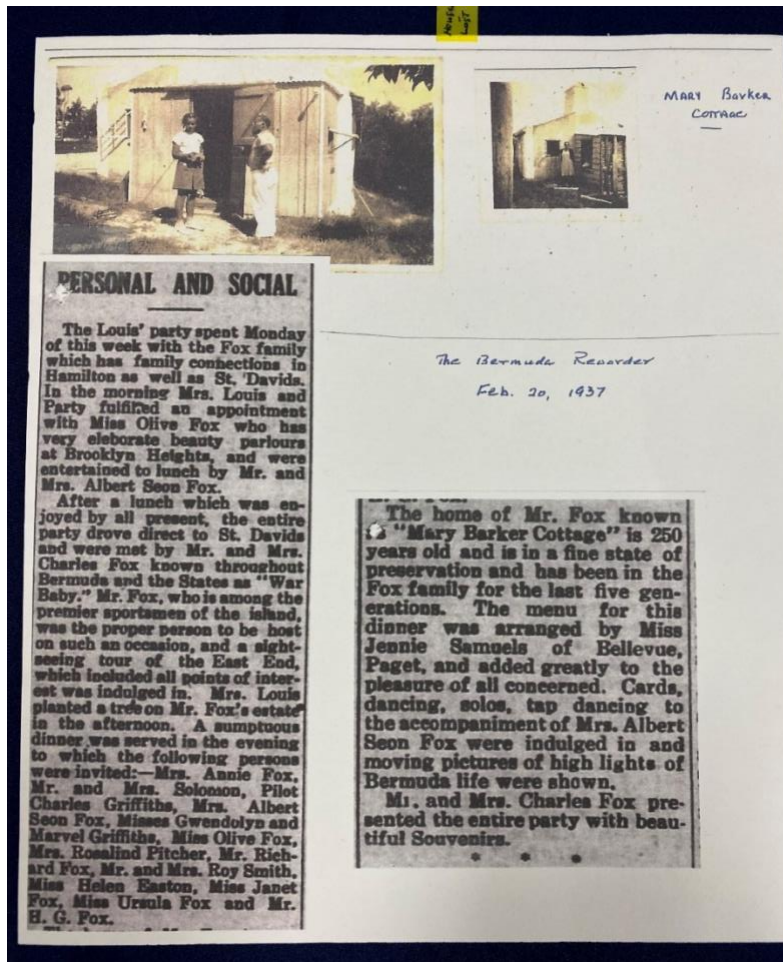
*"A series of beautiful islands in Hamilton Harbour, unimaginable sea and bird life and relocation of human life and a quaint way of life crushes out of existence".<sup>145</sup>*

*"St. David's Islanders and Bermudians were employed by NASA, at Cooper's Island. Of course, the homeowners throughout Bermuda benefitted from having the U.S. Base here by renting their homes and apartments to the Base personnel. Those were of the benefits that Bermudians and St. David's Islanders acquired after the Base arrived."*

*"What the original St. David's Island landowners lost, in my opinion and what my parents and aunts and cousins discussed, they lost their ancestral homes and properties, some dating back to the 1600s. I mentioned in my statement that one home had been in the Fox family for more than 250 years. Well, this was a statement that my grandfather made to the Bermuda Recorder in February 1937. Well, we can do the math. If that house had been in the family for 250 years in 1937, then that house was built in the late 1600s. I have a picture of that house that I would like to share with you and a copy of the newspaper article."*

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<sup>145</sup> COI - Exhibit EF-1.



*"They lost their simple way of life. They lost their community. Everybody was related. We look at the map of the Southside allocation of all the properties and I can see sisters, brothers, cousins, whole families and the matriarchs and patriarchs living in the middle of where these people lived. It was just completely splintered. Degradation of the environment, unimaginable, loss of livelihood, farming, fishing, boating were interrupted by the building of the Base. Loss of future development prospects. St. David's was beautiful. There were coves and there were beaches everywhere. Elders lost the opportunity to pass on the skills of boat building, gig building, carpentry. They lost the farming and they lost the ability to pass that on to their children and grandchildren. And of course, there was a social problem. Young St. David's Island women were often left to face motherhood as single parents. This happened time and time again. So that's all I want to speak to and I want to speak to, yes, it was a war and desperate times call for desperate measures and their sacrifice was small compared to the sacrifice that millions of people in Europe and Asia made. They were simple people, very simple people, fiercely loyal to one another, fiercely clannish. And yet there's nothing to commemorate their loss".*

*"They lost the community. They lost their way of life. They lost their livelihood. 'Lost Way of Life.'"*



Ms. Fox concluded her presentation by reaffirming that St. David's was vibrant and that like most small, isolated communities, the St. David's Islanders had their dignity, customs and their way of life.

## **Dispossession of Lands in St. David's Island/Establishment of U.S. Military Base**

Following is an insightful account of circumstances surrounding the construction of the U.S. military base in St. David's Island in the early 1940s and its impact upon St. David's Islanders who lived in the area at that time.

On 26<sup>th</sup> October, 2020, the COI heard evidence from Dr. Quito Swan who drew on his report *Historic Land Grabs in Bermuda: St. David's, World War II and the US Base, Bermuda Government Commission of Inquiry into Historic Land Losses* that he had prepared for the COI. His report finds that the building of the United States military bases in Bermuda during World War II was facilitated by a discriminatory and irregular land dispossession in St. David's Island and surrounding areas orchestrated by a matrix of white internationalism—British colonialism, U.S. imperialism and Bermuda's oligarchy. The report asserts that this uneven process with consistent racist overtones consistently pitted the will and power of British colonial officials, U.S. military authorities and the island's white oligarchy against the desires of a small community of largely black Bermudians of African and Native American heritage who possessed limited economic, political and social power. As such, the report asserts, this process (the negotiations, media coverage, passing of Acts and Bills, compensation, displacement, legalities, arbitration and appeals) must be understood within the context of the power disparities that undergirded these systemic complex interactions of colonialism, imperialism, racism, ethnicity, sexism, racism, power and class that negatively impacted on Bermuda's black community in general".<sup>146</sup>

The following excerpts have been taken directly from Dr. Swan's report:

*"On 4<sup>th</sup> September, 1940, a WWII "destroyers-for-bases" agreement between the British and United States governments called for the construction of military bases in Bermuda via a 99-year land lease. Britain did not give up any warships in exchange for the land in Bermuda which had significant strategic value for the United States during the War. Yet, it was not inevitable that St. David's would be the site of the U.S Base.. Why, when and how did the alleged land grabs occur?"*

*"On September 5, 1940, U.S. Navy Rear Admiral John W. Greenslade arrived in Hamilton, Bermuda on the U.S.S St. Louis to scout the island for navy and army installations. He was flanked by a Committee that included representatives from the Army, Navy, Marines and Lt. Col. Omar T. Pfeiffer, U.S. Marine Corps, Member and Recorder. They were officially called on by U.S. Consul General, William "H. Beck, British Governor to Bermuda, Lieutenant General Sir Denis Bernard, and Vice Admiral Sir Charles Kennedy-Purvis, Commander in Chief of the British West Indies Naval Forces. Meetings were arranged with British officials to extensively determine essential land, sea, and air requirements."<sup>147</sup>*

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<sup>146</sup> Swan, Dr. Quito. *"Historic Land Grabs in Bermuda: St. David's, World War II and the US Base"* (2020)., COI - Exhibit QS-1, pp. 4

<sup>147</sup> Swan, Dr. Quito. *"Historic Land Grabs in Bermuda: St. David's, World War II and the US Base"* (2020)., COI - Exhibit QS-1

*“The first official meeting to discuss the proposed Bases was held between the Greenslade team and British representatives (with Bermudian sanction), namely Governor Bernard, Colonial Secretary Hon. Eric Dutton (who was were there to supposed voice the opinions of Bermuda), Vice Admiral Kennedy-Purvis and Rear Admiral J. Powell, Royal Navy Commodore of H.M. Dockyard naval authority.”<sup>148</sup>*

*“On September 2, 1940 Governor Bernard appointed a Committee of prominent citizens, including members of the Legislative Council, to obtain their views on the question of the U.S. establishing a base in Bermuda...”<sup>149</sup> This Committee of prominent Bermudian citizens – read wealthy, white men – was comprised of Colonial Secretary Dutton, Attorney General Trounsell Gilbert, J.D.B. Talbot (member of Legislative Council), MCPs W.J. Howard Trott, J.W. Cox and Henry Jack Tucker (manager of Bank of Bermuda) and Hal Butterfield (managers of Bank of Butterfield).*

*“The Greenslade Committee covertly visited Dockyard, Riddell’s Bay, islands in the Great Sound, St. George’s, and St. David’s. On September 3, 1940, Greenslade announced to that his team had chosen land in the area of Warwick and Southampton Parish from North to South Shore, continuing from “approximately Spithead—in Granaway Deep, following the shoreline up to Jew’s Bay close to Gibb’s Hill Lighthouse, space for a landing strip and a 2.5 x .5 mile area for the U.S. Navy at Riddell’s Bay.*

*“The residents of Riddell’s Bay, and the Bermuda Committee strongly opposed the Riddell’s Bay proposal because the area contained many homes of wealthy Americans and the waters there were used for their favourite pastime, yachting and picnics. The Committee also reported that Bermudians favoured the East End of the Island which was a blatant lie as Bermuda, and certainly not the St. David’s Islanders had been consulted. The Governor ordered officers to inspect alternative areas at East End.*

*“Butterfield Bank Manager Hal Butterfield and Bank of Bermuda’s Bank Manager Henry Tucker, travelled to Washington DC where they met with the British Ambassador to discuss the opposition to the proposed Riddell’s site for the U.S. Base and also the monetary claim form the US Government of \$10,000,000 per annum.”<sup>150</sup>*

*“Greenslade had hoped to meet with the Bermuda Committee regarding the Summary of Objections but was told by the Governor that this would be impossible, but there could be space for informal discussions.”<sup>151</sup> Greenslade was disturbed. The Governor had been instructed by the Home Government to tell Greenslade “not to seek a meeting with local Bermudians” as they did not “want such a conference to be held or mentioned in later correspondence,” and that the approach to the Bermuda Committee needed to be informal. He continued, “a formal meeting would possibly subject some of the proposals to being misunderstood and the injection of bodies rather than this one her was not desirable—please do not have a round-table discussion with the Committee.” Furthermore, it was falsely argued, as the Colonial Secretary was there, it would not*

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<sup>148</sup> Swan, Dr. Quito. (2020)., Supra-No.147

<sup>149</sup> Swan, Dr. Quito. (2020)., Supra-No.147

<sup>150</sup> Swan, Dr. Quito. (2020)., Supra-No.147

<sup>151</sup> Swan, Dr. Quito. (2020)., Supra-No.147



be necessary to have a discussion with the Committee.<sup>152</sup> The Colonial Secretary remarked that if Greenslade wanted to get “a good picture” of what was in the Committee’s mind, then he should see Attorney General Trounsell Gilbert later that evening at a social event they were to attend. After all, it was Gilbert, a white Bermudian, who had drawn up the comprehensive statement.<sup>153</sup>

“Greenslade was concerned that “the objections gave no idea whose opinions were stated, there being no signatures to identify the authors.” There was nothing to authenticate the Summary.<sup>154</sup> The Governor confirmed that the views presented were those of the Bermuda Committee, whose chairman was Dutton. Greenslade read off “astonishingly large figures for the dredging required for St. David’s compared to Riddell’s Bay and the Great Sound – 12,000,000 cubic yards for dredging and 6,000,000 more for the landing field. This would also take years. The Great Sound was chosen due to its proximity to Dockyard and, plus, fewer people lived in the requested areas than East end.<sup>155</sup> Later that month British Naval staff offered St. David’s Island to Greenslade. After revisiting the island’s East End, and facing strong resistance to his plans, he conceded. Members of Bermuda’s oligarchy had had their day, but his was a short-lived victory. Greenslade still pressed for use of the Great Sound for seaplanes and emergencies. In late October, Greenslade announced an agreement, via which the U.S. would get the East End for the base as well as Morgan’s Island in the Sound.

“In early November, the Bermuda Committee sought to address the issue of compensation. This request was sent to the Secretary of State, which included an issue raised by the Governor on behalf of the Committee the lifting of the embargo of black Bermudians into the United States, the lifting of embargo on vegetables reduction of taxation on Bermudian incomes accruing in United States and an annual cash-down payment (lowered to 2.5 million per year as opposed to 10 million).<sup>156</sup> To surmise, St. David’s was chosen as the site for the base via covert discussions and debates between the U.S. Military, British Colonial officials and Bermuda’s white elite. These discussions largely took place behind closed doors and were not part of a public discourse. In fact, the Bermudian and British Governments sought to keep the talks as secret as possible. By and large, the residents of St. David’s were not consulted on the decision and they had no representation on the “Bermuda” Committee.

“Through formal and informal discussions at official meetings and segregated social events, the Bermuda Committee spoke on behalf of the desires of Bermuda’s oligarchy and placed tourism, weekend yachting jaunts and part time leisure over the 18 daily livelihoods of St. David’s Islanders who had no representation at these meetings. This was unfair and certainly irregular.

“The Home Government instructed the Governor to have Bermuda’s House of Assembly announce the decision to build the base in St. David’s on the afternoon of November 18, 1940. This meant that several residents of St. David’s would be displaced. Several MCPs expressed shock at the scope of the request, which begs further question. The following morning, Governor Bernard went to St. David’s to speak to a large group of residents at Wesley Hall. Flanked by Dutton, his ADC, and the aforementioned MCPS for St. George’s—Spurling, Tucker, Toddings and Cooper— he

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<sup>152</sup> Swan, Dr. Quito. “Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base” (2020)., COI - Exhibit QS-1

<sup>153</sup> Swan, Dr. Quito. (2020)., Supra-No.152

<sup>154</sup> Swan, Dr. Quito. (2020)., Supra-No.152

<sup>155</sup> Swan, Dr. Quito. (2020)., Supra-No.152

<sup>156</sup> Swan, Dr. Quito. (2020)., Supra-No.152

expressed his “deep concern” as Governor but also as someone who had land issues in the past: “I know it is very easy to say one is sorry, and I know that I can do little more than say that, for money does not really count in these circumstances. I know that the houses you have been living in all your lives, and in which your ancestors lived will be hard to leave. I shall do my best.”<sup>157</sup> Governor Bernard continued to tell the crowd that he had come to St. David’s to acquaint them with the defense scheme, which had “come as a bombshell.” He pledged to appoint a Committee whose first duty would be to make sure they left their homes under the best possible terms. Bernard also stated that it was “a dreadful thing to think that one man was responsible for all this, that abominable man Hitler.” It was difficult to realize that “one man, a devil, had brought all these dreadful things to pass throughout the world and that, even in faraway Bermuda,” the effects of his wanton war were being felt. However, said the Governor, “Mr. Winston Churchill, whom they all knew, admired and studied, thought it was wise to have these bases leased to America. And if he said so, it was so.”

“While these residents might have been surprised at the amount of land taken, the Governor was “sure that they would take it in loyal spirit.” Printed in *The Royal Gazette*, the Governor also said, “Mr. Hitler is primarily responsible for this base, yes, the one devil Hitler is responsible.” However, he claimed, the Americans were “anxious to help.” He continued, “We must make the best of the job; it is not a bad job. Bermuda is taking a big part in the Empire scheme. Demands are being made on all parts of the Empire, and this is their demand on us. We must all get to work.” There was no empty space, and “as bad luck would have it” Castle Harbour suited the needs of the US officials, who needed a large space for planes, airfields, ships, guns, barracks and soldiers.<sup>158</sup> But as we have seen, bad luck had nothing to do with the decision. The Governor took out a huge map of the plans and placed it on an easel. “There is a map here, and I shall be pleased if Sir Stanley Spurling will explain it.” Spurling proceeded to do so, which raises some suspicion.<sup>159</sup> If Spurling, a landowner in St. David’s had just heard of these plans for the East End the day before, how could he have adequately explained these plans?

“MCP Tucker bluntly informed the crowd, “There is no question of your livelihood being taken away from you. Take it all in good spirit,” for the benefit of the British Empire. He would later state that in HOA that St. David’s, “the poor and insignificant Parish” of which he happened to be a native of” had “at least demonstrated its material importance to the defense of Empire and the protection of the American continent.”<sup>160</sup> At the end of the meeting, a statement was read and allegedly accepted by the group: Resolved, that this meeting of people vitally affected by the establishment of the USA defense base on St. David’s Island, record their deep sense of remorse at losing their homes in which their families have lived for centuries, but wish to express their loyalty to<sup>161</sup> the British Empire by accepting the sacrifice in a spirit of support for the ultimate winning of the war against Germany and Italy.<sup>162</sup> Colonial Secretary Dutton recalled that Toddings informed the group that “their fellow citizens at home [England] had been bombed and they had given their homes and their lives to bring this war to a successful conclusion. Everyone realizes that we are sorry for you; it is all caused by that fiend Hitler. Everything will be done as near as

<sup>157</sup> Swan, Dr. Quito. “*Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base*” (2020)., COI - Exhibit QS-1

<sup>158</sup> Swan, Dr. Quito. (2020)., Supra-No.157

<sup>159</sup> Swan, Dr. Quito. (2020)., Supra-No.157

<sup>160</sup> Swan, Dr. Quito. (2020)., Supra-No.157

<sup>161</sup> Swan, Dr. Quito. (2020)., Supra-No.157

<sup>162</sup> Swan, Dr. Quito. (2020)., Supra-No.157

*circumstances will permit to make you happy and comfortable, as you have been in the past.*<sup>163</sup> *Toddings claimed that there would be a wave of prosperity that this end of the island that could not yet be imagined. Still, no amount of money would compensate the group for what they would “have to do.”*<sup>164</sup>

*“The meeting and issues surrounding the selection of St. David’s continued to be discussed in the House of Assembly. When asked by Henry Watlington why the meeting was kept secret, the retort was that public knowledge would have prejudiced the discussions. But these discussions misled the public. The Bermuda Committee claimed that Americans came to the island twice, reviewed entire country and made their decision based upon those assessments. The Committee sought to avoid clearly stating that they offered St. David’s to US officials. Watlington himself still would concede—“It was only Adolf Hitler made everybody do this.”*<sup>165</sup>

*“The white power structure hypocritically used the notion of “disloyalty” to the British Empire and the need to be fight against Hitler to pressure St. David’s Islanders. Indeed, it is remarkably troubling to note how white MCP’s threw words, concepts and phrases such as “empire, duty, citizen and home” at black Bermudians whose ancestors were violently enslaved and colonized in the name of the British Empire, who, to this day, are not British citizens and were, in the moment, not able to emigrate to America under racist immigration policies, yet were told <sup>166</sup>that Hitler was the enemy. This is particularly striking, given white Bermuda’s preexisting admiration for Germany and Nazism. Case in point In 1936, the Bermuda Athletic Association (BAA) handpicked an all-white swimming team to represent the island at Berlin’s 1936 Olympics. The black owned newspaper, Bermuda Recorder, claimed that Bermuda and South Africa were the only majority black countries to send all white teams to Germany. The paper launched a vendetta against the insulting decision which placed Bermuda in the same category as Germany and South Africa. Bermuda had catered “to the feelings of superiority of Herr Hitler and his Nazi Regime” by sending “lily-white contingents”. In fact, during the Olympics Opening Ceremony, the team hailed Hitler with a Nazi salute and had the “dubious distinction” of being the first country to do so. Bermuda’s “alliance with Hitlerism” continued later in the month, when its Government organized a publicity event with a German aircraft company, Lufthansa. Organized by MCP Percy Tucker and the local agents for Lufthansa, John Darrell and Company, the Deutsch A.G. Lufthansa Aeolus flew to Bermuda from the Azores in record time. The plane landed next to the Darrell and Company boat which was flying a large Swastika flag. The flight crew disembarked with a Nazi salute. Yet, in September 1940, the Acting British Governor responded to “ill-founded rumours of impending disturbances” by having numerous meetings with black leaders. One, G. A. Williams, came before the Governor to speak on behalf of Bermuda’s “coloured people.” He stated that the “coloured people felt that no matter what future trails might lie ahead, whatever their King desired of them in the common cause that would gladly give.” On 21st of September, Robert Crawford, “senior coloured member of the House of Assembly,” said that he had not heard one person regret that he belonged to the British Empire.*<sup>167</sup>

*“The Uncrowned King of St. David’s/How did St. David’s Islanders react to the land grab?*

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<sup>163</sup> Swan, Dr. Quito. “Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base” (2020)., COI - Exhibit QS-1

<sup>164</sup> Swan, Dr. Quito. (2020)., Supra-No.163

<sup>165</sup> Swan, Dr. Quito. (2020)., Supra-No.163

<sup>166</sup> Swan, Dr. Quito. (2020)., Supra-No.163

<sup>167</sup> Swan, Dr. Quito. (2020)., Supra-No.163

*“While the mainstream narrative is that St. David’s islanders largely accepted the land grab, this perspective needs to be unpacked within the context of war, white power and misinformation. Indeed, all of these factors undermined the capacity for landowners to challenge the seizing of their land. Put another way, black Bermudians were placed under political, economic and social pressure to pledge allegiance not only to the British Empire, but also to acquiesce to American imperialism as a response to Hitler and Nazi Germany. The day after the meeting the Gazette’s headline read, “Governor Explains U.S Bases at St. David’s: Residents Accept Decision in Loyalty to Empire.” The article included the supposed reasons for why St. David’s was chosen—the protection of the tourist industry and life in the Great Sound. MCP Trott would claim that there was not one dissenting voice among the St. David’s Islanders. “They were sad, naturally, because they had to leave the homes which they had occupied for generations but felt it was for the good of the Empire and therefore were perfectly satisfied.”<sup>168</sup>*

*“According to Dutton, at the meeting it was “impossible not to feel the utmost sympathy for this simple folk, many of whom were in tears as the Governor moved among them.”<sup>169</sup> There were some voices critical of the situation. One letter to The Royal Gazette, written by an American resident, read, “Think it over Bermudians, before it is too late. The US is entitled to a base. But why make people like the St. David’s Islanders suffer—while the Somerset Colony, and Riddell’s Bay golf “fans” smile.”<sup>170</sup>*

*“News of the decision spread across the United States. Reprinted in several newspapers, Alan Waters reported that the decision was going to “force Bermuda families to leave land” that their ancestors had lived on for more than three centuries. These descendants of some of the oldest persons in Bermuda, shed tears at the Governor’s statement.<sup>171</sup> One internationally read news report remarked that St. David’s Islanders had a unique way of life. The account problematically expected that they would “express indignation,” but the Pequot Indian blood in the St. David’s Islanders kept them silent.<sup>172</sup> MCP Toddings claimed that there was one person present at the meeting at Wesley Hall, who had told him not so long ago that if he was paid one pound for every minute of the day, he would not give up his home. “I see by the look on his face now,” stated Toddings, “that he is willing to do that for the Mother Country.” That one person was Henry Mortimer “Tommy” Fox. According to Dutton, Fox had long been regarded as the “Uncrowned King of St. David’s.” Fox had been bitterly opposed to the idea of land loss. It is reported that he had said “if the taking of my land will help to do in that son-of-a-bitch, Hitler, they can have it for nothing.”<sup>173</sup> Born in 1861, Fox was a living legend and the largest landowner in St. David’s. A former Sergeant of the Bermuda Volunteer Rifle Corps of WWI, in 1940 he owned some forty to sixty acres in the area. He also cultivated arrowroot. In December 1940, he informed Bermuda magazine that when he learned that most of St. David’s Island was to be utilized to construct the U.S. naval base, he remained pretty close-lipped about his feelings. “I can’t say what I feel like saying,” he muttered. “I know what I’ve got to give. I don’t know what I’m going to get.”<sup>174</sup> Upon his death in 1942, the New York Times described Fox as being “tall as a ship’s spar,” with skin*

<sup>168</sup> Swan, Dr. Quito. “*Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base*” (2020)., COI - Exhibit QS-1

<sup>169</sup> Swan, Dr. Quito. (2020)., Supra-No.168

<sup>170</sup> Swan, Dr. Quito. (2020)., Supra-No.168

<sup>171</sup> Swan, Dr. Quito. (2020)., Supra-No.168

<sup>172</sup> Swan, Dr. Quito. (2020)., Supra-No.168

<sup>173</sup> Swan, Dr. Quito. (2020)., Supra-No.168

<sup>174</sup> Swan, Dr. Quito. (2020)., Supra-No.168

*“like tanned leather” that was “burned with the suns of eighty-one summers.” He “carried himself with kingly dignity” and was known and loved by “every Bermudian and a host of Americans.” A whale hunter, he had once crawled into the belly of a captured one (which was on shore) to prove true the Bible’s story of Jonah. The New York Times described Fox as being “a tribal chieftain,” to whom St. David’s Islanders brought their troubles and their feuds and that he settled them with “patience and common sense.” It claimed that prior to the building of the Base, numbers of Americans had offered to buy Tommy’s home and land, to which he responded, “This is my home...I’ll live here till I die.” However, now the Times claimed, as he had always been “loyal to his island and to the Crown, he accepted the inevitable sorrowfully but with the dignity that characterized his life.<sup>175</sup> As poetic as this description sounds, St. David’s Islanders showed their displeasure for the years to follow. For example, on January 1, the New York Times reported that two hundred St. David’s Islanders were not relishing the idea of having to find new homes to make way for the base.<sup>176</sup>*

*“In December 1940, the British Governor appointed a five membered St. David’s Island Committee Board of Arbitrators to “advise and assist the people” who were to be “dispossessed of their lands” or who would “suffer damage” by the establishment of the Naval and Air Bases by the Government of the United States. The Committee also had license to pay fixed sums of money to disposed persons. Yet again, the Committee was comprised of all white men who represented the island’s oligarchy—Chairman MCP N.B. Dill, Esq, MCP W.S. Cooper, Esq, MCP Captain E.P.T. Tucker, W.E.S. Zuill, Esq., and R.S. McCallan, Esq. Their first meeting occurred on December 13, 1940 at the offices of Conyers, Dill, and Pearman.<sup>177</sup> The Committee rented an office in St. David’s from Gosling Brothers Ltd in the Flashing Avenue Restaurant (located across the street from Black Horse Bar) for 100 pounds a month to operate from. Its office was open from 9-12 and 1:30-4 pm for interviews.<sup>178</sup> It was also tasked with finding available land in in St. David’s, Smith’s Island, and any Colonial or Imperial land for persons that would be dispossessed.*

*“In this first meeting Dill submitted a memorandum for a procedure for conducting the dispossessions. The Colonial Government spent some 500 pounds on the Committee’s expenses.<sup>179</sup> During the Committee’s second meeting of December 24, 1940, it discussed ways to discover available land owned by the Imperial Government, the Colonial Government and nonresidents who owned land in St. David’s Island for the rehabilitation of dispossessed persons. In addition, it discussed the “necessity of adopting an attitude of paternalism in relation to the persons being dispossessed.” It was claimed, on the one hand, that if some of these persons “were granted monetary compensation that it would probably be spent foolishly and not used to rebuild” a “proper house.” On the other hand, it was noted that if the Government built them homes that they would not be satisfied and would feel that “too much money had been spent on the house and not enough cash left over for them to spend.” It also discussed suggesting to the Colonial Secretary that legislation be passed to prevent land speculation in St. David’s and Smith’s Island, but not St. George’s for the duration of the Committee’s work. The Committee had also visited persons who were liable to be dispossessed and claimed that some families wanted to remain on St. David’s and*

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<sup>175</sup> Swan, Dr. Quito. “Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base” (2020)., COI - Exhibit QS-1

<sup>176</sup> Swan, Dr. Quito. (2020)., Supra-No.175

<sup>177</sup> Swan, Dr. Quito. (2020)., Supra-No.175

<sup>178</sup> Swan, Dr. Quito. (2020)., Supra-No.175

<sup>179</sup> Swan, Dr. Quito. (2020)., Supra-No.175

*others wanted to go to Smith's Island.<sup>180</sup>High took this to mean that the Committee had decided to buy new homes for nonwhite persons, as black people could not be trusted with cash awards.<sup>181</sup>*

*"The Committee's paternalism towards St. David's Islanders was laced with the previously noted negative perceptions of St. David's Islanders. These views negatively influenced how the Committee handled the "rehabilitation" of St. David's Islanders, who were dehumanized in the process. As part of the process, the Committee conducted interviews with persons who were about to be dispossessed and made visits to their homes. In doing so, it kept notes about the supposed<sup>182</sup> character and physical characteristics of St. David's Islanders. It compiled these notes into a document called "Notes on St. David's Islanders," which, while completed in at least June 1941, was a compilation of the Committee's perspectives of both black and white St. David's Islanders. It included racist and sexist descriptions of the physical attributes of the interviewees. This suggests that they used these characteristics in determining compensation for dispossessed St. David's islanders."*

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<sup>180</sup> Swan, Dr. Quito. "Historic Land Grabs in Bermuda: St. David's, World War II and the US Base" (2020)., COI - Exhibit QS-1

<sup>181</sup> Swan, Dr. Quito. (2020)., Supra-No.180

<sup>182</sup> Swan, Dr. Quito. (2020)., Supra-No.180





CHARLES (WAR BABY) FOX'S TOURING TEAM IN AMERICA, 1929  
 (r.): D. Nealon, A. Hayward, E. Gilbert, E. Hunt, S. Tucker, C. Fox, A. Durrant.  
 (Boys in front): P. Fox and A. Fox, Jr.  
 (r.): A. Woodgate (Umpire), W. Darrell, E. Swainson, A. Hunt, R. Richardson, O.  
 Simons, C. Philpott, A. Hunt.  
 (l.): W. Duerden, W. Hinson, H. Fox, J. B. Williams, C. Lee, F. Outerbridge, A. Fox, St.  
 Charles (War Baby) Fox's Touring Team in America, 1929.<sup>12</sup>

## Post Era of Land Expropriation in St. David's Island and Elsewhere in Bermuda for Military Purposes

On 4<sup>th</sup> September, 1940, a World War II “destroyers-for-bases” agreement between the British and United States Governments called for the construction of military bases in Bermuda via a 99-year land lease. Britain did not give up any warships in exchange for the land in Bermuda which had significant strategic value for the United States during the war. The land was given to the U.S. as a gift. This led to the U.S. military acquisition of some 437 acres of land from 118 privately owned properties, involving some 65 families, and the subsequent addition of 750 acres of dredge fill.<sup>183</sup>

Dr. Quito Swan has written extensively in his Report on the St David’s Island expropriation:

*“This report has shown evidence of the following in the case of land dispossession in St. David’s during WWII for the US base: unusual and unethical activities regarding the passage of the laws authorizing the land grabs; undisclosed dealings and relationships between foreign speculators and Bermudian lawmakers; racial, class and ethnic biases towards the communities targeted for removal; unfair standards and/or practices of land valuation; power disparities between those carrying out the land acquisition and residents; limited avenues of redress for displaced landowners; individuals and groups that benefitted from the land grabs; individuals and groups who were disadvantaged by the land grabs; individual and societal impacts of the land grabs; and local and/or colonial government participation, authorization, and/or nonintervention in the land grabs.”*<sup>184</sup>

This section relates to the post-era of the land expropriation in St David’s Island. In the case of expropriated lands, responsibility has reverted to Bermuda in respect of the Base Lands that were formerly occupied as military bases by foreign governments. The Bermuda Government established the Bermuda Land Development Company Limited (BLDC) in 1996 to foster the development of roughly 400 acres of land across four sites in Bermuda, that is, Southside/St David’s Island, Tudor Hill, Southampton, Morgan’s Point, Sandys/Southampton and Daniel’s Head, Sandys, previously occupied by the U.S. and Canadian military. According to Section 10(2) of the Base Lands Development Act 1996, the Government owns the scheduled land in fee simple absolute in possession and the descriptions of landholdings are set out in the Schedule to the Act:

### THE SCHEDULE

(Section 2) ALL THOSE LANDS, being lands—

- (a) occupied up to and including 31 August 1995 by the Government of the United States of America pursuant to the Treaty Agreement entered into in 1941 between that Government and the Government of the United Kingdom; and
- (b) shown on the attached drawings prepared by the Ministry of Works and Engineering, Parks & Housing and respectively numbered— 5/15/7: the

<sup>183</sup> Swan, Dr. Quito. “*Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base*” (2020)., COI - Exhibit QS-1, pp.5

<sup>184</sup> Swan, Dr. Quito. (2020)., Supra-No.183, pp. 55



former Naval Air Station at St David's in the Parish of St. George's; 2/11/5:  
the former Naval Annex in the Parishes of Southampton and Sandy's; 2/10/97:  
the former Operating Base at Tudor Hill in the Parish of Southampton,

BUT EXCEPTING the several areas respectively marked A to H on the drawing  
numbered 5/15/7;

AND ALSO the land for the most part formerly occupied as a Base by the  
Government of Canada at Daniel's Head in the Parish of Sandys and shown on the  
attached drawing prepared by the Ministry of Works and Engineering, Parks &  
Housing and numbered 1/14/32.”

<b>Location of Bases Granted to the U.S.A.</b>	<b>Acreage in each case</b>
Long Bird Island, including adjoining islands in Ferry Reach and the causeway to the mainland south of Mullet Bay	80 acres
On the shoreline of St George's Harbour in the neighbourhood of Stokes Point and including Cave Island, Sandy Island, Little Round Island, Jones Island, Round Island, Long Island, Graces Island and Westcott Island in Castle Harbour	260 acres
Coopers Island and all islands and cays between Ruth's Point on St David's Island and Coopers Island	approximately 77 acres
Tucker's Island and Morgan's Island and immediately adjacent cays in Great Sound	approximately 50 acres
The shoreline southeast of Somerset Bridge	approximately 78 acres

A total of 545 acres of land in Bermuda were used by foreign governments' military bases. Save those portions of land that have been reserved for continued use by both the Canadian and U.S. Governments, the BLDC's mandate is to reintegrate sites identified above into Bermuda's social and economic fabric, creating employment and opportunities for the well-being of the present and future generations of Bermudians. As a consequence of the exceptions made, it may be that foreign governments still own parts of the old Base Lands in Bermuda. There is a clause in the Government of the United States of America and the Government of the United Kingdom Treaty Agreement entered into in 1941<sup>185</sup> that states the following:

“Article II: When the United States is engaged in war or in time of other emergency, the Government of the United Kingdom agree that the United States may exercise in the Territories and surrounding water or air spaces all such authority as may be necessary for conducting any military operation desirable by the United States, but

<sup>185</sup> COI - Exhibit QS-18A

these rights will be exercised with regard to the spirit of the fourth clause of the Preamble”;

“Fourth clause of the Preamble reads...“And whereas it is desired that this Agreement shall be fulfilled in a spirit of good neighbourliness between the Government of the United Kingdom and the Government of the United States and that details of its practical application shall be arranged by friendly co-operation...”; and

#### Article XXI: Abandonment

“The United States may at any time abandon any Leased Area or any part thereof, without thereby incurring any obligation, but shall give to the Government of the United Kingdom as long notice as possible and in any case not less than one year, of its intention so to do. At the expiration of such notice the area abandoned shall revert to the Lessor. Abandonment shall not be deemed to have occurred in the absence of such notice.”:

1. By the Schedule of the Base Lands Act 1996, certain portions of Base Lands have been reserved for use by foreign governments, unless or until an abandonment notice has been served; and
2. By Articles II and XXI, when read in context, it would appear that whenever the United States is engaged in war or in time of other emergency, the Government of the United Kingdom agrees that the United States may exercise in the Territories and surrounding water or air spaces all such authority as may be necessary for conducting any military operation desirable by the United States.

other representative opinions reflected the widespread satisfaction over the non-transference of sovereignty and the prospects of economic advantages for the Island.

In each other Colony extreme satisfaction was shown at the conclusion of the negotiations which set aside all fears of the sale of the Colonies.

#### FULL TEXT OF THE AGREEMENT

On March 27th, 1941, the Agreement between the Government of the United Kingdom and the United States of America relating to the Bases together with the Protocol between the Governments of the United Kingdom, Canada and the United States of America covering the defence of Newfoundland was signed in London. The following is the text of the Agreement :—

##### No. 1.

WHEREAS the Government of the United Kingdom of Great Britain and Northern Ireland, in consultation with the Government of Newfoundland, are desirous at this time of further effectuating the declarations made on their behalf by his Excellency the Most Honourable the Marquess of Lothian, C.H., His Majesty's Ambassador Extraordinary and Plenipotentiary, in his communication of the 2nd September, 1940, to the Secretary of State of the United States of America ;

And whereas it is agreed that leases in respect of the naval and air bases to be leased to the United States of America in Newfoundland, Bermuda, Jamaica, St. Lucia, Antigua, Trinidad and British Guiana, respectively, shall forthwith be executed substantially in the forms of the leases, which are hereby approved, and that a similar lease in respect of a base in the Bahamas shall be executed as soon as possible ;

And whereas it is desired to determine by common agreement certain matters relating to the lease of the said bases, as provided in the communication of the 2nd September, 1940, and the reply thereto of the same date from the Honourable Cordell Hull, Secretary of State of the United States ;

And whereas it is desired that this Agreement shall be fulfilled in a spirit of good neighbourliness between the Government of the United Kingdom and the Govern-

ment of the United States of America, and that details of its practical application shall be arranged by friendly co-operation ;

The Undersigned, duly authorised to that effect, have agreed as follows :—

#### ARTICLE I.

##### General Description of Rights.

(1) The United States shall have all the rights, power and authority within the Leased Areas which are necessary for the establishment, use, operation and defence thereof, or appropriate for their control, and all the rights, power and authority within the limits of territorial waters and air spaces adjacent to, or in the vicinity of, the Leased Areas, which are necessary to provide access to and defence of the Leased Areas, or appropriate for control thereof.

(2) The said rights, power and authority shall include, *inter alia*, the right, power and authority :—

- (a) to construct (including dredging and filling), maintain, operate, use, occupy and control the said Bases ;
- (b) to improve and deepen the harbours, channels, entrances and anchorages, and generally to fit the premises for use as naval and air bases ;
- (c) to control, so far as may be required for the efficient operation of the Bases, and within the limits of military necessity, anchorages, moorings, and movements of ships and waterborne craft and the anchorages, moorings, landings, take-offs, movements and operations of aircraft ;
- (d) to regulate and control within the Leased Areas all communications within, to and from the areas leased ;
- (e) to install, maintain, use and operate under-sea and other defences, defence devices and controls, including detecting and other similar facilities.

(3) In the exercise of the above-mentioned rights, the United States agrees that the powers granted to it outside the Leased Areas will not be used unreasonably or, unless required by military necessity, so as to interfere with the necessary right of navigation, aviation or communication to or from or within the Territories, but that they shall be used in the spirit of the fourth clause of the Preamble.

(4) In the practical application outside the Leased Areas of the foregoing paragraphs there shall be, as occasion requires, consultation between the Government of the United States and the Government of the United Kingdom.

#### ARTICLE II.

##### Special Emergency Powers.

When the United States is engaged in war or in time of other emergency, the Government of the United Kingdom agree that the United States may exercise in the Territories and surrounding waters or air spaces all such rights, power and authority as may be necessary for conducting any military operations deemed desirable by the United States, but these rights will be exercised with all possible regard to the spirit of the fourth clause of the Preamble.

## Findings for St David's Island Expropriation – Post-Military Use

1. For all the benefits that are said to have derived to Bermuda generally from past expropriations, particularly as a result of the Tucker's Town and St. David's Island expropriations, evidence presented to the COI showed that conformity with past practices, processes and procedures instituted by the powers that be to carry out such expropriations, by official and non-official agents, led to unfairness and injustices. It is the manner in which such powers of expropriation were exercised in the case of both Tucker's Town and St. David's Island that brings these events within the ambit of consideration by the COI so long after their alleged occurrence.
2. Unless notice has been served as stated above, the door has been left open indefinitely by the United Kingdom for the United States to return to Bermuda and possibly to former Base Lands. Thus, St David's Island landowners and landowners other areas once occupied may be the subject of another expropriation if the need should ever arise in the future.

## Findings

The COI takes note of the compelling historical account that Dr. Swan sets out in the preceding paragraphs. The COI also takes note of the following information, equally compelling, with respect to land losses suffered by St. David's Islanders in preparation for the construction of the U.S. military base there, some of which has been expressed earlier in Dr. Swan's account and some of which is presented via additional excerpts from his report, *Historic Land Grabs in Bermuda: St. David's, World War II and the US Base, Bermuda Government Commission of Inquiry into Historic Land Losses*.

- The Government of the United Kingdom instructed the Governor of Bermuda to have the House of Assembly announce the decision to build the base in St. David's on the afternoon of 18<sup>th</sup> November, 1940. Clearly, the decision to dispossess the St. David's Islanders of their land had been reached before Governor Bernard actually met with the soon to be affected landowners. Thus, several residents of St. David's Island would be dispossessed of their land without their families being provided with the opportunity to have input regarding the decision. When Governor Bernard met with the residents of St. David's Island at Wesley Hall, he played on their consciences by speaking to them of their loyalty to the British Empire and the benefit to Bermuda that would accrue as a result of their allowing their properties to be expropriated. Families, including the family of Mr. Solomon Fox whose granddaughter was a Claimant before the COI, were forced to leave their freehold properties to live in temporary housing/barracks until such time they were rehabilitated to Texas Road..<sup>186</sup>
- Witness Jean Foggo-Simon, who met with the COI via Zoom on 8<sup>th</sup> September, 2020, gave evidence from the written Witness Statement that she had submitted for the COI's consideration. She stated that she was born in St. David's Island and recalled residing in wooden barracks at Cashew City on the north side of St. David's Island until her family was relocated to new accommodations. In her words: "*I lived in these barracks with my family. My sister Millicent Elmena Stuart Foggo who is 14 months younger than I was born in the barracks. They were totally overcrowded.*" <sup>187</sup>
- Most of the dispossessed families were forced to live in four prefabricated barracks until their permanent homes were constructed. The prefabs totaled six apartments.
- The Bermuda Air Base, Parcel Index Map dated 15<sup>th</sup> March, 1941 showing the Leased Area of St. David's Island was introduced into evidence by the COI's Chief Investigator. The map, obtained from Bermuda Archives on 14<sup>th</sup> January, 2021, shows the total number of Parcels of Land expropriated from St. David's Islanders as 114. An additional six Parcels listed are shown on the map as owned by the Bermuda Colonial Government, making a total of 120 Parcels listed on the map.<sup>188</sup>

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<sup>186</sup> Swan, Dr. Quito. "*Historic Land Grabs in Bermuda: St. David's, World War II and the US Base*" (2020)., COI - Exhibit QS-1

<sup>187</sup> COI – Exhibit EFS-1

<sup>188</sup> COI - Exhibit CA-2

- Often Fair Market Value was not taken into consideration by the Official Arbitrators when awarding compensation to disposed landowners, as evidenced by Claimant Marlene Warren, Case 031, and Dr. Swan's report.<sup>189</sup> Dr. Swan wrote further: "*Disparities in compensation are further displayed in US military records of the arbitration.*"<sup>190</sup>
- An area spanning Southampton and Warwick Parishes was originally recommended as the location of the U.S. Military Base. However, this recommendation was not pursued largely as a result of protests from wealthy landowners in the Riddell's Bay area.
- On 4<sup>th</sup> September, 1940, the Committee selected by Governor Sir Denis Bernard to consider the question of establishing a U.S. military Base in Bermuda, advised him on three specific issues—to limit the amount of seaplanes operating in Bermuda in times of peace; that costs of land defenses be passed on to the British government and that "advantage be taken of the negotiations to persuade the American Government to lift the "immigration ban on the entry of coloured persons into the United States."<sup>191</sup>
- Bermuda's Colonial Secretary Dutton expressed concern that the U.S. base would significantly increase Bermuda's population density of 1,600 persons per square mile with the addition of some 5,500 persons related to U.S. service personnel. He stated that Bermuda was considering formally asking the U.S. to remove the quota on black persons entering the United States in order to relieve population pressure on the island.
- Pursuant to an instruction from the U.K. Government, on 18<sup>th</sup> November, 1940 Governor Bernard announced in the House of Assembly the decision to locate the U.S. military base in St. David's, notwithstanding the objections that had been raised by St. David's Islanders and others in the Island. The next day the Governor, accompanied by Colonial Secretary Dutton, his ADC and the four St. George's Members of Parliament, met with a large group of St. David's Island residents at Wesley Hall. Expressing his deep concern, the Governor said: "*I know it is very easy to say one is sorry, and I know that I can do little more than say that, for money does not really count in these circumstances. I know that the houses that you have been living in all your lives, and in which your ancestors lived well be hard to leave. I shall do my best.*" He also blamed the situation on "*that abominable man Hitler*".<sup>192</sup>
- At the end of the meeting, a statement was read and allegedly accepted by the group: *Resolved, that his meeting of people vitally affected by the establishment of the USA defense base on St. David's Island, record their deep sense of remorse at losing their homes in which their families have lived for centuries, but wish to express their loyalty to the British Empire by accepting the sacrifice in a spirit of support for the ultimate winning of the war against Germany and Italy.*<sup>193</sup>

<sup>189</sup> Swan, Dr. Quito. "Historic Land Grabs in Bermuda: St. David's, World War II and the US Base" (2020)., COI - Exhibit QS-1

<sup>190</sup> Swan, Dr. Quito. (2020)., Supra-No.189, pp.52

<sup>191</sup> Swan, Dr. Quito. (2020)., Supra-No.189

<sup>192</sup> Swan, Dr. Quito. (2020)., Supra-No.189

<sup>193</sup> Swan, Dr. Quito. (2020)., Supra-No.189

- St. David’s Islanders were not relishing the idea of having to find new homes to make way for the base. According to Colonial Secretary Dutton, at the meeting it was “*impossible not to feel the utmost sympathy for this simple folk, many of whom were in tears as the Governor moved among them.*” There were some voices critical of the situation. One letter to Royal Gazette, written by an American resident, read, “*Think it over Bermudians, before it is too late. The U.S. is entitled to a base. But why make people like the St. David’s Islanders suffer—while the Somerset Colony, and Riddell’s Bay golf “fans” smile.*”<sup>194</sup> News of the decision spread across the United States. Reprinted in several newspapers, Alan Waters reported that the decision was going to “*force Bermuda families to leave land*” that their ancestors had lived on for more than three centuries. These descendants of some of the oldest persons in Bermuda, shed tears at the Governor’s statement. One internationally read news report remarked that St. David’s Islanders had a unique way of life. The account problematically expected that they would “express indignation,” but the Pequot Indian blood in the St. David’s Islanders kept them silent.<sup>195</sup>

In the words of COI witness Ms. Elaine Fox, a born St. David’s Islander and current resident: “*It is not about restitution but recognition of the community of St. David’s. Ms. Fox also stated, “In the early 1940s, the U.S. base authorities named a road after Tommy Fox. Bermuda has done nothing to commemorate this man’s patriotism and his leadership. I ask the Commissioners and Bermuda to recognize the small sacrifice that these residents of Southside made. Tommy Fox, lost all of his property, all of it, and he was the leader of St. David’s. He should be recognized as a National Hero. A bench should be placed on the Hill as I would like to take my granddaughter to that bench and sit up on that hill and look to the east and show her through their eyes, what they saw and then look to the west and see the end result of their sacrifice. The runway, the airport when she and my other grandchildren go overseas to attend university, they are going on the sacrifice of these residents of Southside, albeit a small sacrifice.”*

## Recommendations

The COI recommends the following to protect its greatest asset, its people, from unfair dispossession of their real property and to pay tribute to those who lost their lands unfairly.

- (1) Development of a methodology that is fair from an economic, political and social aspect which is transparent and ensures all people are treated in a fair and just manner and not by intimidation, dehumanization and victimization
- (2) Protection of our lands from destruction by local or foreign entities which means placing people over profit, the natural environment over financial gain and creation of a balance to protect our most important assets: the people and the natural beauty of Bermuda.
- (3) Establishment of a St. David’s Island Museum.

<sup>194</sup> Swan, Dr. Quito. “*Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base*” (2020)., COI - Exhibit QS-1

<sup>195</sup> Swan, Dr. Quito. (2020)., Supra-No.194



- (4) Naming of Tommy “War Baby” Fox as a Bermuda National Hero and erecting a statue in his honour.
- (5) Strategic placement of a bench where the people of St. David’s Island might sit, reflect upon and discuss the proud history of the sacrifices that their ancestors made to the Governments of the United Kingdom and the U.S.A. for the maintenance of peace in the world.

## **Additional Information Relevant to the COI**

### **Black Lodges and Friendly Societies**

On 26<sup>th</sup> November, 2020, expert witness and former Bermuda College lecturer Dr. Michael Bradshaw, who holds a doctorate in education and administration, addressed the COI regarding the establishment and organization of Bermuda’s Friendly Societies. He began his presentation by stating that the Friendly Societies arose due to the initiatives of free blacks even before Emancipation in 1834 *“and immediately shepherded and buttressed the calm orchestration of those first post-slavery days when government and church and other social organs were absolutely placid/torpid.”* He explained that the masses were organized so that by their own effort they took full responsibility for advancing their capabilities and their interests as individuals and for the benefit of their local neighbourhood communities. He said that by using the dual themes of self-help and mutual help as a driver, the Friendly Societies of Bermuda have been critical and central to Bermuda’s social evolutionary path towards today’s achievements in the political, governance and social spheres as a start.”<sup>196</sup>

On 2<sup>nd</sup> December, 2020, Dr. Bradshaw again gave evidence to the COI, advising that the Friendly Societies historically provided advice, empowerment and financial assistance throughout the community, allowing the voices of the people, primarily the black community, to be freely heard. It is noted that in 1917, Mr. B.D. Talbot, chairman of the Tucker’s Town Agricultural Union,<sup>197</sup> owned 75 acres in Tucker’s town, was politically involved in his community and more than likely was a member of the Friendly Societies.

Additionally, during his appearance before the COI on 20<sup>th</sup> April, 2021, Mr. Wentworth Christopher, a former Pembroke Parish Vestry Clerk, stated:

*“In 1834, the Friendly Societies were not philanthropic organizations. They were mutual aid societies and provided benefits to their members only. Those members were obliged to pay a specified amount periodically (weekly or monthly) and would be entitled to benefit in case of illness, death or other distress. The Government made Regulations to ensure the members were not victimized. They enacted the Poor Law of 1834, which enabled it to tax the populace to provide shelter, food and tools to enable those capable of work to be employed. It is noteworthy that in*

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<sup>196</sup> COI – Exhibit MB-1

<sup>197</sup> Francis, Dr. Theodore, (2020) *“Tucker’s Town, Tourism and Captured Lands”*, COI – Exhibit TF-2

*June and October of 1850, several young children from St. Pancras Workhouse (popularized in Charles Dickens “Oliver Twist”) were shipped to Bermuda to work as house servants”.*<sup>198</sup>

*“Blacks in Bermuda were deemed to have received “the gift of emancipation”. This was acknowledged by a letter sent to the rector on Tuesday, 5<sup>th</sup> August, 1834 after a Thanksgiving Service at St. Paul’s Church, Paget on Sunday, 3<sup>rd</sup> August, 1834. The letter was signed by several members of the Coloured Friendly Union Society of the Parish of Paget. Emancipation was observed annually by the various Friendly Societies by holding services at the Parish Churches followed by dinners at their halls. The practice evolved into Cup Match, which was initiated by two of the Friendly Societies 68 years after Emancipation.”*

## **Role of Parish Vestries in the Community**

Several cases heard by the COI relied on research of Parish Vestry records regarding the registration of landownership, conveyance of land, land assessment and taxes. In some instances, it was difficult for Claimants to show landownership as records had been destroyed or were otherwise missing. Additionally, there was the occasional reference to the role of the Anglican Church in keeping those records. Consequently, the COI deemed it necessary to gain more knowledge and a better understanding of the important role and responsibilities played by the Anglican Church and its Vestries in the administration of landownership from the early 1600s. The Rt. Revd. Nicholas Dill, Bishop of Bermuda, and Mr. Wentworth Christopher, a former Pembroke Parish Vestry Clerk, provided for the COI’s consideration detailed historical overviews of Parish Vestries in Bermuda.

Mr. Christopher appeared at the COI’s Hearing on 19<sup>th</sup> April, 2021 and offered the following evidence which is provided verbatim:

*“In the earliest years of settlement our island was apportioned amongst the investors in relation to the extent of their holdings in the Bermuda Company. In each portion (or tribe, now Parish) provision was made for a parish church. The affairs of the parish church were administered by a Church Vestry. In addition to those matters that were of a religious nature, the Church Vestries also had responsibilities that were of a civic nature. Meetings were held to discuss matters, such as: garbage collection, road lighting and providing for the poor within the Parish.*

*“In the latter half of the 19<sup>th</sup> century, there was a division of responsibilities with the Church Vestries retaining their role relating to ecclesiastical (or church) matters and newly created Parish Vestries assuming a role dealing with temporal (or civic) affairs. Parish Vestries were responsible for street lighting, garbage collection, and each parish appointed one or two Overseers of the Poor (financial assistance). Some parishes established Poor Houses (subsequently used as Rest Homes) and some provided cemeteries.*

*“As an example, in the Parish of Pembroke near St. John’s Church, there are two cemeteries. The burial ground east of the Church is the Parish Cemetery administered by the Parish Council*

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<sup>198</sup> COI - Exhibit WC-1



*(successor of the Parish Vestry). The burial grounds north and south of the Church are administered by the Church Vestry Funds for the aforesaid purposes were derived by taxes levied on the assessed values of properties within the Parish. All attorneys who transferred property were required to inform the Vestry Clerk of the Parish. The value of the property was assessed by a Parish official and the consequences of that assessment were far-reaching. It was the means by which the eligibility of a voter was determined. If a person owned property in more than one parish, he/she was entitled to vote in a General Election in each of the parishes where the property was owned. On the other hand, if a person was college-educated, gainfully employed, owned shares in an economic enterprise, but did not own property at the required assessed value, that person could not vote. In addition, the Parish Vestries had the responsibility of submitting names to the Supreme Court for jury selection from amongst their property-owning taxpayers.*

*“Pembroke Parish was divided into 34 Tracts of land that ran in a North to South direction. Each Tract was divided in lots, which were numbered. When transferred, the attorney would provide the name and biographical data of the acquirer; the name of the disposer; a legal description of the property with a plot plan attached; and the Tract and lot numbers (e.g. Tract 5 lot 3). In cases where the disposer was only selling a portion of his lot, the plot would be designated Tract 5 Lot 3(B). A plan of the entire parish measuring approximately 5ft x 7ft was kept so that upon viewing the transfer notice, one can readily see where the property is located. Records included the assessment books and the Tract Book identifying the owner of each lot.*

*“The Vestries were required to have an Annual General Meeting of taxpayers at which time members of the Vestry were elected. Service on the Vestries was often an initial step for persons seeking membership in the House of Assembly.*

*“The Parish Councils Act 1971 came into effect on January 1, 1972. That Act abolished the Parish Vestries and replaced them with appointed bodies. All moveable and immovable property vested in the Parish Vestries together with any monies held by or liabilities chargeable against a Parish Vestry were thereby held by and chargeable against the Parish Council of the parish concerned. The churches, however, were supported by congregational offerings, the rental of pews and the income derived from Glebe lands. Glebe lands were transferred by an Act of the Legislature at a time when the total population was relatively sparse and unable to support the rector of the church.*

*“St. George’s was the capital, the commercial centre and had a relatively large population. Little additional support was required so there was a smaller Glebe land allotted. Hamilton and Smith’s Parishes shared a rector and their Glebe land was on the left hand side of the road leading from Tucker’s Town to the entrance of the old Castle Harbour Hotel. To this day, the area is known as Glebe Hill. Pembroke and Devonshire shared a rector. Their Glebe land stretched from the waters of the North Shore to St. Augustine’s Hill. It explains why the road which bounds the former Glebe land on its eastern side was named Glebe Road, also, why until at least 1965 the houses on the property were made of wood since the occupants were on land rented from the Church on an annual basis. They did not risk putting permanent structures thereon. These lands were purchased in 1965 by Government and vested in the Public Works Department, then subsequently to the Bermuda Housing Corporation which subsequently sold the lots to the occupying tenants.*

*“Paget and Warwick shared one rector. Their Glebe went along Chapel Road from Middle Road to Harbour Road Paget. It is where Bishop Spencer built Paget Glebe School in 1839. Southampton and Sandys shared one rector. A portion of their allotment was used by Bishop Spencer in 1839 for Southampton Glebe School (now Dalton Tucker Primary School. The balance is still owned by the Church and was leased for the proposed Morgan’s Point project.”<sup>199</sup>*

The Rt. Revd. Nicholas Dill, Bishop of Bermuda, appeared at the COI’s Hearing on 22<sup>nd</sup> April 2021 and offered the following evidence which is provided verbatim:

*“Vestries are voluntary bodies of members appointed at the Annual General Meeting (AGM) of the parishes. Historically these AGMs took place around Easter. The Vestries existed from the earliest days of settlement. In 1622, there were 5 incumbents – and each was supported by their Vestries – which acted in accordance with common practice of the Church of England. In 1627, there was an Act of Assembly to establish Vestries in each tribe – of up to 13 men – a kind of executive committee for each tribe. At that time the Vestry had a role as a kind of local government. In 1693, they took on new responsibilities – with the handover from the Company they were responsible for paying the assessment for the repair of churches, payment of salaries of Assembly, jurors, local officers (wardens, constable etc.) and could be called upon to raise funds for things like fortifications. They acted on an ad hoc basis. From the 1760’s they met more regularly – with three meetings per year. In 1793, an Act entitled “For the Better Regulation of Vestries” was approved. Civic responsibility was removed from the Vestries in 1813 & 14 – and by Act of 1867, Church Vestries dealt only with ecclesiastical affairs; parish councils were formed to deal with civic affairs.*

*“Thereafter, Vestry responsibilities were spelled out in the Church Vestry Acts of 1867, 1890, 1899 & 1901 (see Statute Law of Bermuda 1620-1952 Vol IV). Currently, their responsibilities are set out in the regulations flowing from the Church of England in Bermuda Act 1975. Prior to 1813, 14 and then 1867 Vestries could levy support for civic projects and office holders. This they did through assessments. Under the Vestry Act 1867 the Vestries constitution and powers were regularized across the Island as a body to support the work of ministry, regulate pew rents and otherwise provide the stipend for the incumbents and support for the poor. By virtue of the Church Vestries Act 1899, they became bodies corporate – with power to hold land and investments. Under the Church of England in Bermuda Act 1975, all ecclesiastical land (except Glebe Land) was vested in the Vestries of the parish as bodies corporate. ‘The Chronicles of a Colonial Church’ by Dr. Hallett explain the historic role of Vestries as ecclesiastical and also civic organizations – becoming completely ecclesiastical by 1867 (see also Statute Law of Bermuda 1620-1952). Vestries were not landowners, nor authorized to hold land until 1899. The Vestries as bodies corporate may hold property on trust. The individual members of the Vestries are not trustees in this case; the Vestry as a body corporate is the trustee. The ecclesiastical properties held by Vestry relate to the churches, halls, graveyards and rectories. Not many of the churches had deeds, but if there are any deeds they would have been kept as part of the individual parish’s records. There is no central repository of deeds. Each parish would have retained their own records. When Synod assumed role as trustee of Glebe Land and proceeds of sale, it did not receive any deeds.”<sup>200</sup>*

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<sup>199</sup> COI - Exhibit WC-1

<sup>200</sup> COI - Exhibit ND-1

## Glebe Lands

On 12<sup>th</sup> April, 2021 the COI heard evidence from Revd. Dr. Arnold Hollis, a past Canon and now Archdeacon Emeritus of the Anglican Church in Bermuda, who claimed he has been concerned about the Glebe lands in Sandys Parish for the past forty-three years. Father Hollis stated:

*“From a historical point of view, the Glebe lands of Bermuda were distributed to the parishes by the colonial government at the very early history of Bermuda. My research yielded the following information. It was in 1613, the “governor” Richard Norwood divided the island up into nine parishes, with the division consisting of each parish with a land mass of 2 miles. I don’t know if the division included St. George’s and Hamilton at that time, but with the island being considered as a land mass of 22 square miles, the nine parishes would have taken up 18 square miles with the town of St. George and the City of Hamilton being each given 2 square miles, making the total of 22 square miles.*

*“In the Anglican Church, a Glebe is land belonging to a benefice and so by default to the incumbent. At the time of the early settlement of Bermuda, the colonial government ensured that Bermuda along with the 13 colonies were given Glebe lands in each parish and these existed for the benefit of the incumbent of each parish. I often wonder at the rationale for this. So I am going to suggest to you my personal “take” on the matter. In the modus operandi of grand old English home, the sons were expected to seek competence in certain fields of endeavour such as scholarly pursuits, science, medicine and law, and the son that did not measure up was encouraged to become clergy. Being at the lowest rung of the totem pole, with the remunerations of such positions as being very small, it was considered that Glebe lands would be at their disposal to aid in their costs of living. That may well be a figment of my imagination, but it aids me in my understanding as to why Glebe lands were especially given for the benefit of clergy. When I arrived in Bermuda I was installed and inducted into the Parish of Sandys under the canon laws of the Church of England 1604. This gave to Thomas Nisbett (who preceded me in Bermuda) and myself the Freehold and Tenure and so by default the inheritors of the Glebe lands of the respective parishes. The Church was disestablished in 1975 when it became the Anglican Church of Bermuda, but until its canon laws were revised the old canon laws were still in force. The new canon law became effective as of 1980.*

*“Section 7 of the Canon Laws of the Anglican Church of Bermuda under the title – REGULATIONS OF THE SYNOD RELATING TO CHURCH LIVINGS AND GLEBE LANDS CONSOLIDATION – In this act, No 1(a). The expression Glebe lands includes all monies and investments arising from the sale of such lands or which may in the future arise from such sales. Nowhere in the act does it give any idea of the actual land mass of each Glebe. The entire act is taken up with financial concerns of the Glebe. Sub section No 4 All Glebe lands in these islands and the investment and monies resulting from the sale of Glebe lands are hereby vested in the Synod subject to the trusts, terms and provisions hereafter appearing and those already so vested are hereby confirmed subject as aforesaid. The only direct reference to any Glebe Lands can be found in Subsection 2, which reads as follows: The portion of St, George’s Parish which is situated on the main island of Bermuda and commonly called Tucker’s Town shall be included in the living of Hamilton Parish and subject thereto. For each parish in these islands there shall be separate church livings and in respect of each church living there shall be one incumbent or rector in priests orders, regularly*

*ordained in the church of England or in some church of the Anglican communion in full communion therewith.”*

*“Let me end my presentation on the Glebe lands of the Anglican Church of Bermuda by referencing to that which I note at the beginning of this presentation. I remarked about how I was distressed, and I am adding devastated over the fact that a lawyer who seemed to be the legal arm of both Mr. Terceira (Dr. Clarence Terceira former UBP MP for Works and Engineering.) and the Morgan’s Point Group was in a joint meeting with the Rectors, Wardens and Vestrymen of both parishes along with the Bishop. In the process of our talks, the lawyer boasted how he had just finished writing up the deeds for the Glebe lands that were farmed by Terceira for half of the Glebe land that was remaining between the Parishes of Sandys and Southampton. That he could be so emboldened as to make this claim in the very presence of the Bishop caused me to believe that the Bishop had foreknowledge of this action. The terminology of eminent domain came to mind. How Terceira claimed eminent domain when I had been traversing the Glebe lands many times in each year for the past 43 years. The only action taken was the Bishop having the remaining piece of land surveyed. I consider this to be violent theft in broad daylight, and an assault on me as Rector of Sandys Parish. I estimated that the land in question was worth upward of five million dollars.”*

[The response of the Rt. Revd. Nicholas Dill, Bishop of Bermuda, to the above paragraph appears on the COI Website.]

Dr. Hollis’s statement continues:

*“On 4<sup>th</sup> May, 2021 I sought help in determining where Glebe lands were located can be aided by the existing names of roads and places. E.g. Glebe Hill in Southampton and Southampton Glebe School was erected on that part of the Glebe that existed in Southampton Parish. Glebe Hill indicated that Tucker’s Town was part of the Glebe of St. George’s and Hamilton Parishes, and there is the Glebe Road in Pembroke Parish.”* <sup>201</sup>

Dr. Hollis could not confirm who had control of the Glebe lands, but he did say that his benefit from the Glebe lands was produce from the farmers. He also confirmed that Bishop Nicholas Dill was the President of the Synod and that he would have knowledge of the Glebe lands.

## **History of Land Recordation in Bermuda**

As a result of evidence provided by Rt. Revd. Nicholas Dill, Bishop of Bermuda, on 22<sup>nd</sup> April, 2021 and by Mr. Wentworth Christopher on 19<sup>th</sup> April, 2021, the COI learned that prior to 1955, record keeping of land transactions was administered by the Parish Vestries.

The COI required information regarding post-1955 record keeping of land in Bermuda, that is, after the Parish Vestries’ role in the process had ceased. In this regard, on 4<sup>th</sup> May, 2021, the COI heard the following evidence from Mrs. Debbie Reid, Land Title Registrar, Department of Land Title and Registration, Ministry of Public Works:

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<sup>201</sup> COI – Exhibit AH-1

*“Between the late 1800s and 1955,, the parish vestries kept a record of land transactions in Bermuda under the Parish Vestries Act. Each parish maintained a register of properties that were sold. The registered information included the name of the new owner, the location, acreage and the price of the land. Some parishes kept the deeds. The Land Title and Registration Department currently has these deeds, with the exception of those for Pembroke where we only have the information contained in the books. Under the Registration of Freeholders Act 1867, all owners of freehold land were recorded in the General Register of Freeholders. The Archives Department currently holds this information. We have seen records that show that the Office of the Colonial Secretary was required to keep a book of Deeds and Wills in 1800, but we are unable at this time to establish where those documents are currently. Under the Registry General (Recording of Document Act), 1955, the Registrar General assumed responsibility for maintaining a repository for deeds, known as a Deeds Registry. It was introduced to ensure that deeds held in private hands were secure. The Mortgage Register was kept to protect mortgage priority and mortgagees’ interests. The Voluntary Conveyance register was kept to impede certain types of fraud and the Alien Deed register was maintained to monitor the amount of foreign-owned land. Therefore, the Deeds Registry existed to protect specific interests and was not necessarily designed to promote land dealings or protect the purchaser and proprietors. It was not until the late 1990s that the Registrar General started keeping a full copy of all deeds. Prior to that, the Registrar General held what is known as a transfer notice or memorandum of the mortgage or voluntary conveyance, which is a synopsis of the deed with the lot plan.*

*“In 2006, the Government decided to create a Land Title Registration Department which became fully operational in 2018. Today, this Department is the custodian of the Parish Vestry and Deeds Registry records. Some land transactions that do not trigger land title registration are still being recorded under the Deeds Registry system.*

*“The reasons the Government introduced the Land Title and Registration Department are as follows:*

- 1. **Security** – Unregistered land is at a higher risk of fraud. Fraudsters can assume your identity and attempt to sell or mortgage your property without your knowledge. Registration helps you protect your property from fraud and resist any third-party applications for adverse possession, commonly referred to as “squatter’s rights”.*
- 2. **Evidence of Ownership** – Registration makes it easier to buy and sell property as the Land Registry contains all the title information necessary for conveyancing and is available to the public online. The Land Registry collates all the relevant information from the historical deeds and provides only the relevant information on the three registers which forms part of the registered title.*
- 3. **Clarity** – Registration makes it easier for conveyancers to ascertain who owns the property and what benefits and burdens are attached to the land. If the land is unregistered, the conveyancer has to review the original deeds which can be lengthy, hand-written documents that can be difficult to read and interpret. Reviewing the deeds can increase the time required to complete a transaction because the*

*conveyancer will need to wait for the deeds, check that the chain of ownership is correct, and then draft the contract.*

4. **Certainty** – Registration also provides a state-backed guarantee securing the title to the property, meaning that the state guarantees that the legal estate is vested in the registered owner.

*“Since introducing the Land Title registration system, all deed information and deeds are kept in an electronic register. Once a property is registered, the paper deed becomes superfluous.”*<sup>202</sup>

## Banking in Relation to Foreclosures

On 22<sup>nd</sup> January, 2021, Attorney Christopher Swan gave evidence before the COI in relation to various bank practices in Bermuda as some Claimants, in advancing their stories about land losses, spoke of challenges that they had experienced in dealing with local banks as they tried to save their properties. Responding to the COI Counsel’s invitation to address the COI on the subject of recovery of monies owed under mortgages, possession of land, for example, Mr. Swan opened his remarks by providing background to his career in banking. He said that he had had many years’ experience in debt collection even before proceeding to law school and that following his qualification as a lawyer, he had worked extensively in all areas of debt collection and conveyancing matters, representing both vendors and purchasers. He also informed the COI that he had worked extensively with Bermuda’s three major banks in these areas. He then presented in evidence a written submission entitled “Opinion” that he had prepared upon the invitation of the COI.

Mr. Swan’s written submission begins as follows: *“This opinion is written in relation to the Commission of Inquiry concerning land grabs in Bermuda and in relation to bank practices in regards to recovery of monies owed under mortgages in the possession of land thereunder. It is intended in general terms to include banking practices to enforce mortgages or other forms of security to secure a debt when the debt becomes delinquent and in particular when if any court order is required for sale, and whether on sale any remaining equity is returned to the borrower. Classically, banks loan monies on the security of first legal mortgages, Memorandum of Deposits of Deeds [MODs], loans and rarely promissory notes. Oftentimes a combination of these securities are associated with a single loan.”*<sup>203</sup>

Referring to aspects of his written submission, Mr. Swan stated that the first legal mortgage, a conveyance of title in a particular property or properties to the bank in return for monies borrowed, was the most secure collateralized loan that the banks offered and that the banks re-conveyed the property to the borrower once the loan and interest have been repaid. He informed the COI that an MOD was an equitable charge over property in exchange for monies loaned; he emphasized that such arrangement did not transfer legal title in the collateral property to the bank but the documents widely used by Bermuda banks contained provision that the borrower will execute a first legal mortgage over the collateralized property on demand. He added that loans supported by

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<sup>202</sup> COI – Exhibit DR-1.

<sup>203</sup> COI – Exhibit CS-1

promissory notes or unsecured loans involved enforcement of the debt owing by judgment against the debtor, followed by the issuing of a writ of execution against the property to enable its sale by auction or private treaty to recover the debt. He said that proceedings to recover debt were akin to a summary judgment hearing, but only in reference to the usually undisputed fact that monies are owed by the debtor to the bank. He said that in defence of most claims by the bank, if appropriate on the evidence, it was left for the defendant to show that there was a viable defence such that further evidence can be directed and a hearing listed.

Me. Swan deemed the following extracts from his written submission to be of particular importance in the context of the matters under consideration by the COI:

*“Mortgage recovery actions are usually commenced by an originating summons supported by an affidavit claiming possession and judgment for a specified sum. Defaults under Memorandum of Deposits of Deeds, loans and promissory notes can be commenced similarly but are often commenced by specially or generally endorsed writ of summons claiming judgment and possession.*

*“The mortgage recovery actions the bank will usually depose (are) that an amount of money was lent to the borrowers pursuant to the terms of a facility letter. As part of the security for the loan obligation, the borrowers would provide real property as collateral and perhaps an unconditional guarantee in favour of the bank in the amount borrowed supported by a mortgage in respect of property owned. The usual scenario involves the Bank making a demand in respect of the mortgage which a borrower has failed to repay together with accrued and unpaid interest and is therefore in default.*

*“The usual remedies sought are an order for sale as well as for the appointment of independent joint receivers pursuant to section 35 of the Conveyancing Act 1983. Most often borrowers that find themselves the parties of record reactions lack sufficient resources to instruct counsel to assist them properly. It is usual for their lack of knowledge and understanding of the legal process to heavily disadvantage them in response to or defending claims made against them.*

*“In my experience there are a few usual categories to which defenses to bank claims lie.*

- a) The bank provided an inaccurate and misleading picture of events in their affidavit, including the banks have not provided particulars of the alleged debt. Defendants most often do not agree with the value of the sums claimed by the bank which oftentimes include legal fees, delinquent taxes, the cost of repair of the premises. I should add something about the question of an order for sale/receivership.*
- b) That agreements were made as to writing off interest and the non-charging of penalty fees. Defendants will admit that they are in arrears of mortgage payments but that they had met with the bank who agreed to accept lesser payments (most often for a specified time period) and so long as they are consistent with that other agreement the banks should be prevented from pursuing actions against the defendants who assert that these agreements should continue.*
- c) The banks exercised undue influence, duress, coercion or threats to seize or attempt to seize the borrowers' property.*



d) *The banks have intermeddled in the sale of the borrowers' property and/or the appointment of receivers would imperil efforts to sell the borrowers' properties.*

e) *There is a relationship of trust and confidence that the banks have breached."*

Mr. Swan's written submission concludes with the statement that the bank's reasons for seeking the appointment of receivers were entirely standard, that banks asserted that the properties required management in terms of ongoing maintenance, management of the expenses and insurance and that it was not practical for the bank to manage these issues on an ongoing basis, especially where there are issues pending a sale. He writes that it was his confident view that the bank's position was usually very strong indeed and that it may be in the clients' best interests to try to settle the actions on the best possible terms prior to any court hearing. He writes: "*In terms of the actual specifics of settlement, this clearly turns upon the clients' current financial position, the valuation of the properties and the possibility of re-financing*".<sup>204</sup>

It is significant to note that on 24<sup>th</sup> July, 2020, the Hon. Walter H. Roban, JP, MP, Minister of Home Affairs, presented to the House of Assembly the report entitled "Implementing Measures to Protect Mortgage and Lending Customers", evidence that the Government recognizes the need for consumer protection to protect the community against unfair banking practices. This Government initiative was reported in *The Royal Gazette* of 25<sup>th</sup> July, 2020.

## Rule of Law

*Freedoms, like privileges, prevail or are imperiled together. You cannot harm or strive to achieve one without harming or furthering all.* – Jose Marti.

*For a colonized people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity.* – Frantz Fanon, 'The Wretched of the Earth'.

A key question before the Commission of Inquiry [COI], especially relating to Tucker's Town and St. David's, is that of the Rule of Law [RoL]. Essentially, this question comes down to whether the expropriations in these cases were legal and, if so, is it appropriate for the COI to even be reviewing lawful acts. To answer this, we must consider what is lawful, or, rather, what does the 'rule of law' mean and was the rule of law in place at these times. This chapter discusses these key questions and seeks to come to a conclusion as to whether or not the acts in question were or were not within the RoL.

## What is it?

In order to assess whether the RoL was in effect regarding the cases before the COI, especially as relates to the key cases around Tucker's Town and St. David's Island, it is important to first come to an understanding of what the RoL is. Having reached an accepted definition of the RoL, only then are we able to judge the incidents in question.

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<sup>204</sup> COI – Exhibit CS-1



The concept itself is both ancient (drawing on antecedents found in classical antiquity) and modern, gaining prominence during the 20<sup>th</sup> century.

Black's Legal Dictionary defines the RoL rather briefly as '*the predominance that is absolute of an ordinary law over every citizen regardless of that citizens power*'. This can be more generally expanded to mean that under the RoL everybody is held equally accountable under the same laws; it is a governance system contrasted by systems based on the rule of men (or power) such as tyranny, monarchy, theocracy or oligarchy, where governance, laws and the administration of justice are determined by the interests of a single person or group of people. The RoL may be considered a fundamental principle in many countries today, especially those referred to as liberal democracies.

While there is a large amount of literature concerning the concept, there are four generally agreed universal principles that underpin the RoL – and which may be used to ascertain whether the RoL existed at the relevant times in question.

The four universal principles:

**Accountability** – The government as well as the private sector are accountable under the RoL.

**Just Law** – The law is clear, publicized, stable and is applied evenly. It ensures human rights as well as contract and property rights.

**Open Government** – The processes by which the law is adopted, administered, adjudicated and enforced are accessible, fair and efficient.

**Accessible and Impartial Justice** – Justice is delivered in a timely manner by competent, ethical and independent representatives and neutrals who are accessible, have adequate resources and reflect the makeup of the communities they serve.

The concept is, naturally, a contested one, with a large amount of literature discussing it. It is, unfortunately, not possible to provide an exhaustive review of this literature in this Report. Nonetheless, the COI is satisfied that the above outline of the concept is sufficient for its purposes and would be widely accepted by most as at least a general working definition. However, it is useful to consider some main concepts of the RoL beyond the general definition considered above. In particular, we will consider concepts of the RoL associated with Dicey, Rawls, Fuller and O'Donnell; for this, Wenger (2007) provides a useful summary of the history and key schools of thought on this matter.

The following draws heavily on Wenger's succinct summaries:

### **Dicey's Concept of the RoL**

A.V. Dicey provided an early and influential attempt to define the RoL. An English Whig jurist and constitutional theorist, his *Introduction to the Study of the Law of the Constitution* (1885) set out key principles for his interpretation of the RoL. In his formulation, the RoL contains three elements:

- 1) The absolute supremacy of regular law as opposed to the influence of arbitrary power.
- 2) Equality before the law, or the equal subjection of all classes [including government officials] to the ordinary law.
- 3) The law of the Constitution, being the consequence of the rights of individuals, a result of the ordinary law of the land.

The Dician concept of the RoL is one that is focused on procedural matters – as long as laws are properly passed and executed on a procedural basis, they meet the criteria of this concept of the RoL.

### **Rawls's Concept of the RoL**

John Rawls, a prominent American political philosopher within the liberal tradition, insisted that a key aspect of the RoL is that of justice as fairness. Essentially, the RoL must be '*the regular, impartial, and in this sense fair*' administration of public rules. For Rawls, there are five requirements that the RoL must meet:

1. The Requirement that Compliance be Possible – Essentially, the legal system should reflect the precept that ought implies can:
  - a. The actions which the rules of law require and forbid should be of a kind which persons can reasonably be expected to do and to avoid.
  - b. Those who enact the laws and issue legal orders should do so in good faith, in the sense that they believe 'a' with respect to the laws and orders they promulgate.
  - c. A legal system should recognize impossibility of performance as a defence, or at least a mitigating circumstance.
2. The Requirement of Regularity – The legal system should reflect the precept that similar cases should be treated similarly.
  - a. Judges must justify the distinctions they make between persons by reference to the relevant legal rules and principles.
  - b. The requirement of consistency should hold for the interpretation of all rules.
3. The Requirement of Publicity – The legal system should reflect the precept that the laws should be public.
  - a. The laws should be known and expressly promulgated.
  - b. The meaning of the laws should be clearly defined.
4. The Requirement of Generality – Statutes and other legal rules should be general in statement and should not be aimed at particular individuals.
5. The Requirement of Due Process – The legal system should provide fair and orderly procedures for the determination of cases.

- a. A legal system ought to make provision for orderly and public trials and hearings.
- b. A legal system ought to contain rules of evidence that guarantee rational procedures of inquiry.
- c. A legal system ought to provide a process reasonably designed to ascertain the truth.
- d. Judges should be independent and impartial, and no person should judge their own case.

While much of the above may be seen as procedural in nature, similar to that of Dicey, Rawls's theory of justice is actually broader than these procedural protections alone – they all link to his expansive conception of justice as fairness. As such, something may be within the procedural criteria of Rawls's RoL, but violate Rawlsian ideas of liberty and justice as fairness and thus not meet the Rawlsian conception of the RoL.

### **Fuller's Concept of the RoL**

Lon Fuller was an American legal philosopher who was critical of legal positivism. Central to Fuller's concept of the RoL was his linking it to morality, arguing that the RoL cannot be based solely on positive rules but instead must be linked to an 'inner morality'. In general, the Fullerian concept of the RoL may be said to have two components – procedural protections and an underlying broad morality.

The procedural protections required under the Fullerian concept of the RoL include that the laws must be:

2. Generally applicable.
3. Promulgated to the public.
4. Non-retroactive.
5. Understandable.
6. Internally consistent.
7. Possible to be performed.
8. Constant through time.
9. Linked to official action.

These, for Fuller, are not enough to prevent the abuse of the RoL deteriorating into the rule of men. Only an underlying broad morality can prevent the use of oppressive tools allowing governments to undermine public faith in the link between law and morality – “*not that of giving the citizen rules by which to shape his conduct, but to frighten him into impotence*”.

Like the Rawlsian concept of the RoL, something may well meet the procedural criteria of Fuller's concept of the RoL, but it would also have to meet the broader underlying morality aspect. Under a government where oppression is used to frighten some citizens into impotence, the RoL cannot be said to exist under Fuller's concept. It is worth quoting here a passage from Fuller's main work:

*“To me there is nothing shocking in saying that a dictatorship which clothes itself with a tinsel of legal form can so far depart from the morality of order, from the inner morality of law itself, that it ceases to be a legal system. When a system calling itself law is predicated upon a general*

*disregard by judges of the terms of the laws they purpose to enforce, when this system habitually cures its legal irregularities, even the grossest, by retroactive statutes, when it has only to resort to forays of terror in the streets, which no one dares challenge, in order to escape even those scant restraints imposed by the pretence of legality – when all these things have become true of a dictatorship, it is not hard for me, at least, to deny to it the name of law.” – ‘The Morality of Law’, p.660.*

### **O’Donnell’s Concept of the RoL**

Guillermo O’Donnell was an Argentinian political scientist who argued for a concept of the RoL that is linked to democratic ideals. In particular, he argued that the RoL “*ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power.*” For O’Donnell, the concepts of the RoL and liberal democracy were inseparable. Under the O’Donnellian conception of the RoL, where a class of people are deprived of civil rights and excluded from the political process automatically means that, irrespective of procedural processes, the RoL cannot be said to exist.

The key work in which O’Donnell fleshes out his democratic concept of the RoL is O’Donnell (2004) and it is worth exploring his argument in full. The following draws on this paper accordingly.

O’Donnell makes a useful distinction between the RoL and ‘being ruled by law’, stressing that if the application of the law is “*invidiously discriminatory or violates basic rights*” or involves “*the selective use of a law against some, even as privileged sectors are enjoying arbitrary exemptions*” then it is not the RoL but being ruled by law. He argues that the former situation entails the violation of moral standards, while the latter entails the violation of the principle of fairness – “*that like cases be treated alike*”.

Building on this, he adopts from the legal scholar Joseph Raz eight characteristics of laws that he considers to be a necessary condition for the RoL:

- All laws should be prospective, open and clear.
- Laws should be relatively stable.
- The making of particular laws must be guided by open, stable, clear and general rules.
- The independence of the judiciary must be guaranteed.
- The principles of natural justice must be observed (i.e. open and fair hearing and absence of bias).
- The courts should have review powers to ensure conformity to the rule of law.
- The courts should be easily accessible.
- The discretion of crime preventing agencies should not be allowed to pervert the law.

Of these, he particularly stresses that “*the stewards of the law must hold themselves ready to support and expand*” democracy. Points 5, 7 and 8 are of crucial importance for O’Donnell’s conception of the RoL, with respect to their lacking leading to “*the denial of redress to many of the poor and vulnerable*” and “*the impunity enjoyed by police and other (so-called) security agencies, as well as violence perpetuated by private agents who often take advantage of police forces and courts that are culpably indifferent toward or even complicit in such unjust acts.*”

From this, O’Donnell comes to conclude that:

*“...the rule of law – or estado de derecho – should be conceived not only as a generic characteristic of the legal system and the performance of the courts, but also, and mostly, as the legally based rule of a democratic state. This entails that there exists a legal system that is itself democratic, in three senses: 1) It upholds the political rights, freedoms, and guarantees of a democratic regime; 2) it upholds the civil rights of the whole population; and 3) it establishes networks of responsibility and accountability which entail that all public and private agents, including the highest state officials, are subject to appropriate, legally established controls on the lawfulness of their acts.”*

While there are more aspects to O’Donnell’s argument than can be addressed here, a key component of the RoL in his argument is the existence of civil and human rights, in effect arguing that the RoL cannot be said to exist where these are absent or violated, inclusive of discrimination on the basis of race.

## **Conclusion**

Having considered the above conceptions of the RoL, the COI considers the RoL as requiring all the above aspects with a particular emphasis on the need for equality before the law and the respect of civil and human rights as integral to it. Ultimately, the COI adopts the conception of the RoL put forward by O’Donnell, in as much as he builds upon and includes those outlined in Dicey, Rawls and Fuller.

The question that the COI was compelled to address is whether the Bermuda of 1920 and 1940 could be said to meet the criteria of the RoL as set out above. For this, it is necessary to provide a summary sketch of the Bermudian State at those times.

## **Bermudian State in 1920 and 1940**

It is outside the scope of this Report to delve in-depth into the nature of the Bermudian State during the 1920s and the 1940s; this Report seeks only to provide an overview as a result. There are various Bermudian history books which provide a fuller account of these times, namely Brown (2011), Philip (2003), Jones (2004) and Manning (1978).

The key aspects of the Bermudian State in both 1920 and 1940 were that of formal racial segregation and the existence of a land qualification for voting to elect Members of the Colonial Parliament.

Formal racial segregation in Bermuda is generally accepted to have come to an end in 1971 following the commencement of the Education Act 1971 which made it illegal for any school (public or private) to base admission on race. However, the process of desegregation in Bermuda spans about two decades, with formal steps towards dismantling legal segregation largely dating to the 1959 Theatre Boycott. While there were previous protests against Bermuda’s segregationist policies (the 1952 Front Street protest being seen as a forerunner of the 1959 protests and petitions by Dr. E.F. Gordon in the 1940s, as well as earlier actions, for example), there is no question that the Bermuda of 1920 and 1940 was a Bermuda which enforced segregationist laws and policies.

Indeed, the historian expert witnesses to the COI, Dr. Theodore Francis and Dr. Quito Swan, both speak to the racial nature of the Bermudian State in these time-periods. Dr. Francis, for example, highlights the racial research conducted at the then Bermuda Biological Station and the general history of segregation and racial views of the white oligarchs in the 1920s. Dr. Swan, writing of the 1940s, provides additional detail concerning racial attitudes in the 1930s and 1940s, including towards the inhabitants of St. David's Island (see p.9 of his report) and what he terms Bermuda's 'alliance with Hitlerism' during the 1930s (see p.20 of his report).

With respect to the issue of land qualification for voting, it is an accepted fact that this originates from the 1834 Act to Abolish Slavery. In an attempt to deny the vote to the newly emancipated slaves and prevent them from being elected to the House of Assembly, Parliament in 1834 passed an Act to fix qualifications for jurors, voters, electors and candidates, effectively doubling the voting property qualifications that were in place prior to Emancipation. While this Act disenfranchised segments of the white population, its primary goal and effect were to disenfranchise the majority of the newly emancipated black population, both from participating in elections and from trials. As Brown (2011) notes:

*"The ruling class justified this by claiming that most blacks lacked sufficient education, were not suited for civic responsibility, and that to enfranchise them immediately would only create social disruption. The most appropriate course to take, they argued, was to gradually groom blacks until they had reached an 'acceptable' level of political maturity. Only then can they be entrusted with the vote."*

Key steps towards realizing universal suffrage began in approximately 1963 with the passing of the Parliamentary Election Act 1963. This Act removed the requirement for owning property to qualify for the franchise. However, this Act also increased the voting age from 21 to 25 and provided landowners with a second vote, thus maintaining aspects of the property vote and ensuring unequal voting power for whites. This 'plus' vote was subsequently ended by a 1966 amendment which also returned the voting age to 21. This was, however, followed by the creation of 20 electoral districts in 1967 in advance of the 1968 General Election with the explicit purpose of making '*the white vote more significant than it might otherwise have been*' – an action that an earlier Select Committee has previously condemned as gerrymandering. The year 1967 also saw the passing in the British Parliament of the Bermuda Constitution Act 1967, creating the Bermuda Constitution Order 1968.

Key further developments relevant to this section are the passing of the Race Relations Council Act in 1970 and the Human Rights Act in 1981. Also of note is that in 1989 there was a change in policy of the Bermuda Immigration Act 1956 which had previously been used to provide the discretionary granting of Bermudian status to mainly white immigrants. It was not until 2003 with the passing of the Bermuda Constitution (Amendment) Order 2003 that the electoral district system created in 1967 was replaced by single-seat constituencies, ending the racial gerrymandering of electoral districts.

Ultimately, it can be concluded that pre-1971, the Bermudian State was one based on formal segregation and formal disenfranchisement of the black population. The Bermuda of both 1920 and 1940 was one that was founded on formal racial inequality enforced by the State.

More directly regarding the expropriation of land in Tucker's Town, there are a number of issues of concern as relates to the RoL and whether it was in place. Key matters are:

- 1) The role of conflicts of interest between Government officials. For example, one reason the Trade Development Board encouraged Furness Withy Company to consider the Tucker's Town area was because one of the members of the Trade Development Board, Mr. F. Goodwin Gosling, was a landholder there. Furthermore, as early as 2019, Mr. F. Goodwin Gosling and the chair of the Trade Development Board, Mr. S. Stanley Spurling, were acting as agents for Furness Withy. Mr. S. Stanley Spurling was also a Member of the Colonial Parliament and was responsible for shepherding the incorporation of the Bermuda Development Company through Parliament. Following the incorporation of the Bermuda Development Company (BDC), both Mr. S. Spurling and Mr. F. Goodwin Gosling become Directors of the company. Indeed, Mr. F. Goodwin Gosling, the former Colonial Secretary, Clerk of the Executive Council and member of the Trade Development Board, resigned his posts and became the BDC Secretary and Board member. Mr. S. Spurling, a Member of the Colonial Parliament representing the area, sat on the Executive Council, the Board of Agriculture, the Board of Public Works, was the Chair of the Trade Development Board, a Councillor for the Town of St. George's, sat on the Board of Directors for the Bank of Bermuda and was the managing director of the then Bermuda Electric Light and Traction Company (the forerunner of BELCO), he therefore stood to profit from the expansion of the electric grid) and subsequently became a member of BDC's Board.
- 2) The lack of political power of residents in Tucker's Town is worth noting as well. While a petition in protest was read in Parliament, the political representative for the area, Mr. S. Spurling, chose not to read it on behalf of his constituents, leaving it to be read by a representative from Smith's Parish, Mr. T.H. Outerbridge. The Colonial Parliament effectively ignored the petition, giving it a simple perfunctory hearing. It is worth noting that in addition to the post-Emancipation changes to the franchise, doubling the property threshold for eligibility for the explicit reason of disenfranchising blacks, the evaluation of property for attaining the franchise remained in the control of the white elite who are understood to have systematically undervalued black properties as part of maintaining the white oligarchic power structure that was implemented post-Emancipation; as such, many black landowners in the area literally lacked political power of any kind.
- 3) The composition of the Commissioners presiding over the compulsory purchasing was problematic in that it was drawn from the Smith's, Hamilton and St. George's Parish Registers of Jurors. These Registers were informed by the same post-Emancipation Act that sought to disenfranchise the newly emancipated blacks and, indeed, the subsequent Commission was composed of three white men, Mr. Reginald Appleby, Mr. Charles E. Astwood and Mr. Jeremiah Scott Pearman. Of these, Mr. Appleby was a police magistrate and the brother-in-law of Mr. Gosling, referred to previously; the other two Commissioners were both lawyers and Members of the Colonial Parliament. In terms of assessing the property of black landowners, one must consider the conflicts of interest as well as the existing racial power structure in existence in terms of the power dynamics involved.



In looking at the case of St. David's it is important to consider the following aspects as they relate to the RoL:

- 1) The ongoing challenge of the post-Emancipation disenfranchisement of blacks is clearly evident here in that, while blacks had increasingly accumulated wealth to qualify as registered voters, the racial inequality remained stark. For instance, Swan (2020) notes that in the electoral parish that included St. David's Island, there were 177 registered white voters and 167 registered black voters – however, the white population totaled 805 people while the black population totaled 1,860, meaning the black population had less than half the voting power of the white population in that time. As a result of this, the Members of the Colonial Parliament for this Parish were four white men, including Mr. S. Spurling who was involved in the Tucker's Town matter.
- 2) The decision-making process at this time was largely an informal one, outside the formal corridors of power, leading to a lack of transparency, accountability and representation. Swan (2020) discusses in several places the challenges this posed, with he appointed Committee avoiding formal meetings with the U.S. representatives, instead preferring informal meetings and social events. To quote Swan (2020): *"St. David's was chosen as the site for the base via covert discussions and debates between the U.S. Military, British Colonial Officials and Bermuda's white elite. These discussions largely took place behind closed doors and were not part of a public discourse. In fact, the Bermudian and British Governments sought to keep the talks as secret as possible. By and large the residents of St. David's were not consulted on the decision and they had no representation on the 'Bermuda Committee'. Through formal and informal discussions at official meetings and segregated social events, the Bermuda Committee spoke on behalf of the desires of Bermuda's oligarchy and placed tourism, weekend yachting jaunts and part-time leisure over the daily livelihoods of St. David's Islanders, who had no representation at these meetings. This was unfair, and certainly irregular."*
- 3) Conflicts of interest were also involved in this matter, primarily in terms of the preferred central location identified by the U.S.. on the basis of military analysis, threatening the commercial and property interests of the white oligarchy, including those on the Committee. Indeed, the selection of St. David's was suggested by this Committee in order to protect their interests in the central area without consulting the residents of St. David's Island, a population who were largely outside the power structure on account of their racial composition and lack of wealth (and thus access to power).
- 4) Discriminatory evaluation practices also appear to be at play in this matter. This can be seen in both the composition of the evaluating Committee, the notes taken by them in reference to St. David's Islanders and the nature of the evaluation process itself. The five members of the St. David's Island Committee Board of Arbitrators, appointed by the Governor, were also all white men from the local oligarchy. Many of the notes of this Committee remain, compiled as a document 'Notes on St. David's Islanders'. While these notes covered both white and black St. David's Islanders, it *"included racist and sexist descriptions of the physical attributes of the interviewees"*. In terms of the actual evaluation of properties, the Committee spent a total of four days on this. Of these four days, one day

was spent evaluating two properties, two days were spent evaluating 35 properties and one day was spent evaluating 77 properties. In relation to this, Dr. Swan noted the racial geography of St. David's (touched on in his report on p.7) and that the 37 properties evaluated over the first three days were largely, if not completely, white-owned properties, while the 77 properties evaluated on the final day were largely, if not completely, black-owned properties.

### **Was the RoL in place in 1920 and 1940?**

Having now provided an overview of the Bermudian State in 1920 and 1940, with particular regard to certain aspects of the 1920 (Tucker's Town) and 1940 (St. David's Island) expropriations, it is now possible to consider whether the RoL was in place at those times.

The short answer is no. Or, at least, the RoL was compromised and breached significantly, both in terms of the general governance of Bermuda and in particular regarding Tucker's Town and St. David's Island.

On a general point, the RoL cannot be said to exist in a state of formal segregation and racial discrimination, including one that explicitly sought to disenfranchise a significant number, if not the majority, of the population on the basis of race. Arguably, it can be said that the journey to establishing the RoL in Bermuda was only completed (to a sufficient degree) with the 2003 creation of single-seat constituencies. At the very least, Bermuda did not approach a state of being governed by the RoL until the formal end of segregation in 1971.

As McIntosh (2002) notes *"the abolition of slavery would have constituted the critical starting point, or at least set the stage, for the development of a new trend in colonial government in the West India colonies., which, over a century later, culminated in political dependence and the full restoration of civil status to all the inhabitants of the Archipelago."* Indeed, the 1834 Act to Abolish Slavery set the stage for the evolution of the Bermudian polity to one that, well over a century later, can be said to be under the RoL, but which was not under the RoL in 1920 or 1940.

Indeed, the Bermudian State in 1920 and even as late as 1940 may best be described in what may be called the Marxist-Leninist conception of the State, which Jessop describes as treating the state *"as an essentially repressive instrument whose control enables the economically dependent class to exercise its dictatorship over subordinate classes."*<sup>205</sup> The Bermudian State was, at least prior to the 1968 Constitution, one that largely fit this description – it was a racist regime ruled by law, but not a regime that had the RoL to draw on O'Donnell's terminology.

It is not enough that there was legislation to enact the expropriations of 1920 and 1940, nor is it enough that the legislation in question set forward a clear method for these expropriations to be done. The legislation in question was predicated on racial power relations, themselves the result of racist legislation dating to 1834 (and drawing on even more historical legislation from pre-Emancipation) that contributed to their being outside the RoL as defined previously. The same, of course, can be said the issue of slavery, which itself would then be seen as being outside of the

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<sup>205</sup> Jessop, B. (1996) *State Theory - Putting the Capitalist State in its Place*. Polity Press, UK

RoL. Indeed, it is worth quoting Wenger (2007) on this: “...slavery itself, the greatest breach in the Rule of Law, was simply replaced by a system of lesser breaches: Jim Crow, peonage, legalized discrimination, Black disenfranchisement, and so forth.”

## **Healing the Breach of the RoL**

We are thus confronted with the realization that the acts of 1920 and 1940 were at best a breach of the RoL and, at worst, outside the RoL. Having come to this conclusion, the COI is naturally faced with the question of ‘what now?’

The COI considers it is not enough to simply state that there was a breach of the RoL and consider it something ‘of the past’ about which we should no longer be concerned. As Wenger (2007) notes, in discussing the issue of the RoL breach beginning with slavery, there are consequences to breaches of the RoL which cannot be waved away so simply: “*The consequences of the breached Rule of Law – resentment, distrust of law, a perception that law is beholden only to power – will continue to negatively impact society and undermine faith in the Rule of Law.*” Rather, Bermuda must take steps to repair and heal this breach of the RoL

To this effect, and drawing on the arguments put forward by Wenger (2007), the COI recommends the following:

- That the Government formally apologizes for the absence or the breach of the RoL that existed at this time and animated the expropriations in question. An apology is a first step for collective healing for breaches of the RoL
- The Government should formally initiate work on reparations – while the COI can only speak regarding the expropriation of property occurring through breaches of the RoL, the COI acknowledges that other breaches of the RoL such as slavery and segregation also warrant healing. As such, the Government should consider a wider remit for this work on reparations and include those other breaches of the RoL as part of such work. The formal apology recommended above is only effective in healing a breach of the RoL if it is made meaningful through acts that demonstrates seriousness and sincerity. It is the opinion of this COI that reparations are one such act that must accompany any formal apology. The COI also acknowledges that the breach of the RoL from these acts has potential long-term consequences for our society – such as resentment, distrust of law and the State and a perception that the law is beholden only to power. It is only by taking steps to atone for these past breaches of the RoL that these consequences can begin to heal. Reparations, essentially, serve as a concrete act of social atonement rather than vengeance. The exact nature of how such reparations should take form is, however, outside the remit of this COI. The COI solely recommends that this process be initiated and that, done properly, it could serve as collective atonement and healing which will benefit all of Bermuda. Importantly, the COI concludes that reparations are within the RoL and, indeed, are necessary for healing breaches of the RoL.
- In addition to the issue of reparations, the COI considers that while it has served a role in approximating aspects of a Truth and Reconciliation Commission, the remit before it was

too narrow to serve this purpose for Bermuda as a whole properly. There is much more to Bermuda's history, especially regarding segregation and the operations of U.S. Military Bases from 1945 to 1995 that is deserving of fuller treatment. To that end the COI recommends the setting up of a Truth and Reconciliation Committee with the remit of exploring issues relating to segregation, race and the U.S. military presence in Bermuda from 1945 to 1995.

- The Government should ensure that the history of the Tucker's Town expropriation is memorialized suitably through both ensuring its inclusion in Bermudian history curriculum and in a suitable physical monument, ideally located in Tucker's Town.
- The Government should ensure that the history of the St. David's Island expropriation is memorialized suitably through both ensuring its inclusion in Bermudian history curriculum and in a suitable physical monument, located ideally at the entrance to St. David's Island, and relevant signage with historical photos and information at key locations throughout Southside.
- As part of the repair for the breach of the RoL, the Government should take steps to ameliorate disparities in access to power – in this sense, in terms of the provision of Legal Aid relating to property disputes. The COI thus recommends that the Government conducts a review of Legal Aid and ensures that it is available to qualified persons involved in property disputes, at least regarding expropriations.

# SUMMARY OF CLAIMS

The circumstances which gave rise to the establishment of this Commission of Inquiry [COI] are well known. The Terms of Reference as set out in the Instrument of Appointment required the COI to investigate not only historical land losses in Tucker's Town and St David's Island, but also to examine the wrongs done to Bermudian citizens and whether these could have had redress in the Courts. The COI was charged with investigating historical land losses that came about as a result of corrupt practices that were endemic in the legal and political culture of Bermuda. It was recognized that "equality before the law" was not equal for all and, indeed, absent in some form of regime for contingency legislation, the mere cost of going to court operated as an insurmountable obstacle to some citizens.

## COI's Terms of Reference

1. To inquire into historic losses of citizens' property in Bermuda through theft of property, dispossession of property, adverse possession claims and/or such other unlawful or irregular means by which land was lost in Bermuda;
2. To collect and collate any and all evidence and information available relating to the nature and extent of such historic losses of citizens' property;
3. To prepare a list of all land to which such historic losses relate;
4. To identify any persons, whether individuals or bodies corporate, responsible for such historic losses of citizens' property; and
5. To refer, as appropriate, matters to the Director of Public Prosecutions for such further action as may be determined necessary by that Office.

The COI has been asked to examine in the context of particular cases systemic issues that led to the wrongs identified in paragraph 1 of the Terms of Reference.

Cases filed before the COI were examined and a determination made in each case as to whether the case represented an instance of a historical loss of land by the Claimant, a citizen of Bermuda, through theft or dispossession of property, adverse possession claims or other unlawful or irregular means by which land was lost in Bermuda.

The first substantive COI meeting was held on 8<sup>th</sup> May, 2020, nearly seven months after the COI was appointed because of COVID- 19 regulations that were in place. Arrangements were made for then Counsel, Ivan Whitehall, QC, to join the COI Hearings by Zoom while the witnesses appeared in person.

The COI convened for First Series of Hearings on 8<sup>th</sup> September, 2020 and adjourned that same day.

Second Series of Hearings: 19<sup>th</sup> - 30<sup>th</sup> October, 2020

Third Series of Hearings: 18<sup>th</sup> November, 2020 – 4<sup>th</sup> December, 2020

Fourth Series of Hearings: 14<sup>th</sup> January, 2021 – 8<sup>th</sup> February, 2021

Fifth Series of Hearings: 15<sup>th</sup> March, 2021 – 28<sup>th</sup> April, 2021

The COI reconvened publicly via video conferencing software on 12<sup>th</sup> and 19<sup>th</sup> May, 2021 to hear two matters where extraordinary circumstances had prevented the parties from attending during the Fifth Series of Hearings.

From April through July 2021, the COI met with numerous experts for assistance in clarifying outstanding queries and giving historical context to practices that might have occurred in the past.

The COI adhered to all COVID- 19 restrictions in place. Arrangements were made to accommodate those who could not appear in person, including but not limited the Commissioners themselves. Video conferencing software was used throughout all COI Hearings.

The COI received a total of 53 Claims: 18 were heard, 15 were denied, 10 were withdrawn and 10 were closed by Commissioners for jurisdiction reasons.

**Table below shows in numerical order the status of all Claims received by the COI**

**Colour Code:**

Claim Withdrawn

Claim Heard

Claim Closed

Information insufficient

Claim #	Claimant's Name	Given Standing	Result	Reason
001	PARRIS	Yes	Claim heard	-
002	DUNKLEY	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
003	SANTUCCI	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
004	PAYNTER	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
005	GILBERT	Yes	Claim closed	After investigation, Claims were found not to be supported

006	GILBERT	No	Information insufficient	No jurisdiction
007	GILBERT	No	Information insufficient	No jurisdiction
008	GILBERT	No	Information insufficient	No jurisdiction
009	BUTZ	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
010	BRISTOL	No	Information insufficient	No jurisdiction
011	BEARDWOOD	No	Information insufficient	No jurisdiction
012	ROSE	No	Information insufficient	No jurisdiction
013	SIMPSON	Yes	Claim heard	-
014	CLARKE	Yes	Claim heard	-
015	BROWN	Yes	Claim heard	-
016	LIGHTBOURNE	Yes	Claim heard	-
017	G. ROBINSON	Yes	Claim heard	-
018	SWAN	Yes	Claim closed	Lack of communication from Claimant
019	HILL	No	Information insufficient	No jurisdiction
020	DAVIS	No	Information insufficient	No jurisdiction
021	DAVIS	No	Information nonexistent	No jurisdiction
022	DAVIS	Yes	Claim closed	-
023	D. ROBINSON	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
024	FRANCO	Yes	Claim heard	-
025	MOORE	Yes	Claim heard	-
026	K. SMITH	Yes	Withdrawn	Claimant withdrew Claim without offering a reason
027	R. SMITH	Yes	Claim closed	Lack of communication from Claimant

028	BURROWS	No	Information nonexistent	No jurisdiction
029	TALBOT	Yes	Combined with Claim 042	-
030	GL. ROBINSON	Yes	Claim closed	After investigation, Claims were found not to be supported
031	WARREN	Yes	Claim heard	-
032	JU. ROBINSON	Yes	Claim closed	Lack of communication from Claimant
033	GL. ROBINSON	Yes	Claim closed	Lack of communication from Claimant
034	ADAMS-TALBOT	Yes	Claim heard	-
035	MOULDER	Yes	Claim heard	-
036	STEPHENSON	Yes	Withdrawn	Claimant withdrew Claim because of personal reasons
037	J.W. ROBINSON	Yes	Claim heard	-
038	BAILEY	No	Information insufficient	No jurisdiction
039	TEART-DARRELL	Yes	Claim heard	-
040	M. DARRELL	Yes	Claim closed	Lack of communication from Claimant
041	ROBINSON-DOUGLAS	Yes	Withdrawn	Claimant requested that the Claim be withdrawn without offering a reason
042 (&029)	V.P. TALBOT	Yes	Claim heard	-
043	RICHARDS	Yes	Withdrawn	After investigation, Claim was withdrawn because of insufficient evidence
044	JERVIS	Yes	Claim heard	-
045	PRINGLE	No	Information insufficient	No jurisdiction
046	CHENTOUF	Yes	Claim heard	-



047	DOWLING	Yes	Claim closed	Lack of communication from Claimant
048	WHYMAN	Yes	Claim closed	After investigation, Claim was found not to be supported
049	HARLOW	Yes	Claim heard	-
050	MALLORY	No	Information insufficient	No jurisdiction
051	DAVIS	No	Information insufficient	Alleged Claims submitted by another Claimant
052	PIPER	Yes	Withdrawn	Claimant declined an in camera evidentiary hearing
053	DURHAM	No	-	Claimant submitted Claim after application deadline

# Case 001 – Matter of James Parris

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## Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell

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## Introduction

This case involves a dispute over the ownership of a dock in Devonshire Parish adjoining a property known as Salt Haven, Lot B. It was brought to the attention of the COI by a fisher, Mr. James Parris (“Mr. Parris”), who stated that the dock was a public dock and that he and other fishers traditionally had access to the dock for fishing purposes, notably docking their boats. According to Mr. Parris, on the purchase of the Salt Haven property, the new owners sought to claim ownership of the dock through the erection of private property signs and preventing the fishers access to the dock.

It is noted that the key aspect of this case, the purchase of the Salt Haven property and subsequent erection of the private property signs and restriction of access for the fishers, dates to 2009. The COI considered whether this claim fit its remit in terms of whether it constituted a historical case. Ultimately, the COI decided that while the case may not be strictly within the definition of historical, it would hear the case and the issues around it on the basis that it might provide an illustrative example of similar, but clearly historical, cases that may not have otherwise been presented to the COI for various reasons.

The COI’s Investigator for this case was Ms. Judith Chambers.

## Summary of Facts

There are 11 pieces of evidence for this case. Each is considered and discussed below.

It should be noted that although marked as different Exhibits, **CA-2** and **CA-3** consist of a single document while **CA-4** through to **CA-11** also consist of a single document.

**CA-1** – This evidence constitutes a statement by Mr. Parris. It consists of a one-page document, dated 20<sup>th</sup> May, 2020 and signed by the witness. It can be summarized as stating:

- Mr. Parris is a fisher who has two registered moorings with the Government at Devonshire Dock, adjacent to the Salt Haven property. He pays \$181 per mooring annually, \$362 per year in total.

- The owner of Salt Haven has claimed the western portion of Devonshire Dock as her property and not a public dock.
- The owner has erected private property signs on the western portion of the dock.
- The owner has prevented Mr. Parris and others from accessing their moorings from the western portion of the dock. These moorings have been inaccessible for several years.
- The owner has prevented emergency access to the western portion of the dock, despite being advised by the Police to ensure such access.
- There is a life ring on the western portion of the dock, erected by the Government, which would not have been placed on a private dock.
- The previous owner of Salt Haven claims to have confirmed that the western portion of the dock was not included in the sale to the current owner.
- Mr. Parris is primarily concerned about accessing his moorings; however, he also believes access to the western portion of the dock is a matter of public interest.

**CA-2** – A single page document dated 20<sup>th</sup> May, 2020. It appears to be a summary version of the case prepared by the COI's Investigator. However, it is unsigned by either the witness or Investigator. It is summarized below:

- It notes that Mr. Parris pays for moorings at the western portion of Devonshire Dock adjacent to the Salt Haven property. The annual payment is stated as \$176.
- The owner of the Salt Haven property has claimed that the western portion of the dock is her private property and not a public dock.
- The owner of Salt Haven property has subsequently prevented access to the western portion of the dock, including the moorings paid for annually by Mr. Parris.
- As part of this alleged restricted access to the western portion of the dock and moorings, the owner of the Salt Haven property has secured a boat to the dock in question. The boat remains docked indefinitely and, in so doing, prevents access to the moorings paid for by Mr. Parris. As a result, Mr. Parris has been unable to access his moorings for several years.
- Other unnamed persons also have been prevented from accessing their moorings on the western portion of the dock because of the actions of the Salt Haven property owner.
- Mr. Parris has been in communication with the previous owner of the Salt Haven property who, according to Mr. Parris, stated that this previous owner has confirmed to him that the dock in question was not included in the sale of the property to the current owner.
- Mr. Parris is primarily interested in accessing his moorings. However, he also believes the case is of public interest generally.

**CA-3** – This consists of three pages: (a) a schedule, dated 3<sup>rd</sup> March, 1977, describing the Salt Haven properties Lot A and Lot B; (b) a plan of land by surveyor J. Godet, dated 31<sup>st</sup> December 1976, including the Salt Haven properties lots, as described in the previous schedule; and (c) a receipt for \$18 from the Ministry of Public Works, including a business card for Senior Estates Surveyor Sudell Joseph. It is understood, as described in the Investigator’s report, **CA-5**, p.1, that this receipt is for photocopies of (a) and (b).

- It is understood that the schedule (a) and the plan (b) are to be read together. The receipt (c) appears to refer to the acquisition of (a) and (b) from the Ministry of Public Works.
- The schedule (a) provides a clear description of the Salt Haven property, with Lot B describing the Salt Haven property adjacent to the dock. Lot B is described as having an easterly border with a right of way to ‘the Public Wharf at Devonshire Dock’.
- The plan (b) clearly demarcates the property border of Salt Haven Lot B, with the border being at the wall marking the right-of-way and the Public Wharf. Lot B is outlined red/purple on this plan.

**CA-4** – The cover page of the Investigator’s report marked as its own piece of evidence on the basis of the photo on the cover page. This photo is of a sign erected on the wall of the western portion of Devonshire Dock reading ‘Salt Haven Private Dock’ in white letters on a red background, and, below, ‘No Trespassing’ in black letters on a white background.

**CA-5** – Seven pages in total and the main body of the Investigator’s report. It includes the subsections (i) Table of Contents; (ii) Introduction and Summary of Claim; (iii) Further Information Received from Mr. Parris; (iv) Research Conducted and Evidence Gathered; and (v) Conclusion. Key points of note from this report are:

- Mr. Parris has refused to meet with the Investigator at Devonshire Dock or the COI office. The reason given is that Mr. Parris is concerned for his safety and wishes to have as minimal a role in the process as possible. His concerns for his safety appear to stem from fears of intimidation or damage to property from persons unknown.
- The boat that was moored at the western portion of the dock preventing access to the moorings owned by Mr. Parris and others was ‘burned’ on 2<sup>nd</sup> August, 2020; Mr. Parris cited this as partly why he elected to have a minimal role in the COI process subsequent to his initiating the case. It is important to stress that this boat is not owned by Mr. Parris, but was allegedly berthed there by the owners of Salt Haven.
- Mr. Parris has spoken with both the Land Title Registry and Mr. Stephen Conway of the Department of Public Lands and Buildings. Mr. Conway, who was not called as a witness, advised Mr. Parris that the western portion in question was, indeed, a public dock.
- Mr. Parris notes that he has been told that the current owner is in possession of paperwork proving her ownership of the western portion of the dock, however he has not seen this himself.

- The Hon. Walter Roban, JP, MP, Minister of Home Affairs with responsibility for the Departments of Planning and Environment, is quoted as having said that the western portion of the dock was ceded to Government as a public dock ‘years ago’.
- The current owner is identified as Ms. Debbie DeSilva who came into possession of the property on 13<sup>th</sup> October, 2009 from the previous owner, Ms. Ruth-Anne Winifred Dill Outerbridge.
- Ms. Ruth-Anne Winifred Dill Outerbridge has confirmed that the sale of the property did not include the western portion of the dock which she said was a public dock.
- A summary of communication between the COI’s Investigator and Ms. Catherine Blackburn, Estates Surveyor of the Land Title Registry who was not called as a witness, affirmed that the western portion of the dock was a public dock and that the Department of Public Lands and Buildings was aware of the private property sign and issues involved.
- Reference was also made to conversations that the COI’s Investigator had with other users of Devonshire Dock. These conversations were held on 4<sup>th</sup> October, 2020. One user, a senior citizen, noted that the dock was public in his youth and another user asserted that it was public in the past but appeared to be private now.
- The Department of Planning was contacted by the COI Investigator who confirmed that the property, Salt Haven, was a listed building. The relevant pages from the Department of Planning are included in Appendix 3 of the document, inclusive of a description of the property (Exhibit **CA-9**).
- The report also references an architectural book by the Bermuda National Trust that supports the belief that the western portion of the dock was a public dock. The relevant excerpts of this book are contained in Appendix 2 of the overall document, entered into evidence as **CA-8**.

**CA-6** – Transfer notice dated 30<sup>th</sup> September, 2009 concerning the sale of the property to the current owners. It lists the previous owner as a Ms. Ruth-Anne Winifred Dill Outerbridge and the new owners as Mr. Jairzinho Jair Romero Robinson and Ms. Deborah Naomi DeSilva.

**CA-7** – Duplication of **CA-3(a)(b)**. It is understood that this and **CA-6** were originally a single document.

**CA-8** – Excerpt from the Bermuda National Trust publication *Bermuda’s Architectural Heritage Series – Devonshire*. It consists of the cover page of the book and copies of pages 41-42. These pages contain historical photos of the site and information concerning it; however, it does not state whether the dock in question was private or public.

**CA-9** – Certificate of Listing for the Salt Haven property dated 6<sup>th</sup> March, 2000 consisting of three pages: (a) the Certificate itself; (b) a description of the listed building in question (but not the boundaries); and (c) a map of the Devonshire area with the actual building in question outlined in bold (but not the property boundaries).

**CA-10** – While not made explicit in the document, it is evident that this is an additional excerpt from the same book as **CA-8**, but page 81. It includes a small reference to the Salt Haven property; however, it does not note whether the dock in question was private or public.

**CA-11** – Witness Statement taken by the COI’s Investigator from Salt Haven’s former owner who sold the property to the current owners in 2009 (see **CA-6**). The individual was not called as a witness for this case. The key points from this statement are:

- Devonshire Dock, along with all the adjoining properties, were at one point all owned by her great grandfather, Colonel Thomas Dill.
- Around 1918 (exact date uncertain) she understands her great grandfather transferred Devonshire Dock to the Government, moving from private to public ownership.
- She recollects the dock in question being in general public use, especially by fishers, during her residence there.
- She notes that at one point a small dock, further to the west of the Salt Haven property, not the western portion of Devonshire Dock which is the subject of this claim, was added to her land tax evaluation, despite her understanding it was also a public dock. She was able to resolve this with the Government by demonstrating to them it was, indeed a public dock and not part of her property.
- On selling the property in 2009, it was clear to her that the deeds did not include the western portion of Devonshire Dock.
- She expresses surprise and dismay at the erection of the private property sign on the dock, as the dock in question was not part of the property she sold to the current owner as this was a public dock.

## Issues

The key issues that arise in this case are:

- 1) Was the dock part of the Salt Haven property or a public dock?
- 2) Was the property owner within their rights to restrict access to the dock?

## Adverse Notices

Adverse notices were sent to (i) the current property owner; and (ii) the Government of Bermuda.

The current property owner did respond to the adverse notice and noted that, due to personal reasons (communicated in private to the COI), she would not be able to participate in the matter and she gave no evidence. She made no comment as regards the matter at hand. She did not indicate whether she was claiming ownership over the dock or restricting access to it.

The Government of Bermuda did not respond.

## Discussion of Facts

A key question in this case is the ownership of the western portion of Devonshire Dock. To that point, **CA-3** (a 1977 property description and plan of the Salt Haven property) is the key document and appears to have been relied upon by the previous owner during the sale of the property in 2009 (see **CA-6** and **CA-7**, the transfer notice of property sale and the property description, respectively), as well as the Land Title Registry. The boundaries of the property Salt Haven Lot B clearly illustrate that the property does not include the western portion of the dock; furthermore, the ownership of the western portion of the dock is clearly that of the Government – it is a public dock. These facts are reinforced by the witness statement from the previous owner and the account of Mr. Parris. Aspects of the Investigator’s report (**CA-5**), in particular the correspondence between the Investigator and Ms. Catherine Blackburn of the Department of Public Lands and Buildings, have the effect of reinforcing this position, that is, of the western portion of the dock being a public dock and not part of the Salt Haven property.

There is a discrepancy between the cost of the moorings cited by Mr. Parris as stated in his signed witness statement. There the record reflects that he is paying \$362 per year while Exhibit **CA-2** (apparently a summary of Mr. Parris’s case by the Secretariat) indicates he is paying only \$176. As Mr. Parris’s account is considered a primary source, the COI considers the value cited in **CA-1** as the relevant value; the discrepancy found in **CA-2** is thus considered a result of subsequent human error.

As the current owner of Salt Haven elected not to appear before the COI for personal reasons which were accepted by the COI, it is not possible to confirm certain allegations raised by the evidence. This poses a challenge for the COI in our deliberations in determining aspects of the case – notably, whether she (the person to whom an adverse notice was issued), was actively restricting access to the western portion of the dock (including the use of a permanently docked boat) or whether she believes the western portion of the dock is indeed part of Salt Haven’s private property.

However, the erection of a private property sign (**CA-4**) is accepted by the COI as indicative that she or someone acting on her behalf did perceive the western portion of the dock to be private property belonging to Salt Haven and that she was, or may have been in this way, actively restricting access to the dock. It is not possible, however, to ascertain whether she was indeed aware of the contrasting claims of ownership raised by Mr. Parris and the Government maintaining that it was a public dock. The COI is, however, inclined to accept the evidence supplied by Mr. Parris and the Government (see **CA-1** and **CA-5**) that between 2009 and 2020 the current owner of Salt Haven was made aware of the competing ownership claims regarding the western portion of the dock. It is unclear, however, based upon the evidence before the COI, to what degree a mediation process or conversation between the owner of Salt Haven and the Government to has occurred or will help to ameliorate the perceived impasse.

It is indicated in Exhibit **CA-5**, which is the Investigator’s report (in particular, conversations referenced between the COI’s Investigator and the Estates Surveyor Ms. Catherine Blackburn),

that the Government was/is aware of the issue at hand. However, it is not clear to the COI at which date the Government became aware of the issue, or what steps the Government has taken – or intends to take – in order to resolve the matter.

The COI sought to answer two primary questions in this case:

- 1) Is the western portion of Devonshire Dock a public dock or private property of the Salt Haven property?
- 2) Is the owner of the Salt Haven property actively restricting access to the western portion of the dock?

Based on the evidence presented to the COI, the conclusion is that:

- 1) The western portion of Devonshire Dock is a public dock and not the private property of the Salt Haven owner.
- 2) The owner of the Salt Haven property or someone acting on her behalf may have been actively restricting access to the western portion of the dock.

## Findings of Fact

1. The COI finds that the public ownership of the western portion of the dock is proven, supported by communications with the Department of Public Lands and Buildings in **CA-5**.
2. The COI finds that the erection of the private property sign (**CA-4**) is proof that the owner of the Salt Haven property, or someone acting on the owner's behalf, both (a) believed the western portion of the dock to be her own private property; and (b) was actively restricting access to the western portion of the dock.

## Conclusion

The COI cannot conclude that the owner of the Salt Haven property has taken additional steps to restrict access by means of verbal claims and the permanent docking of a boat there, as noted in **CA-1** and **CA-5**. It is not clear when the move to restrict access to the western portion of the dock began; however, it is clear that access was restricted after the new owners took possession of Salt Haven in October 2009.

While **CA-1** and **CA-5** indicate that the owner of the Salt Haven property has been made aware of conflicting claims to the western portion (prior to 2020) of the dock by Mr. Parris, the Government and others, the COI is unable to conclude whether she was actively trying to take possession of public property (theft) or did so inadvertently. As the owner was unable to appear as a witness to the COI and as in her communication with the COI she did not address this matter, the COI is not able to determine whether she intentionally sought to claim ownership over property that she knew



was not hers. The COI considers it probable that there was, indeed, such intention (based on CA-1 and CA-5). However, it is not proven.

As a result, the COI can only conclude that the owner of the Salt Haven property or someone acting on her behalf unlawfully claimed ownership of the western portion of Devonshire Dock or otherwise sought to restrict access to it and was in error in so doing. Essentially, it is not possible for the COI to attribute motive in this matter. As a result, the actions of the new owner of the Salt Haven property may be seen as a matter of encroachment as opposed to theft.

## Adverse Finding

The owner of the property is to be issued adverse finding on the basis of the Claimant's statement:

*"The owner of Salt Haven has claimed that the dock in question belongs to her and has prevented the use of the government owned dock to the general public, whilst also posting private dock signage. This action has prevented Mr. Parris and others from gaining access to their moorings. She has prevented access to his moorings by securing a boat to the dock, which remains attached to the dock continuously (24 hours per day). Mr. Parris indicated that the moorings in question have not been accessed for many years. Moreover, the owner of the Salt Haven property has left no room for emergency access to the dock, as required by the police service many years ago."*

## Recommendations

On considering the evidence presented, and the conclusions arrived at subsequently, the COI makes the following recommendations:

- The private property signs should be removed and replaced with signs clearly indicating that the dock is public property.
- The Government should conduct an inventory of all public property (buildings, land, docks, etc.) and identify any similar cases where public property is or has been appropriated by private owners. Any such incidences of similar encroachment of public property should be addressed and property subsequently returned to public ownership or Government should be compensated accordingly.
- The Office of the Ombudsman should be approached to investigate the collection of mooring payments by Government without ensuring the provision of mooring services. Such an investigation should not be limited to this particular case but should cover the entire system of mooring administration and payments. As part of this investigation, a mechanism should be put in place to address issues of compensation in situations similar to that experienced by Mr. Parris.

# Case 013 – Estate of Ainsley Eldie Manders

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## Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell

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## Introduction

This case was brought before the COI by Winfield Chuck Simpson (“the Claimant”), the great, great, great grandson of Josiah Smith. The claim originated with the purportedly expropriation of property in Tucker’s town in 1920, owned by Josiah Smith, an aide to Queen Victoria. The Claimant proudly traced his lineage to Josiah Smith through his mother, now deceased, Ainsley Eldie Manders.

The Claimant spoke anecdotally of information communicated by his mother and grandmother. He produced various documents dated almost 100 years ago from the Bermuda Development Company and the Supreme Court of Bermuda. He also recounted information he received of Mr. Smith’s general dismay at the loss of all his lands in Tucker’s Town due to the expropriation of his property by the Bermuda Government on behalf of the Bermuda Development Company. As a direct descendant of Josiah Smith, the Claimant was seeking justice and redress for the loss of property located in Tucker’s Town, St. George’s which would have been inherited by his grand and great grandmother had it not been expropriated. He alluded to the fact that the property had later been sold to another development interest without adequate compensation given to the family.

The Claimant was considered credible but due to the dearth of hard evidence provided, the information given was viewed in its anecdotal context.

## Summary of Facts

There were several pieces of evidence tendered as Exhibits as part of this case:

**WCS-1** – An eight (8) page document, dated 5<sup>th</sup> March, 2020 which the Claimant tendered. This document includes letters from the Commissioners of the BDC Limited, Bermuda Development Company, Act No. 2, 1920, as well as deeds and documents relating to the Estate of Josiah Smith of St. George, Tucker’s Town. This document includes a detailed oral history passed on to the witness by his mother, Ainsley Eldie Manders. Specific details are listed which demonstrate how the Claimant’s great, great, great grandfather, Josiah Smith, his wife and some additional family members were buried on the grounds of the property where the Tucker’s Point Golf Course is now located. The Claimant stated the tragic deaths of family members and how his mother became in possession of the documents from the estate of her great, great, great grandfather, Josiah Smith.

**WCS-2** – A letter from the Commissioners of the BDC Limited, Bermuda Development Company, signed by A.B. Smith, dated 18<sup>th</sup> December, 1922 and addressed to Ainsley Meadows Manders, the Claimant's mother. This letter requests that all deeds and documents related to the Tucker's Town property be turned over to BDC Limited for inspection and vesting.

**WCS-3** – This submission relates to the Claimant's family members and a family tree along with footnotes which document stories of Tucker's Town residents, including freed slaves. This document alludes to the estate of Josiah Smith of 57 Breakers Road which is believed to be currently in control of the Marsden Church of Devil's Hole. It is believed that the Claimant's mother, Ainsley Eldie Manders, was deprived of her homestead by the Marsden Church.

**WCS-4** – A letter dated 29<sup>th</sup> May, 2013 referring to the estate of Josiah Smith, former aide of Queen Victoria, which the witness sent to the former Ombudsman of Bermuda, Ms. Arlene Brock. This letter alleges that Bermuda Development Company (BDC) along with members A.W. Black, MCP, F. Goodwin Gosling, MCP, S.S. Spurling, MCP and Henry W. Watlington, MCP, acted unscrupulously to the family of Josiah Smith. The letter goes on to request a reasonable settlement by the current Bermuda Government due to these actions.

**WCS-5** – A letter dated 24<sup>th</sup> September, 2014 which the Claimant submitted to the Permanent Secretary, Ministry of Home Affairs. The witness requests that the site of the Tucker's Town graveyard, the resting place of Josiah Smith, be designated an historic monument, such monument to be a token of appreciation for his services.

**WCS-6A** – A letter produced from the Supreme Court of Bermuda dated 23<sup>rd</sup> February, 1925 that confirms distribution of monies paid into court in the amount of 4,000 pounds to be distributed to ten (10) grandchildren of Josiah Smith who died in 1876.

## **Conclusion**

The facts presented by the Claimant concerned highly controversial matters. The findings are based largely upon anecdotal evidence which the Claimant presented to the COI.

In 1920, the Claimant's great, great, great grandfather, Josiah Smith, owned property in Tucker's Town that was expropriated. As was demonstrated through his family tree, the Claimant and his mother had a direct link to Josiah Smith. However, it had not been clearly demonstrated where the land and exactly where the plot was located.

This case illustrates some of the complexities and broad impact of the Tucker's Town expropriation. Notwithstanding Mr. Josiah Smith's position as aide to Queen Victoria and the fact that he had been gifted land by the Queen, he was not protected from the scourge of the times. The COI deemed the Claimant to be credible and placed reliance on his Witness Statement as well as the documents submitted by him as they supported his version of events. However, due to the paucity of documentary evidence, the COI was unable to make any definitive conclusion as to the extent of the property holding and consequently was unable to make any recommendation.

Based upon the Claimant's historical submissions, it is the COI's view that given the regime in place at that time, it is unlikely that the estate of Josiah Smith would have received fair and reasonable compensation for the property cited. More importantly, the expropriation demonstrated how full exertion of power by a small business/political cabal could accomplish its goal.

## **Recommendation**

The COI does not deem it appropriate to make any recommendation at this time because of the insufficiency of evidence, save to say that the Government could consider establishing a system whereby redress could be given to aggrieved Claimants so that they would not have to wait 100 years to bring their matter to the courts seeking a just outcome.

## Case 014 – Estate of Agatha Richardson Burgess

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell

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### Summary

This matter was presented to the COI by Carol Ann Elizabeth Clarke and Charles A. R. Clarke (“the Claimants”) on behalf of the late Agatha Charlotte Eve Richardson Burgess (“Mrs. Burgess”), their maternal grandmother.

Mrs. Burgess, a well-respected member of the Hamilton Parish community, was a political activist who canvassed on behalf of Messrs. Hilton Hill, Walter N. H. Robinson and Gilbert Darrell who were elected to the House of Assembly in the 1950s. She had inherited a vast amount of freehold property in Hamilton Parish (see **Exhibit 5** – Voluntary Conveyance 1924) from her parents, Eva Susann Isabella Richardson and Rev. Austin Bascome Richardson (see **Exhibits 3 and 4**).

In May 1956, the Bermuda Government wished to acquire property to construct and develop a playing field for Francis Patton School in Hamilton Parish. To that end, the Government acquired property from Mrs. Burgess by compulsory purchase via the Public Works Department Act 1930 and the Acquisition of Land Act 1941 (see **Exhibit 6**, 5<sup>th</sup> May, 1956). This compulsory conveyance states that she was paid 1,000 pounds cash with a transfer of .150 acres of roadside property to the east (see **Exhibit 7**, 31<sup>st</sup> January, 1956).

Correspondence between Mrs. Burgess and the Government of Bermuda indicates that a request for a pedestrian right-of-way was made for access along the western border of the property to provide access to the oceanside property remaining in Mrs. Burgess’s possession. It would appear that this request had been considered by the then Attorney-General (see **Exhibit 7**, 31<sup>st</sup> January, 1956). From this correspondence, it is apparent that the requested right-of-way should have been granted and recorded in the original conveyance document. To this date, access to Mrs. Burgess’s property has been blocked by fencing and a portion of the Francis Patton lower school is built through the right-of -way itself (see 1992 Plan at **Exhibit 17**).

This matter was last raised by Mrs. Burgess’s descendants in 2009.

The Claimants wished to bring to the attention of the COI specifically the issue of Mrs. Burgess not receiving a fair price for her land. They asserted that the amount of 1,000 pounds paid to Mrs. Burgess was insufficient, noting that the Trimmingham family had been paid 4,000 pound per acre by Government for comparative property in Paget that was acquired by compulsory purchase.

The name of Francis Patton School was a further issue raised by the Claimants who asserted that the school should have been named after the Bascome family whose ancestors gave up their land for construction of the school.

## Supporting Documentation

The property in question was transferred to Mrs. Burgess by an Indenture made on 14<sup>th</sup> April, 1924 between Eva Susann Isabella Richardson and Rev. Austin Richardson, her parents (**Exhibit CAEC3**).

This property remained in Mrs. Burgess's possession until the Bermuda Government demanded the property by compulsory purchase for the construction of the Francis Patton School playing field in 1956. The land was conveyed by a conveyance under the Public Works Department Act 1930 and the Acquisition of Land Act 1941 (see **Exhibit CAEC4**, conveyance dated 4<sup>th</sup> April, 1956 granting and releasing the strip of land delineated and coloured red on drawing number 146/D/2 prepared by the Public Works Department of Bermuda annexed plan attached). On 5<sup>th</sup> May, 1956, Mrs. Burgess wrote a letter to the Director of Public Works requesting a right-of-way or easement over the land recently sold to the Government in order that she might reach her land on the waterfront (**CAEC4** Part 1).

In a letter dated 15<sup>th</sup> May, 1956 to the Attorney-General, the Acting Director of Public Works acknowledges Mrs. Burgess's request for a right-of-way to a strip of land which she owned on the waterside between the railway bed and the sea. He noted that this small area was not purchased with the bulk of the property for the Francis Patton School playing field and she now asked for an easement to reach it.

The Acting Director of Public Works wrote: *"As she owned the property at the time of purchase of land by the railway company, would you please confirm that she has in fact established her right to cross both the land recently purchased from her and the railway bed to reach her waterfront land, presumably this right has only been established on foot."*

On 18<sup>th</sup> May, 1956, the Attorney-General responded to the letter of 15<sup>th</sup> May, 1956 from the Acting Director of Public Works. In that response, the Attorney-General gives support to Mrs. Burgess's request for a right-of-way. The following letter from the Attorney-General refers.

*"From the Attorney-General*

*To the Director of Public Works*

*Reference your memo 827/A/PWD/56 dated 15<sup>th</sup> May, 1956.*

*I am afraid that I cannot confirm as in paragraph 3 of your minute under reference but Mrs. Burgess obviously must be granted a right of way to get to her land.*

*It could and perhaps should have been done at the time of the conveyance of the land to Government by way of a reservation and I suggest that such a reservation should now be endorsed on the conveyance.*

*18<sup>th</sup> May, 1956  
Attorney-General”*

This letter was date stamped as being received by the Department of Public Works on 19<sup>th</sup> May, 1956.

## **Conclusion and Recommendation**

The Claimants had requested that the COI consider recommendations regarding the compulsory purchase of Mrs. Burgess’s land and the amount that she received from Government for her land. They asserted that she did not receive a fair price for her land when the amount received was compared with the amount received by the Trimmingham family following the Government’s compulsory acquisition of their land in Paget.

It is to be noted that under its remit, this COI cannot grant a quantum award to a Claimant.

On the issue of the right-of way-requested by Mrs. Burgess, it is apparent from correspondence between the Attorney-General and the Acting Director of Public Works that in the Attorney-General’s opinion a right-of-way should have been granted to Mrs. Burgess by way of a footpath to access her seaside property. The Attorney-General considered the omission to be an oversight that should have been addressed and recorded by way of a reservation included in the original indenture and conveyance of the property from Mrs. Burgess to the Bermuda Government and he so instructed in his correspondence of 18<sup>th</sup> May, 1956.

It is the COI’s recommendation that the stated intention of the Attorney-General in 1956 to grant a right-of-way to Mrs. Burgess be carried out. It must be noted that adverse notice has been sent to the Attorney-General’s Chambers and that a session of the COI Hearing this matter was attended by a representative of the Attorney-General’s Chambers.

The COI recommends further that a notice of adverse finding should be sent to the Attorney-General’s Chambers setting out the position of the COI regarding this matter.

## **Addendum**

In furtherance of adverse notice to Solicitor General, at 3:24 p.m. on Thursday, 13<sup>th</sup> May, 2021, the following email was sent from the COI to Mr. Melvin Douglas, Solicitor General:

*“Good afternoon Solicitor General, Please see attached letter regarding Commission of Inquiry claim #014 – Clarke. If you have any questions or concerns, do not hesitate to contact us.*

*Regards, Secretariat, Commission of Inquiry into Losses of Land in Bermuda.”*

A letter was also sent giving the same information. As of Tuesday, 20<sup>th</sup> July, 2021, the COI had not received a response from the Solicitor General.



# Case 015 – Estate of John Augustus Alexander Virgil

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## Commissioners

Mr. Wayne Perinchief (Acting Chairman), Mr. Jonathan Starling and Mr. Quinton Stovell

## Commissioners Recused

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mrs. Maxine Binns, Ms. Frederica Forth and Mrs. Lynda Milligan-Whyte were recused from the proceedings due to a close association with one or more of the parties in this matter.

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## Introduction

Mrs. Barbara Brown, Mr. Charles Brown and Mr. George Brown (“the Claimants”) submitted a claim on behalf of the beneficiaries of the Estate of John Augustus (Augustus) Alexander Virgil.

Location of land: Spring Benny, Sandys Parish including Spring Benny Road, Spring Benny Drive and Spring Benny Lane

Representation: Mr. Kim White for Sir John W. Swan and for Cox Hallett Wilkinson Limited  
Mr. Michael Hanson for the Bank of N. T. Butterfield & Son Limited  
A descendant of the Estate of John Alfred Virgil representing the Estate of John Alfred Virgil

The claim was heard on the 25<sup>th</sup> November, 2020, 30<sup>th</sup> November, 2020, 1<sup>st</sup> December, 2020, 4<sup>th</sup> December, 2020, 25<sup>th</sup> March, 2021, 26<sup>th</sup> March, 2021 and 5<sup>th</sup> April, 2021.

## THE CLAIM

1.0 The Claimants on behalf of seven (7) beneficiaries named in the 21<sup>st</sup> May, 1964 Will of John Augustus Alexander Virgil outlined that the purpose of their presentation was to show that, “...*parties conspired to execute a plan that two (2) major transactions are fraudulent and that major players partnered to obstruct justice.* They also submitted, this is a *land grab story and it is being made in three parts:*

1. “1885-1961”
2. “Two transactions 1961-1962 and 1968-1969
3. “The pursuit of justice 1972- today”

1.1 Their presentation began with the Commissioners being invited to listen to an audio recording in memory of C. Walton D. Brown, Jr., JP, MP, representing his 4<sup>th</sup> July, 2014 address to the Bermuda House of Assembly regarding the need for a Commission of Inquiry into Historic Losses of Land in Bermuda. Mr. C. Walton D. Brown, Jr. was related by blood to the three (3) Claimants Mrs. Barbara Brown (his mother), Mr. George Brown (his brother) and Mr. Charles Brown (also his brother).

1.2 The named beneficiaries are:

Mrs. Barbara Brown, Mrs. Marion Johnston, Mr. Glen Ming, Mr. Gladwyn “Moe” Ming, Mrs. Marie Spence, Mrs. Sylvia Davis and Ms. Eunice Ming. There is no challenge that the beneficiaries are related to John Augustus Alexander Virgil, nor is there any challenge to the fact that John Augustus Alexander Virgil owned Lot 4 up to the time of the two major transactions in 1961 and 1969.

### 1.3 **Land Grab Story in Brief**

The Claimants allege that approximately seven (7) acres of land divided between an area described as the northern and southern portions of Spring Benny Road, Spring Benny Drive and Spring Benny Lane had been owned by the Virgil family since 1885. Regarding the southern portion, the Claimants do not agree that the purchaser, Eric Arthur Jones, family friend and family lawyer, purchased a portion from John Augustus Alexander Virgil (the testator). They claim Eric Jones unlawfully acquired the land by undue influence as no evidence exists to confirm a sale or transfer of the property on 24<sup>th</sup> January, 1962. Regarding land in the northern portion, comprising approximately four (4) of the seven (7) acres, they allege that a fraudulent scheme was engineered and facilitated by major players who conspired to dispossess John Augustus Alexander Virgil and his beneficiaries. One of the conclusions drawn by the Claimants is that the 1962 transaction for the southern portion (Eric Jones) and the 1969 transaction for the northern portion (John Swan) are both rooted in fraudulent and illegal actions, consequently all related transactions thereafter lack legal credibility and do not meet the legal standard for a property transaction. Additionally, they conclude that Eric A. Jones, the Virgil’s family lawyer, conspired with cousin, John Alfred Virgil, and Robert Motyer from Appleby to defraud John Augustus Alexander Virgil of his 4 acres of land in Spring Benny. The Claimants submit that it was a “scheme to take advantage of an unsuspecting client that owned land”. The Claimants argue that money, muscle and power dictated the outcome of the Virgil family being dispossessed of their land.

The Claimants on behalf of the beneficiaries reject claims of ownership to the eight (8) lots in the northern section, in spite of possession and title being vested in the occupants, in some cases as much as fifty years ago. They ground their claim on the basis that they are still in physical possession of the original deeds to the land in the northern portion in question. Most importantly, the Claimants submit that “there is no reliable documentation to support a legal transfer of any land from John Augustus Alexander Virgil during this timeline” (6<sup>th</sup> March, 1968 and 21<sup>st</sup> May, 1970 COI emphasis).

The beneficiaries through the Claimants argue that they are entitled to justice and compensation for being victims of this scheme.

#### 1.4 **Adverse Notices**

Arising from the allegations made by the Claimants, adverse notices were sent to parties to whom the allegations were directed, affording them an opportunity to respond to the claims. The notice included an invitation to seek standing before the COI, providing the parties an opportunity to respond to the complaint. Parties to whom standing was granted were served with all documents submitted by the Claimants in support of the claim, transcripts of the evidence before the COI and all relevant documents.

Notices were published in *The Royal Gazette* where personal service could not be effected. Notices were sent to the Bank of Butterfield, Cox Hallett Wilkinson Ltd., Appleby, the Estate of Eric Arthur Jones, the Estate of David Wilkinson, the Estate of Robert Motyer, the Estate of Russell L. Pearman, the Estate of E.T. Richards, Sir John Swan, the Estate of John Alfred Virgil, the Estate of Arnold Francis and Leslie Earl Ming.

Applications for standing were made and granted by the COI to the Estate of John Alfred Virgil, Sir John Swan, the Bank of Butterfield and Cox Hallett Wilkinson Ltd. The other parties to whom notices were issued did not apply for standing.

**Importantly, the Claimants withdrew the claim made against Cox Hallett and Wilkinson Ltd. and advised that any reference to Mr. David Wilkinson was made in his own capacity as an associate with the law firm.**

- 1.5 Sir John W. Swan through his counsel Mr. Kim White, the Bank of Butterfield through Mr. Michael Hanson, counsel, and a descendant of Mr. John Alfred Virgil representing the Estate of the said John Alfred Virgil, vigorously denied all of the allegations submitted by the Claimants.

#### 1.6 **Facts on which Claimants Rely**

On 9<sup>th</sup> December, 1962, by Indenture of partition, approximately four (4) acres of land (7/8 share) was conveyed by Ida Melissa Henry, Elizabeth Maria Carter, Rupert Lansdown Simmons, Arnold Lansdowne Simons and Grace Lillian Simons to John Augustus Alexander Virgil. He became the sole owner of Book number 92 Pages 195/203 in the Land Registry. John Augustus Alexander Virgil, “Uncle John,” (the testator) died on 17<sup>th</sup> January, 1972 and under his Will dated 21<sup>st</sup> May, 1964, he devised his real and personal estate to his seven nieces and nephews, the herein named beneficiaries of the claim before the COI.

#### 1.7 **Reports in Support of Claim**

The Claimants submit that the evidence in support of the claim is contained in four (4) critical reports:

- i. Bermuda Police Report -7<sup>th</sup> February,1976
- ii. Bank of Butterfield Report -1<sup>st</sup> November, 1978
- iii. Bermuda Caribbean Engineering Consultants Ltd. Report (Summers Report) 24<sup>th</sup> July, 1996
- iv. Questioned Document Examiner Letter and Report, Subject: John Augustus Alexander Virgil and Algernon Doers #1753, Date: 25<sup>th</sup> January, 2021

## 1.8 Witnesses Heard during Claim

Mrs. Barbara Brown, Mr. George Brown, Mr. Charles Brown, Mr. Carlton Adams, Ms. Brenda Petty and Sir John W. Swan on his own behalf gave evidence and subjected themselves to cross-examination. The Bank of Butterfield and a representative of the descendants of the Estate of John Alfred Virgil (the representative) gave no evidence and did not allow their party to be subjected to cross-examination.

## 1.9 Issues

- a. Is there evidence of a conspiracy and by whom?
- b. Were the two major transactions (1961 and 1969) fraudulent and, if so, is anyone culpable?
- c. Whether the parties to whom adverse notices were issued were a part of the alleged conspiracy at (a) and (b) above.
- d. Good root of title, the doctrine of the Bona Fide Purchaser for Value and lodging of notice of change of ownership with the Registrar General.

## 1.10 Genesis of Claim

The Bank of Butterfield Executor and Trustee Company Ltd. (Executors to the Will of the testator) in a 1<sup>st</sup> November, 1978 letter and report advised the beneficiaries of the status of the Estate of the testator. The reference letter indicated inter alia as follows:

*“... Dear Mrs. Brown,*

*We enclose the Report you and your family asked this Company to obtain on your behalf, in connection with the title of real property at one time owned by the late Augustus Virgil.*

*I hope you and your family are now satisfied with the conclusions of the Report, since a tremendous amount of legal work has been involved at considerable cost to the Estate of the late John Augustus Alexander Virgil, the personal estate of which this Company was sole executor. These costs amount to \$1,850 and will have to be settled in due course.*

Please note carefully that this Company as Executor of the late John Augustus Alexander Virgil had neither the duty, or even the right, to deal with, or attempt to deal with, any real estate of the late John Augustus Alexander Virgil, even if he had any at the date of death.

*We feel that we have gone beyond our requirements as Executor to endeavor to assist you and your family in this matter and, in fact, have only done so to be as helpful to you as we possibly could. We have tried on many occasions to advise you that we could have no interest in any real estate, even if it existed, but to our knowledge there was no real estate owned by the late Mr. Virgil on his death. (COI Emphasis). This Report now proves everything this Company has stated from the beginning.*

*We hope you will now agree that there is nothing more we can be expected to do on your behalf and the subject must be considered closed as far as we are concerned... ”*

*T.S. White  
General Manager”*

The beneficiaries were not satisfied with the response from the Bank and this led to their “*pursuit of justice*” where they relied on documentation to substantiate their allegations of a “*scheme to take advantage of an unsuspecting client that own land.*” Consequently, at the request of the beneficiaries the Bermuda Caribbean Engineering Consultants Ltd. Report (the *Summers Report*) was commissioned to ascertain the “extent of real property of the testator”.

The purpose of the Summers Report was to indicate “*...the extent of the real property holding that formed part of the estate of John Augustus Alexander Virgil, located on Spring Benny Lane, Sandys Parish, Bermuda*”. The key findings of the Summers Report were that:

*“The research has traced the history of the title of the real property of John Augustus Alexander Virgil until 24<sup>th</sup> January, 1966 through the available sources.*

*It is concluded herein that John Augustus Alexander Virgil owned Lot 4, shown on the annexed Plan 7, on 24<sup>th</sup> January, 1962. John Augustus Alexander Virgil died on 17<sup>th</sup> January, 1972.*

*The research on which this report is based did not reveal any record of John Augustus Alexander Virgil disposing of Lot 4 (Plan 7) or any part thereof between 24<sup>th</sup> January, 1962 and 17<sup>th</sup> January, 1972 when he died or before that period.*

*The record did not reveal who Russell L. Pearman was acting on behalf of when he made application to the Central Planning Authority for two plans of subdivision for Lot 4 (Plan 7), or whether he was doing so as “owner” of the land.*

*The record did not reveal how any part of Lot 4 (Plan 7) came into the possession of John William David Swan at the time that he voluntarily conveyed the six lots derived from Lot 4 to Leslie Earl Ming.*

*The Executor of the Estate of John Augustus Alexander Virgil did not declare any real property asset in the Affidavit of Value submitted to the Supreme Court.”*

#### 1.11 Summarized Chronology of Landownership - 1880-1962

On 13<sup>th</sup> November, 1880, recorded by the Colonial Secretary on 15<sup>th</sup> November, 1880 and in Book Number 8 Page number 360 of the land Registry reference, George H. Young conveyed to Samuel David Robinson “... *by estimation seven acres be the same more or less situate and being in the said parish of Sandys...and bounded Northerly by lands belonging to Estate of the Reverend Robert Hoare deceased and of Joseph Roberts and others Westerly by the lands of John Seymour Burrows... Southerly by lands formerly of Anne Pearman Outerbridge and now belonging to her heirs or devisees and Easterly by lands belonging to the Estate of Lydia Burrows deceased...*” to secure a mortgage of 40 pounds. **This is not a part of the chronology in the Summers Report, but it is noted from the original deeds provided to the COI by the Claimants.**

- 1.12 18th June, 1885, Samuel David Robinson conveyed to Augustus Virgil (great grandfather of John Augustus Alexander Virgil) a parcel of land in Sandys Parish of approximately 7 acres more or less in Spring Benny, Sandys. Recorded by the Colonial Secretary 17<sup>th</sup> June, 1886. Land Registry reference Book Number 33 Page 1, 2 and 3.
- 1.13 1<sup>st</sup> September, 1887, Augustus Virgil and wife conveyed to Henry Robert Hursk house and land in Sandys Parish to secure a mortgage of 53 pounds 2 shillings recorded by the Colonial Secretary 6<sup>th</sup> September, 1887. Land Registry reference Book Number 11, Page 110. Mortgage fulfilled 15<sup>th</sup> July, 1891.
- 1.14 25<sup>th</sup> July, 1896, Augustus Virgil and wife conveyed to Daniel Trimmingham to secure a mortgage (100 pounds) of a cottage and a Parcel of land in Sandys Parish, recorded by the Colonial Secretary on 30<sup>th</sup> July, 1896, registered in Book of Mortgage No. 13, pp 151,152. Containing seven acres to the same more or less. Mortgage discharged.
- 1.15 28<sup>th</sup> August, 1924, Augustus Virgil and wife conveyed to Carie Lloyd Grisct to secure a mortgage ( 200 pounds) of parcel of land and dwelling house in Sandys Parish (estimated to contain seven acres or same more or less), recorded by the Colonial Secretary on 30<sup>th</sup> August, 1924 and registered Book Number. 21, page 60

- 1.16 12<sup>th</sup> November, 1937, Carrie Lloyd Griset assigned mortgage debt (200 pounds) and the securities thereof to Rodirich Alexander Ferguson (Augustus Virgil had since died and the debt remained due and owing) recorded by the Colonial Secretary on 26<sup>th</sup> November, 1926 and registered Mortgage Book Number 22 and page 51.
- 1.17 19<sup>th</sup> March, 1945, Roderick Alexander Ferguson re-conveyed to John Augustus Alexander Virgil , Dora Elizabeth Simons, Thalia Ann Virgil, Mabel Maud Virgil, Harriet Agatha Simmons, Ida Melissa Henry, Elizabeth Maria Carter and James Eugene Pearman upon the payment of the sum of two hundred pounds by the said Augustus Virgil, his heirs and executors. This Indenture re-conveyed and devised the parcel of land after the deaths of Augustus Virgil, his wife Elizabeth Virgil and other heirs who died intestate. (Summers Report, paragraph 6).
- 1.18 On 9<sup>th</sup> December, 1961 by Indenture of Partition, John Augustus Alexander Virgil was conveyed Lot 4. (Butterfield Report, paragraph 47, Summers Report, paragraph 11).
- 1.19 On 24<sup>th</sup> January, 1962, by an Indenture John Augustus Alexander Virgil conveyed to Eric Arthur Jones and his wife the southern portion of the lot of land of the property obtained by John Augustus Alexander Virgil on 9<sup>th</sup> December, 1961. (Butterfield Report, paragraph 48, Summers Report, paragraph 12).
- 1.20 On 17<sup>th</sup> January, 1972, John Augustus Alexander Virgil died (see paragraph 1.6).

### LAY OF THE LAND AT TIME OF WILL

- 2.0 In relation to the ‘*Last Will and Testament of John Augustus Alexander Virgil*’, the Claimants assert the following three (3) points and argue that this document is a fundamental piece of evidence regarding their land grab story:
- “*The Bank of Butterfield, Executor and Trustee Co. Ltd. were the sole Executors of the Will.*
  - *This Will is governed by the Trustee Act 1876, sec. 50.*
  - *Robert Motyer from Appleby was hands-on with the 1961/62 fraud surrounding the Southern portion and then signed off on the Will in 1964.”*

The following is the front page of the Last Will and Testament of John Augustus Alexander Virgil for which the authenticity not been disputed by the parties:

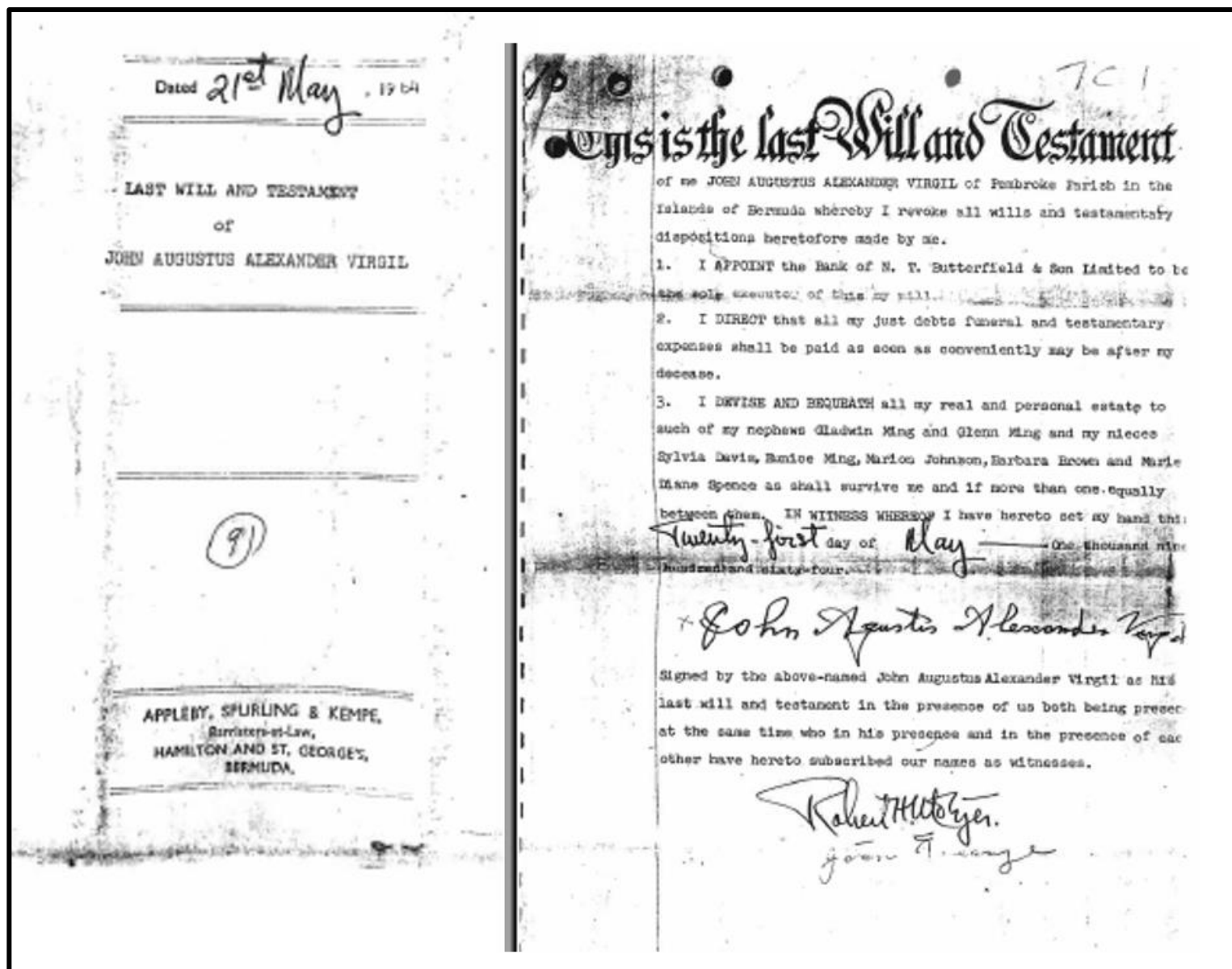
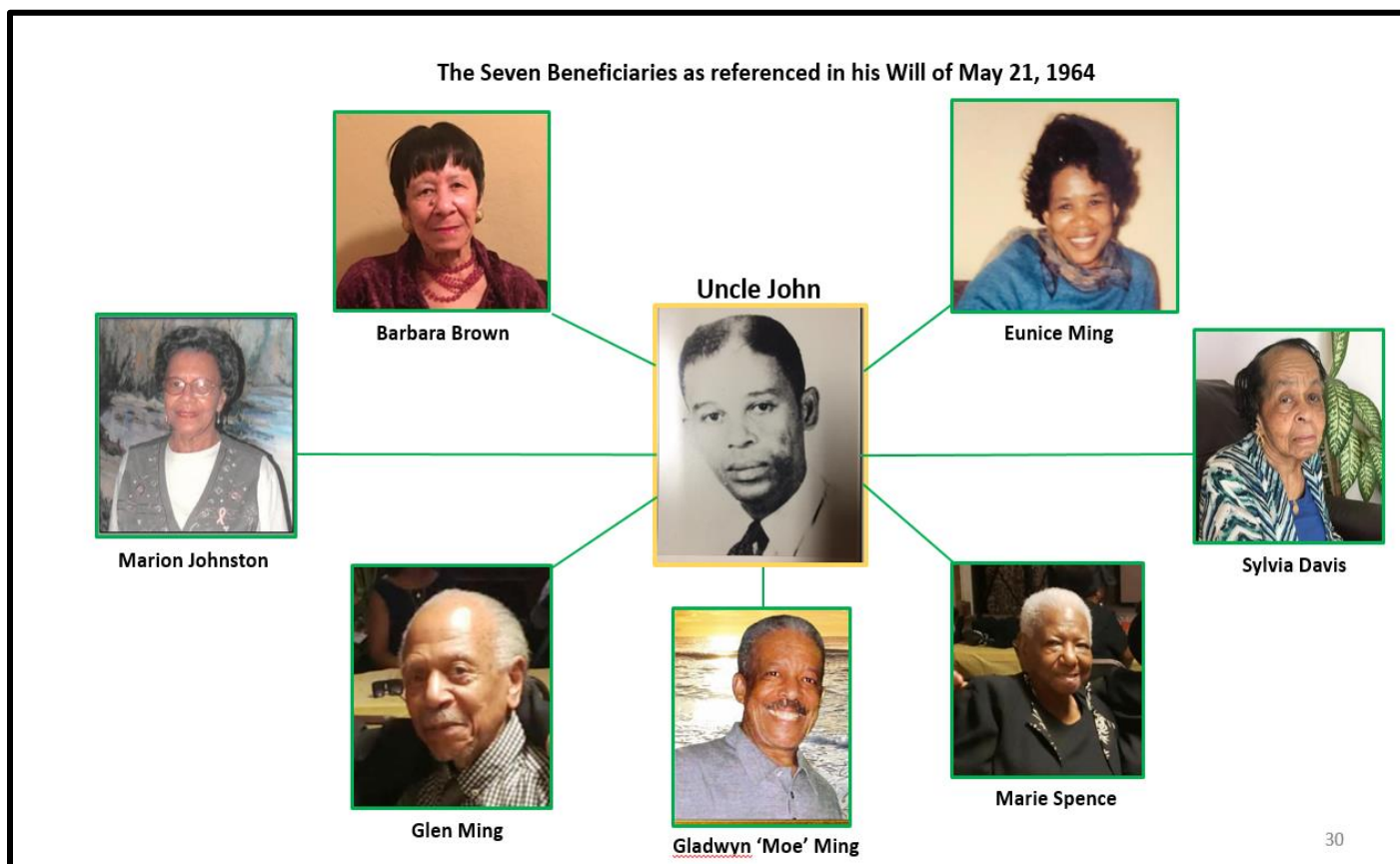


Figure 1: Last Will and Testament of John Augustus Alexander Virgil<sup>206</sup>

- 2.1 The following is an illustration presented by the Claimants which indicates the seven beneficiaries named in the referenced Will, in relation to the subject land:

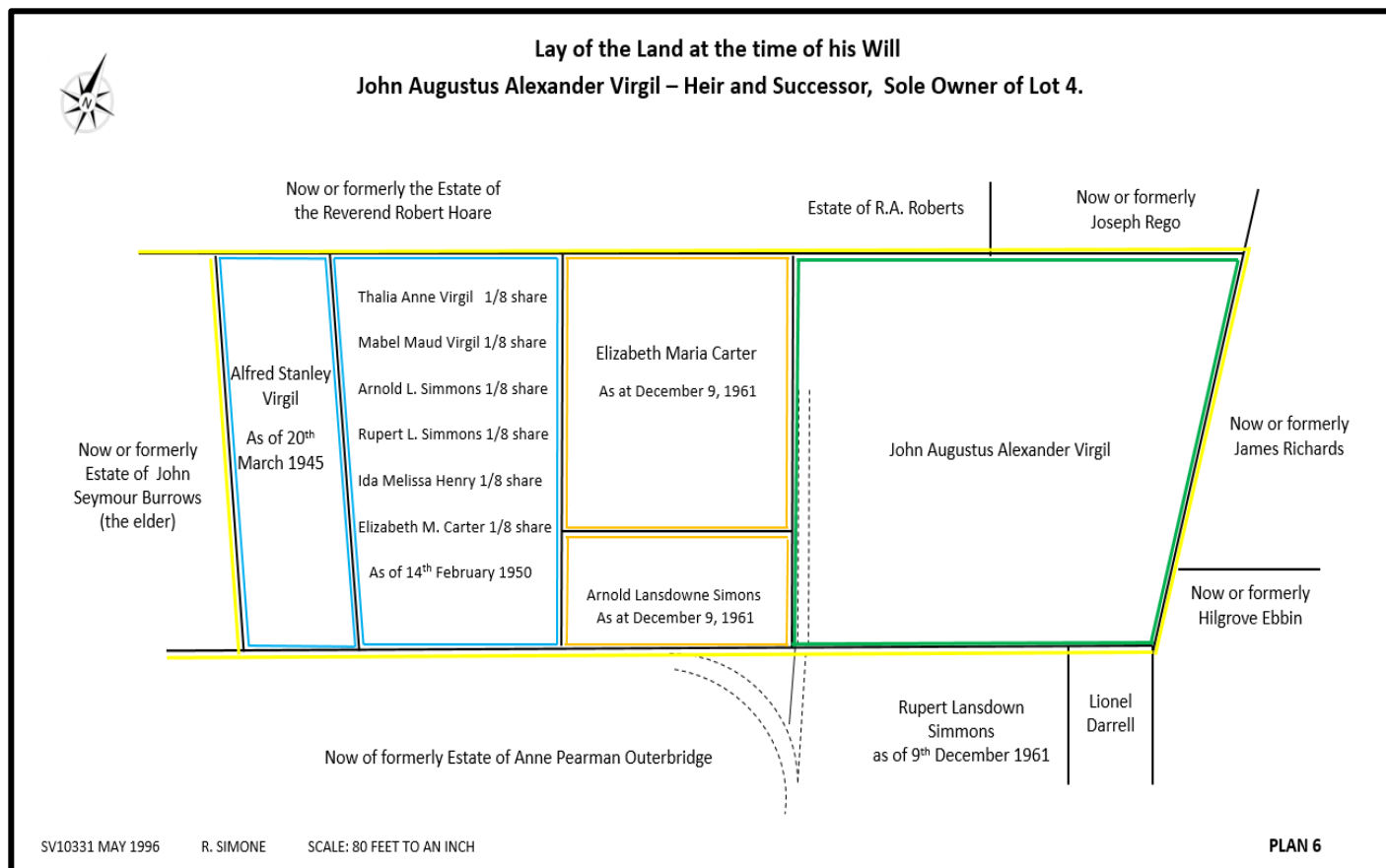
<sup>206</sup> COI - Exhibit CNLB-6 and also extracted from COI-Exhibit CNLB-4, pp 27.





**Figure 2: The Seven Beneficiaries as referenced in his Will of 21<sup>st</sup> May, 1964**

- 2.2 The Claimants suggest the following as the “*Lay of the Land*” at the time of the making of the Will of John Augustus Alexander Virgil, (as Heir and Successor, Sole Owner of Lot 4):



**Figure 3: Lay of the Land at the time of his Will John Augustus Alexander Virgil – Heir and Successor, Sole Owner of Lot 4.**<sup>207</sup>

## THE 1961-1962 TRANSACTION - THE SOUTHERN PORTION

- 3.0 The family in ‘pursuit of justice’ set out to establish the basis of their allegation(s), that is, “*two major transactions are fraudulent*”, and they cite a series of events and transactions which they argue prove their assertions that the transactions were fraudulent.
- 3.1 By Indenture dated 9<sup>th</sup> December, 1961, Ida Melissa Henry, Elizabeth Maria Carter, Rupert Landown Simons, Arnold Lansdown Simons and Grace Lillian Simons conveyed to John Augustus Alexander Virgil. The beneficiaries claim that this Indenture vested John Augustus Alexander Virgil as the sole owner of Lot 4 and, importantly, traces good title, evidence of the fact that the family owned the land for over 75 years and which is rooted in deeds dated 18<sup>th</sup> June, 1885.
- 3.2 Mr. Eric Jones, the family lawyer, signed as a witness to the Indenture of Partition dated 9<sup>th</sup> December, 1961.\* Then by an Indenture dated 24<sup>th</sup> January, 1962 between John

<sup>207</sup> Extract from COI - Exhibit CNLB-4, Plan 6, pp. 18.

\* By an Indenture of Partition dated 9<sup>th</sup> December, 1961 between Ida Melissa Henry of the first part, Elizabeth Maria Carter of the second part, Rupert Lansdowne Simmons of the third part, Arnold Landsdowne Simons and Grace Lillian Simons of the fourth part and John Augustus

Augustus Alexander Virgil and Eric Jones and his wife, Mr. Virgil conveyed to Mr. and Mrs. Jones a parcel of land forming a part of the land conveyed by the Indenture of Partition. The beneficiaries claim that this 9<sup>th</sup> December, 1961 transaction is not in dispute.

3.3 “12<sup>th</sup> December, 1961, a ‘Letter from Eric Jones’” to Ida Melissa Henry making a request for deeds to be executed purportedly on the instructions of her nephew, Mr. Arnold Simons. Mr. Eric Jones further requested that the deeds are returned to him.

3.4 “22<sup>nd</sup> December 1961, Letter from Eric Jones” to Ida Melissa Henry advising,

*“1. Please find enclosed herewith the equivalent in dollars of £900.0. being the balance of the purchase price of the lot of land numbered One (1) on the partition plan of the Estate of Augustus Virgil, which you have recently conveyed to me.*

*2. I had intended to cable this money to you, but on being informed that your New York Banks are closed on Saturday...I decided to send it by ordinary draft...I remain,”*

3.5 “Memorandum from the Office of Registrar General”, making reference to an-

*“...indenture dated the -24<sup>th</sup> – day of January – One thousand nine hundred and sixty-two and made between the within named John Augustus Alexander Virgil.... And Eric Arthur Jones and Hedwig Elizabeth Jones his wife both of the other part the Southern portion of the lot of land within described in the second schedule within written measuring Northwesterly Three hundred and forty one feet (341’) Northeasterly along two straight lines Seventy-three feet (73’) and Eight-seven feet (87’) respectively Southeasterly along two parallel straight lines Fifty- eight feet (58’) and Two hundred and twenty-six feet (226’) respectively and Southwesterly along two parallel straight lines One hundred feet (100’) and Sixty feet (60’) respectively for the consideration therein mentioned was conveyed to the Eric Arthur and Hedwig Elizabeth Jones their heirs and assigns forever.”*

The Claimants argue:

*“1. John Augustus Alexander Virgil was not in good health and was living with his niece, Barbara Brown, at this time.*

*2. In April 1969, David Wilkinson represented to the Registrar General that there is a ‘conveyance’ dated 24<sup>th</sup> January, 1962 where John Augustus Alexander Virgil ‘conveyed’ property to Eric Arthur Jones and his wife.*

3. *There is no sales agreement or indenture or other conveyance on or around 24<sup>th</sup> January, 1962.*
4. *Seven years passed between the 'transaction' and filing with the authorities on 15<sup>th</sup> April, 1969.*
  5. *The Bank investigation into the Indenture to support this transaction reported "Please note that (this) Indenture . . . has not been produced to us; it is missing, but we have no reason to doubt its existence."*

The Claimants posit that it is an anomaly that seven years elapsed between the transaction (the conveyance) and filing with the authorities (Office of the Registrar General) on 15<sup>th</sup> April, 1969. The Claimants further criticize the role of the Bank of Butterfield, Executors to the Will of John Augustus Alexander Virgil, as they consider the statement; *"Please note that (this) Indenture . . . has not been produced to us; it is missing, but we have no reason to doubt its existence,"* as curious and cause for concern.

- 3.6 *"26<sup>th</sup> January, 1962, Letter to Mr. John Virgil from Mr. Robert Motyer"* (this letter the Claimants describe as the covenant of 26<sup>th</sup> January, 1962)

*"Please Quote: RHM/jwf/V89*

*January 26, 1962*

*Mr. John Virgil  
Summerset*

*We enclose herewith our cheque made payable to you for £1,025 representing the balance due to you from Mr. E. Jones on the sale from you to Mr. Jones for a portion of your property in Southampton. We enclose herewith a copy of the statement from Mr. Jones to us which shows the payment to us of £1,030. We enclose also our receipted account for professional services for £5 and this enclosed cheque provides the balance of £1,025. We propose therefore to deliver the deed of conveyance to Mr. Jones.*

*We will keep the previous title deeds to the property for the time being since Mr. Jones will be preparing a covenant for production which our Mr. Motyer discussed with you at your recent interview."*

The Claimants argue that *the covenant* was made between:

- Robert Motyer, Senior Counsel, Appleby, Spurling and Kempe, Acquaintance. The Engineer;
- Eric A. Jones, Family Lawyer and Acquaintance; and
- John Alfred Virgil, from Summerset, Cousin and Imposter.

The covenant, the Claimants argue, is a document created as part of the thread of a conspiracy to deceive and to possess title deeds to the property (Lot 4) mentioned.

3.7 “Schedule of Conveyances from 9<sup>th</sup> December, 1961”, the Claimants argue:

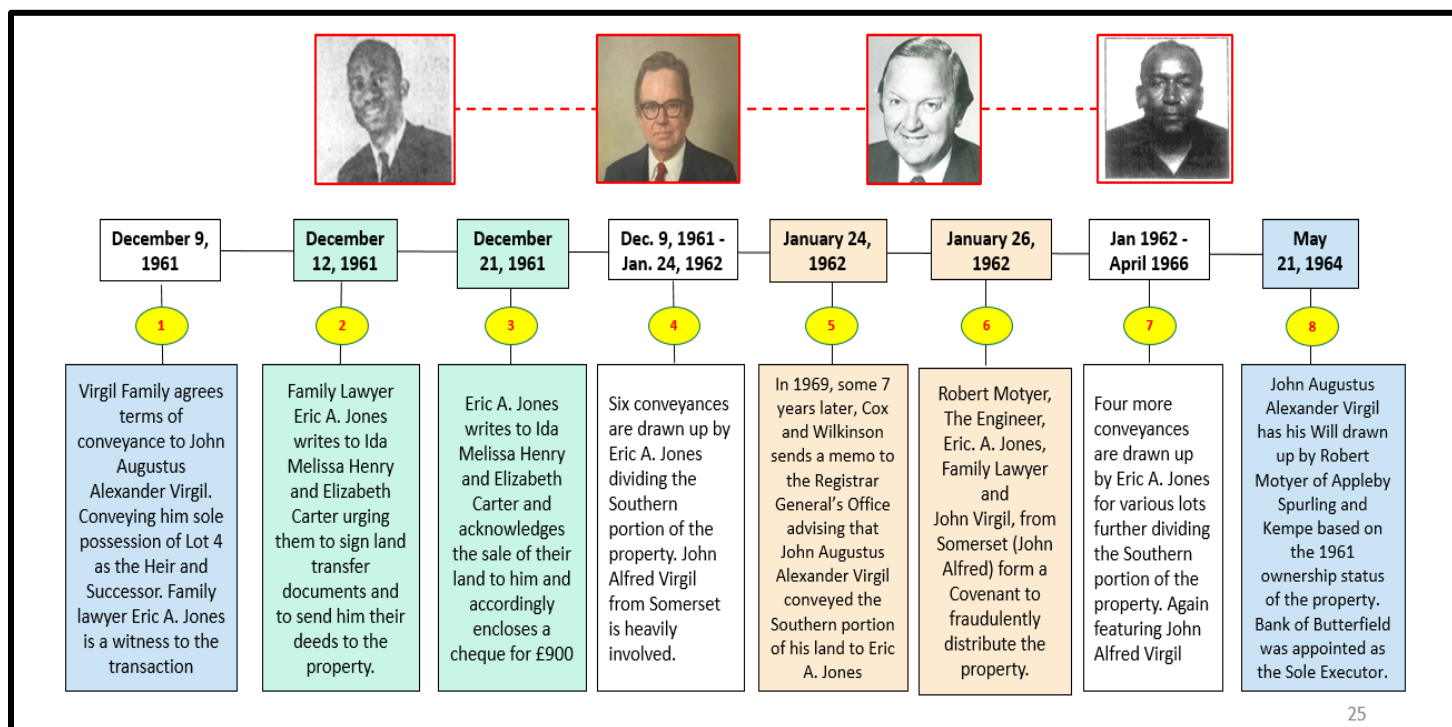
- “1. Eric Jones drafted conveyances for weeks leading up to the date of the missing indenture of 24<sup>th</sup> January, 1962.
2. Six conveyances were prepared by Eric A. Jones for various lots from the Southern portion between 9<sup>th</sup> December, 1961 and 24<sup>th</sup> January, 1962. John Alfred signed off on quite a few himself. Motyer was the Engineer.
3. Presumably, these were prepared by Counsel and filed with the relevant Parish Vestry Office. And this presumed its authenticity.”

These circumstances, the Claimants allege, are suspicious and indicative of a conspiracy. The table below, they argue, illustrates the conveyances and the dates they were executed.

**Table1: showing schedule of conveyances from 9<sup>th</sup> December, 1961**

Date	From	To	Lawyer
December 9, 1961	Julien Cornelius Jones	John Alfred Virgil	Eric A. Jones
December 19, 1961	Eric A. Jones	Eric A. Jones and Elizabeth Hedwig Jones	Eric A. Jones
December 20, 1961	Eric A. Jones	Julien Cornelius Jones	Eric A. Jones
December 28, 1961	Eric A. Jones	Eric A. Jones and Elizabeth Hedwig Jones	Eric A. Jones
January 23, 1962	Eric A. Jones and Elizabeth Hedwig Jones	John Alfred Virgil	Eric A. Jones
January 23, 1962	Eric A. Jones and Elizabeth Hedwig Jones	John Alfred Virgil	Eric A. Jones
June 14, 1962	Eric A. Jones and Elizabeth Hedwig Jones	Robert Clayton Shirley and Joan Marilyn Smith	Eric A. Jones
October 16, 1962	Eric A. Jones and Elizabeth Hedwig Jones	Vivian DaCosta Sweeting and Gloria Yvonne Sweeting	Eric A. Jones
June 28, 1963	Vivian DaCosta Sweeting and Gloria Yvonne Sweeting	John Alfred Virgil	Eric A. Jones
April 15, 1966	Eric A. Jones	John Alfred Virgil and Muriel Dorothy Wilhemina Virgil	Eric A. Jones

3.8 The Claimants rely on “A Chronology of activity regarding the Southern portion of the Virgil Property at Spring Benny - 1961 to 1964”, as the factual basis for the assertion that the transaction (conveyances) was fraudulent. See below illustration, labelled Figure 4, which was submitted by the Claimants.

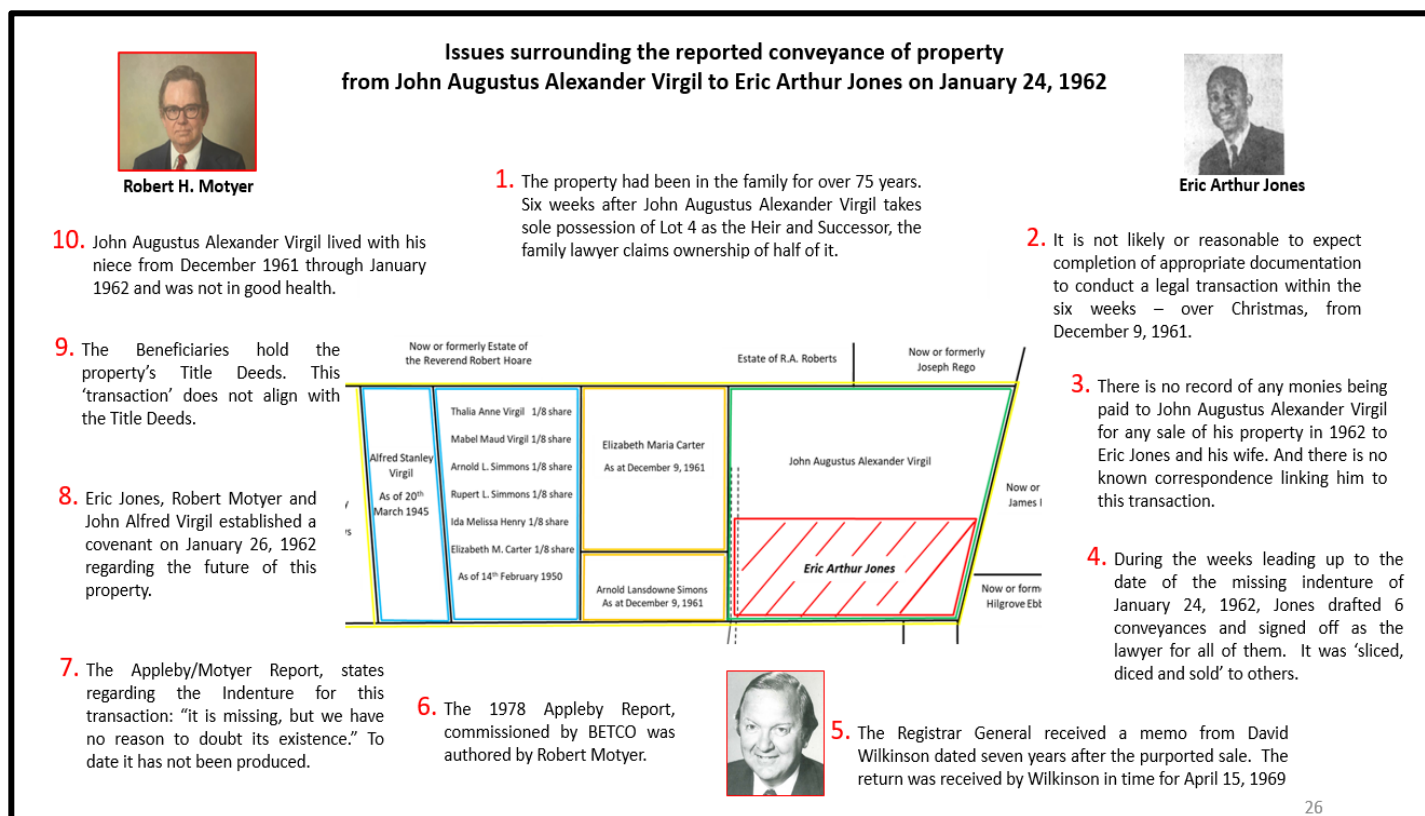


25

**Figure 4: A Chronology of activity regarding the Southern portion of the Virgil Property at Spring Benny - 1961 to 1964<sup>208</sup>**

3.9 Regarding the Southern portion, the Claimants identify ten (10) “*Issues surrounding the reported conveyance of property from John Augustus Alexander Virgil to Eric Arthur Jones on 24<sup>th</sup> January, 1962.*” Below is the verbatim submission with an illustration, labelled figure 2, and the Claimants invited the COI to consider the issues identified.

<sup>208</sup> Extracted from COI - Exhibit CNLB-4, pp. 25



**Figure 5: Issues surrounding the reported conveyance of property from John Augustus Alexander Virgil to Eric Arthur Jones on 24<sup>th</sup> January, 1962**<sup>209</sup>

## THE NORTHERN PORTION

- 4.0 The Claimants allege that Russell Levi Pearman, a real estate agent, was acting as an agent for John W. Swan "*who would take possession and go on to develop the property.*" An application submitted by R. L. Pearman to the Central Planning Authority to sub-divide the Northern portion of the property as (illustrated in figure 6) they allege was made in circumstances where Pearman was not the owner of the property and he was therefore making a fraudulent submission, purporting to be the owner of John Augustus Alexander Virgil's property. The application, the Claimants argue, was simply described as plan of subdivision of lot 4 of property White Hill, Sandys Parish.
- 4.1 Two submissions were made to the Central Planning Authority by Mr. Russell Levi Pearman and they exhibit copies of documents submitted by Mr. Pearman on 6<sup>th</sup> March, 1968 and 3<sup>rd</sup> February, 1969.

<sup>209</sup> Extracted from COI - Exhibit CNLB-4, pp. 26



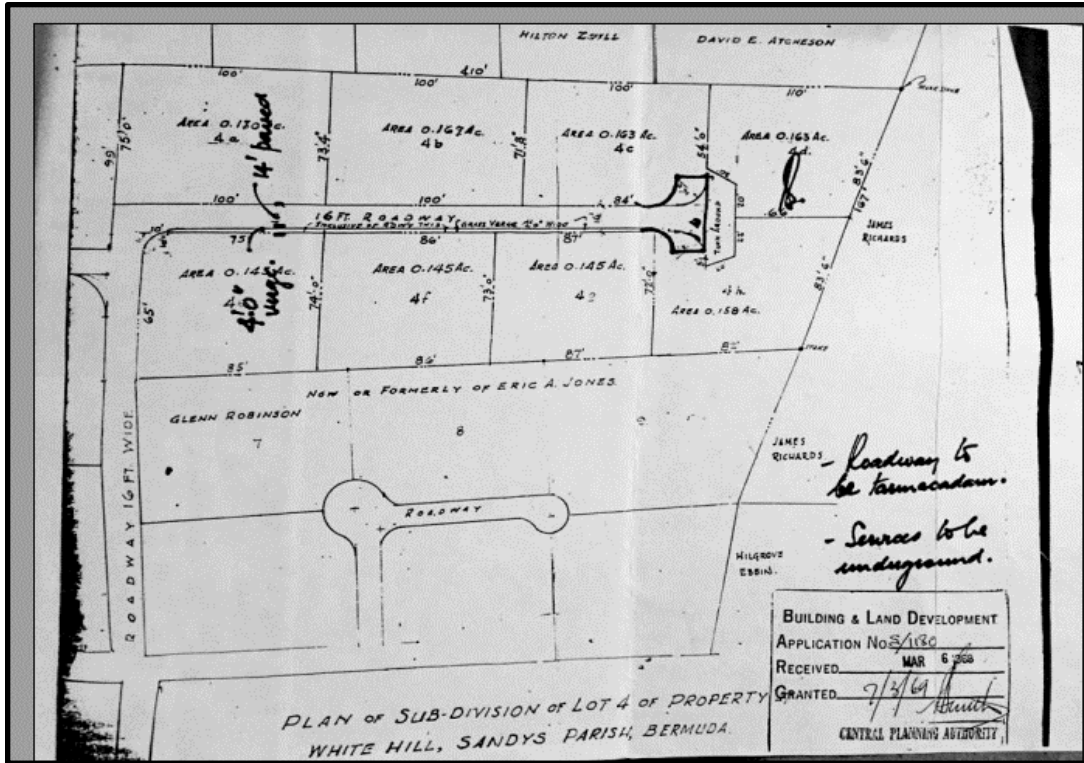


Figure 6: March 1968 - An Application To The Central Planning Authority by Mr. Russell Levi Pearman to subdivide the Northern portion of the property

4.2 The verbatim submissions of the Claimants are below which they argue is proof of a fraudulent activity:

**Police Investigation**  
An Application to The Central Planning Authority by Mr. Russell Levi Pearman to subdivide the Northern portion of the property

R. L. Pearman was regarded by this Department as being both applicant and owner of the land subject of the application.

FLN: S/1160 19th October 1976

Subdivision into 8 lots, R. L. Pearman, Port's Hill, Sandys.

This is to confirm that on 18th October 1976, at the request of Sgt. T. Cassin, this Department supplied to him the following copy documents in connection with the above application:-

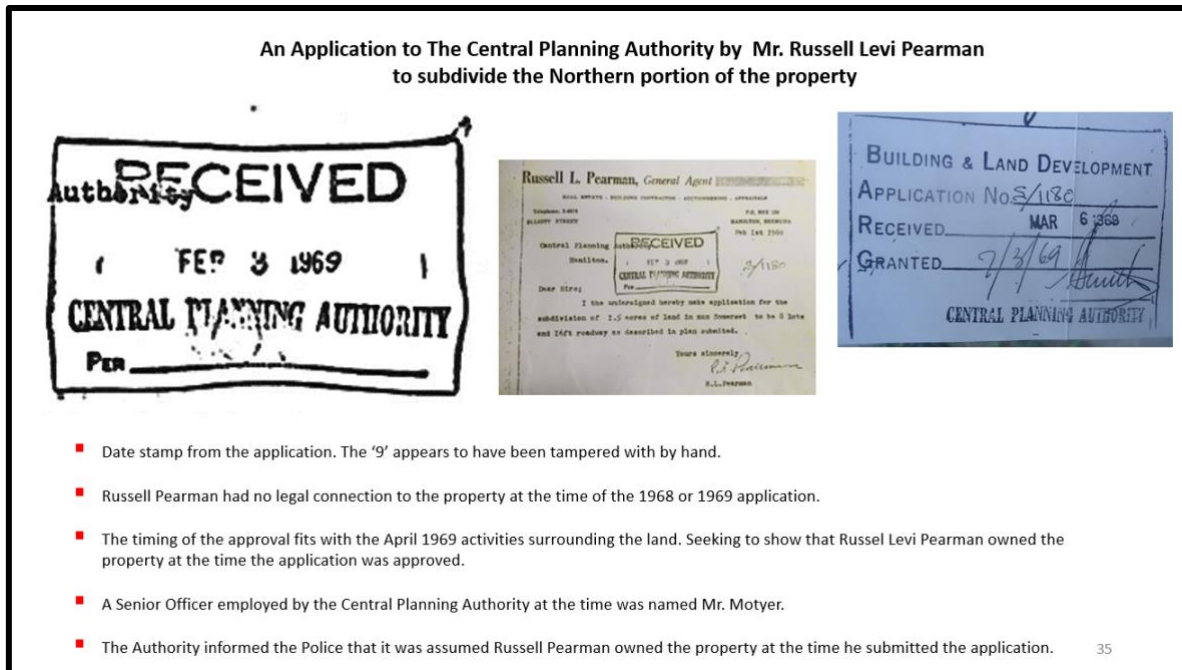
- Letter of application from R. L. Pearman dated 1st February 1969. In the absence of a certificate to the contrary, R. L. Pearman was regarded by this Department as being both applicant and owner of the land subject of the application.
- Approved drawing dated 14th February 1969 submitted in support of the original application in 1. above.
- Approved drawings dated 7th March 1969, as received 6th March 1969 as an amendment to approval dated 14th February 1969.

Both 1. and 2. were received 3rd February 1969.

- Department written position to the Bermuda Police Force during their investigation into the handling of the Northern portion of the land.
- Application was received and processed within one month.

Figure 7: An Application To The Central Planning Authority by Mr. Russell Levi Pearman to subdivide the Northern portion of the property





**Figure 8: An Application to The Central Planning Authority by Mr. Russell Levi Pearman to subdivide the Northern portion of the property**

- 4.3 The Claimants invite the COI to infer that the 11<sup>th</sup> January, 1969 sales agreement was created to align with the 3<sup>rd</sup> February, 1969 resubmission of the application for approval and, importantly, they allege the transaction was fraudulent.
- 4.4 The Claimants highlight the fact that a police investigation was launched pursuant to a complaint made to the Police by Mrs. Barbara Brown. More importantly, they exhibit a letter written by the Central Planning Authority to the Bermuda Police Force during the course of the Police investigation regarding the complaint made by Mrs. Barbara Brown. The Claimants viewed with interest the contents of the 19<sup>th</sup> October, 1976 letter from the Central Planning Authority: (i) That “...R. L. Pearman was regarded by this Department as being both applicant and owner of the land subject of the application.” and (ii) that the application was received and processed within one month.
- 4.5 The 19<sup>th</sup> February, 1969 letter from Robert Motyer to David Wilkinson. The Claimants allege that this letter is “*Legalism at work. Inter-lawyer correspondence on a land deal that was not rooted in legality.*” The Claimants allege that this letter is proof of the fraudulent behaviour surrounding the lot of land which led to the Virgil family being dispossessed. The family assert that the circumstances under which the sales agreement was negotiated<sup>210</sup> are worthy of further investigation and, most importantly, the account given by witnesses to the sales agreement raises the issue of a process that was not transparent.

<sup>210</sup> COI- Exhibit CNLB-16

- 4.6 Mr. Robert Motyer, the Claimants assert, drafted and witnessed the 21<sup>st</sup> May, 1964 Will of John Augustus Alexander Virgil and undoubtedly was aware of its contents. They invite the COI to draw the inference that Mr. Motyer was in a position of a conflict of interest and he used his close association and professional relationship to his own personal benefit, leading to the family being dispossessed of land in the northern portion.
- 4.7 The Claimants allege in Figure 9 as illustrated below (Exhibit CNLB 4, page 37). They argue that it represents a “*Timeline of known Activities within a Fraudulent Scheme Regarding The Northern portion - March 1968 to May 1970.*”

**A Letter 19<sup>th</sup> February, 1969  
From Robert Motyer to David Wilkinson**

F.O. Box 1179  
RHM/jwf/V70  
19th February, 1969

Mr. David E. Wilkinson,  
Barrister & Attorney,  
Church Street,  
Hamilton.

Dear Sir,

on the instructions of Mr. John Augustus Alexander Virgil we forward to you herewith the title deeds of a property in Sandys Parish which we understand that Mr. Virgil has contracted to sell to your client Mr. Russell Levi Pearman at a total price of £7,000.

We have a copy of a form of contract for sale signed by the parties dated 11th January 1969, which mentions that the purchaser requires a mortgage in the amount of £5,000. Mr. Pearman has today confirmed to our Mr. Motyer that no mortgage is required and that the full purchase price of £7,000 will be paid in cash to Mr. Virgil.

Please sign and return to us the enclosed receipt card.

Yours faithfully,

RHM/jwf  
enc.

**From:** Robert H. Motyer, Senior Counsel A.S. & K.  
(RHM/jwf/V70)



**To:** Mr. David E. Wilkinson,  
Barrister and Attorney  
Church Street,  
Hamilton.

1. Robert Motyer advises that on instructions of Mr. John Augustus Alexander Virgil we forward to you herewith the title deeds of a property in Sandys Parish.....
2. which we understand that Mr. Virgil has contracted to sell to your client Mr. Russell Levi Pearman at a total price of £7,000.
3. We have a copy of a form of contract for sale signed by the parties dated 11<sup>th</sup> January 1969, which mentions that the purchaser requires a mortgage in the amount of £5,000.
4. Mr. Pearman has today confirmed to our Mr. Motyer that no mortgage is required and that the full purchase price of £7,000 will be paid in cash to Mr. Virgil.

Please sign and return to us the enclosed receipt card.

Yours faithfully,

RHM/jwf

enc.



■ Legalism at work. Inter-lawyer correspondence on a land deal that was not rooted in legality.

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**Figure 9: A Letter 19<sup>th</sup> February, 1969 from Robert Motyer to David Wilkinson**

Sales Agreement  
11<sup>th</sup> January 1969  
John Augustus Alexander Virgil to Russell Levi Pearman.

Authentic signature

*John Augustus Alexander Virgil*  
Signed by the above-named John Augustus Alexander Virgil as his  
last will and testament in the presence of us both being present

Phone: 2-4056 TC-9 90

RUSSELL L. PEARMAN

SALE AGREEMENT

RUSSELL L. PEARMAN REAL ESTATE acting as Agent on behalf of the Vendor heretofore mentioned agrees to sell and the Purchaser heretofore mentioned agrees to buy the property heretofore described upon the terms and subject to the General conditions on the reverse hereof and the Special conditions below, all of which form an integral part of the contract between the parties.

Vendor JOHN AUGUSTUS VIRGIL  
Address Pentruke  
Occupation Tailor Telephone No.  
Purchaser RUSSELL LEVI PEARMAN  
Address 221077 St Hamilton  
Occupation Realitor Telephone No. 220770  
Date of Birth November Status 1st  
Purchase Price £ 7,000 Deposit £ 100

Mortgage required £5,000  
Existing Mortgage  
Existing Tenancies  
Attorneys David Wilkinson Completion Date 40 days  
Legal Costs Purchaser & Vendor  
Mode of Conveyance To Deeds  
Agent's Commission 5%  
Wherabouts of Title Deeds A.S.A. Kemp  
Description of Property Lot of land measuring 410 North 190 East 311 South 144 West with 16 ft roadway to main White Road in Hamstead, South

GENERAL CONDITIONS

- The property above described is being sold in the whole free from encumbrances subject only to any existing mortgage and subject to any encumbrances specifically mentioned in the Special Conditions hereinafter contained.
- The Agent acknowledges receipt from the Purchaser of the sum above mentioned in Deposit and undertakes to hold the same as stakeholder upon the terms of this Agreement. Upon completion of the sale of the Agent shall be entitled to retain the commission and of the sale deposit and shall pay the balance thereof to the Vendor.
- The Vendor shall at his own expense deliver good title to the said property in accordance with this Agreement and shall forthwith make available to the Purchaser all documents of title of the Vendor in the said property. If the Vendor shall fail to deliver good title to the said property as aforesaid or shall fail to transfer the said title within a reasonable time then the Purchaser shall be entitled to refuse to accept the said property and shall be entitled to recover the deposit and to have the return of the said deposit and to have the return of the said deposit and to have the return of the said deposit.
- If the Purchaser shall default in compliance of the purchase price a reasonable time then the Vendor or the Agent on behalf of the Vendor shall have the right to enter by writing to the Purchaser to terminate this Agreement and upon any such termination the said deposit money shall be retained by the Vendor or held in the name of the Vendor as liquidated damages for breach of contract by the Purchaser.
- The Vendor will maintain the said property and all buildings thereon and the grounds thereof and will deliver them to the Purchaser upon completion of the sale condition as they are at the date of the sale. In the event of defaulting of all or any part of the said property by the Vendor or by any other person, the Purchaser shall be at liberty to rescind this Agreement in which case the deposit money shall be retained by the Vendor or held in the name of the Vendor as liquidated damages for breach of contract by the Vendor and shall be the benefit of all persons entitled to have notice of the said property.
- If any dispute shall arise between the parties as to any of the matters herein contained or as to anything pertaining to the sale, the same shall be referred to arbitration under the provisions of the Arbitration Act, 1950.

Dated this 11<sup>th</sup> day of Jan. 1969

SIGNED by the Vendor or Agent in the presence of: *John Augustus Virgil*  
SIGNED by the Purchaser in the presence of: *Russell & Pearman*  
SIGNED on behalf of the Agent in the presence of: *Algernon Doers*

1. This Agreement shall bind the heirs, executors, administrators and assigns of the Vendor and Purchaser respectively.

Dated this 11<sup>th</sup> day of Jan. 1969

SIGNED by the Vendor or Agent in the presence of: *John Augustus Virgil*  
SIGNED by the Purchaser in the presence of: *Russell & Pearman*  
SIGNED on behalf of the Agent in the presence of: *Algernon Doers*

Unknown signature

- Algernon Doers was convinced to witness this transaction. Drove around in a taxi with Russell L. Pearman and parked at Govt. Gate to do the signing. John Augustus Alexander Virgil was not present.

Figure 10: Sales Agreement 11<sup>th</sup> January, 1969, John Augustus Alexander Virgil to Russell Levi Pearman

### Analysing 3 Signatures – The Will and Two ‘Sales Agreements’

Copies of excerpts of 2 separate ‘Sales Agreements’ obtained by Detective Sgt. Thomas Cassin of the Bermuda Police Force during his criminal investigation in 1976. Both documents are signed on the same day i.e. January 11, 1969. They are compared to the signature on the Will.

1. The two signatures are extraordinarily dissimilar.
2. Neither is close to the signature on the Last Will in Testament.
3. The “J” in “John” is the most telling letter.
  - a) The “J” in 1 is made up of three very open, rounded loops – very airy and wide
  - b) The descending loop is very full
  - c) The “J” in 2 is narrow, slender and elongated.
  - d) The descending stem is very straight and not looped.
4. The “o” in John connects to the “J” and “h” differently in both signatures. In 1 - the “o” is connected by a straight line at the top, in 2 there are two small loops which dissect the “o”.
5. The “A” in Augustus is starkly different. The “A” in 1 is straight and plain with no curves or flourishes. The “A” in 2 is curved and begins and ends with a flourish..
6. The V’s in Virgil do not match. They appear rushed. The V in 2 has a small loop and curve as a lead in. This does not appear in 1.
7. The name “Alexander” is completely omitted from the signature in both cases.
8. Russell Pearman’s signature is consistent, almost identical.
9. The “h” in “John” is taller in 2 than 1. The “h” in 2 has a narrower loop than the “h” in 1.
10. The “t” in Augustus in 2 is taller and has a cross stroke which forms a narrow loop. In 1 the “t” is shorter, and the cross stroke forms a wide loop.

*John Augustus Alexander Virgil*

Signed by the above-named John Augustus Alexander Virgil as his last will and testament in the presence of us both being present

Will

Dated this 11th day of Jan. 1969

SIGNED by the Vendor or Agent in the presence of: *John Augustus Virgil*

SIGNED by the Purchaser in the presence of: *Russell & Pearman*

1



(12) Dated this 11th day of Jan. 1969


SIGNED by the Vendor or Agent in the presence of: *John Augustus Virgil*

SIGNED by the Purchaser in the presence of: *Russell & Pearman*

2

39


Figure 11: Analysis of Signatures – The Will and Two ‘Sales Agreements’

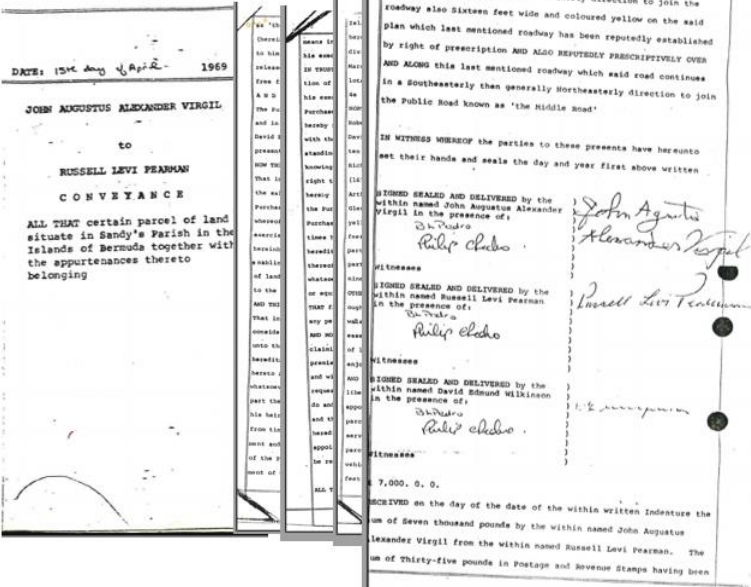


April 15, 1969 Conveyance drawn up by David Wilkinson

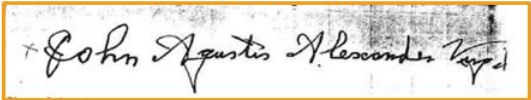
Between John Augustus Alexander Virgil and Russell Levi Pearman

A Closer look at signatures.

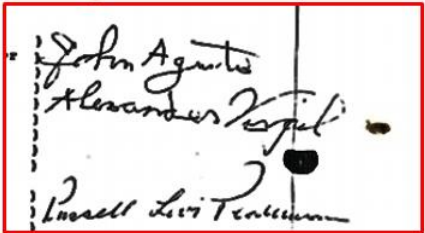




Signature on the Will



Signature on the Conveyance



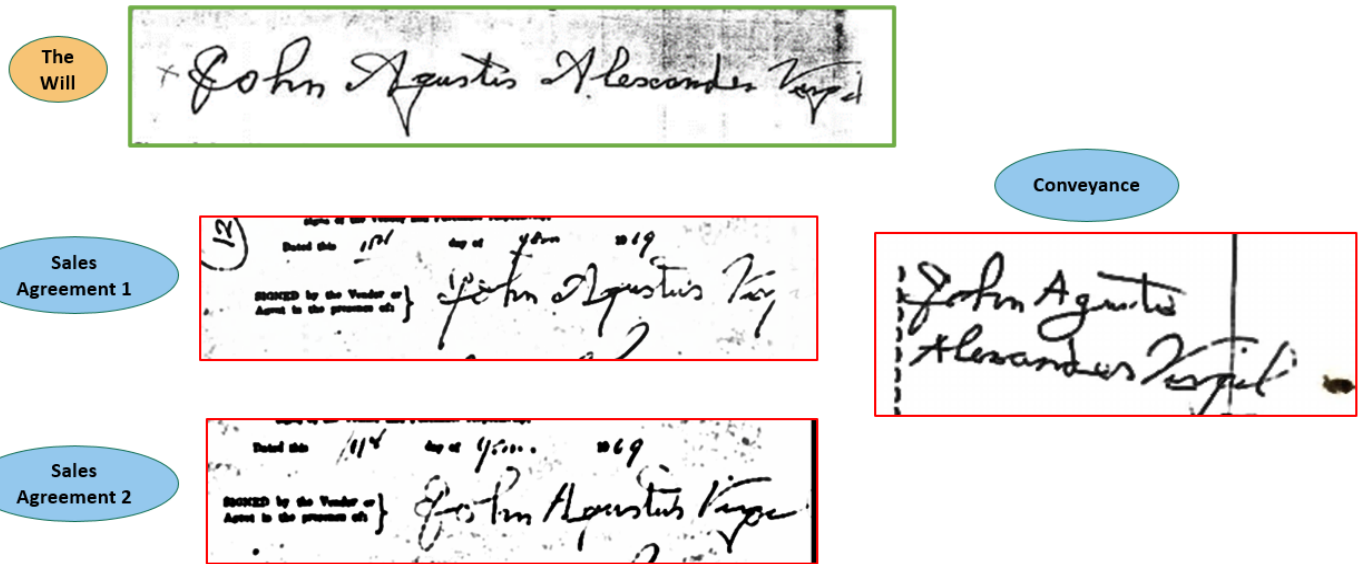
- David Wilkinson also refused to share a copy of the January 11, 1969 sales agreement with the Police Investigator.
- The police were never presented with this conveyance of 1969.

40

Figure 12: 15<sup>th</sup> April, 1969 Conveyance drawn up by David Wilkinson between John Augustus Alexander Virgil and Russell Levi Pearman - A closer look at signatures.



Assessing the Signatures offered to authenticate the January 1969 Sales Agreement  
And Conveyance from John Augustus Alexander Virgil to Russell Levi Pearman



41

Figure 13: Assessing the signatures offered to authenticate the January 1969 Sales Agreement and Conveyance from John Augustus Alexander Virgil to Russell Levi Pearman

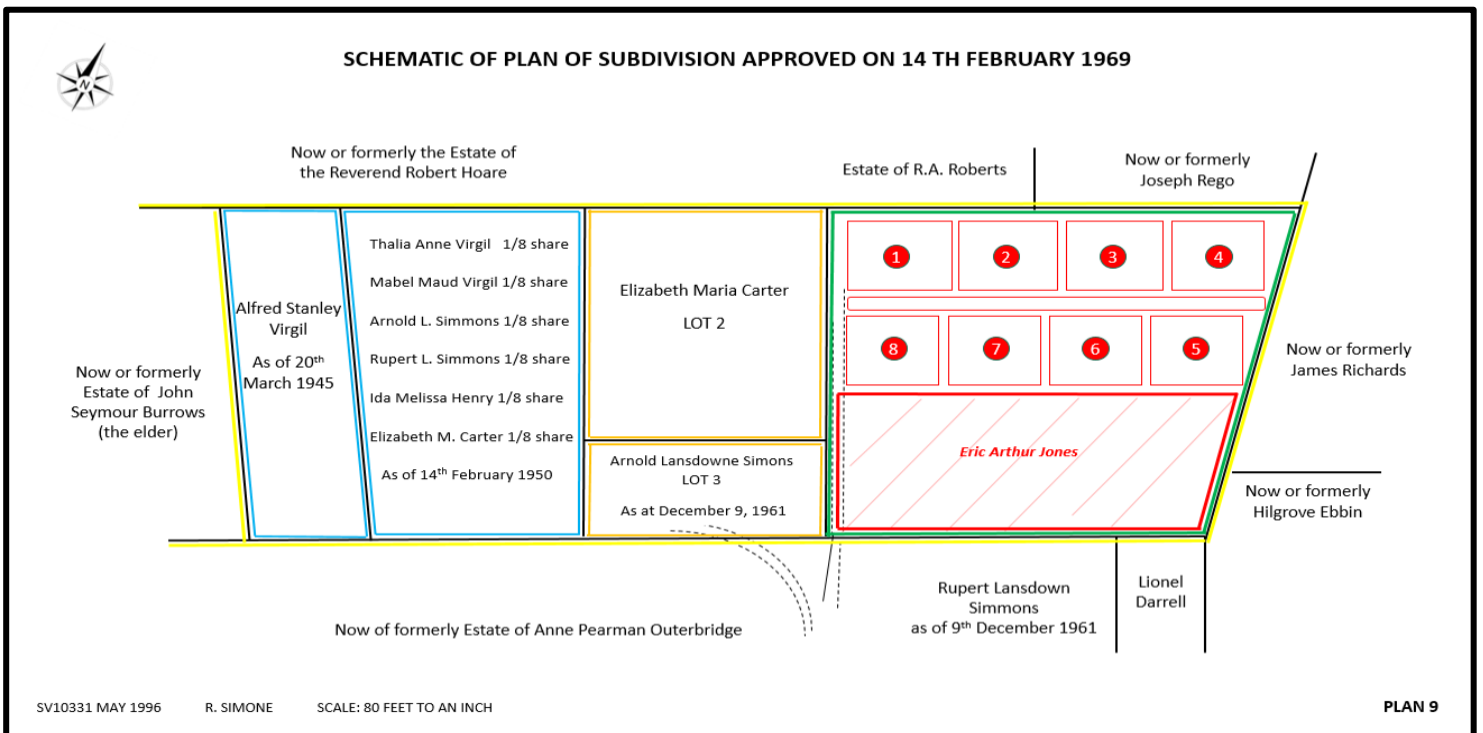


Figure 14: Schematic of plan of subdivision approved on 14<sup>th</sup> February, 1969

## ■ Voluntary Conveyances Recorded in 1970

- Voluntary Conveyances Recorded in 1970 - Book of Conveyances, Registrar General's Office
- Between John William David Swan and Leslie Earl Ming
- Legal Counsel – Arnold A. Francis and Edward 'E. T.' Richards



Sir John W. Swan



Edward E.T. Richards

Item #	Lot Number	Date	From	To	Lawyer	Reference - Registry General's Office
1	6	November 4, 1970	John William David Swan	Leslie Earl Ming	Arnold A. Francis	Book 17, page 108
2	6	November 5, 1970	Leslie Earl Ming	John William David Swan	Arnold A. Francis	Book 17, page 108
3	7	November 4, 1970	John William David Swan	Leslie Earl Ming	Arnold A. Francis	Book 17, page 106
4	7	November 5, 1970	Leslie Earl Ming	John William David Swan	Arnold A. Francis	Book 17, page 110
5	8	November 4, 1970	John William David Swan	Leslie Earl Ming	Arnold A. Francis	Book 17, page 107
6	8	November 5, 1970	Leslie Earl Ming	John William David Swan	Arnold A. Francis	Book 17, page 109
7	4	December 28, 1970	John William David Swan	Leslie Earl Ming	Sir Edward Richards	Book 17, page 190
8	4	December 30, 1970	Leslie Earl Ming	John William David Swan	Sir Edward Richards	Book 17, page 190
9	5	December 28, 1970	John William David Swan	Leslie Earl Ming	Sir Edward Richards	Book 17, page 189
10	5	December 30, 1970	Leslie Earl Ming	John William David Swan	Sir Edward Richards	Book 17, page 191



Arnold Francis

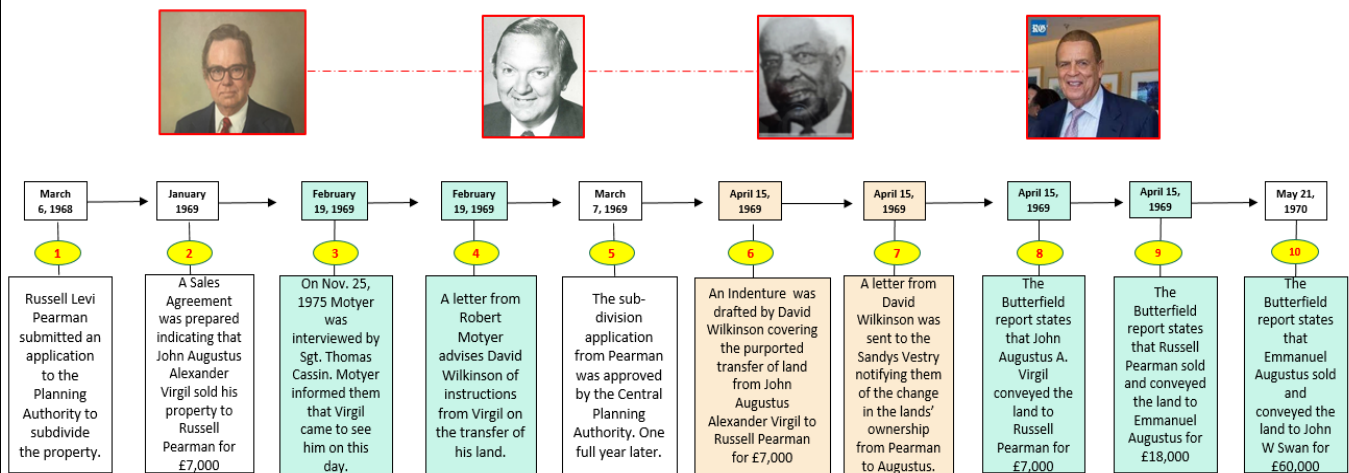


Leslie Earl Ming

43

Figure 15: Voluntary Conveyances Recorded in 1970

## Timeline of known Activities within a Fraudulent Scheme Regarding The Northern portion - March 1968 to May 1970



- There is no reliable documentation to support a legal transfer of any land from John Augustus Alexander Virgil during this timeline.

44

Figure 16: Timeline of known Activities within a Fraudulent Scheme Regarding The Northern portion - March 1968 to May 1970

### 12 Issues Surrounding the 1968 – 1969 Transfer of the Northern Portion of Lot 4 from John Augustus Alexander Virgil to Russell Levi Pearman

1. Russell Levi Pearman was neither owner nor acting on the owner's behalf when he submitted a sub-division application to the Central Planning Authority in March 1968.

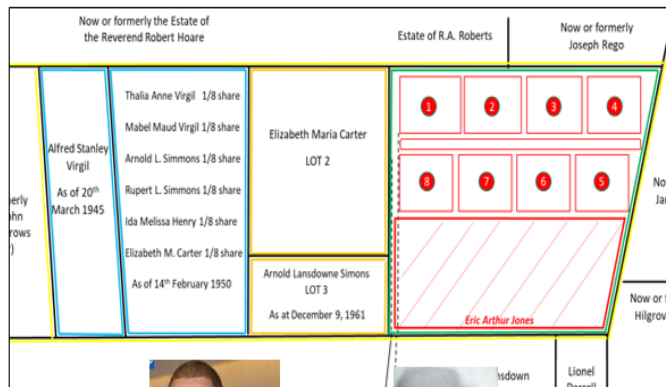


2. The Central Planning Authority dishonestly informed the Police Investigation that the application for subdivision was submitted in 1969, the year it was approved.

3. Russell Levi Pearman did not purchase any property from John Augustus Alexander Virgil.

12. The Beneficiaries hold the Title Deeds to the property.

11. During the Police investigation John W. Swan Ltd. did not produce any relevant documentation to the Police on this 'sale'.



4. Parts of this real estate transaction were conducted in the back seat of a Taxi, while parked up outside of Government Gate on the 42<sup>nd</sup> Street side? The seller was not present.

5. The 'sales agreement' between John Augustus Alexander Virgil and Russell Levi Pearman was not signed by John Augustus Alexander Virgil.

6. Algernon Doers, in his police statement stated that he "signed once" as a Witness on a sales agreement. His signature was used twice on January 11, 1969; to complete two separate sales of the property on this day.

10. Russell Pearman's lawyer David Wilkinson refused to provide the Police access to, sight of or a copy of any authenticating documents for review and analysis during their investigation.



9. The Registrar General's Office holds no record of any sale of this property after 1962.

8. The conveyance of 15<sup>th</sup> April 1969 of the property to Russell Levi Pearman was not signed by John Augustus Alexander Virgil.

7. On 29<sup>th</sup> January, 1976 Det. Insp. Waddle during the Police Investigation indicated that the sales agreement witness signatures attributable to Doers were not the same.

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**Figure 17: 12 Issues Surrounding the 1968 – 1969 Transfer of the Northern Portion of Lot 4 from John Augustus Alexander Virgil to Russell Levi Pearman**

## THE PURSUIT OF JUSTICE 1972 – TODAY

5.0 The beneficiaries argue that since John Augustus Alexander Virgil's death on 17<sup>th</sup> January, 1972, the family has sought to agitate for answers regarding being dispossessed of land devised to them in the testator's Will. However, they claim that the matters which they have instituted in the Courts of Bermuda have been dismissed on technicalities.

5.1 The pages below represent more of the verbatim submissions and allegations made by the Claimants to the COI, (**Exhibit CNLB 4**), see extracts below titled *The Pursuit of Justice 1972 – today. A Police Investigation -- Excerpts from Two Witness Statements by Sergeant Thomas Cassin #55*. Excerpts from interviews with Robert H. Motyer, David Wilkinson and John W. Swan, Recollections from the Pursuit of Justice



- 5.2 The Claimants have asked the COI to consider the probative value of these extracts (Figures 18 – 24) taken from witness statements which are attached as appendices.

**The Pursuit of Justice  
1972 – today**

**A Police Investigation  
By Sergeant Thomas Cassin #55**

TO: The Commissioner of Police, Superintendent "C"  
DIVISION: Major Incident Room  
FROM: Thomas Cassin DS 55      DATE: 7th February 1976  
SUBJECT: Complaint relating to Estate of John Augustus VIRGIL

Complainant: Mrs. Barbara Lucille Browne, Spanish Point,  
Pembroke West. Telephone: 20286.

Complaint: She is one of the beneficiaries of her Uncle's  
Will, namely one John Augustus Alexander Virgil  
who passed away on 17th January, 1972. She al-  
leges irregularities in purchase of land from  
Virgil by one Russell Levi PEARMAN in 1969.

- (a) That VIRGIL didn't know what he was doing as he  
was a sick man and also an alcoholic.  
(b) That a witness to the Sales Agreement between  
Virgil and Pearman, a Mr. Algernon DOERS gave  
his signature on the street to Pearman and  
Virgil was not present.

Detective Sargent Thomas Cassin #55 conducted interviews with and obtained statements from two gentlemen who were parties to the transactions surrounding the Northern portion of the property in 1969.

1. Algernon Conway Doers who witnessed the 'sale' from John Augustus Alexander Virgil to Russell Levi Pearman from the back seat of a parked taxi.
2. John Emmanuel Augustus who supposedly purchased property in good faith from Russell L Pearman in April 1969

**Figure 18: A Police Investigation by Sergeant Thomas Cassin #55**

**The Pursuit of Justice  
1972 – today**

**A Police Investigation - Excerpts from two Witness Statements**

***Algernon Conway Doers***

1. **Algernon Conway Doers**, a Taxi Driver. He witnessed the 'sale' from John Augustus Alexander Virgil to Russell Levi Pearman.
2. Drove Russell Pearman to the rear of Government Gate on the left of St. Monica's Mission.
3. Mr. Pearman asked me to sign the paper as a witness, and I did.
4. I have been told by D. Sgt. Cassin that he had 2 agreements with my signature on both. . . That cannot be right. I only signed one form.
5. I definitely only signed my signature once, I'm sure about this. I am definite I only gave one signature.
6. If there is two signatures, then one of them was made by someone else.

***John Emmanuel Augustus***

1. **John Emmanuel Augustus**, a Mason by trade, who supposedly purchased property from Russell L Pearman.
2. Russell Pearman told him that he owned the Northern portion of the land.
3. Recalls that Russell said "I'll have to do things my way."
4. I have been shown a sales agreement (copy) dated Feb 19<sup>th</sup> 1969 and it appears to have my signature on it. I did not sign this agreement . . . Because I only went there once and that was 15<sup>th</sup> April 1969.
5. Pearman never at anytime showed me any deeds, sales agreements or anything else showing that he owned the property.
6. I accepted that John Swan was dealing as agent for me and he would know this.

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**Figure 19: A Police Investigation - Excerpts from two Witness Statements**

**The Pursuit of Justice  
1972 – today**

**A Police Investigation**

Conclusion:

It is possible that John Virgil never signed the Conveyance dated 15th April, 1969, at David Wilkinsons office. He was not known to Wilkinson, and indeed Mr. Pearman could have brought someone also instead. Without the original conveyance and examination of Virgil's signature on that document, nothing further can be done, at present. Mr. John W. Swan has started a search for this document without success to date.

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**Figure 20: Conclusion of Police Investigation**

**The Pursuit of Justice  
1972 – today  
A Police Investigation By Sergeant Thomas Cassin #55**

Excerpts from interviews with Robert H. Motyer, David Wilkinson and John W. Swan

- During an interview on January 28, 1976 with Sgt. Cassin at his Sofia House office, David Wilkinson refused to cooperate and provide Sgt. Cassin with access to, sight of, or a photo-copy of the February 19, 1969 Sales Agreement and or Conveyance between Russell Levi Pearman and Emmanuel Augustus that was in his possession.
- This document, withheld from the investigation, may have Algernon Doers' signature on it as a Witness to the 'transaction'. Mr. Doers swears that he "only signed once" and "somebody else must have" signed on my behalf if my signature is there.
- During an interview on November 25, 1975 with Sgt. Cassin, at his office Robert Motyer stated that John Virgil came to see him on February 19, 1969 and showed him a Sales Agreement for the sale of his property to Russell Levi Pearman.
- He also informed Sgt. Cassin that John Virgil instructed him to send his deeds to David Wilkinson who was representing Russell Pearman.
- Sgt. Cassin reported that "a search has been in progress for a number of months by John W. Swan Ltd for (the) conveyance dated 15th April 1969. There has been no success to date." A Conveyance dated 1969 was produced by John W. Swan Ltd. in 1978.



55

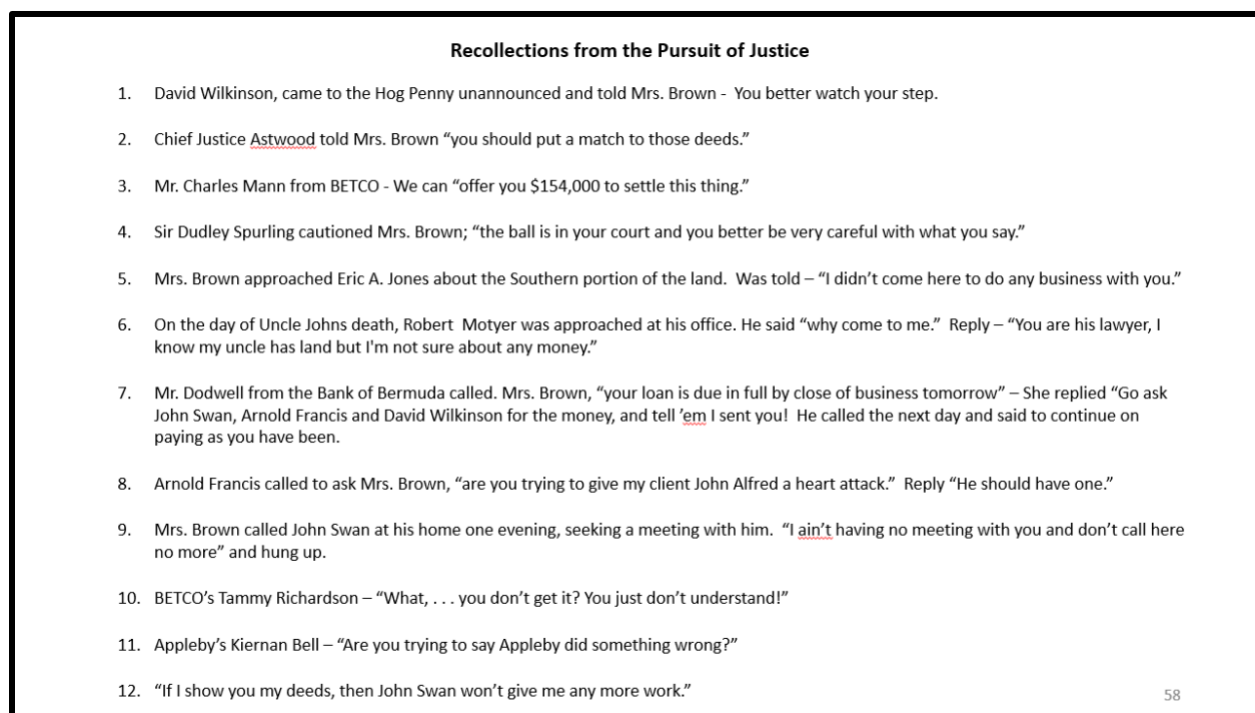
**Figure 21: Excerpts from interviews with Robert H. Motyer, David Wilkinson and John W. Swan**

**Seeking Justice  
1972 - today**

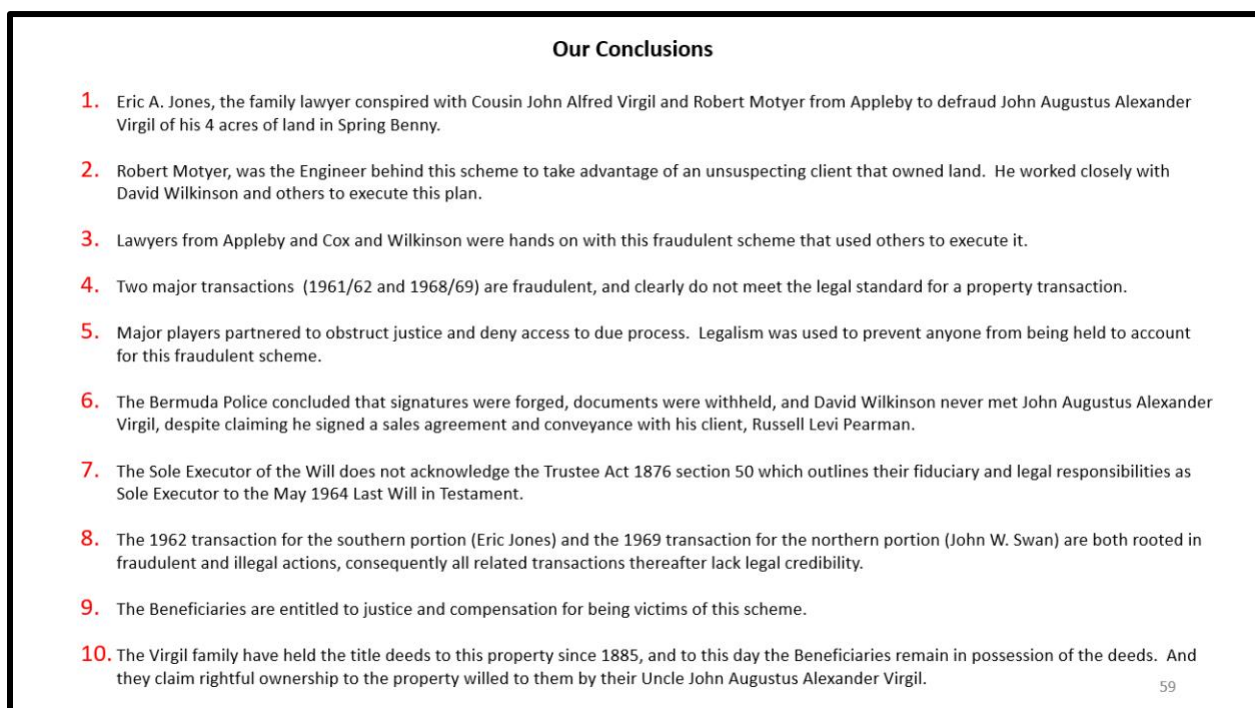
- Beneficiaries wrote to the Bank of Butterfield, Appleby and the Bermuda Monetary Authority, making several approaches over the years.
- Constantly told that there is nothing wrong here.
- A cross-section of Lawyers advised that:
  - “
  - 1. Nothing we can do
  - 2. You are causing trouble
  - 3. You can't take these people to court
  - 4. Take the money
  - 5. The Bank has paid me off
  - 6. I cannot do anything for you
  - 7. I always wondered how John Swan got his start
  - ”

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**Figure 22: Seeking Justice**



**Figure 23: Recollections from the Pursuit of Justice**



**Figure 24: Claimants' Conclusions**

5.3 The Claimants, Mr. George and Charles Brown, were cross-examined by Mr. Kim White on behalf of Sir John Swan and during cross-examination further written submissions were made by Claimants. The further submissions appear below (**Exhibit CNLB 17**).

“John W. Swan  
Association with Fraudulent Activity Surrounding the 1968/69 Transaction  
Taken for Evidence Previously Submitted to the Commission of Inquiry  
Showing a Pattern of behaviour – associated with fraudulent activities  
March 25, 2021”

1. A Fraudulent Scheme Involving Bankers Lawyers and Real Estate Agents – Robert Motyer of AS&K was the Engineer, John W. Swan was a major player within this fraudulent scheme.
2. The 1969 transaction is directly related to the 1970 transaction. The fraudulent transactions of 1968 and 1969 are a crucial part of the basis upon which the 1970 transaction involving John W. Swan relies. John W. Swan is directly connected to both transactions.
3. Russell Levi Pearman acted as the agent for John Swan when the 1969 transactions were being carried out involving JAAV and Emmanuel Augustus.
4. Russel Pearman fraudulently submitted a plan to the Planning Dept for a subdivision of the property into eight lots. John Swan sold these eight lots to the current residents. We are curious to learn which deeds were used to support a legal claim of clear title to these lands by any of John Swan's clients.
5. The January 11, 1969 Sales Agreement between JAAV and Russell Pearman was fraudulent. Also, the April 15, 1969 Conveyance between JAAV and Russell Pearman is fraudulent. These documents are used to claim a legal basis for the subsequent sale of the property to Emmanuel Augustus and then on to John W. Swan.
6. Russell Pearman, Emmanuel Augustus and John Swan visited the property together, just before Christmas in 1968. Russell (the seller) was acting as agent for John Swan and John Swan was acting as agent for Emmanuel Augustus (the purchaser).
7. The sales agreement for the 'sale' of JAAV's land to Russell Pearman was done in the back seat of a taxi, at Government Gate, up on 42<sup>nd</sup> Street. The owner and purported seller of the land JAAV was not even present. This is another fraudulent building block. The transaction between Emmanuel Augustus and John Swan depends on this earlier transaction to support a legal claim to the property.
8. The same documents referred to in item 7 above also contained a witness signature of Algernon Doers. His name appears on more than one sales agreement however he was adamant (Police Investigation) that he only signed his name once on a sales agreement in the taxi. This is fraudulent misrepresentation of Algernon Doers' signature and is also used to support the eventual claim by John Swan to the legal title of the property.
9. In March 1969 Russell Pearman submitted a plan for subdivision to the Dept of Planning for a second time – the first time was in 1968 before he claimed ownership. The 1969 submission contained documents with alterations (by hand) to the official record. This subdivision into 8 lots of land was the basis for subsequent sales of the property by John Swan.
10. Russell Pearman was involved in two conveyances on the same day, April 15, 1969. Firstly the land frequently conveyed to him in 1969 from JAAV and secondly the conveyance he signed in the sale of land to Emmanuel Augustus in 1969. These transactions involving John Swan' Agent and John Swan's client show the relationship that enabled the fraud.
11. John Swan took seven years to produce a conveyance between JAAV and Russell Pearman. This conveyance was not provided to the Police when they requested it as part of their investigation.
12. Ten conveyances between John Swan and his staff member Leslie Ming – between each other back and forth over four days. This is understood to be fraudulent behaviour. According to Investigator Carlton Adams this was the “wild-wild west”! The ten conveyances were headlined as Heads of Terms – an intent to complete transactions at a later date.

Other Notes:

13. Mr. David Kessaram of Cox and Wilkson penned an article in the Bermuda Sun February 23, 2001 – One Good Deed Deserves Another. The article speaks to the relationship between Deeds and how they should link over time.
14. The bank wrote to Mrs. Brown to inform her that 6800 pounds had been deposited into JAAV's account for the sale of his land. Mrs. Brown said that the money had been into the account years after the sale around July 4 19??, after the case had been closed...and because she had asked them about the money time and time again. The Bank's Mr. Collier wrote up the slip for sale. David Wilkinson claims in his statement to police that the payment for the property was made by cheque, while the lawyer Robert Motyer previously stated in a letter (February 1969) that the transaction was paid for in cash.

- 5.4 The Claimants sought to illustrate a pattern of ownership of lots of land by Sir John Swan (The Northern Portion). \* They refer to this pattern as remarkable, that is, “*suspicious and indicative of a conspiracy*”, specifically over a very short period of time lots of land were conveyed to employees or a close association and days later the said lands were re-conveyed to Sir John Swan.\*\*

**Table 2: showing extract from Exhibit CNLB 18, letter dated 5<sup>th</sup> March, 2021 from the Land Title Registry Office re records obtained by Mr. Charles Brown from the LTGO (The Northern Portion)**

Item #	Type of document	Date	Parties	LTRO ref.	Property details
1	Heads of Voluntary Conveyance (to uses)	04.11.70	John William David Swan to Leslie Earl Ming	Book of Voluntary Conveyances no. 17, page <b>105</b>	<b>Lot 6</b> Sandys Parish (0.145 Acres)
2	Heads of Voluntary Conveyance (to uses)	04.11.70	John William David Swan to Leslie Earl Ming	Book of Voluntary Conveyances no. 17, page <b>106</b>	<b>Lot 7</b> Sandys Parish (0.157 Acres)
3	Heads of Voluntary Conveyance (to uses)	04.11.70	John William David Swan to Leslie Earl Ming	Book of Voluntary Conveyances no. 17, page <b>107</b>	<b>Lot 8</b> Sandys Parish (0.176 Acres)
4	Heads of Voluntary Conveyance (to uses)	05.11.70	Leslie Earl Ming to John William David Swan	Book of Voluntary Conveyances no. 17, page <b>108</b>	<b>Lot 6</b> Sandys Parish (0.145 Acres)
5	Heads of Voluntary Conveyance (to uses)	05.11.70	Leslie Earl Ming to John William David Swan	Book of Voluntary Conveyances no. 17, page <b>109</b>	<b>Lot 8</b> Sandys Parish (0.176 Acres)
6	Heads of Voluntary Conveyance (to uses)	05.11.70	Leslie Earl Ming to John William David Swan	Book of Voluntary Conveyances no. 17, page <b>110</b>	<b>Lot 7</b> Sandys Parish (0.157 Acres)
7	Memorandum of Voluntary Conveyance	28.12.70	John William David Swan to Leslie Earl Ming	Book of Voluntary Conveyances no. 17, page <b>189</b>	<b>Lot 5</b> Sandys Parish (0.166 Acres)
8	Memorandum of Voluntary Conveyance	13.12.70	Leslie Earl Ming to John William David Swan	Book of Voluntary Conveyances no. 17, page <b>190</b>	<b>Lot 4</b> Sandys Parish 0.168 Acres)
9	Memorandum of Voluntary Conveyance	13.12.70	Leslie Earl Ming to John William David Swan	Book of Voluntary Conveyances no. 17, page <b>191</b>	<b>Lot 5</b> Sandys Parish (0.166 Acres)

\* The Claimants had earlier sought to illustrate this pattern regarding the Southern Portion and the role of Eric Arthur Jones

\*\* This is in reference to the northern portion and the “conveyancing and re-conveyancing patterns.”

10	Heads of Voluntary Conveyance	19.12.61	Eric Arthur Jones to Eric Arthur Jones and Hedwig Elizabeth Jones	Book of Voluntary Conveyances no. 11, page 150	<b>Lots 2, 3 and 4</b> Sandys Parish (no lots sizes in memo)
11	Heads of Voluntary Conveyance	28.12.61	Eric Arthur Jones to Eric Arthur Jones and Hedwig Elizabeth Jones	Book of Voluntary Conveyances no. 11, page 172	<b>Lot 6</b> Sandys Parish (no lot size in memo)
12	Memorandum of acquisition by a	30.07.60	Ida Melissa Henry and Elizabeth Carter to	Book of Alien Deeds	2/8 share of lot in Sandys
	British Subject from an Alien		John Alfred Virgil	no. 5, page 97	Parish

## CROSS-EXAMINATION AND EVIDENCE

### 6.0 Cross-examination of Charles and George Brown by the parties to whom adverse notices was issued

Below is an extract from the transcript of the Hearing, highlighting parts of the cross-examination on behalf of Sir John Swan. We highlight the following questions put to Mr. Charles Brown and Mr. George Brown and their responses:

#### UNEDITED TRANSCRIPT

##### For Claim 015

[Begin Transcript at 00:49:05]

**MR. CHARLES BROWN:** On page three, the second paragraph ends with a sentence that says,  
*"I accepted that John Swan was dealing as agent for me and he will would know this."*

**MR. KIM WHITE:** That was not the question I put to you, Sir. I asked you to show in that document you ascertain that Russell Pearman was an agent of John Swan and you cannot do that, can you, sir?

**HON. WAYNE PERINCHIEF:** Yes, sir.

**MR. CHARLES BROWN:** Chair the, the statement on page two, which says, at the top of page two,  
*"Pearman said: 'John, I'll have to do this my way.' And 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 I can protect you.””*

And Counsel is correct in that the statement does not say that Russell Pearman was agent for...we took this exchange and concluded that he was acting as his agent in the context of what he was saying. And we also know that Mr. Pearman went directly to Swan’s office with these pieces of paper all through this transaction. So Counsel is right in that it does not specifically state what we stated earlier in the fraudulent activity in terms of Mr. Pearman clearly being articulated as an agent for John Swan.

**MR. KIM WHITE:**

No, Mr. Brown, there is no evidence that Mr. Russell Pearman was agent for John Swan, that’s the correct answer, is it not?

**MR. CHARLES BROWN:**

That may be an answer. My answer is that, we have taken the information that has been...

**MR. KIM WHITE:**

And have extrapolated out and connected two and two to make eighty-two, with respect that is what you have done

**MR. CHARLES BROWN:**

I would like to finish my answer. May I?

...[transcript continues]...

**MR. CHARLES BROWN:**

The police report as you say it is, the document we have relied upon to make these ascertains

**HON. WAYNE PERINCHIEF:**

Yes.

**MR. CHARLES BROWN:**

And it goes on to talk about that he did not sign the yellow sheet of paper



and it was arranged that Pearman will go to John Swan's office with Augustus to make the arrangements. And so this to us is all association, although the statement does not overtly state as I have interpreted the facts, I invite the Commissioners to draw their own conclusions.

**MR. KIM WHITE:**

So, you accept from me that the police statement does not say either that Russell Pearman is an agent of John Swan?

**MR. CHARLES BROWN:**

I have answered...

**MR. KIM WHITE:**

It does not say expressly that Russell Pearman is an agent of John Swan as you have expressly said he was. That's correct, isn't it Mr. Brown?

**MR. CHARLES BROWN:**

I have answered...

**MR. KIM WHITE:**

No, you haven't.

**MR. CHARLES BROWN:**

The question. My answer, if I may repeat it, is that the assertion that Russell Pearman acted as agent for John Swan is not expressly articulated in John Emmanuel Augustus's police statement of October 25, 1976, but it is our conclusion from the facts contained in this statement that Mr. Russell Pearman was acting as agent for John Swan during this transaction.

**MR. KIM WHITE:**

So now you are resiling from your earlier statement that it is your opinion which is not based on a fact.

**MR. CHARLES BROWN:**

The fact as entered into evidence and contained in the statement which I have read excerpts from, those facts are in part used to draw the conclusion that we have drawn and taken alongside the twelve points that

we have shared earlier with you today. Our conclusion based on this suite of evidence is as we articulated that Russell Pearman is acting as agent for John Swan in this transaction detail.

**MR. KIM WHITE :**

You accept, Mr. Brown, that your conclusion would be wrong based on your conclusion by what these asserted facts amount to. It would be wrong, wouldn't it?

**MR. CHARLES BROWN:**

Conclusions are unique and we are all entitled to them. We are all entitled to our own opinions

**MR. KIM WHITE:**

Equally entitled to being wrong.

**MR. CHARLES BROWN:**

But we are not entitled to our own facts. And the facts are as answered and we have chosen to draw our own conclusions from these facts as we presented them and others are welcomed to draw their conclusions from the same facts as they see appropriate.

**MR. KIM WHITE:**

And just to finish this line of questioning off. There is nothing in the, what I want to call The Cassin Report, CNLB 16 that supports the, factually, the assertion that you have made or the conclusion that you have come to that Mr. Pearman was an agent of John Swan. Any more so than in the previous...

**MR. CHARLES BROWN:**

With respect, Counsel...

**MR. KIM WHITE:**

...Mr. Augustus's statement.

**MR. CHARLES BROWN:**

It appears that the, that matter, we just discussed the facts are not in dispute, we can agree on the facts. We are free to draw our own conclusions.

...[transcript continues]...

**MR. KIM WHITE:** I would like to, sir

**HON. WAYNE PERINCHIEF:** And Mr. White may have his ...

**MR. KIM WHITE:** Just one more thing.

**HON. WAYNE PERINCHIEF:** You may have your comments..."Another White is the ...[00:58:54 unclear]"

**MR. KIM WHITE:** Just to be complete, Mr. Brown was seeking to refer

**HON. WAYNE PERINCHIEF:** Yeah.

**MR. KIM WHITE:** CNLB 15 which is Mr. Doers's statement. Mr. Brown, can you confirm for the Commission that Mr. John Swan's name is not mentioned at all in that statement either? CNLB15...

**HON. WAYNE PERINCHIEF:** Could the Commission move to CNLB, Exhibit 16 to stop 15

**MR. KIM WHITE:** 15

**HON. WAYNE PERINCHIEF:** 15

**MR. KIM WHITE:** 15...It's a two-page statement

**HON. WAYNE PERINCHIEF:** Yes, it's already up. Thank you

**MR. CHARLES BROWN:** Mr. Doers's statement is what you are asking about?

**MR. KIM WHITE:** Yes, yes please. Yeah.

**MR. CHARLES BROWN:** Just give me...

**HON. WAYNE PERINCHIEF:** This is the statement of Algernon Conway Doers.

**MR. CHARLES BROWN:** Just to be clear. Algernon Doers's witness statement is the basis of your question?

**MR. KIM WHITE:** Yes. You were seeking to refer to it earlier on to show a fraudulent scheme. My question to you, sir, is does Sir John Swan's name appear in it? Yes or no. It's a simple answer. You may want to elaborate on that.

**MR. CHARLES BROWN:** I'll have, if I may have quick scan.

**MR. KIM WHITE:** Sure.

**MR. CHARLES BROWN:** You seem confident that it is not.

**MR. KIM WHITE:** Give you the chance to check it.

**MR. CHARLES BROWN:** Chair, I believe the question was, do I see or is John Swan's name mentioned in Algernon Doers's police statement, and the answer is no.

**MR. KIM WHITE:** Thank you, sir. In your written document CNLB 17, you said you wanted to know, one second, I would "probably [01:01:07 unclear]" find it.

**MR. CHARLES BROWN:** Chair, Chairman, could I just have a moment?

**HON. WAYNE PERINCHIEF:** Yes, what's your question, Mr. Brown?

**MR. CHARLES BROWN:** I want to confer with...

**MR. KIM WHITE** Who's giving evidence, sir? Which Brown brother is giving evidence?  
 ...[transcript continues]...

**MR. KIM WHITE:** Tag team, sir.  
*[laughter]*

**HON. WAYNE PERINCHIEF:** You believe so...thank you, Mr. White.

**MR. CHARLES BROWN:** So, thank you Counsel and Chair. And with that I would like to have my brother respond, brother George respond to this question...[inaudible 01:05:21]

**HON. WAYNE PERINCHIEF:** Could you put the question again, Mr. White?

**MR. KIM WHITE:** “Not that.... [01:05:24 unclear]”... Algernon Doers’s statement, Sir John Swan’s name does not appear. Which you have already confirmed that it doesn’t.

**MR. GEORGE BROWN:** No, it doesn’t, but I would like to expand on ‘no it doesn’t’ if that is possible.

**MR. KIM WHITE:** With respect, Mr. Chairman, we are never going to finish this Hearing unless we...

**HON. WAYNE PERINCHIEF:** Let us get the substantive answer that no, Mr. John Swan’s name doesn’t appear.

**MR. KIM WHITE:** That’s it.

**HON. WAYNE PERINCHIEF:** ...in the statement of Algernon Conway Doers, on the police statement. That is the short answer.

**MR. GEORGE BROWN:** Yes, that is the short answer, but I’m not finished.

**HON. WAYNE PERINCHIEF:** And Mr. Brown wishes to extrapolate on his answer, on this answer.

**MR. KIM WHITE:** Sir, he has given his evidence in chief and our cross-examination. I’m the one asking the questions. It is not for them to be making further statements. We’re never going to get finished this way, sir.

**HON. WAYNE PERINCHIEF:** Well, Mr. White, with respect, as I said this is not a Court of Law and we do wish to elucidate as much information as we can as a Commission and within reason and expansion of his

**MR. KIM WHITE:** Within reason as you directed, sir.

**HON. WAYNE PERINCHIEF:** I believe it is allowable.

**MR. GEORGE BROWN:** And just to echo what was said yesterday, that this is a fact-finding mission and it shouldn't just be a yes or no answer because that type of yes or no answers doesn't crack open the truth here. And the truth of the matter is that we have two police reports here and they're interrelated. So when you ask us to answer one question, it blindsides the other, so we need to read the Algernon Doers police statement that my brother was trying to get to, but you kept asking him a bunch of whole different other questions. So now it's time to read the Algernon Doers police statement that connects along with the Mr. Emmanuel Augustus one

**MR. KIM WHITE:** Sir, I was referring to that one. That is CNLB 15, is the one you are referring to?

**MR. GEORGE BROWN:** Yes

**MR. KIM WHITE:** Thank you.

**MR. GEORGE BROWN:** Would you be kind enough to let me read it now?

**MR. KIM WHITE:** Yeah..

**MR. GEORGE BROWN:** Is that fair enough?

**MR. KIM WHITE:** Yeah I just wanted to make sure that we are talking about the same statement.

**HON. WAYNE PERINCHIEF:** Yes, Mr. Brown, Mr. Brown. I'll say that you may read the Algernon Doers statement, Conway Doers statement.

It's up on the screen. If you would read it from the top to the bottom, sir.

**MR. GEORGE BROWN:** *"Statement of witness, statement of Algernon Conway Doers. I'm a taxi driver...This statement consists of blank pages. Each signed by me is true to the best of my knowledge and belief."*

**COUNSEL DIRK HARRISON:** I'm sorry,, but could you just indicate who is speaking now for the record.

**HON. WAYNE PERINCHIEF:** Mr. George Brown.

**COUNSEL DIRK HARRISON:** Thank you.

**HON. WAYNE PERINCHIEF:** Yes, continue Mr. Brown, Mr. George Brown

**MR. GEORGE BROWN:** Yes, *"this statement consisting of blank pages each signed by me is true to the best of my knowledge and belief and I make it knowing that it is tended in evidence. I shall be liable to prosecutions if I willfully stated in anything, which I know to be false or do not believe to be true. They dated the 26<sup>th</sup> day of November 1975. Signed by Algernon Doers, witnessed by T. Cassin DS five five. I'm a taxi driver and I live at the above address. I am divorced. I remember that some time ago, I was driving my taxi and I had the occasion to sign a document for Mr. Russell Pearman. I knew Mr. Pearman as I used to drive him many times. On this day, on this one, occasion, I picked up Mr. Pearman somewhere in town. I cannot say where it was in the morning time and I drove him to the rear of government gate, that's to the left of Saint Monica's Mission. He told me to stop nearby a man standing on the bank looking towards the*

*North Shore. Mr. Pearman went over to this man and I saw him showing this man a piece of paper. This man is named Smith. I think it's Howard Smith.*

*Mr. Pearman then came back to the taxi with this paper; he had shown Smith and the paper was folded over a couple of times. Mr. Pearman asked me to sign the paper as a witness and I did. I saw no names or writing on this paper. I knew Mr. Pearman was in real estate. And I figured he was doing a deal with Mr. Smith and he wanted me to be bear witness to it. Mr. Pearman and then went back to Mr. Smith showed him the paper, as if to say, is this all right, then he came back to the taxi and told me to drive him back to town. He had this paper with him when he came back to the taxi. I took him back to town. I cannot say where I dropped him off to. I definitely only signed my signature once. And that's the only time I've ever signed my name for Mr. Pearman.*

*I have never had any dealings with Mr. Pearman except drive him in my taxi. I was paid nothing for my signature. I have been shown a copy of a sales agreement by Detective Sergeant Cassin. My signature is on the agreement. I have been told by Detective Sergeant Cassin that he had two agreements with my signature in both. And both signatures are originals. That cannot be right. I only signed one form. I only signed my signature once. I'm sure about this. I now think that the paper I signed was a bigger one than the one that was shown to me by Sergeant Cassin. I really cannot be definite on this point. I am definite I only gave one signature, and the one I've been sharing looks*



*like mine. If there's two signatures, then one of them was made by someone else.*

*Algernon Doers. Statement recorded at dictation of Doers and on completion, it was read to him, he read and signed same. T. Cassin, DS 55."*

**MR. KIM WHITE:**

Mr. Brown, Mr. Brown.

**MR. GEORGE BROWN:**

Yeah, yeah.

**MR. KIM WHITE:**

Did Sir. John Swan's name appear in anything you read?

**MR. GEORGE BROWN:**

I said that no before I read it.

**MR. KIM WHITE:**

So why did you read it?

**MR. GEORGE BROWN:**

Because it's all connected and that's for the Commission to make inference from it. It's all connected, the two police statements

**MR. KIM WHITE:**

So you accept that John Swan's name does not appear in any one of those...does not appear in that Algernon Doers statement, yes?

**MR. GEORGE BROWN:**

Let's clarify when you say 'any one of those', because

**MR. KIM WHITE:**

I said Algernon Doers.

**MR. GEORGE BROWN:**

On the Algernon Doers one, it is not on there.

**MR. KIM WHITE:**

Nor does it appear in Mr...Just to be complete because you did ask your brother, you're giving evidence. Now it does not appear as in Mr. Augustus's statement where he, Mr. Augustus, says Russell was an agent of John Swan. That's correct, right?

**MR. GEORGE BROWN:** That was already spoken to.

**MR. KIM WHITE:** But not by you, sir. Since you're doing this tag team, I have to put it to.

**MR. GEORGE BROWN:** And, I read the Augustus, the Algernon Doers statement

**MR. KIM WHITE:** Yeah, but I'm putting it to you that in the Pearman, sorry, the Augustus statement, Augustus's statement does not say that Mr. Pearman is agent for John Swan.

**MR. GEORGE BROWN:** Well, yes man, and we already referred to that. My brother said it wasn't in there and you the Commission would make a determination on that.

**MR. KIM WHITE:** And you're confirming that?

**MR. GEORGE BROWN:** I'm confirming what was said.

**MR. KIM WHITE:** That's fine. Thank you. If you go to number two.

**HON. WAYNE PERINCHIEF:** Thank you.

**MR. GEORGE BROWN:** Thank you.

**MR. KIM WHITE:** If you go to paragraph four of the CNLB 17...Am I talking to you now sir, yes? Yes I am talking to you now...paragraph four of your document CNLB 17. You say John Swan sold these eight lots to the current residents. We are curious to learn what docket these were used to support the legal claim of clear title to these lands by John Swan's clients. You are familiar with JS-one, the document that was put in yesterday?

**MR. CHARLES BROWN:** Yes.

**MR. KIM WHITE:** And that document had on it all the memoranda which if you recall, I think it was you I'd point out to it, might have been your brother, I do apologize.

**HON. WAYNE PERINCHIEF:** Mr. White, let us just indicate that you're speaking to Mr. Charles Brown.

**MR. KIM WHITE:** Yes and thank you.

**HON. WAYNE PERINCHIEF:** Listen for a response from Mr. Charles Brown.

**MR. KIM WHITE:** Yes thank you, correct. Thank you. That's correct. And it's JS-1 for the secretary. Could you have it there, sir?

**MR. CHARLES BROWN:** Yes, I do.

**MR. KIM WHITE:** Okay, and I believe, I believe it was you, I was speaking to when you confirmed there were eight memoranda on that.

**MR. CHARLES BROWN:** Correct.

**MR. KIM WHITE:** In which each lot was removed from that deed as they were sold off to various people?

**MR. CHARLES BROWN:** That's what the memoranda...

**MR. KIM WHITE:** Yes.

**MR. CHARLES BROWN:** Speaks to you

**MR. KIM WHITE:** Yes, and that the JS one speaks to, in the recital A to an indenture dated April 1969 made between Russell Levi Pearman, and the vendor Mr. Augustus and Mr. David Wilkinson and also in the description of paragraph two, you, recall me putting it to you, that mentions, an indenture

of 15th April, 1969 made between John Augustus Alexander Virgil of the first part and Russell Levi Pearman of the second part. Yes?

**MR. CHARLES BROWN:**

Yes, sir.

**MR. KIM WHITE:**

Okay, thank you.

Paragraph 12, you say the conveyance between John Swan and staff member Leslie Ming back and forth over four days; this is understood to be fraudulent behaviour. Why is that fraudulent behaviour in your opinion, since you're not asserting any fact?

**MR. CHARLES BROWN:**

We concluded this is fraudulent inasmuch as we believe that the property in question was obtained by fraudulent means and so, what we call the gatekeeper transaction from 1969, the questions we've raised about that transaction opposition, is that all the transactions that flow from that because they are rooted in what we believe to be fraudulent activity, then the branch is, metaphorically speaking, of that root, are also categorized in the same way. And just as we've identified and concluded evidence of fraud with this transaction and we see the ten conveyances as an extension of, or a set of transactions, that rely upon the 1969 transaction, we say 1969 is not good and what standing '69 is likewise rooted in the fraud of '69.

**MR. KIM WHITE:**

Mr. Brown, look at what you wrote and what you said. You said ten conveyances between John Swan and staff member Leslie Ming between each other back and forth that were four days. This is understood to be fraudulent behaviour. You are saying

specifically that those transactions not the '69 transaction. Those transactions are fraudulent behaviour. They're not, are they?

**MR. CHARLES BROWN:**

If you take it out of context.

**MR. KIM WHITE:**

They are not fraudulent behaviour, are they Mr. Brown? Those transactions. I'm very specific, limiting to that.

**MR. CHARLES BROWN:**

Yeah, I understand your preference for specificity and limitations, but I took an oath to share the whole truth and I think the answer should reflect the whole story. And so while we like to focus on item 12 and you try and say the conveyance is a 1970, it is important to know and to note that those transactions are rooted in what we assert to be fraudulent activity. And if the root is fraudulent, then so too are the branches that flow thereafter. And this is...

**MR. KIM WHITE:**

But there is no fraud is there, Mr. Brown, between John Swan and his staff member Leslie Ming, is there in doing that transaction, that conveyance which you refer to in your statement.

**MR. CHARLES BROWN:**

I could repeat my answer, but the position...

**MR. KIM WHITE:**

Mr. Chairman, I've just asked the Commission to note that the witness was refusing to answer the question and evading the direct question and I'm going to move on. I see no profit in continuing to do that. I put to him one last question. Mr. Brown, is it not possible that those transactions are designed to create deeds for each one of the eight lots from the main deed?

**MR. CHARLES BROWN:** Theoretically that may be true, but...

**MR. KIM WHITE:** Thank you Mr. Brown.

**MR. CHARLES BROWN:** But we haven't seen the deeds and we don't know which deeds are being referred to.

**MR. KIM WHITE:** Thank you, Mr. Brown.

**MR. CHARLES BROWN:** We do know that the questions surrounding the deeds that were used and this is one of the reasons why we've invited an opportunity to review deeds of the current occupants. And that has not yet happened.

**MR. KIM WHITE:** Mr. Chairman, I don't think I'm in a position to ask any questions on paragraph 14 of this document that relates to the Bank of Butterfield doing, alleged to have been doing, anything, doing something and also whether or not there's no clarity to when the sixty eight hundred pounds was put in Mr. Virgil's account at the Bank of Butterfield, but what is clear from what Mr. Brown is saying is that 6800 pounds was in Mr. Virgil's Bank of Butterfield account. It doesn't say when.

**HON. WAYNE PERINCHIEF:** Mr. White, the entire document has now been entered as an Exhibit. And as such I believe that Mr. Brown made us notes and he should be able to, you should be able to question him on that.

**MR. KIM WHITE:** I don't think Mr. Brown can give...

**HON. WAYNE PERINCHIEF:** Mr. Brown.

**MR. KIM WHITE:** Because he's relying on information he received from his mother who didn't give any evidence about this.

That's all. I don't think I should ask him anymore because he has been very honest and saying he doesn't have the day.

**HON. WAYNE PERINCHIEF:** Oh, he doesn't know the day?

**MR. KIM WHITE:** No, he doesn't. He says it right in his statement.

**HON. WAYNE PERINCHIEF:** So, yes.

**MR. KIM WHITE:** What he does say is that the money was in the bank account

**HON. WAYNE PERINCHIEF:** So, you have asked him the question of that item 14 and his answer has been as fulsome as he could do with his knowledge. Is that correct?

**MR. KIM WHITE:** Maybe, maybe a better way of putting it is, you can't add to the date any more than what you've actually said here, can you?

**MR. CHARLES BROWN:** I perhaps could.

**MR. KIM WHITE:** Okay, fair enough, over now.

**HON. WAYNE PERINCHIEF:** If you're willing to make an attempt at it, Mr. White, you'll have to accept his answer. I mean tentative as it might be, speculative as it might be.

**MR. CHARLES BROWN:** It was in the mid 70s, mid to late 70s.

**MR. KIM WHITE:** And that's based on hearsay evidence from somebody else. You don't know personally the day.

**MR. CHARLES BROWN:** I do not know personally

**MR. KIM WHITE:** That's fair enough. Thank you, Mr. Brown.

**MR. CHARLES BROWN:** The day

**MR. KIM WHITE:** That's okay.

**MR. CHARLES BROWN:** The Bank might know.

**MR. KIM WHITE:** They might, thank you. You're right, quite right, they might.

**MR. CHARLES BROWN:** And if I could just add. The transaction that supposedly attracted 6800 was paid for either by cash or cheque pending on which lawyer is being interviewed by the police.

**MR. KIM WHITE:** And it doesn't, doesn't resile from the fact that cash or cheque, the money was in Mr. Virgil's account.

**MR. CHARLES BROWN:** It may very well be the case.

**MR. KIM WHITE:** But you've asserted that it was. You said here that the bank wrote to Mrs. Brown that 6800 pounds have been deposited into the account for the sale of land.

**MR. CHARLES BROWN:** The letter that Mr. Motyer penned to Mr. Wilkinson, speaking to the sale in February said that the full purchase price will be paid in cash to Mr. Rogers. And ..

**MR. KIM WHITE:** And do you think Mr. Motyer was...

**MR. CHARLES BROWN:** You could suggest, you would suggest that the cash was paid seven eight years after the transaction supposedly took place.

**MR. KIM WHITE:** I didn't suggest that at all, sir. You're suggesting that on which you have no knowledge personally, that that was the case.

**MR. CHARLES BROWN:** What I do know is that..



**MR. KIM WHITE:** Do you accept what I just said, sir, Before you go off on another tangent?

**MR. CHARLES BROWN:** With respect, Mr. White, you asked me if I accept...

**MR. KIM WHITE:** That you do not know personally, when the money would enter the account.

**MR. CHARLES BROWN:** I do not.

**MR. KIM WHITE:** Thank you. You may have wanted to add to that

**MR. CHARLES BROWN:** No, I am good.

**MR. KIM WHITE:** Thank you. So you cannot point to anywhere in this statement that you have made or in any of the other documents that you have submitted that John Swan engaged in a fraudulent activity with any specificity, other than this broad brush approach called a fraudulent screen scheme.

**MR. CHARLES BROWN:** With respect, Counsel, I think you're rephrasing, rephrasing an earlier question and I gave you my answer then, I can give it again. But I don't, I don't describe the facts as presented in the same vein. So, I'm not, it's the same question we've spent quite some time on

**MR. KIM WHITE:** And because you've not provided any specific incident of fraudulent activity by John Swan. Isn't that correct?

**MR. CHARLES BROWN:** Well, as I indicated earlier, we presented what we believe to be a series of facts through our evidence. And we like, we look at the facts in total, the whole truth, and connect the

facts as we see fit and present our conclusions of those facts. Now, as I indicated earlier, we can have our own opinions and our own conclusions, but the facts are not optional. And the facts that we have relied upon to draw our conclusions around fraudulent activity have been presented

**MR. KIM WHITE:**

And none of that which has been presented, you will accept from me, involved a specific activity by John Swan.

**MR. CHARLES BROWN:**

I cannot accept that.

**MR. KIM WHITE:**

Point to the specific activity, the specific fact, not your opinion, the specific fact which does that.

**MR. CHARLES BROWN:**

Specific facts as we've outlined clearly demonstrate the involvement of Mr. John Swan in the 1969 transaction from accepting and relying upon fraudulent documents. Although he may not have prepared them, they were relied upon. We know this, because the 1970 transaction relies upon the fraudulent activity of Mr. Russell Levi Pearman and others as we've articulated.

**MR. KIM WHITE:**

You will accept when you say relied upon, then you also accept that he didn't prepare the documents, that the documents were prepared. Sorry. This document here which is JS-one we just referred to, the conveyance from Mr. Augustus to John William David Swan was not prepared by John William David Swan but rather by a lawyer?

**MR. CHARLES BROWN:** I accept that the document was prepared by the, which lawyer was that?

**MR. KIM WHITE:** Peter Smith, sir, Peter Smith

**MR. CHARLES BROWN:** I thought I saw Medeiros.

**MR. KIM WHITE:** No, no, it's, if you look, if you just have a quick look

**MR. CHARLES BROWN:** What's on the back page, back page, the very back?

**MR. KIM WHITE:** Yeah, I am looking. That's a Registrar General's stamp

**MR. CHARLES BROWN:** And what's, what's in the stamp, in the law firm they received...  
[01:28:11 unclear]

**MR. KIM WHITE:** Received March 16th, 1977

**MR. CHARLES BROWN:** And which name

**MR. KIM WHITE:** Medeiros Law Firm,

**MR. CHARLES BROWN:** Medeiros Law, Firm.

**MR. KIM WHITE:** But that was not the person who prepared this document because if you look at the first paragraph, look at the first paragraph and Peter Smith, Peter James Chalmers Smith, a barrister, was the person who prepared that document, okay? Looking for the backing sheet. It doesn't appear to have one, maybe that was the practice in those days. And in fact, Peter Smith signed this document to. So, Sir John relied on a lawyer to prepare this document and produce good title to the property he was paying sixty thousand dollars for, isn't that correct?

**MR. CHARLES BROWN:** The real estate transaction would require a series of deeds as Mr. Kessler articulated, one good deed deserves another. And so the position of the beneficiaries is that, that document to which you refer is not aligned with the deeds that have been presented, that have been held by the beneficiaries

**MR. KIM WHITE:** The deeds that the beneficiaries have with over 60 years previous going back in time, starting 60 years previous to that deed going back to the 1850s, I'm not quite sure

**MR. CHARLES BROWN:** 1880

**MR. KIM WHITE:** 1880 All right, so those are deeds you are talking about. Okay.

**MR. CHARLES BROWN:** Those are the deeds that speak to the parcel of land that Russell Pearman claimed ownership, sought to subdivide. The subdivision was eventually used to sell the Lots, which is now occupied.

**MR. KIM WHITE:** So the question was now Sir John Swan relied on a lawyer to produce good title to the land which he was purchasing, and that lawyer was Peter Smith, I put to you.

**MR. CHARLES BROWN:** Okay.

**MR. KIM WHITE:** And do you accept that the lawyer would review the deeds of title and report to his client that you have good titles of the property?

**MR. CHARLES BROWN:** I cannot speak to the posture of the lawyers, but what I do know is that this was during the apartheid era. This was an era when blacks were often intimidated and whites tended to rule,

by money muscle and power. We saw that we presented evidence to that affect and we also know that the deeds that should have been relied upon were not relied upon because they were housed by the beneficiaries.

**MR. KIM WHITE:**

You know that Peter Smith is a white lawyer?

**MR. CHARLES BROWN:**

I do know that.

**MR. KIM WHITE:**

And Sir John is a black man?

**MR. CHARLES BROWN:**

He's, he is...he is indeed.

**MR. KIM WHITE:**

And you're raising apartheid?

**MR. CHARLES BROWN:**

Sure. Are you denying that apartheid and segregation did exist in Bermuda at that time?

**MR. KIM WHITE:**

No sir, I am not. I am not here to answer your question and I don't deny anything. I'm wondering how that fits into John Swam relying on Peter Smith to produce good title. That was what the question was about.

**MR. CHARLES BROWN:**

You're asking how I...

**HON. WAYNE PERINCHIEF:**

Let me interject with respect. I think we may be getting off on a tangent that don't seem to be of... [01:31:59 unclear] value to the matter. Will you agree Mr. White and Mr. Brown?

**MR. KIM WHITE:**

Agree to what sir, sorry?

**HON. WAYNE PERINCHIEF:**

I do not believe that this tangent, this line of questioning is of probative value.

**MR. KIM WHITE:** I don't, I don't agree with the greatest respect or otherwise I wouldn't have asked the question.

**MR. CHARLES BROWN:** Mr.

**MR. KIM WHITE:** But I've asked the question, he's given his answer to the Commission. The Commission has it for its record.

**HON. WAYNE PERINCHIEF:** I'm just, I'm just putting the question rather, do we need to continue this line of questioning?

**MR. CHARLES BROWN:** Well, did

**HON. WAYNE PERINCHIEF:** You might like to get back on the main track?

**MR. CHARLES BROWN:** I...certainly, certainly.

**HON. WAYNE PERINCHIEF:** Agree?

**MR. CHARLES BROWN:** I do agree but as we said previously that you know this was a triangle of trickery where we had bankers, lawyers and real estate agents....

**HON. WAYNE PERINCHIEF:** Yes.

**MR. CHARLES BROWN:** Working in partnership. My brother spoke about it in the House of Assembly at the time this Commission was being debated and so we see this at play and we're describing what we see at play.

**HON. WAYNE PERINCHIEF:** Yes, but nevertheless, all of that has been entered into evidence and it's very obvious. And I think that if we go too far, on a tangent on the, on the basis of what is represented, if we stick closely to the facts and the evidence that has been entered, I think we are on safer ground when it comes to coming to a resolution.

**MR. CHARLES BROWN:** Certainly

**HON. WAYNE PERINCHIEF:** I dare say that when we submit our report, we may be at liberty to make such comments on a broad basis, but I think we should stay more focused on this issue at this point, with respect

**MR. CHARLES BROWN:** Certainly.

**MR. KIM WHITE:** So as a result, the questions I've been asking you Mr. Brown, plural, you've not been able to point to a single fact as opposed to opinion or conclusion that shows that John Swan engaged in a fraudulent activity, in respect to the transaction that you're complaining about, which is particularly, let us be clear, you're complaining about the sale of the land to Mr. Pearman by Mr. Virgil for which you have accepted sixty eight hundred pounds went to Mr. Virgil's bank account?

**MR. CHARLES BROWN:** We don't accept that representation of the facts at all.

**MR. KIM WHITE:** I'm asking you to point to a fact.

**MR. CHARLES BROWN:** Yeah.

**MR. KIM WHITE:** And you're not able to do so.

**MR. CHARLES BROWN:** What, what we have pointed to, and I'll add that as a realtor of some years' experience, one would expect that, at least a reasonable person would expect that a realtor will know the value of the deeds that are required to complete a legal land transfer. That does not appear to have occurred in instances. And again you mentioned that we have not pointed to a single fact. What we have pointed to and maintain is that there are a series of facts that speak to a scheme that was

at play. And Mr. Swan was intricately involved in those activities as part of the triangle of trickery, real estate agent.

**MR. KIM WHITE:**

Intricately involved in the triangle of trickery because he went and looked at the piece of land at the invitation of the potential purchaser and advised him? That's a good piece of land by it. That's trickery? It's trickery when his client who had money with them came to borrow money or take money, whatever way it went to pay for that land. That's trickery? With the greatest respect, sir, I put to you it is not trickery at all.

**MR. CHARLES BROWN:**

The...fair enough, the facts you select are fine. We selected, we've presented our story and we maintain that the fraudulent activity of 1968 attributable to Mr. Pearman an associate of Mr. Swan and the subsequent fraudulent activity...

**MR. KIM WHITE:**

Associate? How is he associated with Mr. Swan? You've given no evidence he's an associate of Mr. Swan. There's been no evidence in light of that. You just throw these things out, like casting assertions into the air. Sir, they have to be rooted in fact. Where is the fact?

**MR. CHARLES BROWN:**

There's a really strong relationship between the players. It's evidenced by the comments, the, the reports in the police statement and that's the conclusion we've drawn, that Algernon Doers was witness to two transactions. Emmanuel Augustus was the purchaser and then the seller and John Swan's the client. So we've presented what we believe to be the evidence that speaks to the



environment that enabled these fraudulent activities to flourish. And when it was time to cooperate with the police on this matter, there was avoidance.

**MR. KIM WHITE:**

By who?

**MR. CHARLES BROWN:**

By Mr. Swan.

**MR. KIM WHITE:**

And you base that on what?

**MR. CHARLES BROWN:**

There was a request for a copy of documents and they said we'll look for them. At the conclusion of the police investigation, they concluded that they were still waiting for the documents to be provided by Mr. Swan's office.

**MR. KIM WHITE:**

That doesn't mean he's avoiding anything, does it? It means that they couldn't be found, possibly, doesn't it, Mr. Brown?

**MR. CHARLES BROWN:**

It's an interpretation of the facts.

**MR. KIM WHITE:**

So it's an interpretation...

**MR. CHARLES BROWN:**

A seasoned...

**MR. KIM WHITE:**

Thank you

**MR. CHARLES BROWN:**

A seasoned real estate agent, soon-to-be Premier, ought to have known, a reasonable person, I would suggest, ought to have known that the title to a piece of property that he was seeking to claim ownership of ought to be free and clear of any encumbrances, any, any claims of what we spoke to you.

**MR. KIM WHITE:**

And you have accepted that Mr. Swan was relying on a lawyer to provide good title.

**MR. CHARLES BROWN:** Mr. Swan is a seasoned realtor. The realtor did, the lawyer may have drafted, but he's drafted. But it is unreasonable to suggest that the realtor was unaware and unconcerned with the legitimacy or lack thereof of the title to the property which he lay claim to in 1970.

**MR. KIM WHITE:** Doesn't the fact that he used a lawyer speak to the fact that he was concerned about the legitimacy of anything he purchased?

**MR. CHARLES BROWN:** [01:38:46 unclear]

**MR. KIM WHITE:** Having, having the lawyer produce a document which has good title to that property.

**MR. CHARLES BROWN:** If this was...

**MR. KIM WHITE:** Is it, no answer to the question sir?

**MR. CHARLES BROWN:** I'm going to answer the question in the way in which it needs to be answered because context is important. We spoke about money, muscle and power and to suggest that a lawyer in 1960 would do transaction

**MR. KIM WHITE:** In the 1970s.

**MR. CHARLES BROWN:** In the 60s, 70s that a transaction would be completed and it be taken for granted that it is a legitimate transaction is concerning, is perpendicular to the climate in Bermuda at the time. We've heard several instances of lawyers come before this Commission of...

**COUNSEL DIRK HARRISON:** Mr. Chairman, we're going along a line that now, in terms of what the witness is saying and I must say broad

brushing all lawyers now in Bermuda, I think we, there's a point now where we need to draw the line, Chairman.

**HON. WAYNE PERINCHIEF:** Yes, Counsel. I am taking your advice and I have asked that the witnesses and Counsel for Mr. John Swan be as concise and precise as possible. I believe that the Commission at this point has been magnanimous, if you like, when it comes to gathering information and evidence. And I believe that the horse is being flogged virtually to death on this issue. I believe that we've gathered a preponderance of relevant facts. I believe that we have given certainly Mr. White his full opportunity to question the witnesses...

**6.1 Cross-examination of Mr. Charles Brown by Mr. Michael Hanson on behalf of the Bank of Butterfield - We refer to extracts of the unedited transcript.**

**Michael Hanson-Attorney 09:35:** Thank you. So, Mr. Brown, I mean, looking at this report that your family commissioned. I think any objective person would have a significant understanding and empathy for the position that you've raised because the expert that you have, that you have paid to look into this for you has effectively validated your concerns on title.

**Senior Counsel Harrison 10:03:** Chairman, I'm just wondering whether Mr. Hanson would like Mr. Brown to answer the question rather than an objective view of him indicating what an objective person would believe.

**Michael Hanson-Attorney 10:18:** Sure. That's no, no, no problem. Mr. Brown, do you, did you have significant concerns on the back of this report, about the title?

**Charles Brown 10:33:** The concerns that the family had about the title remain up until today in that we are still

seeking, we are still seeking to present our story as it relates to this property.

**Michael Hanson-Attorney 10:53:** Thank you. Mr. Brown, yesterday in the questioning from Counsel for Mr. Swan, you were emphatic, were you not, that you stood by this report?

**Charles Brown 11:08:** We stand by parts of the report. Indeed.

**Michael Hanson-Attorney 11:14:** Okay. So, do you stand by this part of the report, that there was no evidence that there was a transfer of title?

**Charles Brown 11:28:** I believe that Mr. Summers, based on what he had available at the time, drew the conclusions that, as we see here, we accepted it. We accepted that he did the work he said he did.

**Michael Hanson-Attorney 11:44:** Thank you. But now, on the 26th of March 2021, in hindsight of all the documents that you've provided to the Commission, do you still consider that there was no documentary evidence of the transfer of property or the conveyance of property? Or do you now amend your position just in respect to that, not in respect of all the context, all the other issues you've raised, just in respect to this particular issue? Do you now revise your position on that issue?

**Charles Brown 12:17:** We maintain that the sale, the supposed sale of land from John Augustus Alexander Virgil to anyone is in question, as we understand that there was never any sale of his property.

**Michael Hanson-Attorney 12:46:** Thank you, Mr. Brown. Yes, you've made that very clear. I think what I'm trying to separate out for the benefit for you and the Commission, just so we're all clear, is whether or not your issue now, today, is not that these documents didn't exist, as you provided them in your evidence, you know. Not that they didn't exist, but that the circumstances around them was suspect. And

that's why the transfer shouldn't have taken place or didn't take place. But the document exists itself, the conveyance document of the 15th of April, 1969. Now, I know you have concerns about the document, but the document itself exists, doesn't it?

**Charles Brown 13:29:** We have seen a conveyance, yes.

**Michael Hanson-Attorney 13:32:** Okay. Alright.

**Charles Brown 13:32:** April/15/69 which we've entered as part of our evidence submission recently, back in November.

**Michael Hanson-Attorney 13:41:** Thank you. So, it was just, it was just to clarify for the Commission's benefit. The issue isn't so much whether or not the document exists. You think it does. And the issue is more surrounding the parties' intentions at the time, the contracting parties, all the issues we raised over the course of yesterday and in your evidence. Is that correct, is that fair?

**Charles Brown 14:03:** It's, I'm sorry, I believe the answer is yes. But I would, would you kindly repeat the question? Sorry about that.

**Michael Hanson-Attorney 14:16:** Maybe, maybe I could phrase it another way. Today, giving evidence under oath, your position is, is it not, the 1969 conveyance document itself did exist, but you have concerns about it or its authenticity.

**Charles Brown 14:39:** Correct.

**Michael Hanson-Attorney 14:40:** Is that, is that right?

**Charles Brown 14:42:** That is right.

**Michael Hanson-Attorney 14:43:** Okay, so, so your evidence is that it did exist, but there's concerns about its authenticity and, as we've seen, we have an expert, a handwriting expert who's going to give evidence to that, etc., in respect to the

authenticity of the documents and the signatures correct?

**Charles Brown 15:00:** Correct.

**Michael Hanson-Attorney 15:01:** Thank you. But at the time, Mr. Brown, you accept that the parties at the time they were dealing with these documents in front of us now, as you, as you have them in, as you've, you provided.

**Charles Brown 15:18:** That the parties to the fraudulent conveyance?

**Michael Hanson-Attorney 15:22:** What you say is a fraudulent conveyance. But yes, the parties at the time being the bank Mr. Pearman, the solicitor, the lawyers involved, etc. These were the documents that they were working off. The, you know, you question the signatures, and I understand that, but these were the documents everybody was working off at the time in 1969.

**Charles Brown 15:42:** That's our understanding. Yes.

**Michael Hanson-Attorney 15:43:** Thank you. Okay. Another impression that I received, Mr. Brown, from your evidence as you were giving and from Mrs. Brown was the passion you felt in respect of no independent body or person looking at these issues without the conflict problems that you've raised before. And that's one of your main problems. Is that, is that fair?

**Charles Brown 16:13:** I'm not certain that we would characterize it as no unbiased person. We haven't had the opportunity. We haven't had the legal representation we've sought and, we haven't had the avenues of justice open to us as we had desired.

**Michael Hanson-Attorney 16:31:** I see. But now you do through the Commission of Inquiry.

**Charles Brown 16:34:** Yes, we believe that this is an opportunity. And we've exercised that right to, to present what we've presented.

**Michael Hanson-Attorney 16:42:** Thank you, Mr. Brown. So really, we, we're here, we're 25 years on from the Bermuda Caribbean Report which was 18 years on from the original report. So, a large amount of time has passed for that feeling that you have in terms of getting justice, as far as you see it? That's correct. Right? I mean, it's obviously...

**Charles Brown 17:05:** I'm a messenger on behalf of the beneficiaries and they have, the remaining surviving beneficiaries, yes, they have long suffered and they're grateful for this opportunity.

**Michael Hanson-Attorney 17:15:** Yeah. And, Mr. Brown, again, when questioned by Mr. White, you mentioned a few times context and looking at the entire picture. And that's how you formed your opinions. Okay. So, when you were questioned on specific facts by Mr. White, you know, you move to, well, my opinion is related to looking at the entire issue. That's correct, isn't it?

**Charles Brown 17:46:** In part, yes.

**Michael Hanson-Attorney 17:48:** Okay. And this, Mr. Brown, that brings me to my questions in respect of the report which is the report by Mr. Carlton Adams of November 2020.

**Michael Hanson-Attorney 35:59:** Thank you, Mr. Brown. So, what, what the report is saying, isn't it, is that perhaps Pearman and Doers, and I maybe pronouncing that wrong, you're probably pronouncing that better. There may have been adverse findings in respect of them, key word 'may', as well as those of Pearman's lawyer, David Wilkinson, key word being 'may'. But that does not, there is not evidence, there is an absence of evidence in respect of the other named parties. And of course, one of those being the Bank of Butterfield Executor and Trust Company Limited. That's what that says, Right?

**Michael Hanson-Attorney 36:47:** Thank you. Now, Mr. Brown, for the first time in in 50 years, we have someone who's not connected to the parties appointed by the Commission of Inquiry review the historic documents that were available to Butterfield or the bank at the time of this transaction and has come to the conclusion that there's no grounds of justification to proceed with any adverse findings. And my question, Mr. Brown, on that is...

**Senior Counsel Harrison 37:23:** I'm sorry. Just a minute, could cause (sic) indicate who, who he's referring to, this person who has looked at everything, my words, and come to this conclusion. Are you referring to Mr. Adams?

**Michael Hanson-Attorney 37:36:** Yes.

**Senior Counsel Harrison 37:36:** Okay?

**Michael Hanson-Attorney 37:37:** Yes. Mr. Brown, do want me to start again. Are you? Are you still with me?

**Charles Brown 37:44:** I'm still with you.

**Michael Hanson-Attorney 37:46:** Thank you. So we now have this. Mr. Adams's report saying that, has that in any way changed your view in respect of any of the issues he's raised? Or do you still have the firm view that all these parties together are still equally at fault?

**Charles Brown 38:08:** Our position is that the document prepared by Mr. Adams lacks credibility and it doesn't do justice to the evidence that was presented. And so the conclusion that I've or the sentence that I've just read is we are not able to accept and so, by extension, cannot accept that this was an objective and unbiased assessment of all of the facts that are available. The entirety of available facts were not included and there are implications and other statements that are not supported.



**Michael Hanson-Attorney 39:03:** Thank you, Mr. Brown. So your position is that the Commission of Inquiry investigation by Mr. Adams is not correct?

**Kim White-Attorney 46:38:** I'll put it another way Counsel. The Summers Report does not refer to JS-1 which you requested about yesterday. Nor does the Summers Report refer to the Sandys Parish Vestry Records.

**Charles Brown 46:53:** We stand by the facts and conclusions in the Summers Report.

**Kim White-Attorney 46:59:** So you stand by Mr. Summers saying that there are no records relating to the transfers?

**Charles Brown 47:06:** We stand by Mr. Summers's Report.

**Kim White-Attorney 47:08:** Okay, thank you, sir. Thank you. No further questions from me.

## 6.2 Evidence of Mrs. Barbara Brown

Mrs. Barbara Brown, one of the beneficiaries to the claim, testified before the COI when her statement dated 25<sup>th</sup> January, 2021, was tendered as an Exhibit and read<sup>211</sup>. She stated that her evidence represented *"a set of documented memories and experiences that have occurred over the last forty-nine years during the pursuit of justice regarding real estate at Spring Benny, Sandys."* Her memories were categorized by way of her interactions with "residents" of Spring Benny with whom she spoke hoping to be shown deeds to their property regarding the matter of clear title<sup>212</sup>. She was unsuccessful in this regard. Mrs. Brown shared that she had placed a legal notice in *The Royal Gazette* in 1982 describing *"the land in question and identified all the occupants of the land at the time. The occupants were all advised that the legal title to the respective lots of land was being challenged by us the beneficiaries."*

She also categorized her memories in respect of her interaction with Mr. Robert Motyer of Appleby Spurling and Kempe (in spring 1972) and other officers of that firm after the death of John Augustus Alexander Virgil. This memory was not a good one<sup>213</sup>. Her other memories categorized in her statement included interactions and meetings with officers at Butterfield Bank<sup>214</sup>. This memory was one of frustration, her memory of being approached

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<sup>211</sup> COI - Exhibit BB-1

<sup>212</sup> COI- Exhibit BB-1., Paragraphs 3 - 7

\* She spoke to a Mr. Kenneth Maybury in 1984 and Mr. Robert Horton in April 1982, both of whom were residents who had built homes on land bought and developed by Sir John Swan. This said land comprised of part of the northern portion of the estate of John Augustus Alexander Virgil which the beneficiaries argue they had been dispossessed.

<sup>213</sup> COI- Exhibit BB-1., Paragraphs 8 - 10

<sup>214</sup> COI - Exhibit BB-1, Paragraph 11 to 15.

by Mr. David Wilkinson, the lawyer for Russell Pearman, in the spring of 1975 at the Hog Penny Restaurant where she worked as a waitress. She described this memory as unsettling: *"It seemed to me that he was trying to intimidate me. He said, "you better watch your step" and then he left. Mrs. Brown said he showed up unannounced to the Hog Penny Restaurant. This was strange because I have never seen him in there before. He made his way to my workstation and took a seat, so I approached him as I would any other customer. He asked me is anything was settled with my uncle's estate. He did not order any food or drink."*

Mrs. Brown retraced her memory of calling<sup>215</sup> Sir John Swan at home in 1975 to discuss his claim to the land in Spring Benny and that John Swan said, *"I ain't having no meeting with you and don't call here no more. Then he abruptly hung the phone up in my ear."* This telephone interaction and accusation Sir John Swan vehemently denied during cross-examination when he stated, *"I do not recall and nor would I have hung up on somebody. It's not my policy ever to hang up on anybody, ever..."*

She described the memory of telephoning Mr. Eric Jones in the early 1980s at his office *"He hung up in my ear,"* then she attended his office and *"we spoke and I asked him about my uncle's property. His explanation about the property did not make any sense to me."*<sup>216</sup> Mrs. Brown lamented the other steps she had taken through Brown and Wade law firm who wrote to the Commissioner of Police on 16<sup>th</sup> June, 1989 *"requesting that the 1976 investigation conducted by Detective Sergeant Cassin be reopened with specific reference to the circumstances under which John Augustus Alexander Virgil's signature<sup>217</sup> was obtained upon a conveyance dated 15<sup>th</sup> April. 1969."*

Mrs. Brown was asked about the 'institutions she had approached, the contacts she had and conversations she had with residents of Spring Benny, Appleby, Butterfield Bank, Mr. David Wilkinson, Sir Dudley Spurling, Sir John Swan and Eric Jones and her purpose for doing so. She responded, *"Hoping that they would have come to a settlement like my uncle put in his Will."* When asked what it meant for her to be before the COI that day speaking about the claim, she responded, *"Today is a great day for me and my family, because it appears that finally we have somebody to listen to us, hear us."*

### 6.3 Cross-examination of Mrs. Barbara Brown

Under cross-examination by Mr. Kim White, Mrs. Brown agreed that there were five Court cases that she was aware of that had been initiated by her family and said, *"I was involved in them all."* She was asked if she remembered *"1982 case No. 252"*. Her response was, *"I recall that case, but today that's not about that case. Today is about (sic) a complete different case. Today is fraud (sic), not civil."* When asked whether the case was dismissed against the defendants, Mrs. Brown answered, *"We never had a case, we never had a case."* Mr. White tendered as Exhibits the five Court judgments<sup>218</sup> emphasizing the fact that the beneficiaries had been unsuccessful in all five cases against his client, Sir John Swan, and other parties between 1990 and 2001. In answer to the other questions put to Mrs. Brown

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<sup>215</sup> COI - Exhibit BB-1, paragraph 18.

<sup>216</sup> COI - Exhibit BB-1, paragraph 19.

<sup>217</sup> COI - Exhibit BB-1, paragraph 22.

<sup>218</sup> COI - Exhibits JS-2, JS-3, JS-4, JS-5 and JS-6

regarding the Court judgments, she responded, *“It was no case, it was never heard.”* She also repeated, *“I can say there was no case and today completely different case, you’re taking me back where I’ve already been. Today is about fraud (sic), before it was civil.”* Mrs. Brown agreed that she was ordered to pay costs and did. However, Mr. White stated those were not his instructions.

#### **6.4 Cross-examination of Mrs. Barbara Brown by Representative of the Estate of John Alfred Virgil**

The following question was put to Mr. Brown: “You said this is a different situation at a different time and may be in a different Court<sup>\*</sup>. Mrs. Brown responded, *“This time it is fraud, last time it was civil’...my sons have now uncovered the fraud part of it.”*

**In re-examination**, Mrs. Brown said, *“A civil case is when you claim land and a frauding (sic) case is when people write their names frauding (sic) on documents.”*

#### **6.5 Cross-examination of Mrs. Barbara Brown by Bank of Butterfield**

Mr. Michael Hanson for the Bank had no questions.

#### **6.6 Expert Evidence of Questioned Document Examiner Miss Brenda Petty**

Miss Brenda Petty, a Certified Questioned Document Examiner, was called as a witness by the Claimants and was accepted as an Expert by the COI. Miss Petty outlined her qualifications, the documents received and the process of examination undertaken and stated that she had rendered an opinion and conclusions in a Report. Miss Petty’s evidence was unchallenged as no questions were put to the witness in cross-examination. Below are verbatim extracts from the Report.

*“I. I am Brenda Petty, designated a Certified Questioned Document Examiner by the International Association of Document Examiners through testing by proctor and the passing of the test I have been court qualified to give expert testimony and deposition in seven (7) states in the United States and testimony and disposition in Canada. I have testified in Superior Court in Phoenix, Arizona and Canada Ontario, Toronto, Brampton, British Columbia, and the Court in Quebec (District of Bedford Cowansville). I have also provided Forensic Examination services for the City of Toronto, Office of the Auditor General, Province of Saskatchewan, Ministry of Social Services, the Law Society of Ontario, City of Vancouver Legal Services, Manitoba Public Insurance and Royal Canadian Mounted Police.*

<sup>\*</sup> Clarification: The COI is not a court of Law.

*2. I started study in the field of Forensic Document Examination in 2006 by completing a two-year study course and have continued education through the present time by roof of completed certificates. I currently have continuing education and study with Katherine Koppenhaver, President of the International Association of Document Examiners (IADE). In 2012, I met requirements and have been granted the honor of the designation Certified Questioned document Examiner-Diplomate by the IADE. I have passed proficiency testing and currently take a required proficiency exam each year. I have testified in a Daubert Motion and the testimony was ruled on favorably by the Judge. I am not an advocate of the person who uses my services. I speak for the document. My opinions are formed through a careful examination of the documents with a determined caution that bias is not a contributing factor to the opinion."*

- 6.7 She has reviewed over 20,000 signatures and handwritings, examined case documents and rendered opinions on more than 700 cases throughout the United States and internationally. Miss Petty indicated the following:

*"3. I have two purported known signatures of John Agustus Alexander Virgil. For the purpose of this examination. I have labeled these exhibits 'K1' through 'K2'.*

*4. I have been asked to capture the signature of John Agustus Alexander Virgil on the 'K' documents to the John Agustus Alexander Virgil signatures on the questioned documents identified herein as 'Q1' and 'Q2' and the John Agustus Virgil signatures on the questioned document identified herein as 'Q3' and 'Q4' to determine if the author of the John Agustus Alexander Virgil signatures on the 'K' documents was the author of the John Agustus Alexander Virgil and John Agustus Virgil signatures on the questioned documents. A Six (6) Page Conveyance and two (2) Sale Agreements all dated April 15, 1969.*

*5. I also have eight (8) purported known signatures of Algernon Doers. For the purpose of this examination, I have labeled these exhibits 'C1A' through 'C4B'.*

*6. I have been asked to compare the signatures of Algernon Doers on the 'C' documents to the Algernon Doers signatures on the Questioned documents identified herein as 'Q3A' and 'Q4A' to determine if the author of the Algernon Doers on the 'C' documents was the author of the Algernon Doers signatures on the questioned documents. Two (2) Sale Agreements dated April 15, 1969*

7. *I also have a document with a Central Planning Authority RECEIVED date stamp. I have been asked to review the stamp for any oddities. This document was labeled 'SI'*

8. *An examination of handwriting includes establishing patterns of writing habits to help identify the author. Handwriting is formed by repeated habits of writing by the author, which are created by neural pathways established in the brain. These neural pathways control muscular and nerve movement for writing, whether the writing done is by the hand, foot or mouth.*

### **Process of Examination**

12 *On January 11, 2021 I received exemplars by email from DocuFraud Canada with the purported known handwritten signatures of John Augustus Alexander Virgil and three (3) questioned documents with the questioned signatures of John Augustus Alexander Virgil and John Augustus Virgil. Two (2) of the questioned documents (Sale Agreements) also contained the name of Algernon Doers as well as the name John Augustus Virgil. I also received comparison documents with the name of Algernon Doers. One of the documents received contained a date stamp that was to be reviewed for oddities*

13 *All documents received were copies and were scanned in as pdf documents and received by email transmission. Though it is always considered that original documents are the best for examinations in this generation because of electronic storage of documents, original documents are becoming more difficult to obtain. In my experience, when examinations were conducted first with copies then conducted again using originals, my opinion reached in the first examination was changed only three times. This is because the proficiency in copying/scanning equipment has increased in performance and yields better copies than those produced in years gone by. To date, I have examined over 20,000 documents. If the original(s) does become available. I would greatly appreciate the opportunity to examine.*

14 *The writing on the documents was enlarged and placed in a line-up for a side-by-side comparison process, as per published industry standard methodologies. All examinations of writing*

*are performed by some type of comparison process, whether the process is electronic and/or physically examined. Under the Scientific Working Group for Forensic Document Examination (SWGDOC) standards in examining documents, its states that documents are to be analyzed, compared, and evaluated. SWGDOC standards for examining documents are used in this examination to arrive at an opinion regarding the request made for the examination. The handwriting was examined and compared using magnification.*

- 15 This report will be broken into three (3) Sections. Section I will illustrate the examination of the John Agustus Alexander Virgil/John Agustus Virgil signatures. Section II will illustrate the examination of the Algernon Doers signatures. Section III will illustrate the examination of the date stamp.*

***Similarities between the Questioned and Known Signatures of John Agustus Alexander Virgil/John Agustus Virgil and information***

- 16 There is a pictorial look to all signatures*
- 17 There is a five (5) year difference between the closet comparison document (1964) to the 1969 questioned document*
- 18 I was given the information that no more comparison documents could be provided for this examination on John Agustus Alexander Virgil due to age of documents and Mr Virgil being deceased.*

***Significant Differences between the Questioned and Known Signatures of John Agustus Alexander Virgil/John Agustus Virgil:***

- 19 There are several similarities in writing habit between the signatures that give a pictorial look to the signatures. Some of the similarities are the unusual way of forming the top oval on the letter J; positioning of letters to one another and the formation of the 'x' in Alexander. These similarities must be considered in the examination.*
- 20 Between the 1964 comparison signature and the 1969 questioned signatures there is also a great degree of decline in*

*writing that can be noted. This decline must also be considered in the examination. The lack of contemporaneous documents also adds to the difficulty of the forming of opinion whether the questioned signatures are genuine or not.*

- 21 *A good simulation will always have similarities. A person who attempts to author another's signature usually does so attempting to achieve a pictorial look to the signature. In this examination, that was achieved. However, what is not logical about the signatures also must be considered. It is noted in the questioned signatures a decline in writing skill that was not noted in the two (2) comparison signatures. There is five (5) year difference between signatures. This either means that Mr. Virgil is having an issue between his brain, muscles and nerves that is causing a problem in his writing or another hand attempting to simulate his signature and faking shakiness in writing is exhibited, and malformed letters are noted. It could just be assumed that Mr. Virgil is suffering a decline in writing skill and that the questioned signatures are genuine because of the similarities, but it is this forensic document examiner's opinion that some things are not 'logical' in the signatures must be considered. The first illustration with be the letter J in John. It is taught in forensic document training that a great deal of errors made in attempts to simulate are made in the beginning or in the ending of the signature. The J is formed so well in all four (4) of the questioned signatures. The top oval is attached after the stem and loop and leg of the J is written in smooth reverse movements. The top loop being so well formed is curious. The backwards loop on the leg and the counterclockwise loop on the stem are so well formed, they are curious. This well-formed letter brings questions that needs answers. Where is the shakiness noted in the other parts of the signature? How are the loops so well-formed when other loops show difficulty? Please see below*
- 22 *On the Q1 an Q2, the 'g' in Agustus has the top and bottom loop well formed, yet the 'g' in Virgil is formed in separate strokes with the bottom formed then a separate oval drawn across the top after the lower was written. Why can the author of the signature do so well on one 'g' and on the other 'g' find it so difficult to form? Please note the formation of the 'h' and 'g' on the Q3 and Q4. If a person has problems with ovals, they usually*

*have problems with all ovals, not just one in a particular area. Also, please notice the 'x' in Alexander. On the Q1 the author failed to execute the 'x' in Mr. Virgil's usual style but it was accomplished on the Q2. Could the author have made a mistake alone? Note on the 'h' in John that the Q1 was formed with separate strokes with the bottom part of the 'h' squared off. The Q2 was formed with a continuous stroke and the 'h' is rounded on the bottom hump. The Q3 and Q4 'h' is also formed fairly well. Note all the g's on the Q3 and Q4 look as though a triangle is attempted but part of it is not drawn. Please also note that the Q1, Q2, Q3, and Q4 were all purportedly written in 1969.*

### **Opinion Reached after Examination**

*34 Based on the documents submitted and upon thorough analysis of these documents, and from an application of accepted forensic document examination tools, principles, techniques and standards, the evidence supports my opinion to a reasonable degree of Scientific Methodology that the opinion reached on the questioned signatures of John Augustus Alexander Virgil/John Augustus Virgil and Algernon Doers is as follows:*

*(A) There is probability that the four (4) questioned signatures of John Augustus Alexander Virgil/John Augustus Virgil labeled Q1, Q2, Q3 and Q4 are not (COI Emphasis) genuine and were not (COI Empahsis) written by the hand of John Augustus Alexander Virgil/John Augustus Virgil.*

*(B) There is probability that the two (2) questioned signatures of Algernon Doers labeled Q3A and Q34 are not (COI Emphasis) genuine and were not written by the hand of Algernon Doers.*

*(C) The date stamp shows typical wear and tear, but it was also noted that there were touch-ups on the number 3 and the number 9 was completely written by hand. There is an area that looks like some type of 'bleaching' or 'erasing' (COI Emphasis) could have happened to remove a signature that appeared on the line beside the word PER. The word PLANNING also showed signs of some type of 'bleaching'*



or ‘erasing’ as the strokes left from the signature stretched into the word PLANNING. Light strokes are still visible.

35 To establish that handwriting was written by a particular person an examination with known genuine handwriting must show substantial agreement in sufficient handwriting characteristics to identify the maker and eliminate the possibility of any other writer. The handwriting characteristics that are evaluated include line quality, pressure patterns, rhythm, slant, size and proportions, utilization of space and spatial alignment, initial and terminal strokes, writing speed, legibility, skill level, letter forms, types of connectors, method of construction, pattern formations, freedom of execution, handedness, pen hold and position, simplification, tremor, type of writing, and range of variation. Other features such as lifts, stops and hesitations of the writing instrument, patching and retouching, slow drawn quality of the line, unnatural tremor, and guide lines of various forms should be looked for and considered when present. Potential limiting factors such as age, illness or injury, medication, drugs or alcohol (intoxication or withdrawal), awkward writing position, cold or heat, fatigue, haste or carelessness, nervousness, nature of the document, use of the unaccustomed hand, and deliberate attempt at disguise or auto-forgery should be considered (ASTM 2007) because they may not present the natural handwriting of the individual. According to the forefathers of document examination if only the fundamental unexplainable significant difference happens in fundamental writing features it can preclude common authorship.”

- 6.8 Very importantly, the Expert shares terminology in her Report where the word ‘probable’ is defined as “the evidence contained in the handwriting points rather strongly toward the questioned and known writings having been written by the same individual; however, it falls short of the “virtually certain” degree of confidence”. The Commissioners remind themselves that the civil standard of proof, on a balance of probabilities, is being relied on in this claim and not the criminal standard of beyond a reasonable doubt. Below is an extract relied on by Miss Petty outlining published industry standard methodologies:

**“SWGDOC Standard Terminology for Expressing Conclusions of Forensic Document Examiners**

#### **4. Terminology**

#### 4.1 Recommended Terms

**identification (definite conclusion of identity)** – this is the highest degree of confidence expressed by document examiners in handwriting comparisons. The examiner has no reservations whatever, and although prohibited from using the word “fact,” the examiner is certain, based on evidence contained in the handwriting, that the writer of the known material actually wrote the writing in question.

*Example – It has been concluded that John Doe wrote the questioned material, or it is my opinion [or conclusion] that John Doe of the known material wrote the questioned material.*

**strong probability (highly probable, very probable)** – the evidence is very persuasive, yet some critical feature or quality is missing so that an identification is not in order; however, the examiner is virtually certain that the questioned and known writings were written by the same individual.

*Examples: - There is strong probability that the John Doe of the known material wrote the questioned material, or it is my opinion (or conclusion or determination) that the John Doe of the known material very probably wrote the questioned material.*

**DISCUSSION** – Some examiners doubt the desirability of differentiating between strong probability and probable, and certainly they may eliminate this terminology. But those examiners who are trying to encompass the entire “gray scale” of degrees of confidence may wish to use this or a similar term.

**probable** –

*Examples – It has been concluded that the John Doe of the known material probably wrote the questioned material, or it is my opinion (or conclusion or determination) that the John Doe of the known material probably wrote the questioned material.”*

6.9 Below are the documents Miss Petty examined Q1, Q2, Q3, Q3A, Q4, Q4A, K2, C1A, C1B, C2A, C2B, C3A, C3B, C4A, C4B, and S1.

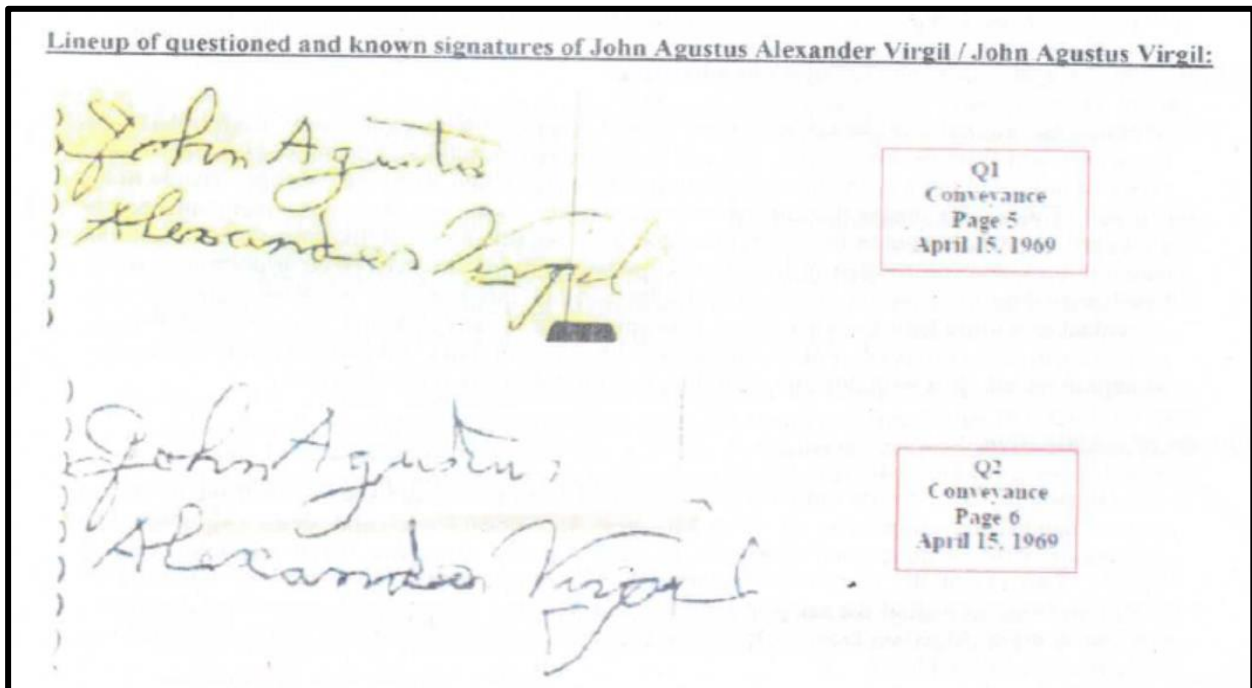


Figure 25: Q1 and Q2 – Documents examined by Miss Brenda Petty

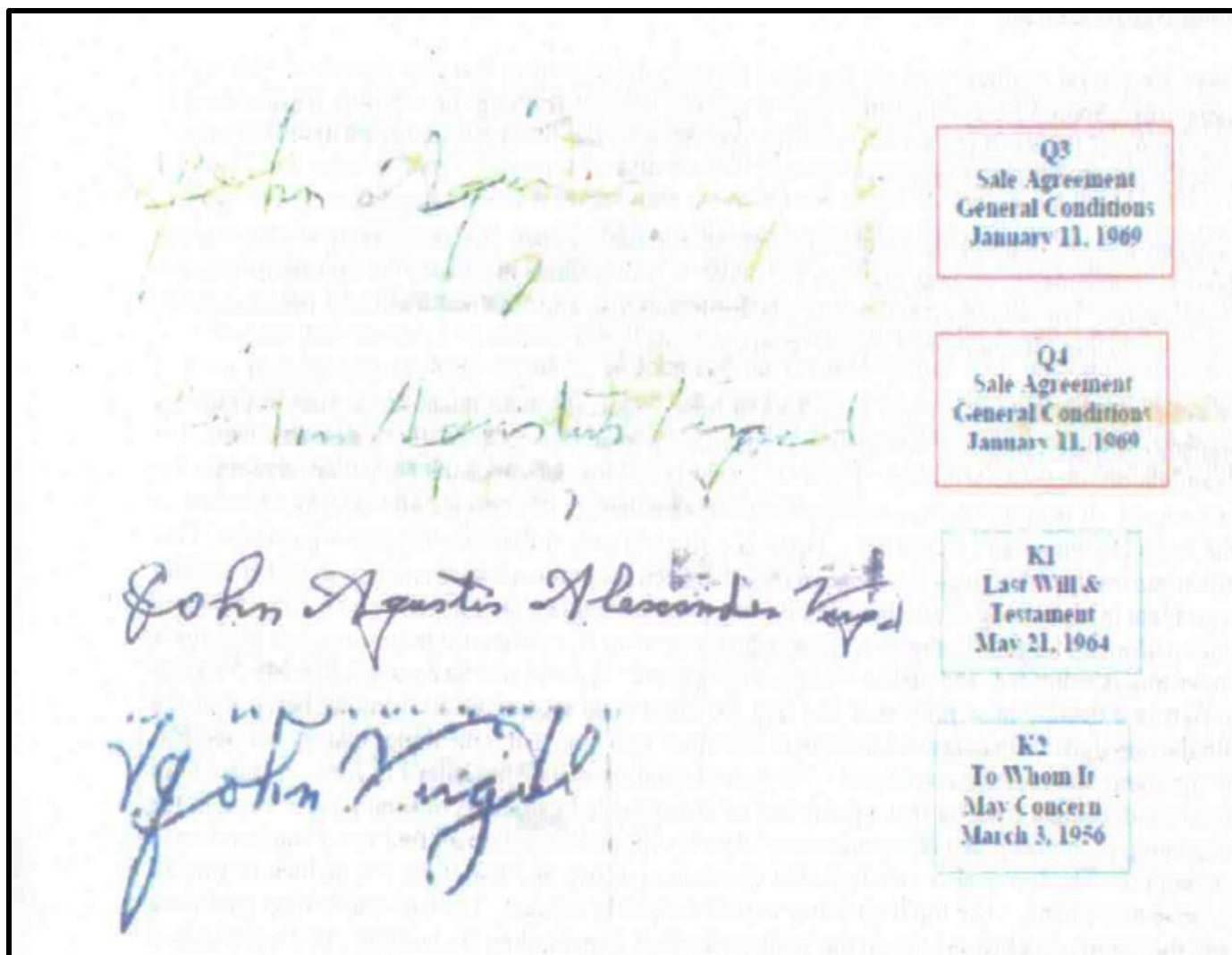


Figure 26: Q3, Q4, K1 and K2 – Documents examined by Miss Brenda Petty

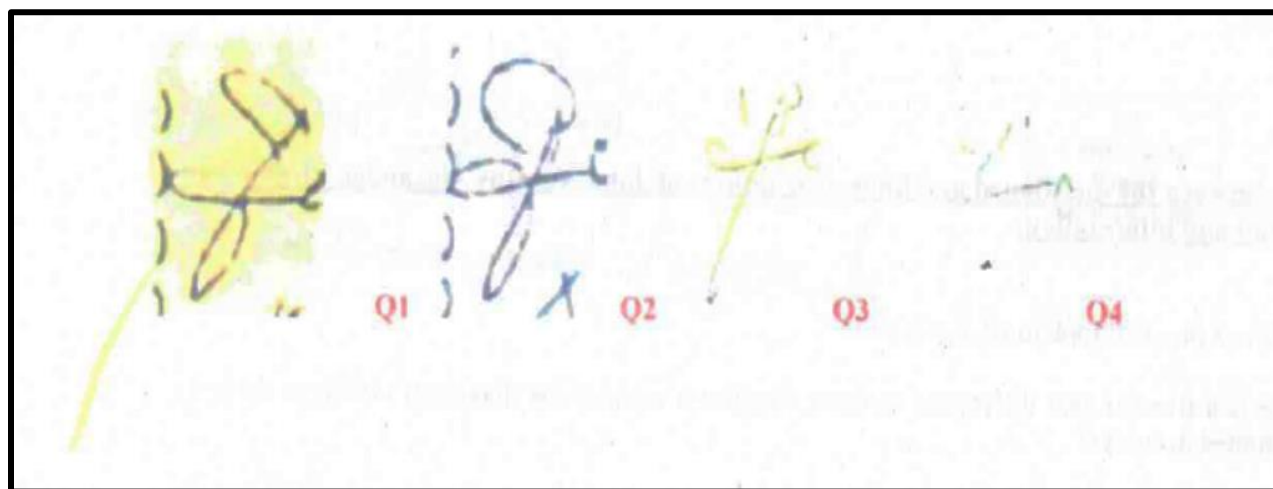


Figure 27: Documents examined by Miss Brenda Petty

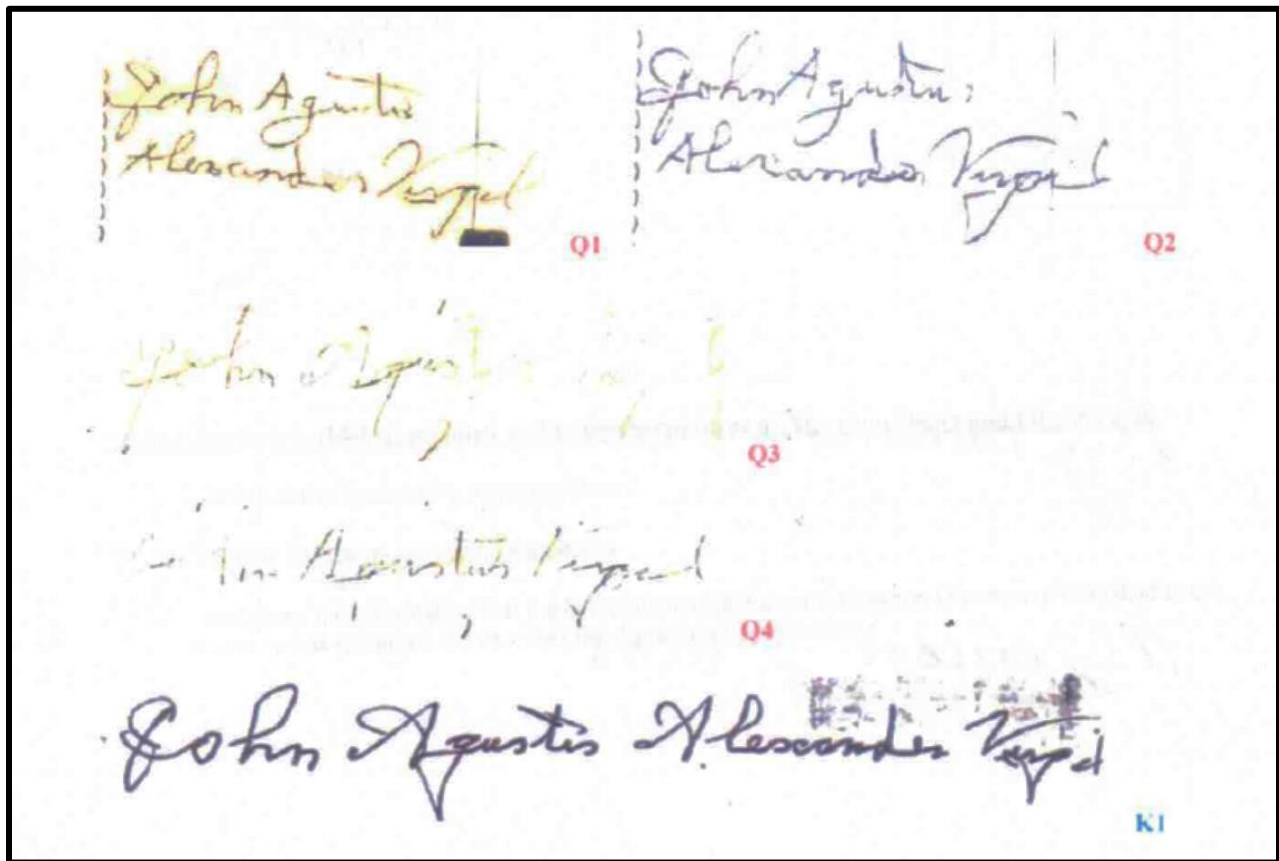


Figure 28: illustration of signatures examined

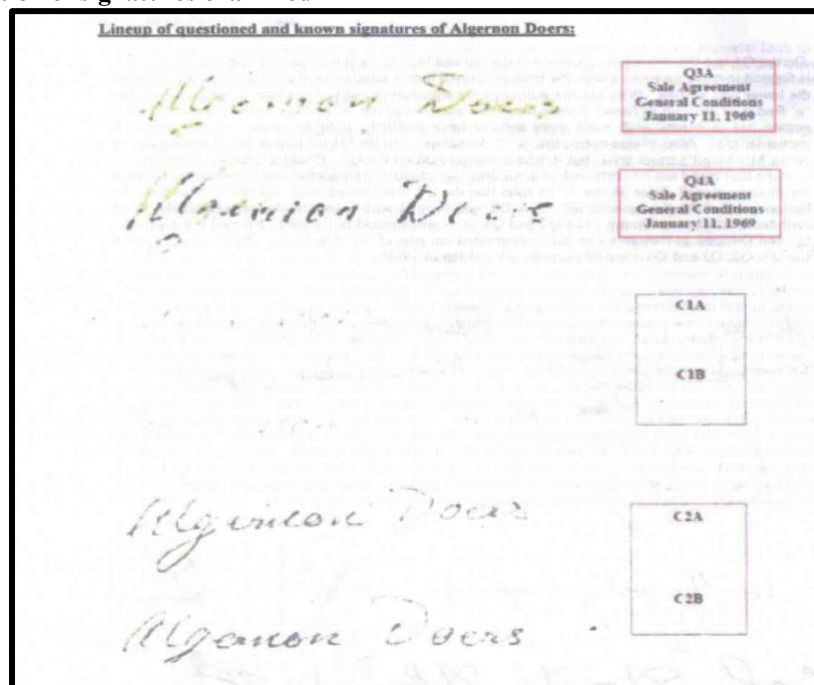


Figure 29: illustration of signatures examined

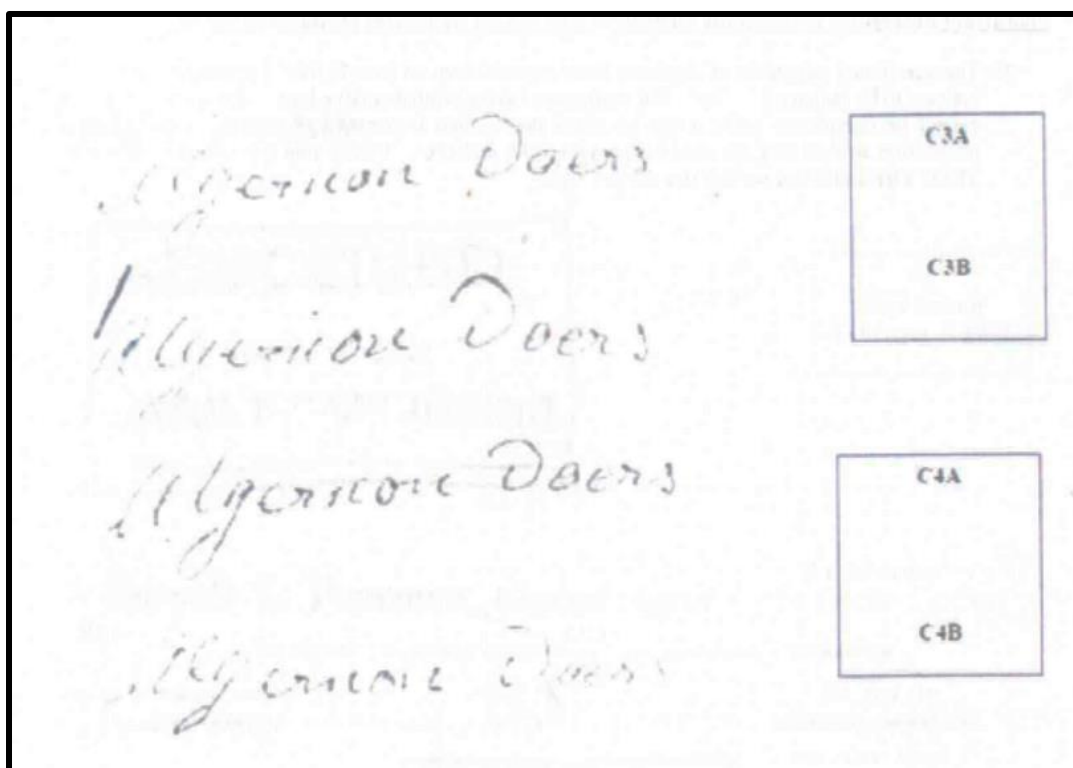


Figure 30: illustration of signatures examined

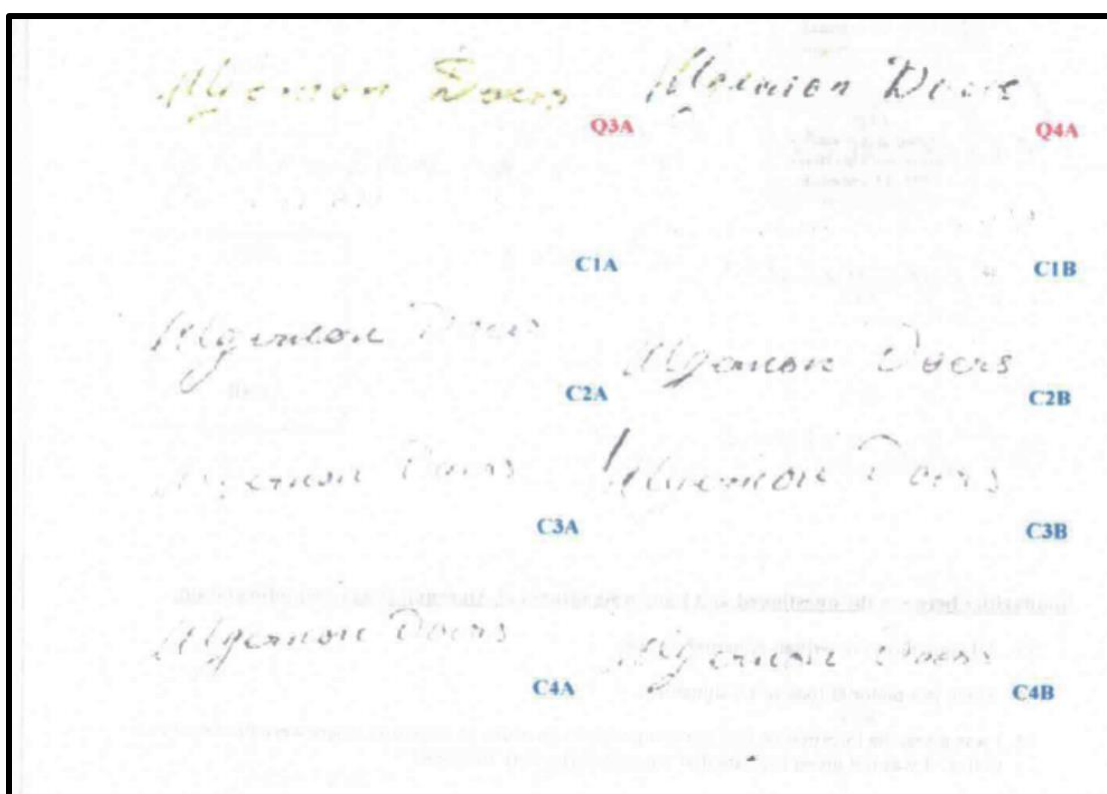


Figure 31: illustration of documents examined



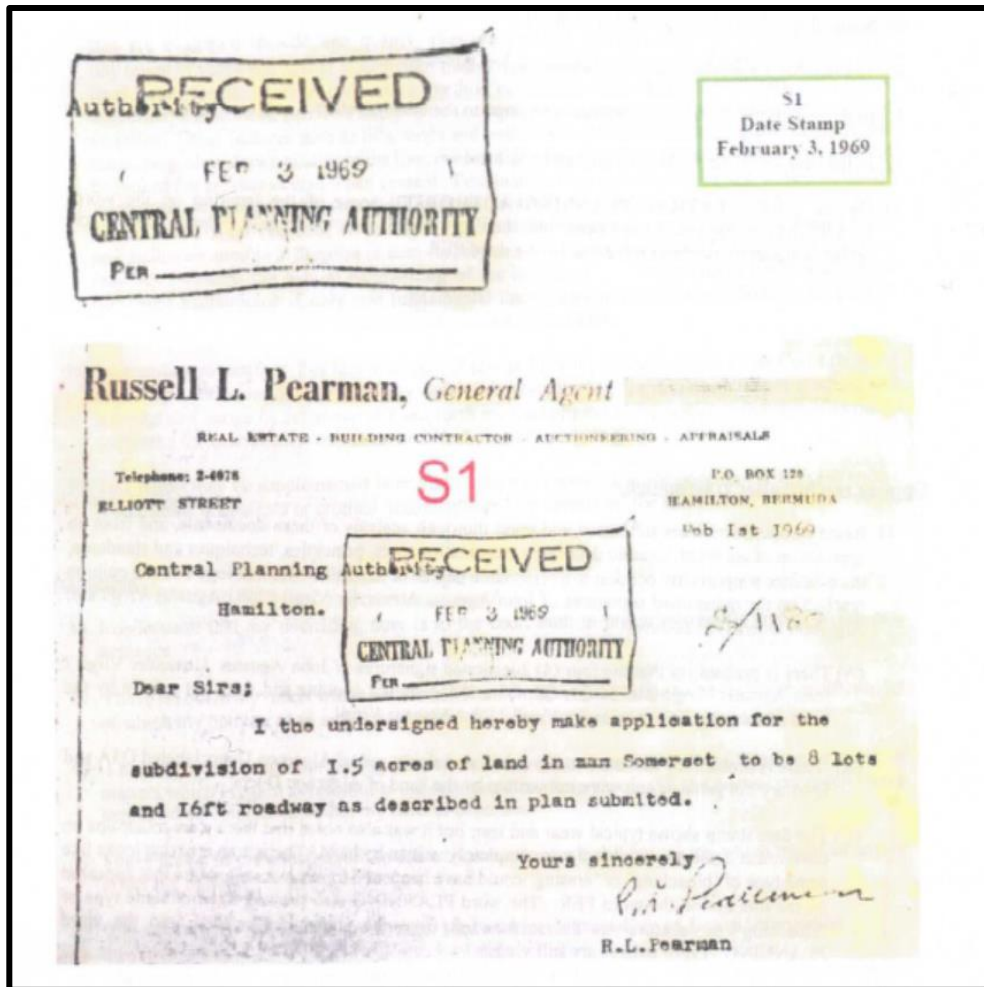


Figure 32: Document examined by Miss Brenda Petty

- 6.10** The COI wishes to reiterate that the illustration of signatures and documents shown above were copies and not original documents which were subjected to a process of examination by Miss Petty. (Paragraph 6.7 – process of examination)

*"13 All documents received were copies and were scanned in as pdf documents and received by email transmission. Though it is always considered that original documents are the best for examinations in this generation because of electronic storage of documents, original documents are becoming more difficult to obtain. In my experience, when examinations were conducted first with copies then conducted again using originals, my opinion reached in the first examination was changed only three times. This is because the proficiency in copying/scanning equipment has increased in performance and yields better copies than those produced in years gone by. To date, I have examined over 20,000 documents. If the original(s) does become available. I would greatly appreciate the opportunity to examine.*

14 *The writing on the documents was enlarged and placed in a line-up for a side-by-side comparison process, as per published industry standard methodologies. All examinations of writing are performed by some type of comparison process, whether the process is electronic and/or physically examined. Under the Scientific Working Group for Forensic Document Examination (SWGDOC) standards in examining documents, its states that documents are to be analyzed, compared, and evaluated. SWGDOC standards for examining documents are used in this examination to arrive at an opinion regarding the request made for the examination. The handwriting was examined and compared using magnification.”*

## 6.11 Evidence of Carlton Adams

The Chief Investigator of the COI gave evidence on details of a Report<sup>219</sup> prepared by him and submitted to the COI. The Report was an internal record, but it had been inadvertently disclosed to the parties to whom adverse notices had been issued and during cross-examination of the Claimants by Mr. Michael Hanson, the Report was brought to light. The Report was a desk review of all documents submitted to the COI Secretariat by the Claimants for consideration by the Commissioners, except for the Report of the Document Examiner which had not been submitted at that time. Notwithstanding the fact that the Report was an internal document, all the parties to whom adverse notices were issued relied on the document. The Claimants, on the other hand, rejected the findings and conclusions of the Report as in their view it lacked credibility and did not do justice to the evidence that was presented. Further, the Claimants asserted that they “*cannot accept that the Report was an objective and unbiased assessment of all the facts that were available.*”

Below is an extract of the adverse findings and conclusions of the Report of Carlton Adams, the COI’s Chief Investigator:

### ***“Adverse Finding***

*Were Pearman and Doers alive today it may be that **Adverse findings** would be appropriate with respect to their actions and those of Pearman’s lawyer David Wilkinson. However, all of them are deceased; and, **in the absence of evidence of wrongdoing, there does not appear to be grounds or justification for such a finding** with respect to entities and individuals against whom allegations have been asserted, these being Appleby Spurling and Kemp, The Bank of Butterfield Executor and Trust Co Ltd, Sir John Swan, and*

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<sup>219</sup> Adams, Carlton., “Review of George and Charles Brown Submission to the Commission of Inquiry into Historic Land Losses submitted by Carlton Adams”, Nov. 2020., COI - Exhibit CA1-015



individuals to whom property was sold following subdivision into individual lots.

### **Conclusions**

*The investigation into the allegations made to Police by Barbara Brown ended with no persons having been arrested or charged in relation to the sale of Virgil's land; in the main **it would seem due to the inability to identify evidence to substantiate evidence of wrongdoing. The original documents having been the object of a search for a period of 5 months not having been found.***

*Det Sgt Cassin concluded referring to the original conveyance dated 15<sup>th</sup> April, 1969.*

***Without the original conveyance and examination of Virgil's on that document nothing further can be done.***

*That money exchanged hands with **6800 pounds having been found to be deposited in Virgil's account at the Bank of Butterfield makes clear that a sale was made** and that he, (Virgil) was in fact paid for this land even if the amount **was less than its value.** The Brown submission does not provide insight into what would have been considered the value of the land at that time, the year 1969.*

*The statements of Doers and Augustus obtained by Cassin give rise to suspicion that Pearman's actions and possibly those of WG Brown may have been dishonest, however this cannot be substantiated.*

*David Wilkinson however was satisfied that Pearman had a valid contract and expedited the paperwork relative to the sale of Virgil's land.*

*Robert Motyer who knew John Virgil, (having drawn up a Will for him in 1964), was **certain that it was Virgil** who attended his offices on the 19<sup>th</sup> February and instructed him to send the Deeds for his property to Pearman's lawyer; David Wilkinson.*

*Further, Virgil's condition, that of an alcoholic, living as a hermit and unwilling to look after himself, suggests one of two possibilities; that he may have been indifferent to his own affairs and was induced to sell the land by Pearman and others. Or, that he simply sold the land despite claims that he said that he would not do so, for **seven thousand pounds, a sum possibly beneath its true value;** this when compared to the sums for which it was subsequently sold by Pearman to Augustus at eighteen thousand pounds, and finally when Augustus sold the land to John W Swan for sixty thousand pounds.*

*Russell Levi Pearman is deceased as are most of the persons involved with the sales and purchases of Virgil's land, the exceptions being relater (sic) **John Swan** and those to whom he sold property in individual lots and are now believed to hold title for that which they purchased.*

*The following individuals have been **confirmed as deceased by the Registrar General's Office**. Russell Levi Pearman, Algernon Doers, John Augustus Alexander Virgil, John Alfred Virgil, David Wilkinson, Robert Motyer and Walter St. George Brown.*

*From **Det Sgt Thomas Cassin** left Bermuda following retirement to reside in the United States where he subsequently died.*

*Nothing is known of **Eric Arthur Jones** save that at some stage he left Bermuda. However, it is not known whether or not Det Sgt Cassin investigated the circumstances of the sale of land to him by John Augustus Alexander Virgil; one aspect being the sending of a letter of acknowledgment of the sale together with a cheque of 1025 pounds to John Alfred Virgil instead of John Augustus Alexander Virgil suggesting the possibility of a mistake been made by Apple Spurling and Kemp.*

*Of note is that an entry in **Sandys Parish Vestry Register** relating to **John Augustus Alexander Virgil**, for transfer of landownership (referred to above) dated April 1962 reflects the transfer of landownership to Jones at Sheet # 12 of the Register. Likewise, an entry dated July 1969 in the same Register on the same sheet, #12 reflects the transfer of landownership to Russell Pearman and then to John E Augustus. A further entry recorded for John Augustus at sheet 24 A reflects transfer of the landownership from Pearman to Augustus.*

*The aforementioned information relating to **transfer of landownership of Virgil's land subsequent to sale was not included** in a report compiled by Bermuda-Caribbean Engineering Consultants during 1996 at the behest of the beneficiaries of Virgil's will. Under the heading Contingent and Limiting Conditions at Page 1 para 4 the statement reads in part.*

*Thorough searches have been made of the applicable registries in Bermuda and the **old Parish Vestry records**, Supreme Court records and the Ministry of Works and Engineering records.*

*Clearly the statement is not accurate given that the entries referred to above at sheet #12 were made in the Sandys Vestry records in 1962 and 1969 well before the report compiled by **Bermuda Caribbean Engineering**, yet the affect of them was not noted or articulated in the report thus creating the **misleading impression** that there was no indication of Virgil having disposed of land after January 1962.*

***David Summers** President of Bermuda-Caribbean Engineering Consultants Ltd and author of the mentioned report was shown a copy of sheet #12 from the Sandys Parish Vestry records on the 9<sup>th</sup> November 2020 and stated.*

***"I can confirm that I did not have sight of the parish vestry records for Sandys when preparing the report but relied on verbal communication with the parish vestry clerk."***

*The effect of sale of Virgil's land in the circumstances was that the expectations of the beneficiaries of Virgil's Will were not met and they did not inherit the land as they may have been led to believe. In the ensuing years Barbara Brown initiated a number of actions in the Supreme Court in efforts (sic) recover it. Two of these #252 1982 and #60 1998 in the Civil Jurisdiction of the Supreme of thee (sic) Court, copies of which have been obtained are known to have come to naught. Efforts to ascertain the outcomes of several other at the Supreme Court Registry are ongoing with difficulty having been encountered with locating the relevant files."*

Mr. Adams, in answer to the COI Counsel, admitted that his Report/internal review was a document which was unsolicited by the COI. He admitted further that a number of key findings consisted of matters for the sole discretion of Commissioners to determine. Most importantly, Mr. Adams conceded that in a number of cases his Report did not provide evidence to support some of the assertions made and, unfortunately, the wrong impression was conveyed of the true meaning of his assertions.

## **ADVERSE PARTIES' RESPONSES TO THE CLAIMANTS**

### **THE ESTATE OF JOHN ALFRED VIRGIL**

- 7.0 The representative **of the Estate of John Alfred Virgil** called no witnesses and rejected all claims made by the Claimants. The response of the family of John Alfred Virgil to the claims is set out in the written response that appears below:

**16<sup>th</sup> March, 2020 – Updated 25<sup>th</sup> April, 2021**

**Commission of Inquiry into Historic Losses of Land in Bermuda  
Sofia House  
4th Floor, 48 Church Street  
Hamilton HM 12**

**Attention: Secretariate and Commissioners**

Dear Commission Chair and Members,

On behalf of the family of the late John Alfred Virgil (to be referred to as John Alfred Virgil hereon), we wish to submit the following information to the Commission of Inquiry for Historic Losses of Land in Bermuda (COIHLL).

The events to which the plaintiffs refer took place over 50 years ago. On the part of John Alfred Virgil and his descendants, the parties involved are no

longer alive. The documents that have been presented in support of the allegations against John Alfred Virgil, are not supported by evidence.

**Further, the third-party evidence presented during the proceedings has confirmed:**

1. In the absence of evidence of wrongdoing, there do not appear to be any grounds for the justification of an adverse finding
2. The report prepared by Mr. Carlton Adams, a former police officer with 40 years of investigative experience, affirms:
  - a. There is no suggestion that John A. Virgil was involved in this transaction (pg. 5)
  - b. John Augustus Virgil attended the offices of AS&K, himself (page 7)
  - c. John Augustus Virgil was paid for the property to a bank account in his name the amount of 6800 pounds
  - d. A letter that was sent to John Alfred Virgil, was likely sent in error to the wrong John A Virgil

**All prior court cases were thrown out. All of them. These court documents have all been presented and we ask that they form part of the record. Matter numbers:**

- 1) JS-4 Supreme Court 1998 No. 60
- 2) JS-3 Supreme Court 1990 No. 226
- 3) JS-6 Supreme Court 2001 No. 435
- 4) JS-5 Court of Appeals 1998 No. 16
- 5) JS-2 Supreme Court 1982 No. 252

**The handwriting expert that the Brown family hired as their witness was asked to review information 50 years after the fact, copies scanned by email and pdf'd. The handwriting expert:**

- 1) Did not positively identify the signature and classified her findings as probably, which is the third level of verification.
- 2) She had not been made aware of John Augustus Virgil's health condition, the advances of age and that signatures change over time.

For ease of reference, we respond to each of the points raised in a document entitled, "Will Say' Submission" submitted by Mr. Charles N. L. Brown on October 29, 2020.

**Response on behalf of the family of John Alfred Virgil to claims and allegations made in submissions and allegations by Mr. Charles Brown on behalf of a beneficiary of the estate of John Augustus Alexander Virgil**

**Claim 1**

The Beneficiaries of John Augustus Alexander Virgil have been fraudulently dispossessed of real property as described in his last Will and Testament of May 21, 1964.

**Having reviewed the package of documentation from the COIHLL received on or around February 12, 2021 following a chance sighting of the allegations against Mr. John Alfred Virgil published in the Royal Gazette on January 25, 2021, no evidence to support the claims in relations to John Alfred Virgil have been presented.**

**Claim 2**

The subject property had been in the Virgil family since 1885. A series of land transfers/conveyances took place from 1885 up to December 1961. Overall, this claim can and should be tracked through an assessment of property deeds.

**No claim against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

**Claim 3**

Eric A. Jones, a lawyer to Virgil family members was a witness to an indenture of December 9, 1961 that resulted in John Augustus Alexander Virgil being the outright owner of approximately 4 acres of property in Spring Benny.

**No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

**Claim 4**

Family lawyer Eric A. Jones subsequently claimed ownership of the Southern portion of the land in January 1962 and had initiated a series of conveyances just before and after January 1962. John Alfred Virgil from Summerset, a cousin along with Robert Motyer and Eric Jones formed a covenant on the distribution of this portion of the property.

**There is no evidence of a covenant brought to bear in any of the submissions presented by the plaintiffs.**

**Claim 5**

Robert H. Motyer of Appleby facilitated the drafting of the Last Will and Testament for John Augustus Alexander Virgil on May 21, 1964. The Bank of N. T. Butterfield, Executor and Trustee Co. Ltd. was the Sole Executor of the Will.

**No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

**Claim 6**

Russell Levi Pearman submitted a plan to the Central Planning Authority in May 1968 to sub-divide the Northern portion of the property. He had no legitimate/legal connection with the property thus rendering as a fraudulent misrepresentation.

**No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

**Claim 7**

Lawyers David Wilkinson and Robert Motyer conspired with others to enable Russell Levi Pearman to claim ownership and subsequently 'sell' the property to Emmanuel Augustus on the same day in April 1969. John Emmanuel Augustus claimed ownership for a year before John W. Swan took possession of the property. He then engaged in a series of questionable conveyances thereafter.

**No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

**Claim 8**

Sales Agreements and a Conveyance (1969) were signed by unknown persons purporting to be the legitimate owner of the Northern portion of the property. Algernon Doers was a witness to the above (#7) and told the Police he only signed his name once. His name appears twice on Sales Agreements.

**No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

### **Claim 9**

The pursuit of justice by the Beneficiaries involved a criminal investigation by the Bermuda Police Force. The Bank of Butterfield, through Appleby prepared a report on the legal title of the property.

**No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

### **Claim 10**

Appleby and the Bank of Butterfield conspired to deny a rightful claim as allowed by the Trustee Act 1876 section 50.

**No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

### **Claim 11**

Over twenty lawyers have been retained since 1972 to assist with the pursuit of justice.

- **Of note, if twenty lawyers have been retained to pursue this matter since 1977, there should be satisfactory evidence to warrant ongoing pursuit. If this pursuit has not yet yielded the outcome the plaintiffs are seeking, it stands to reason that the case is not able to be substantiated.**
- **No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

### **Claim 12**

Money, muscle and power have been used to discourage, intimidate and wear down the Beneficiaries over the years. They remain steadfast in their claim of ownership to the property willed to them by their Uncle John August Alexander Virgil.

- **The evidence and supporting documentation do not bear out the claim that, “money, muscle and power have been used to discourage, intimidate and wear down beneficiaries”.**
- **That the “[beneficiaries] remain steadfast in their claim of ownership” is not proof of its validity.**
- **No allegation against Mr. John Alfred Virgil appears to be raised here nor needs to be addressed.**

**Summary Assessment of evidence – on behalf of family of John Alfred Virgil**

<b>Document</b>	<b>Comment from family of John Alfred Virgil</b>
<b>CLNB 10 – Opening Statement - 10/12/2020</b>	No evidence presented. <b>John Alfred Virgil not listed or mentioned.</b>
<b>CNLB 2 - Schedule of Evidence – 11/25/2020</b>	No evidence presented. <b>John Alfred Virgil not listed or mentioned.</b>
<b>CNLB 3 – Letter from Mr. George Brown – June 1 2020</b>	<ul style="list-style-type: none"> <li>• Adds Charles N.L. Brown as a party to the matter.</li> <li>• Refers to an Appleby report which further refers to John Alfred Virgil's deeds as strength in a transaction? No reference is made to what deeds for which properties.</li> </ul> <p><b>John Alfred Virgil cannot be held to account for reference in a report prepared by an institution (Appleby).</b></p>
<b>CNLB 4. #015 Brown PowerPoint presentation</b>	<p>The author of this PowerPoint submits that it is "a story". Of the 62 pages (note that the last page is blank), the documents make six references to John Alfred Virgil:</p> <ul style="list-style-type: none"> <li>• Page 6 on which he is simply pictured and depicted as one of the 'Players and Acquaintances'. <b>No evidence to support John Alfred Virgil's inclusion on the slide or in the PowerPoint presentation itself is presented.</b></li> <li>• Page 17 in which he is referenced as having formed a covenant for this property). <b>No evidence is presented to support the allegation or claim.</b></li> <li>• Page 22 in which a photo has again be dropped into the slide deck labelling him as an imposter. <b>No evidence has been presented to support this claim.</b></li> <li>• Page 24 is a schedule of conveyances. <b>No evidence to support the claim is presented</b></li> <li>• Page 25 the author drops John Alfred Virgil's name into the slide deck. <b>No substantiating information or evidence as to why he would be included is presented here.</b></li> <li>• Page 60 on which he is pictured again and listed as a player. <b>There is no reference to how John A. Virgil "played" a role and no evidence to support a claim that he did.</b></li> </ul> <p><b>No evidence is submitted to back these allegations and character assassinations. The references described in the PowerPoint presentation as "critical" make no reference to John Alfred Virgil at all.</b></p>



<b>CNLB 5 Bermuda Caribbean Report</b>	Details the history of conveyancing of the estate of John Augustus Alexander Virgil.  <b>No reference to John Alfred Virgil is made</b>
<b>CNLB 6 Last Will and Testament of John Augustus Alexander Virgil</b>	<b>No reference to John Alfred Virgil is made</b>
<b>CNLB 7 – Schedule of Evidence by letter or tab</b>	<ul style="list-style-type: none"> <li>• Makes no substantive reference to John Alfred Virgil but indicates that a report “provides insight into the plan”. No plan or any details are ever provided.</li> <li>• References an instance where Robert Motyer was involved with John Alfred Virgil while at the same time providing legal services to John Augustus Virgil. No allegation is substantiated. No evidence to support the overall claim is provided.</li> <li>• Proports that John A. Virgil was a party to several conveyances from different parties. No evidence provided to substantiate or inform the allegation</li> </ul>
<b>CNLB 8 – Bank of Butterfield Executor &amp; Trustee Limited – November 1, 1978</b>	<b>No evidence presented to support allegation</b>
<b>CNLB 10 – Various, i.e. Indenture- Sandys Parish, Conveyance of parcel of land</b>	<b>No reference to John Alfred Virgil is made</b>
<b>CNLB 11 – Memorandum – An Indenture</b>	<b>No reference to John Alfred Virgil is made</b>
<b>CNLB 12</b>	<b>No reference to John Alfred Virgil is made</b>
<b>CNLB 13 – Letter Motyer-Wilkinson</b>	<b>No reference to John Alfred Virgil is made</b>
<b>CNLB 14 – Police statement – John Augustus</b>	<b>No reference to John Alfred Virgil is made</b>
<b>CNLB 15 – Algernon Doers statement</b>	<b>No reference to John Alfred Virgil is made</b>
<b>CNLB 16 - Exhibit E – Complaint relating to the Estate of John Augustus Virgil made by Barbara Lucille Brown to the Commissioner of Police- Feb 7, 1976</b>	<b>No reference to John Alfred Virgil is made</b>
<b>Transcript of proceedings, November 30, 2020, morning session</b>	It is unclear as to which document Charles N.L. Brown is attempting to reference. <b>There are a number of mentions of ‘taking issue with a report’. The Commissioners are asked to note that ‘taking issue’ with the way something is documented does not equate or stand as evidence.</b> By the end of the session, no finding of substance seems to have been reached. <b>No reference to John Alfred Virgil is made</b>

### **Concluding remarks**

By most accounts, the late John Alfred Virgil was a kind, generous man. He was a mason by trade. He apprenticed and launched countless young men into the construction trades. It would be a travesty of justice for an adverse finding to be made against the reputation and estate of the late John Alfred Virgil.

As referenced, court hearings related to this matter were scheduled from 1982 through to 2001. The cases were dismissed out of hand or thrown out altogether, for lack of evidence.

The situations which Mr. Brown and affiliated parties raise seem unfortunate but are unfounded in the case of John Alfred Virgil, in terms of evidence that stands a legal test. **Correlation is not causation.** The Browns have quite regrettably created a story, dropping names and pictures of people into a power point in an attempt to land on an outcome. However, the allegations don't link together and don't make sense.

Not only is the involvement of John Alfred Virgil unsubstantiated, the premise upon which the claims of Mr. Charles Brown and those he represents are built - that this situation results from of **systemic** land loss, have not been adequately substantiated.

To this end, these allegations to the extent that Mr. John Alfred Virgil has been implicated, cannot stand.

The plaintiffs have not sufficiently substantiated their claims against Mr. John Alfred Virgil.

As descendants of the late John Alfred Virgil, we request that his name be removed from the public record of this allegation.

Submitted on behalf of the family of the late John Alfred Virgil  
by [redacted] COI emphasis

## 7.1 Sir John W. Swan

Sir John Swan read a statement and below is an extract of that statement and the evidence he gave before some further questions were put to him by Mr. Kim White and the COI Counsel.

### UNEDITED TRANSCRIPT

**[Begin Transcript at 00:07:24]**

**COUNSEL DIRK HARRISON:** Thank you very much. Mr. White, over to you.

**MR. KIM WHITE:** Sir John, do you wish to say something to the Commission?

**SIR JOHN W. D. SWAN:**

Yes, I would like to read a statement to the Commission about the aspects of this, this transaction. The transaction in question was between John Augustus and myself on May the 21st 1970. Would have been the third transaction of this piece of land after the first purchase was made between Mr. Virgil and Mr. Pearman who then sold it to Mr. Augustus who then sold it to me. I had seen the property once before, I believe late 1968. I was asked by John Augustus to view the property he was thinking of buying at Sandys Parish. I attended a property...*[coughing]*...excuse me, with John Augustus. After viewing it I told him it was good land for development and you should buy it. I did not know what, if anything, occurred between Mr. Pearman and Mr. Virgil. I had purchased the property sometime later from John Augustus. I then built on it and sold the properties. I was representing in this transaction by lawyer Peter Smith, now deceased. I was never in any contact with Mr. Virgil. My lawyer Peter Smith was satisfied with the title search. During that period, I was responsible for building 40% of the homes on the Island and was involved in many, many transactions. This transaction was no different than the hundreds of other property transactions that I conducted at the time. There

have been five Court cases involving the Browns and myself and my company heard on five different occasions in the Supreme Court or The Court of Appeal by three different Justices and the President of the Court of Appeal. In 1982, number 252, Justice Warden dismissed, no cause for action and of ... *[000:09:47 not clear]*... or possession, prosecution. In 1990, number 226, Justice Meerabux dismissed the plaintiff, not having complied with the paragraph 2 of the Order of the Court made on the 3rd of February, 1994. The plaintiff must pay the costs. In 1988, number 60, Justice Meerabux as the application amounted to a fishing expedition. Civil Appeal 1998, number 16, the President of the Court of Appeal, Sir James Astwood, dismissed the case because of applicant's failure to comply with the Order of the Register dated the 24th of February, 1999 and October 27, 1999 2001, number 435, Justice Warner dismiss specifically endorsed, which was struck... *[coughing]*... *[000:10:54 not clear]*... on the grounds that it it disclosed no reasonable cause of action. These decisions have been provided to the Commission. I have been, I was awarded cost against the Browns. Most importantly, a deed from John Augustus to myself is not missing from the record. It

was in the Book of Deeds, number 108, page 242 to 246, at the Registry at the Supreme...the Summers Report said, were thoroughly searched. A copy of the deed from the book...of the...obtained from the Registry has been supplied to the Commission. The Browns have persisted with these vexatious and unfounded allegations against my company and I for many years and continued here today, damaging my reputation.

**MR. KIM WHITE:**

Thank you, Sir John.

[Ends 00:11:49]

## **7.2 Cross-Examination of Sir John W. Swan**

Sir John Swan was cross examined by COI Counsel. Below is a summary of the responses to questions 1 to 4 at (Exhibit CNLB-17):

- i. Sir John Swan rejected absolutely the following statement: “...*fraudulent scheme involving bankers lawyers and real Estate agents – Robert Motyer of AS&K was the Engineer, John W. Swan was a major player within this fraudulent scheme.*”
- ii. Sir John Swan was asked to respond to the following statement: “*The 1969 transaction is directly related to the 1970 transaction. The fraudulent transactions of 1968 and 1969 are a crucial part of the basis upon which the 1970 transaction involving John W. Swan relies. John W. Swan is directly connected to both transactions*”. In response, Sir John Swan said, “*Absolutely not true, I had no knowledge what Pearman and Virgil were doing.*”
- iii. Sir John Swan was asked to respond to the following statement: “*Russell Levi Pearman acted as the agent for John Swan when the 1969 transactions were being carried out involving JAAV and Emmanuel Augustus*”. Sir John Swan responded, “*Russell Levi Pearman was never an agent for me.*”
- iv. Sir John Swan was asked to respond to the following statement: “*Russell Pearman fraudulently submitted a plan to the Planning Department for a subdivision of the property into eight lots. John Swan sold these eight lots to the current residents. We*

*are curious to learn which deeds were used to support a legal claim of clear title to these lands by any of John Swan's clients". Sir John Swan responded, "Yes I sold eight lots to the current residents."*

- 7.3 Bank of Butterfield through Mr. Michael Hanson did not call any witnesses in its response to the adverse notice sent by the COI.

## DISCUSSION

- 8.0 The COI has endeavoured to highlight by way of summary some of the salient points raised by the Claimants and the responses from the parties adversely affected, including comments attributed to adverse parties who were unavailable.

### 8.1 Key Legal Terms Considered by the COI

The COI notes importantly that the authors of *The law relating to unregistered land*, Maudsley & Burns, Land Cases and Materials 6th Edition, Butterworths, Page 5, states:

*"... the system in essence is one whereby the estate owner proves his title to land by showing from deeds and documents in his possession that he derives his title lawfully from some person or persons who have been in peaceful possession for a long period of time. In the nature of things, the title to his estate can never be proved absolutely, for there may have been interference with the rights of the true owner many years back ". With the assistance of the Limitations Act, proof of title during the last fifteen years is, for practical purposes sufficient and a purchaser is now required to trace the title back to a good root of title at least fifteen years old. On completion of the purchase the deeds are handed over to the purchaser, and he will make title in a similar manner when he decides to sell.*

*no action shall be brought by any person to recover any land after the expiration of twenty years from the date on which the case of action accrued."*

'Introduction to the Modern Law, Modification of the Common Law of Equity and the Doctrine of the Bona Fide Purchaser for Value of the Legal Estate Without Notice', Cheshire and Burn's *Modern Law of Real Property*, 15 Edition, Butterworths, 1994, page 61,

"a man who is purchasing land should investigate the title by requiring the vendor to prove his title by producing evidence to show that the interest which he has contracted to sell is vested in him, and that is in unencumbered by rights and interests enforceable against the land by third parties. Under the system of unregistered conveyancing, proof of title takes the form of requiring the vendor to set out the history of the land in what is called an

*abstract of title* with a view to showing how the interest he has contracted to sell became vested in him, so as to prove that for a given number of years he and his predecessors have rightfully exercised dominion over the land consistent with that interest.”

### **Extraneous Considerations**

The COI was not influenced by anything heard in mainstream or social media or generally outside of the COI Hearings. Nor has any sympathy or prejudice been shown for the Claimants or the persons to whom adverse notices or findings have been issued. The COI has determined the claim on the basis of the documents submitted by the Claimants and the parties to whom adverse notices were issued, some of which were tendered as Exhibits, and the oral evidence provided by all parties.

### **Expert Evidence**

As a general rule, a witness can only give evidence of facts within his knowledge, that is, things seen or heard. It is, however, permissible for a person who is skilled by a course of special study or experience in a particular subject to give evidence of his opinion on matters relating to that subject, and based on facts already proved, and the COI may take that opinion into consideration in arriving at a decision. Such a person is called an expert.

### **False Document**

A document is false if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it, nor authorize its making.

### **Forgery**

Forgery is the making of a false document in order that it may be used as genuine. Forgery of the document may be complete even if the document when forged is incomplete, or does not purport to be or is not such a document as would be binding or sufficient in law

### **Law: Hearsay**

Some of the documents relied on were unsigned copies of witness statements and the makers of the statements were not called as witnesses before the COI. Claimants were permitted to rely on the contents of these documents to include the Police Report, the Summers Report and the Butterfield Report. The COI was cognizant of the fact that the Claimants were inviting the COI to treat the ‘statements’ as true and that they were in fact made and certainly the issue of the statements being hearsay evidence and inadmissible would arise.\* Importantly, the COI was entitled to receive any relevant evidence which might otherwise be inadmissible in a court of law.<sup>220</sup> The strict rules of evidence will not apply to determine the admissibility of evidence.

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\* Subramaniam v. DPP [1956] UKPC “Evidence of a statement made to a witness by a person who was not himself called as a witness might or might not be hearsay. It was hearsay and inadmissible when the object of the evidence was to establish the truth of what was contained in the statement. It was not hearsay and was admissible when it was proposed to establish by the evidence, not the truth of the statement, but the fact that it was not made

## **8.2 Existence of Documentation to Show Basis of Acquisition and/or Proof of Ownership**

Notwithstanding the fact that the Claimants are in possession of the original deeds, new title has been issued to the residents and occupiers of the lots of land developed by Sir John Swan. There is no evidence that Sir John Swan, when he purchased and subdivided the land into 8 lots, was other than an innocent purchaser for value. The simple fact that Sir John Swan acquired the property does not and cannot lead to the conclusion that he was a part of a criminal conspiracy. To arrive at such a finding there must be evidence that at the time he acquired the property, he possessed the requisite knowledge of the unlawful behaviour and participated or turned a blind eye to the unlawful behaviour. There is no such evidence.

It is, however, accepted that the two (2) transactions concerning the northern portion, specifically the sale from John Augustus Alexander Virgil to Russell Levi Pearman and the sale from Russell Levi Pearman to Emanuel Augustus, were fraudulent transactions and both were executed on 15<sup>th</sup> April, 1969.

## **8.3 Role of Lawyers**

The role of the lawyers who had carriage of sale, in relation to the fraudulent transactions of 9<sup>th</sup> December, 1961 and 15<sup>th</sup> April, 1969 and any inference that may be drawn that their role was unethical is a matter which should have been properly brought before the Bar Council for a considered opinion.

Three issues arise in relation to the conveyancing practices, namely transfers into the name of the lawyer with carriage of sale where the lawyer was made party to the transaction. Secondly, the change of ownership and the failure to give a timely notice to the Registrar General's Office. Finally, the several instances where property was transferred and re-conveyed a few days or months apart.

Importantly the exercise must not be seen just as an academic exercise in light of the fact that the five lawyers who were concerned with the various transactions are now deceased. Mr. David Wilkinson, Mr. Eric Arthur Jones and Mr. David Motyer are viewed as having played major roles whereas Mr. E. T. Richards and Mr. Arnold Francis played minor roles. The COI considered the appropriateness of these conveyancing practices by the referenced lawyers in the context of present day international best practices and agreed that they were questionable in some instances. given various findings of fraudulent activities. Additionally, the appropriateness of the practice as outlined by Sir John Swan of transferring land to his employees in order to secure financing to develop property and having the property re-conveyed to him after the financing is secured is an oddity.

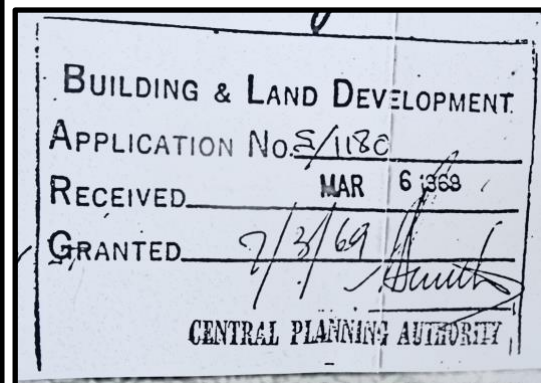
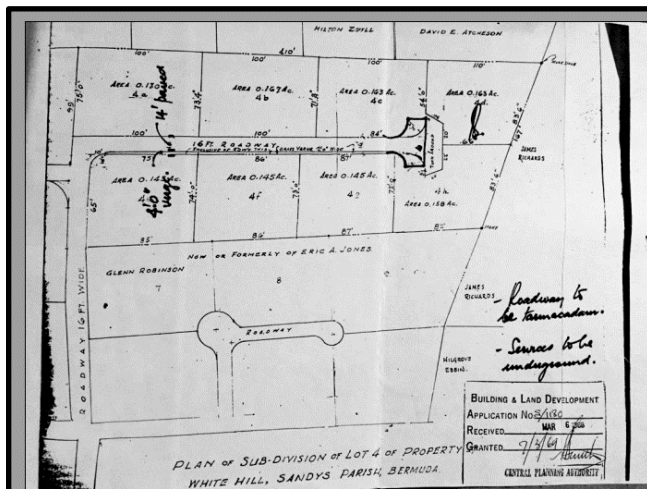
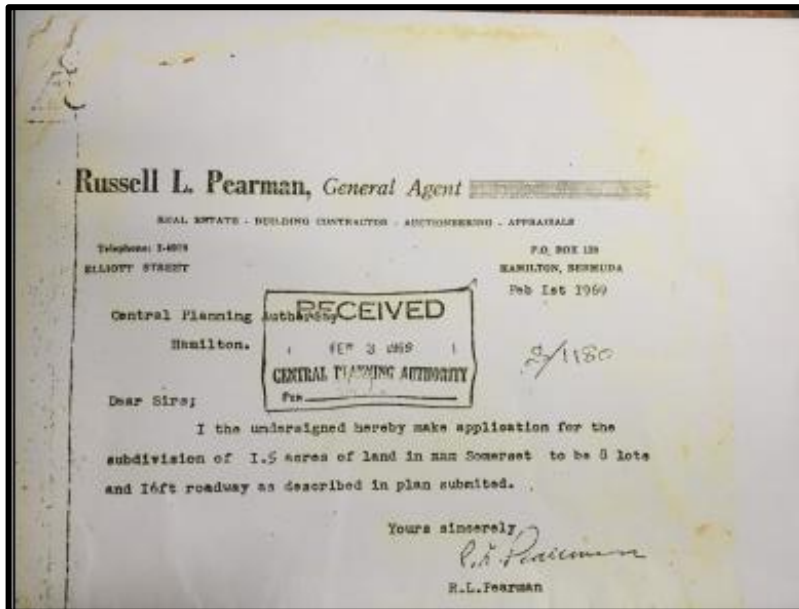
## **8.4 Role of Russell L. Pearman**

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<sup>220</sup> Rules of Procedure and Practice, Commission of Inquiry into Historic Losses of Land in Bermuda, Evidence, Rule 17



The Claimants stated that Russel Levi Pearman submitted two applications to the Central Planning Authority to sub-divide the Northern portion of the property. The first application, was submitted on 6<sup>th</sup> March, 1968 and they relied on a stamp on slide 34 of their presentation (CNLB 4). See below documents previously referenced in figure 8.



The Claimants also stated that a duplicate of this application was submitted by Russell Levi Pearman on 3<sup>rd</sup> February, 1969. The Central Planning Authority confirmed the 3<sup>rd</sup> February, 1969 application being received and regarding a previous submission made on 6<sup>th</sup> March 1968, the COI should consider whether there was a nexus between that document and Russell Levi Pearman. What the COI does accept is that he in fact made an application on 3<sup>rd</sup> February, 1969 to the Department of Planning and at that time, he was regarded "...as being both applicant and owner of the land subject of the application". It can be reasonably

inferred that Russell Levi Pearman submitted the earlier 6<sup>th</sup> March, 1968 application and this is based importantly on the fact that the application # 'S/1180' appears on both the 3<sup>rd</sup> February, 1969 application and the 6<sup>th</sup> March, 1969 application and this fact is conclusive of this being a single application which was assigned the same number. The COI therefore also accepts the fact that the 3<sup>rd</sup> February, 1969 application was a resubmission of the previously submitted application. But more importantly, it supports the Claimants' contention that Russell Levi Pearman on 6<sup>th</sup> March, 1968 and again on 3<sup>rd</sup> February, 1969 submitted a false document, that is, an application and plan for subdivision approval, with the intention to defraud John Augustus Alexander Virgil. The role of Russell Levi Pearman and this single act of submitting the application for subdivision was meant to deceive the Planning Department. It is unknown whether Mr. Pearman himself purported to be both owner and applicant, or in the alternative, whether an assumption was made by the Department of Planning and he was so regarded. The COI shall not speculate in this regard as the factual situation is unclear. The role of Russell Levi Pearman as facilitator of the transaction was dishonest, when considered in conjunction with the statement of John Emmanuel Augustus<sup>221</sup>, which was relied on by the Claimants, unedited extracts of which are below:

*"I believe sometime in November 1968, Russell L. Pearman approached me about some property at White Hill. He said to me, "I have a nice piece of land up Summerset, up by White Hill and it would suit you well." I asked what he would want for it and he said, 18 to 20,000 pounds.*

*Next day I agreed to go up with him 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 would like to get the property and would see John Swan as he had my money invested. Pearman said "Okay". I did see John Swan 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 to Russell Pearman, told him I had spoken to John Swan and it was okay. Pearman said: "John, I'll have to do this thing 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 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 just 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 J W Swan's office with me to make arrangements. I believe there was an agreement made at J. W. Swans office and Russell Pearman said something about leaving 18,000 for a year and he needed money then. John Swan paid him some*

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<sup>221</sup> Statement of John Emmanuel Augustus dated 25<sup>th</sup> October 1976, signature witnesses by T. Cassin. Sgt. 55., COI – Exhibit CNLB-14

*money by cheque, I don't know how much. I didn't sign any agreement at John Swans office. I have been shown a Sales agreement (copy) dated 19<sup>th</sup> February, 1969 and it appears to have my signature on it. I did not sign this agreement at Wilkinsons office because I only went there once and that was on 15<sup>th</sup> April, 1969. I didn't sign it at John Swans office because the witness W G Brown was not there when I went to J. Swans' office with Pearman. W G Brown, the witness on this sales agreement is a friend of Russell Pearman and most of the time hangs around Pearmans place.*

*After this meeting at John Swans office a few months later, Pearman asked me to go to Mr Wilkinsons office to sign the conveyance of the property, thats 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 Wilkinsons office Church Street.*

*Wilkinson was not there and some papers were brought out by a Chinese looking girl. Pearman signed a conveyance, then I signed, both in the presence of this lady. I remember space on the conveyance for three (3) people, myself, Pearman and Wilkinson. Only me a Pear an signed. I have been shown a conveyance dated 15<sup>th</sup> April, 1969 and I believe this is the document I signed. I signed my name John Augustus. I was in the office only ten minutes. I signed only one and the girl kept the papers. I never gave Pearman any money during any part of this transaction. I had no idea that the land belonged to John Virgil. Pearman told me that 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 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.*

*When I went to the property there was nothing there. There was no stakes there which would show that the property was divided up, and Pearman did tell me at this time that the property would be divided up into 8 lots and he gave me an idea where the lots would be on each side of a road which would be built there. The road wasn't there then, the whole area was just a wilderness. I'm sure this was in November and before December 1968, when Pearman approached me and showed me the property. When John Swan went with me to the property that was before Xmas, before anything was put on the land. There was tree and nothing else.*

*I would further say that with regard to the sales agreement dated 19<sup>th</sup> February, 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 W. Swan. This was a small yellow paper. On 25<sup>th</sup> October, 1976 I obtained from Peter Smith, Barrister, a copy of Conveyance, dated 21<sup>st</sup> 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<sup>th</sup> 1969 from Russell Pearman to David E Wilkinson, a letter dated 20<sup>th</sup> June, 1969 from Joh Swan to Wilkinson, an original agreement between myself and John Swan dated 17<sup>th</sup> July, 1969. Also a document dated October 1<sup>st</sup> 1969, an agreement between John Swan and myself.*

*On May 21<sup>st</sup> 1970 an agreement which me and John Swan had about this this property was finished and he took complete control of the property for payment, to me, of \$60,000, this was handled by Peter Smiths office. The*

*The document dated 15<sup>th</sup> April 1969 (copy conveyance) handed to Sgt. Cassin I got from D Wilkinsons ' office on 22<sup>nd</sup> October 1976.*

*I would further say when Mrs. Brown contacted me and I went to Wilkinsons office on 22<sup>nd</sup> October, '76 I saw the girl at the office who was present on 15<sup>th</sup> April, 1969. I told her I remembered her but she denied this, saying 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 and Kempe. I know she was the lady me and Pearman dealt with on 15<sup>th</sup> April, 1969, this same lady brought out the Conveyance on 22<sup>nd</sup> October, 1976, which she brought out to me and Pearman on 15<sup>th</sup> April, 1969."*

## **8.5 Discrepancies and Inconsistencies**

It is always possible to find inconsistencies and/or contradictions in the evidence of witnesses, especially when the facts about which they speak are not of recent occurrence. They may be slight or serious, material or immaterial. If slight, the Commissioners will probably find that they do not really affect the credit of the witnesses concerned. On the other hand, if they are serious the Commissioners may find, because of it, it would not be safe to believe the witnesses on that point or at all.

The COI highlights below some inconsistencies and/or contradictions:

1. The Claimant, Mr. Charles Brown, in answer to Mr. Michael Hanson on the matter of the 'Summers Report' stated, "*We stand by parts of the report. Indeed*<sup>222</sup>." On the other hand, the Claimant Mr. Charles Brown in answer to Mr. Kim White stated, "*We stand by the Summers Report*<sup>223</sup>." In re-examination, the COI Counsel<sup>224</sup> put to Mr. Charles Brown, the question, "...to Mr. White, you indicate (sic) that you stand by the Summers Report. In answer to Mr. Hanson, if my recollection serves me, (sic) indicate (sic) that you stand by parts of the Summers Report. Now can you just indicate, can you clarify for us." Charles Brown responded, "*Certainly. The Summers Report makes reference to a transfer of land from John Augustus Alexander Virgil to Arthur Jones and his wife*

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<sup>222</sup> Page 6 (10:53) of Transcript COI 26<sup>th</sup> March, 2021 – afternoon (a), CNLBTR-16

<sup>223</sup> Page 25 (47:06) of Transcript COI 26<sup>th</sup> March, 2021 – afternoon (a), CNLBTR-16

<sup>224</sup> Page 25 (47:22) of Transcript COI 26<sup>th</sup> March, 2021 – afternoon (a), CNLBTR-16

on 24<sup>th</sup> January, 1962. That statement in the Summers Report is one that we do not support.”

2. The following statement appears in the Summers Report under the heading ‘Contingent and Limiting Conditions’:

*“The original title deeds and title deeds of the parcels of land derived therefrom have not been available. Thorough searches have been made of the applicable registries in Bermuda and the old Parish Vestry records, Supreme Court records and the Ministry of Works and Engineering records. Information obtained from these sources has been relied upon. The determining of the authenticity of any recorded document is beyond the scope of this report.”*

Mr. Charles Brown in Examination in Chief mentioned the location of the deeds when he was asked and he said, *“Certainly, my name is 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.”*<sup>225</sup>

The foregoing statement is inconsistent with the Summers Report of 1996 which stated that, *“The original title deeds and title deeds of the parcels of land derived therefrom have not been available.”* It leads therefore to the question as to why the deeds were not available for the Summers Report, as the Report was commissioned by the Claimants who stated that they were in possession of the original deeds. More importantly, the question of whether the credibility of the witness representing the beneficiaries at this point is impaired is moot as the ownership by the Virgil family of the dispossessed land in question (Lot 4) has not been challenged or denied up to 1961.

3. The Summers Report upon which the Claimants rely concluded that:

*“...The research has traced the history of the title of the real property of John Augustus Alexander Virgil until 24th January, 1962, through the available sources. It is concluded herein that John Augustus Alexander Virgil owned lot 4, shown on the annexed Plan 7, on the 24th January, 1962. John Augustus Alexander Virgil died on 17th January, 1972. The research on which this report is based, did not reveal how any part of lot 4 (Plan 7) came into the possession of John William Swan at the*

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<sup>225</sup> Page 3 (06:15) of Transcript CNLBTR-16 COI 25<sup>th</sup> March, 2021 (M Session) (a) audio

time that he voluntarily conveyed the six lots derived from lot 4 to Leslie Earl Ming.” (COI Emphasis)

Sir John Swan gave evidence and refuted these conclusions and tendered as an Exhibit JS 1, an Indenture dated 21<sup>st</sup> July, 1970 between John Emmanuel Augustus and John William David Swan and Peter James Chalmers Smith. This Indenture is certified by the Registrar General of Bermuda\*. The presentation by Sir John Swan of this Exhibit JS-1 brings to the fore a contradiction on the Claimants’ case which goes to the root of the case and is material.<sup>226</sup>

The Claimants had concluded that the 1962 transaction for the southern portion (Eric Jones) and the 1969 transaction for the northern portion (John Swan) are both rooted in fraudulent and illegal actions and that, consequently, all related transactions thereafter lack legal credibility and do not meet the legal standard for a property transaction. Regarding this statement and the transaction for the northern portion, whereas the COI accepts that the 1969 transaction was rooted in a fraudulent and an illegal action, the COI cannot conclude or agree that it renders the 21<sup>st</sup> July, 1970 transaction between John Emmanuel Augustus and John William David Swan and Peter James Chalmers Smith a nullity and one which did not meet the legal standard for a property transaction. The Registrar General has recorded the notice of transfer of ownership, even though seven years after the fact. Importantly, Mrs. Debbie Reid, Land Registrar, Land Title and Registration Department, opines:

*“Fraud and forgery are the most troublesome aspects of guarantee and indemnity. The success of the registration of the title depends partly on the integrity of the register. A bona fide purchaser must have faith in the completeness and accuracy of the contents of the register. If a purchaser acquires title from a person who, it is later discovered, had acquired the title by fraudulent means, then it would be inequitable to deny the purchaser, who acted in good faith, his enjoyment of the property. Therefore, the owner who was fraudulently denied occupation of the property should be compensated for his loss unless the fraud was*

- *Wholly or partly a result of the owner’s actions, or*
- *Wholly a result of the owner’s lack of proper due care.*

*The bona fide purchaser in occupation remains in possession of the property. The registry may then take steps to recover the compensation paid by way of a court action against the fraudulent party.” (COI Emphasis)*

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\* Certified by the Registrar General 8th February, 2021, Memorandum recorded in Book of Deeds No. 108 at Paged 240 to 246.

<sup>226</sup> This answers and rebuts the claim made that Sir John Swan

Sir John Swan was a bona fide purchaser for value of the northern portion,<sup>227</sup> as was each resident who has purchased from Sir John Swan. Importantly, he who alleges must prove, and there is no evidence before the COI, that Sir John Swan or the residents purchased from him did not act in good faith or that he or they fraudulently acquired title. But of greater significance, Sir John Swan as purchaser did acquire title from John Emmanuel Augustus on 21<sup>st</sup> July, 1970 at the sale price of sixty thousand dollars. John Emmanuel Augustus had acquired title from Russell Levi Pearman who had probably fraudulently acquired title from John Augustus Alexander Virgil. The COI reiterates that there is no evidence that Sir John Swan acquired the title by fraudulent means and so it will be inequitable to deny he who acted in good faith his enjoyment of the property.

## **8.6 Discussion of the Expert's Examination of the Signatures and Documents**

What is clear, even if there was a suspicion of documents being falsified, is that there was no evidence of that fact until the COI heard testimony from Expert witness, Document Examiner, Miss Brenda Petty. Miss Petty opined that there was a probability that the four (4) questioned signatures of John Augustus Alexander Virgil were not genuine and stated as follows:

*“Based on the documents submitted and upon thorough analysis of these documents, and from an application of accepted forensic document examination tools, principles, techniques and standards, the evidence supports my opinion to a reasonable degree of Scientific Methodology that the opinion reached on the questioned signatures of John Augustus Alexander Virgil/John Augustus Virgil and Algernon Doers is as follows:*

*(A) There is probability that the four (4) questioned signatures of John Augustus Alexander Virgil/John Augustus Virgil labeled Q1, Q2, Q3 and Q4 are not genuine and were not written by the hand of John Augustus Alexander Virgil/John Augustus Virgil.*

*(B) There is probability that the two (2) questioned signatures of Algernon Doers labeled Q3A and Q34 are not genuine and were not written by the hand of Algernon Doers.*

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<sup>227</sup> Indenture dated 21<sup>st</sup> July, 1970 - 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. 7004-4-2-69 prepared by Wycliffe M. S. Stovell) annexed to an Indenture dated the Fifteenth day of April One thousand nine hundred and sixty-nine and made between John Augustus Alexander Virgil of the first part 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 NORTH-WESTERLY partly by land of the heirs or devisees of H. A. Roberts deceased of their assigns partly by land of Hilton Zuill and partly by land of David E. Atcheson and measuring along the North-Western boundary Four hundred and ten feet NORTH-EASTERLY by land of the devisees of James Richards deceased of their assigns and there measuring One hundred and sixty-seven feet SOUTH-EASTERLY partly by land of Glenn Envoy Robinson and partly by land formerly of Eric Arthur Jones and Hedwig Elizabeth Jones and measuring along the South-Eastern boundary Three hundred and forty feet then SOUTH-WESTERLY by a roadway delineated and coloured yellow on the said plan and there measuring Fifty-nine feet then SOUTH-EASTERLY by the said roadway and there measuring Sixteen feet then SOUTH-WESTERLY by land Elizabeth Marie Carter and there measuring Ninety-nine feet...

(C) *The date stamp shows typical wear and tear, but it was also noted that there were touch-ups on the number 3 and the number 9 was completely written by hand. There is an area that looks like some type of ‘bleaching’ or ‘erasing’ could have happened to remove a signature that appeared on the line beside the word PER. The word PLANNING also showed signs of some type of ‘bleaching’ or ‘erasing’ as the strokes left from the signature stretched into the word PLANNING. Light strokes are still visible.”*

## 8.7 Findings of Fact

- i. The Summers Report (see Appendices) has some glaring omissions of fact and discrepancies arise which go to the root of the Claimants’ assertions but, more importantly, the Summers Report leads in some instances, from a subjective viewpoint, an innocent bystander to draw a rebuttable inference that because records cannot be found, that they do not exist.
- ii. There is a record of John Augustus Alexander Virgil “*disposing of Lot 4 (plan 7), or any part thereof, between 24<sup>th</sup> January, 1962 and 24<sup>th</sup> January, 1972, when he died or before that period.*”
- iii. There is “*a record in the Registrar General’s Office of an Indenture dated 21<sup>st</sup> May, 1970 in the form of a recital, cited in Book of Deeds no. 108 at pages 240 to 246, which reveals how any part of lot 4 (Plan 7) came into the possession of John William David Swan at the time that he voluntarily conveyed the six lots derived from Lot 4 to Leslie Earl Ming.*” Notwithstanding that fact that the Summers Report concluded that the record did not reveal how any part of Lot 4 ( Plan 7) came into the possession of John William David Swan at the time that he voluntarily conveyed the six lots derived from Lot 4 to Leslie Earl Ming.
- iv. The Bank of Butterfield Executor & Trustee Company Limited (see Appendices for report) Hamilton, Bermuda were sole Executors of the Estate of John Augustus Alexander Virgil who died on 17<sup>th</sup> January, 1972.
- v. The Executors’ fiduciary duty began on the death of the testator.
- vi. The Executors commissioned a report as a result of complaints made to them by certain persons (COI emphasis) that those who claim title to the parcel of land, the subject



hereof, do so in error, or by fraud to the exclusion of the aforesaid certain persons (COI emphasis).

- vii. It is subject to serious debate and contemplation whether the Bank, then, as it was constituted in the course of its investigation in 1978, should be considered as having acted without due regard for its fiduciary duty. For example, the statement in the 1<sup>st</sup> November, 1978 report that, “...we do not direct our minds to the authenticity of any deeds which had been produced to us. So far as we can see, all documents purporting to be original documents appear to be genuine i.e. they appear to be what they purport to be, and we have no reason to doubt that they were signed by the persons whose purported signatures appear therein.” The Bank determined that all documents purporting to be original appear to be genuine, which is unfortunate, having not conducted a thorough investigation regarding the authenticity of the signatures despite the complaint by the beneficiaries of the estate.
- viii. The COI does not share the view that the following was not of importance as indicated in the Butterfield Report: “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 7<sup>th</sup> March, 1969, that is, before John Augustus Alexander Virgil sold “Brownacre” on 15<sup>th</sup> April, 1969.” The COI is of the view that this matter is of material importance as it clearly illustrates that the Bank became aware of the subdivision of the Virgil land before.
- ix. The whole parcel of land originally owned by the late Augustus Virgil at the time of death on 17<sup>th</sup> January, 1972, he did not own any part, except for such residual ownership or rights which he had and the other devisees of Augustus Virgil may have retained over certain of the roadways referred to in the various deeds. (Butterfield Report 1978 Chapters 6, 7&8).

## 8.8 Registry General’s Office

- i. Regarding notice of the transfer of landownership of the Northern portion, the Registry General is unable to determine the date the Indenture dated 21<sup>st</sup> day May, 1970 made between John Emmanuel Augustus and John William David Swan and Peter James Chalmers Smith was filed with the Registry General<sup>228</sup>. The Indenture was entered into the Book of Deeds on 14<sup>th</sup> March, 1977.

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<sup>228</sup> Book of deeds No. 108 at pages 240 – 246, COI – Exhibit JS-1

- ii. The Registry General cannot with a certainty confirm performance measures of former staff members circa 1970. An application for the recordal for an Indenture has to be processed and actioned within ten days of receipt, so it is highly likely that the application was not received by the Registry General until March 1997.
- iii. There was a failure to notify the Registry General of the change in ownership from John Emmanuel Augustus to John William David Swan within three months<sup>229</sup> of the Indenture dated 21<sup>st</sup> July, 1970.
- iv. Regarding notice of the transfer of landownership of the Southern portion, there was a failure to notify the Registry General of the change in ownership from John Emmanuel Augustus to Eric Arthur Jones within three months<sup>230</sup> of the Indenture dated 24<sup>th</sup> January, 1962. The Indenture was entered into the Book of Deeds on 7<sup>th</sup> April, 1969.

## 8.9 Examination of Photocopied Documents by the Questioned Expert Document Examiner

- i. The COI accepts that the word ‘**probable**’ *means that* the evidence contained in the handwriting points rather strongly toward the questioned and known writings having been written by the same individual; however, it falls short of the “virtually certain” degree of confidence.
- ii. The COI accepts that it is probable that John Augustus Alexander Virgil did not sign the ‘sale’ agreement dated 11<sup>th</sup> January, 1969 between Vendor, John ‘*Agustus*’ Virgil and Purchaser, Russell Levi Pearman. This sales agreement is a false document.
- iii. The COI accepts that it is probable that John Augustus Alexander Virgil did not sign the conveyance of 15<sup>th</sup> April, 1969.
- iv. The COI accepts that the Algernon Doers signature was written on two sales agreements and further accepts that contained in the copy statement of Algernon Doers dated 26<sup>th</sup> November, 1975 he states, “*I only signed my signature once. I’m sure about this.*” Consequently, one of the signatures purporting to be Algernon Doers’s is probably not his.
- v. The COI accepts that on the words “CENTRAL PLANNING AUTHORITY”, some of the lettering on the word PLANNING appears to have been or could have been ‘bleached’ or erased in some form in order to ‘bleach’ or ‘erase’ a signature written on the line by the word PER.

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<sup>229</sup> *Registrar General (Recording of Documents) Act, 1955.* (Bermuda).

<sup>230</sup> *Registrar General (Recording of Documents) Act, 1955.* (Bermuda).

- vi. The COI accepts that the date 'Feb 3 1969' stamped on the CENTRAL PLANNING AUTHORITY document was probably not the date on which the application was received from Russell Levi Pearman. 'The border of the date stamp is not straight, the words inside the stamp are 'wavy' in appearance, some of the letters and numbers are cut off, the number 3 appears to have the bottom part 'drawn' on, in the year 1969, the 6 is 'too perfect' compared to the other numbers, In the year 1969, the 9 has been written in by hand'. The COI accepts that the integrity of the approval process has therefore been compromised.

## 8.10 Russell Levi Pearman

- i. The COI accepts that on 3<sup>rd</sup> February, 1969, Russell Levi Pearman submitted application No. S/1180 to the Central Planning Authority for approval to subdivide the Northern portion, that is, '*a sub division of 1.5 acres of land in Summerset to be 8 lots and 16ft roadway as described in plan submitted*'. It is not accepted by the COI that this application was actually received on 3<sup>rd</sup> February, 1969. The COI does accept Russell Levi Pearman was regarded as being both applicant and owner of land at Port's Hill<sup>231</sup>, Sandys by the department of Planning.<sup>232</sup>
- ii. The COI accepts that Russell Levi Pearman was not authorized to submit application S/1180 and by so doing he submitted a false document.
- iii. The COI accepts that Russell Levi Pearman, purporting to being the owner, on or about November 1968 solicited John Emmanuel Augustus to buy and he sold the land, the subject of the subdivision approval, to him.
- iv. The COI accepts that the 6<sup>th</sup> March 1968 Application No. S/1180 for subdivision approval was made approximately 10 months before Russell Levi Pearman signed the 'sale' agreement dated 11<sup>th</sup> January, 1969. The COI accepts that he applied to subdivide before 'owning' the property.<sup>233</sup>
- v. The COI accepts that the 1978 Butterfield Report found "*that the subdivision of 'Brownacre' into eight lots and a roadway had been approved by the Central Planning Authority on 7<sup>th</sup> March, 1969, that is before John Augustus Alexander Virgil sold 'Brownacre' on 15<sup>th</sup> April, 1969.*"

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<sup>231</sup> The same land in Summerset mentioned in application No. S/1180, COI – Exhibit CNLB-12

<sup>232</sup> Department of Planning letter dated 19<sup>th</sup> October 1976 ( PLN:S/1180) re: Subdivision into 8 lots, in response to request of Sgt. T. Cassin, COI – Exhibit CNLB-12

<sup>233</sup> Description of property- Lot of land measuring 410 North 190 East 341 South 166 West with 16 ft roadway to main Public Road in Summerset South, COI – Exhibit CNLB-12

- vi. The COI accepts that Russell Levi Pearman for the second time submitted application No. S/1180 for subdivision approval and accepts that the date ‘Feb 3 1969’ on the stamp was manipulated to falsely give the appearance that the Planning Authority had received application No. S/1180 on ‘Feb 3 1969’.
- vii. The COI accepts that the conveyance dated 15<sup>th</sup> April, 1969 between John Augustus Alexander Virgil and Russell Levi Pearman is signed John *Agustus*, (and not Augustus) Alexander Virgil. This document is a false document.

### **8.11 Robert Motyer**

- i. The COI accepts that Robert Motyer drafted the 21<sup>st</sup> May, 1964 Will of John Augustus Alexander Virgil and that he signed as witness to the Will.
- ii. The COI accepts that on 26<sup>th</sup> January, 1962 Robert Motyer wrote on behalf of Eric Jones to “*Mr. John Virgil*” regarding the Southern portion and the payment of a balance to Mr. Virgil by Mr. Eric Jones.
- iii. The COI accepts that on 19<sup>th</sup> February, 1969, Robert Motyer wrote to David Wilkinson, “*advising that on the instructions of Mr. John Augustus Alexander Virgil we forward to you herewith the title deeds of a property in Sandys Parish which we understand that Mr. Virgil has contracted to sell to your client Mr. Russell Levi Pearman at a total price of 7000 pounds.*” The COI does not accept that it was the original deeds that were forwarded by Robert Motyer to David Wilkinson as the beneficiaries are to this day in possession of the original deeds.

### **8.12 David Wilkinson**

- i. David Wilkinson’s role as attorney with carriage of sale regarding the 11<sup>th</sup> January, 1969 sale agreement and the conveyances of 15<sup>th</sup> April, 1969 are matters of concern regarding the ‘integrity’ of these transactions.
- ii. An important consideration must be brought to the fore, that is, the role of the lawyers who had carriage of sale of the transactions prior to the 21<sup>st</sup> July, 1970 transaction.<sup>234</sup>

### **8.13 Evidence of COI Chief Investigator Mr. Carlton Adams**

The COI does not agree with the views expressed in the Report of COI Investigator Carlton Adams. The views were unsolicited and not supported by the facts. Most unfortunate was

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<sup>234</sup> COI- Exhibit JS-1

the fact that his unsolicited Report was inadvertently shared with the parties to whom adverse notices had been issued.

## CONCLUSIONS

- 9.0** Two major transactions are fraudulent:
- a. The 9<sup>th</sup> December, 1962 acquisition of the Southern portion by Eric Arthur Jones
  - b. The 15<sup>th</sup> April, 1969 sale of the Northern portion by John Augustus Alexander Virgil to Russell Levi Pearman
- 9.1** The evidence from Document Examiner Expert Miss Brenda Petty was not challenged by any of the parties. The Expert through her testimony opined that documents were probably falsified and the COI concludes that the claim ought properly to be referred to the Director of Public Prosecutions to determine if the public interest requires that any person is criminally charged for their conduct. **However being mindful of the fact that the persons we deem culpable are deceased, a referral to the Director of Public Prosecutions is an exercise in futility.**
- 9.2** It is probable that David Edmund Wilkinson, David Motyer and Russell Levi Pearman conspired together with persons unknown and fraudulently signed the conveyance of 15<sup>th</sup> April, 1969.
- 9.3** It is probable that David Edmund Wilkinson, Robert Motyer and Russell Levi Pearman conspired together with persons unknown and signed the sales agreement of 11<sup>th</sup> January, 1969.
- 9.4** David Edmund Wilkinson, Algernon Doers, Eric Arthur Jones, Robert Motyer, Russell Levi Pearman and others unknown participated in a criminal conspiracy to dispossess John Augustus Alexander Virgil.
- 9.5** The Central Planning Authority's role in the criminal conspiracy to dispossess John Augustus Alexander Virgil of Lot 4 is tantamount to a corruption enabling mechanism facilitating the wrongdoing.
- 9.6** There is no evidence that "Appleby" was hands-on with the 1961/62 fraud surrounding the Southern portion and then signed off on the Will in 1964.
- 9.7** The scope for fraud leading to land theft and illegal land transfers was facilitated and accomplished by the brazen and dishonest role of a real estate agent Russell Levi Pearman, lawyers David Wilkinson, Eric Arthur Jones and David Motyer and disingenuous

individuals both in the private and public sectors, culminating in the dispossession of the beneficiaries of land comprising Lot 4.

**9.8** The notice of the transfer of landownership for the Indenture dated 24<sup>th</sup> January 1962 for part of the Southern portion to Eric Jones and his wife Hedwig Elizabeth Jones from John Augustus Alexander<sup>235</sup> was recorded by the Registry General as received seven (7) years after the transaction. The failure to file notice of the transfer of landownership within three months<sup>236</sup> was a breach of section 8, of the Registrar General (Recording of Documents) Act 1955.

**9.9** The Indenture dated 21<sup>st</sup> July, 1970 and notice of the transfer of landownership regarding the Northern portion and the conveyance of ‘all that certain parcel of land situate in Sandys Parish’ from John Emmanuel Augustus to John William David Swan and Peter James Chalmers Smith was entered into the Book of Deeds by the Registrar General seven (7)<sup>237</sup> years after the transaction<sup>238</sup>. The failure to file notice of the transfer of landownership within three months<sup>239</sup> was a breach of section 8 of the Registrar General (Recording of Documents) Act 1955.

**9.10 Sir John W. Swan**

- i. There is no specific incident of fraudulent activity that has been pointed out anywhere in the statements made or in any of the documents submitted that John W. Swan engaged in any fraudulent activity. There is no evidence to support such a finding or a finding that he was a major player in a fraudulent scheme. There is no evidence to support a finding that Russell Levi Pearman acted as the agent for John W. Swan, when the 1969 transactions were being carried out purportedly (COI emphasis) involving John Augustus Alexander Virgil and Emmanuel Augustus.
- ii. *“A conveyance dated 1969 was produced by John W. Swan Limited in 1978<sup>240</sup>”*. However, this conveyance is a different document from the Indenture<sup>241</sup> made 21<sup>st</sup> July, 1970 between John Emmanuel Augustus and John William David Swan and Peter James Chalmers Smith
- iii. There is no evidence that the transaction conducted by John W. Swan lacked legal credibility and was rooted in a fraudulent and illegal action.

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<sup>235</sup> Memorandum to the Office of the Registrar General received on the 15<sup>th</sup> April 1969

<sup>236</sup> Registrar General (Recording of Documents) Act 1955

<sup>237</sup> Memorandum is recorded in Book of Deeds No. 108 at pages 240 to 246

<sup>238</sup> The Registry is unable to determine the date the indenture was filed with the Registry General. This office can confirm the indenture was entered into the Book of Deeds on 14<sup>th</sup> March, 1977.

<sup>239</sup> Registrar General (Recording of Documents) Act 1955

<sup>240</sup> Page 9, paragraph 4 - Summary Profile of Key Players, Submitted by the Beneficiaries of John Augustus Alexander Virgil, March 2021

<sup>241</sup> Exhibit JS1

- iv. The practice of John W. Swan conveying different lots of land,<sup>242</sup> for example, into the name of his employee Leslie Earl Ming<sup>243</sup> and the following day Leslie Earl Ming<sup>244</sup> re-conveying the said lots of land to Sir John Swan is a very curious practice and the explanation given by Sir John W. Swan as to the reason he employed this device is a remarkable oddity and indeed novel. By way of example, the conveyance of three lots of land <sup>245</sup>on one day and then on the next day the three lots being re-conveyed to him in order to secure funding for development of housing solutions. [See Exhibit CNLB 4 and Land Titles Office Letter dated 5<sup>th</sup> March, 2021 on the COI Website].
  - v. There is no evidence at this time that the “...*ten conveyances between John Swan and his staff member Lesley Earl Ming – between each other back and forth over four days*” was fraudulent behaviour.
  - vi. Eric Arthur Jones’s conveyancing practice regarding various lots from the Southern portion between 9<sup>th</sup> December, 1961 and 23<sup>rd</sup> January, 1962 is a remarkable oddity and indeed novel.
  - vii. There is no evidence to support a finding that John Alfred Virgil was the ‘imposter’ who was party to a conspiracy to steal land from the Virgil family.
  - viii. The conveyancing practices for unregistered land in this claim are startling and leave much to be desired in the legal framework. The practices by the drafters of Indentures were corruption enabling mechanisms.
  - ix. The failure to notify the Registrar General’s Office of the change of ownership is not a breach as this is permitted in practice. There is no legal recourse.
  - x. The Claimants have been fraudulently denied occupation of the property by the actions of Russell Levi Pearman, the Central Planning Authority, David Wilkinson, Robert Motyer and persons unknown.
- 10.0 Due regard is to be given to a mechanism being established to consider an award of compensation for loss through theft of property, dispossession of property or such other unlawful or irregular means by which land was lost in Bermuda. The recommendation is being made acknowledging that this falls outside of the remit of the COI.
- 10.1 Legal advice must be sought with a view to instituting legal action against the Estate of Russell Levi Pearman, the Estate of David Wilkinson, the Estate of Robert Motyer and the Central Planning Authority (Government of Bermuda).

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<sup>242</sup> Examination in chief, “When I bought the property I bought with intent to develop into houses as I did and to do that I needed to borrow money and so I put it in people’s names and I borrowed the money on the property so I could build houses on the property.

<sup>243</sup> Heads of Voluntary Conveyance, LTRO reference, Book of voluntary Conveyances no.17, page 105 lot 6 (0.145 acres), COI – Exhibit CNLB-18

<sup>244</sup> Leslie Earl Ming lives overseas and declined the COI invitation to obtain standing and appear before the COI.

<sup>245</sup>COI - Exhibit CNLB 18 Lots 6,7 & 8 conveyed 04.11.70 and reconveyed 05.11.70 (Letter dated 5<sup>th</sup> March 2021 from Land Title Registry Office also See slide 43 of CNLB 4 Re: Records obtained by Mr. Charles Brown from the Land Title registry Office

- 10.2 A review of the storage and preservation of Government records in keeping with international best practices must be prioritized in Bermuda.
- 10.3 The electronic and other safeguards put in place by the Land Titles Office to detect and prevent acts of fraud must keep pace of emerging trends and the continuous engagement of the Bar Association at a consultative level must be a priority, as the Registrar General's Office does not have the capacity to detect or prevent fraudulent conveyancing practices.
- 10.4 The role of the Registrar General's Office, the Land Titles Office and all stakeholders must be amplified through a continuing consultative process to provide through the Government an avenue for 'landowners' who retain original deeds to come forward and seek 'redress', even in cases where they have been time barred. These cases include but are not limited to landowners who have been dispossessed in circumstances other than by adverse possession such as land theft.
- 10.5 The Office of the Commissioner of Police is being invited to give due consideration to locating the 'Investigation original and copy files' touching and concerning the complaint of Mrs. Barbara Lucille Browne (sic) relating to 'Estate of John Augustus Virgil'<sup>246</sup> and having this investigation file<sup>247</sup> reviewed with a view to considering next administrative steps in light of the fresh and compelling evidence from the Document Examiner. Further consideration should be given by the Commissioner of Police in the interests of justice and with a view to rewriting the unsavoury history of the matter. But more so, the role of the Office of the Commissioner of Police in 1975, that is, must be revisited to correct that Office's glaring omission, 45 years ago, by failing to obtain the requisite expertise from a Document Examiner then, rather than, closing the file. The COI acknowledges and it is clear that the likelihood of reconstructing this file is only remotely possible.
- 10.6 As a matter of urgency, the Land Titles Office ought to be invited to, in consultation with the Office of the Registrar General and, most importantly, the Attorney-General's Department, to consider the legal recourse of the beneficiaries who were dispossessed of Lot 4 by fraudulent means by the named players, David Edmund Wilkinson, Eric Arthur Jones, Robert Motyer, Russell Levi Pearman and others unknown. The role of all parties to the transactions must be reviewed.
- 10.7 It is recommended that the Government of Bermuda consider making an award for compensation through the appropriate mechanism of the state machinery to the beneficiaries, in light of the fact that an agent of the state, the Central Planning Authority, played an integral role, tantamount to a corruption enabling mechanism facilitating the theft of land. The Government ought to consider this matter seriously, one which the COI

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<sup>246</sup> COI - Exhibit CNLB 16 Memorandum to the Commissioner of Police, Superintendent "C", Division: Major Incident Room, From: Thomas Cassin DS 55. Date: 7<sup>th</sup> February 1976, documents received from complainant Barbara Brown TC1- TC12 and witness statements collected to be also located and reviewed alongside new evidence FROM Document Examiner Miss Brenda Petty.

<sup>247</sup> "She alleges irregularities in purchase of land from Virgil by one Russell Levi Pearman in 1969.



reiterates is outside its remit. However, it is important to rewrite the wrongs of the past, especially in these circumstances.

## **11.0 REFERENCES TO OTHER AGENCIES**

The COI recommends does not recommend any referrals to the Office of the Director of Public Prosecutions.

## **12.0 ADVERSE FINDINGS**

- i. An Adverse finding notification is to be issued to the Estate of Russell Levi Pearman, Estate of David Wilkinson, Estate of Robert Motyer, Estate of Eric Jones.
- ii. Adverse finding to be sent to Butterfield Bank - whether the Bank, then, as it was constituted in the course of its investigation in 1978, should be considered as having acted without due regard for its fiduciary duty. For example, the statement in the 1<sup>st</sup> November 1978 report that, “...we do not direct our minds to the authenticity of any deeds which had been produced to us. So far as we can see, all documents purporting to be original documents appear to be genuine i.e. they appear to be what they purport to be, and we have no reason to doubt that they were signed by the persons whose purported signatures appear therein.” The Bank determined that all documents purporting to be original appear to be genuine, which is unfortunate, having not conducted a thorough investigation regarding the authenticity of the signatures despite the complaint by the beneficiaries of the estate

## Appendix i

- Voluntary Conveyances Recorded in 1970 - Book of Conveyances, Registrar General's Office
- Between John William David Swan and Leslie Earl Ming
- Legal Counsel – Arnold A. Francis and Edward 'E. T.' Richards

Item #	Lot Number	Date	From	To	Lawyer	Reference - Registry General's Office
1	6	November 4, 1970	John William David Swan	Leslie Earl Ming	Arnold A. Francis	Book 17, page 108
2	6	November 5, 1970	Leslie Earl Ming	John William David Swan	Arnold A. Francis	Book 17, page 108
3	7	November 4, 1970	John William David Swan	Leslie Earl Ming	Arnold A. Francis	Book 17, page 106
4	7	November 5, 1970	Leslie Earl Ming	John William David Swan	Arnold A. Francis	Book 17, page 110
5	8	November 4, 1970	John William David Swan	Leslie Earl Ming	Arnold A. Francis	Book 17, page 107
6	8	November 5, 1970	Leslie Earl Ming	John William David Swan	Arnold A. Francis	Book 17, page 109
7	4	December 28, 1970	John William David Swan	Leslie Earl Ming	Sir Edward Richards	Book 17, page 190
8	4	December 30, 1970	Leslie Earl Ming	John William David Swan	Sir Edward Richards	Book 17, page 190
9	5	December 28, 1970	John William David Swan	Leslie Earl Ming	Sir Edward Richards	Book 17, page 189
10	5	December 30, 1970	Leslie Earl Ming	John William David Swan	Sir Edward Richards	Book 17, page 191

## Case 016 – Estate of James Richardson

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### Commissioners

Wayne Perinchief (Acting Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte and Mr. Jonathan Starling

### Commissioners Recused

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman) and Mr. Quinton Stovell were recused from the proceedings due to a close association with an interested party in this matter.

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### Introduction

This claim was submitted to the COI by Mr. Winston Craig Lightbourne of 3 Coral Acres Drive, Southampton (“the Claimant”) on behalf of the late James Richardson (“the Deceased”) and the Deceased's daughter, the late Catherine Amanda Williams (Catherine). A formal statement setting out the details of claim was submitted by the Claimant on 20<sup>th</sup> January, 2021<sup>248</sup>.

The Claimant attended a COI Hearing on Thursday, 21<sup>st</sup> January, 2021 at the Royal Bermuda Regiment Warwick Camp, South Road, Warwick Parish and tendered evidence in support of his claim.

### Adverse Notices

Adverse Notices were sent on 27<sup>th</sup> January, 2021 to the Estate of Sir Reginal Gray and the Estate of Edmund Gosling Gray. As no responses were received in this regard, in accordance with its Rules the COI published an Adverse Notice on 13<sup>th</sup> March, 2021 in *The Royal Gazette* with respect to the Estates of Edmund Gosling Gray and Sir Reginald Gray as former Trustees of the James Richardson Trust (“the Trust”) and Trustees of the “Honey Hill” Trust I and “Honey Hill” Trust II to give persons or their representatives an opportunity to seek standing, if they so wished, to respond to the Claimant’s claim.

It appears that the Estate of Joseph Trounsell Gilbert, one of the former Trustees of the James Richardson Trust, was not included in the Adverse Notice sent on 27<sup>th</sup> January, 2021.

An Adverse Notice was sent to Coral Beach Club Limited (“Coral Beach”) in February 2021, but the COI has seen no record of a response from Coral Beach.

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<sup>248</sup> COI-Exhibit CL-2.

## Statement of Facts

At the COI Hearing, Mr. Lightbourne confirmed that he was placing reliance on an application that he had submitted to the COI on 10<sup>th</sup> March, 2020<sup>249</sup> as well as a second statement given to the COI on 20<sup>th</sup> January, 2021. These statements and a copy of a 1932 Judgment of the Supreme Court of Bermuda were tendered in evidence<sup>250</sup> for the purpose of establishing **THAT**:

- (a) the Claimant is a descendant of both the Deceased and his late daughter, Catherine, and that his claim is in respect of both Trust and Estate matters relating to the loss of land by the Deceased;
- (b) the Deceased was the Claimant's great grandfather, four times removed, who was born in 1798 and passed away in June 1876 at the age of 78;
- (c) the Deceased acquired property located on South Road, Paget in the 1800s. Part of the property is located on South Road on the same side as Coral Beach. The other part of the property, now referred to as "Honey Hill", is located on the northern side of the South Road, opposite Coral Beach and Tennis Club;
- (d) the total acreage of the Deceased's landholding was 20 acres and an ariel view of the said property and where it was located using a Google Maps Ariel View image of the property<sup>251</sup> was provided in evidence;
- (e) the late Catherine Amanda Williams, daughter of the Deceased, was born in 1847; however, the actual date is unknown. She died on 14<sup>th</sup> March, 1935;
- (f) in 1932, Catherine pursued legal action in the Supreme Court Civil No. 1932, No. 4, against Reginald Gray, Joseph Trounshell Gilbert and Edmond Gosling Gray, former Trustees of the Trust, to take possession of ten (10) acres of her father's property which, purportedly, had been held upon trust for the (charitable) benefit of "poor people", which the Court declared had failed<sup>252</sup>.
- (g) the 1932 Bermuda Supreme Court Judgment (#4), between Catherine Amanda Williams and Sir Reginald Gray, Joseph Trounshell Gilbert and Edmund Gosling Gray, the former Trustees of the Estate of James Richardson, comprising two pages, the contents of which the Claimant read aloud:

*"In the Supreme Court of Bermuda 1932, #4 between Katherine Amanda Williams and Sir. Reginald Gray, Joseph Trounshell Gilbert and Edmund Gosling Gray, Trustees of the Estate of James Richardson, deceased. Action for the declaration of right of and possession by Plaintiff of certain real*

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<sup>249</sup> COI - Exhibit CL-1

<sup>250</sup> COI - Exhibit CL-3

<sup>251</sup> COI - Exhibit CL-10

<sup>252</sup> COI - Exhibit CL-3

*estate. Before His Honour Sir Sidney Orme Rowan-Hamilton, Chief Justice, and our own R.C. Hollis Hallett, Esq., Assistant Justice. A.C. Smith and C.W. Keeley for the Plaintiff. Donald C Smith for the Defendant. Judgment: This is a somewhat unusual case, involving as it does the question as to whether the intents expressed in the Will of the Testator who died in 1877 have been carried out by the Trustees, if not, to whom does the property go). The Testator by his Will left a portion of the land to be set aside to be divided into lots, which lots were to be leased for any life or to lives of poor persons who would erect buildings thereon, but not any longer. Further, he gave the rents, issues and profits of the other parts of his estate to be applied for the benefit of the Church of England in Paget and the schools in connection with the Church by increasing the stipend of the Rector or in any other matter, as the Trust might decide. In his lifetime, the Testator settled two families on a portion of the estate in question and in 1914 their children were granted permission by letter from the Trustees to remain on. Apart from this, the Trustees have done nothing beyond paying the taxes. And the question before the court is to have the provisions of the Will with regard to this part of become null and void and the gift lapsed. And secondly, if so, to whom would the property descend? This charitable gift to the poor is not clear and certain. With regard to the Lessees in possession, it must be remembered that the leases to these Lessees were made in the Testator's lifetime and that probably these Lessees had no knowledge of the content of the Testator's will when the leases were made.*

*I have come to the conclusion that the Trust cannot be carried. It is a somewhat amazing Will for the Testator, though he provides land, expects the poor people to build huts or cottages thereon, provided that they have been unable to buy or to obtain land elsewhere. By the provision that this is to continue for two lives only reduces the conditions almost to a farce. Why anyone should build a house on another man's land for it to revert to the Testator's estate after two lives is an absurdity. These two lives might be a matter of a few months only. Nor do I see how the very poor for whom this charity was intended could afford to build a house. By the poor building houses, it appears that the Testator contemplated that the poor were to augment the charitable gift by providing houses to the charity alive.*

*A circumstance over which he had no control on the face of it observed. No cases were quoted in court and I know none bearing on the subject. Perhaps the nearest is the AG for Northern Ireland versus Ford, Cani 1932 1, but unfortunately the report is not to be obtained here. That being my view, I have formed the opinion that the Trust is incapable of being carried out and therefore the gift fails. The property will devolve on the next of kin. No order as to cost. Dated April 7, 1933."*

- (h) by the 1932 Judgment, the Supreme Court had issued an Order for the next of kin of the Deceased, Catherine, to take possession of 10 acres (of the 20

acres) which were the subject of the failed Will of the Deceased<sup>253</sup>. The Claimant stated that shortly after this 1932 Supreme Court Judgment, Catherine passed away without execution of the Judgment and never received any documents or had taken possession of the 10 acres of land. Note: 'Next of kin' appears to have been struck through and replaced with illegible words in similar handwriting as the Chief Justice's;

- (i) further, in 2010 Dilton Lightbourne, Astin Denmark Lightbourne and Calvin O'Brian Lightbourne as descendants of the Deceased and former Trustees of the Trust made another application to the Court in respect of the Trust/Estate property. By Consent Order, the Court set out the issues that were to be determined, that is, if the action was time barred, whether the Claimants were estopped from bringing the claim or if it should be struck out as an abuse of process and whether the Claimants were directly descendants of the Deceased;<sup>254</sup>
- (j) on 20<sup>th</sup> December, 2013, Dilton Lightbourne, Astin Denmark Lightbourne and Calvin O'Brian Lightbourne, as descendants of the Deceased and the former Trustees of the Trust, made an application to the Supreme Court of Bermuda once again on behalf of Catherine's estate. The basis of the application was that they wished to rely on the 1932 Judgment. In that case, the Court had ordered that the 10 acres of land should be returned to the next of kin and that no action had taken place to do so. The late Dilton Lightbourne had referred to his Affidavit dated 3<sup>rd</sup> January, 2012 in which he confirmed that he was the heir of Catherine Amanda Williams and entitled to the said land. The Claimant asserted that the Court was more concerned with lineage and did not award anything at that time. There were concerns as to whether the applicants were direct descendants of the Deceased. He explained that Janet Richardson was the daughter of James Richardson and his great grandmother three times removed and that there should not have been any concern over lineage; and
- (k) it is believed that the correct spelling family's surname name was 'Lightbourn' without an 'e'. This is supported by the birth certificates of Aston Denmark<sup>255</sup> which showed his great, great grandfather's name spelled without an "e". It is believed that the adopted spelling of 'Lightbourne' is based solely on a clerical error at the Registrar's Office. The Claimant believed that the Court did not consider him to be a direct descendant of the Deceased due to the incorrect spelling of the surname 'Lightbourne'.

**5. Further, the Claimant relied on:**

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<sup>253</sup> COI – Exhibit CL-6

<sup>254</sup> COI - Exhibit CL-5

<sup>255</sup> COI - Exhibit CL-12

- (a) a letter dated 16<sup>th</sup> July, 2013 from law firm Amicus Law Chambers Limited (Amicus) to Conyers, Dill & Pearman (CD&P) re: the Trustees of the James Richardson Estate which was submitted as proof of litigation between the Lightbourne family and the former Trustees. This letter makes reference to the Order of Justice Kawaley dated 10<sup>th</sup> February, 2012 acknowledging that any future claims should be constrained to that portion of land previously held by the Trust that had been awarded in the said ruling to Catherine Amanda Williams, i.e., the land should have been returned to her as the next of kin, as a form of declaratory relief rather than an enforcement of Judgment<sup>256</sup>;
- (b) a letter to Amicus from CD&P dated 28<sup>th</sup> August, 2013 was entered as proof of the fact that there was ongoing litigation between Dilton Lightbourne and the former Trustees of the Trust. Further, CD&P agreed with Amicus's assertion that Ms. Williams took possession of the land. As such, there was no basis upon which Amicus's client could claim against the former Trustees, as the land had already been carved out of the Trust and this brought the matter to a close<sup>257</sup>;
- (c) a letter from H. Durham of Amicus to Stephanie Hanson of CD&P dated 5<sup>th</sup> September 2013 sought to clarify that there was no requirement for the enforcement of the declaration in the present matter, which subjects the property in question to the ordinary procedural operation of probate law, as the matter was closed from a trust perspective<sup>258</sup>;
- (d) Mr. Durham had pointed out in his letter of 5<sup>th</sup> September, 2013 that if the property had been "carved out of the James Richardson trust", as Ms. Hanson was suggesting, then CD&P should provide Amicus with copies of the deeds showing the said subdivision, so as to be able to probate Catherine's Estate<sup>259</sup>;
- (e) a plot plan of the southern portion of land on the Coral Beach side, which goes right to the shoreline<sup>260</sup>;
- (f) a plot plan grid showing the land located on the northern side of South Shore (the southern most part), which is the basis of this claim<sup>261</sup>; and
- (g) a letter from Ashes Management and Consulting dated 5th June, 2020 to the COI<sup>262</sup>.

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<sup>256</sup> COI - Exhibit CL-4

<sup>257</sup> COI - Exhibits CL-6 and CL-5

<sup>258</sup> COI - Exhibit CL-5

<sup>259</sup> COI - Exhibit CL-5

<sup>260</sup> COI - Exhibit CL-7

<sup>261</sup> COI - Exhibit CL-8

<sup>262</sup> COI - Exhibit CL-9

## Ashes Management and Consulting

*“Re: In the matter of the Estate of James Richardson, deceased, James Richardson Trust.*

*The Testator of this estate, the late James Richardson, died in or around 1876. He was a slave who worked as an ocean navigator.*

*Upon his retirement in around 1872, he settled the above-named James Richardson Trusts. He was permitted to buy his way out of slavery and purchase land.*

*The parcel of land that he purchased is that land that borders on the east by Stovell Lane in Paget, opposite the entrance to Coral Beach Club, to the south by the high water mark of the South Shore, to the west by Harvey Road and to the north by Ord Road.*

*It is a term of the Trust that the property to what is now known as South Shore Road to the north of said road was to be left for poor people to build temporary homes until they saved sufficient funds to afford to purchase lots of land north of the allotted land, that land where we now see the farmland used for commercial farming.*

*The land to the west of Coral Beach, including the two cottages to the immediate west of the Coral Beach gate, belong to the James Richardson Trust. There's a sign stating that the Bermuda Audubon Society owns the land, but they do not and have stated so.*

*The Trustees over the years have sold multiple parcels of land between the northern side of the gardens and Ord Road. Those funds were held by the Trustees in the name of James Richardson Trust.*

*It was contended that upon his death in 1876 that his family predeceased him. This was by our research incorrect. His wife passed thirteen years after he did, in or around 1889, and seven of his nine children survived him. To our knowledge, they were all illiterate. In fact, James Richardson himself made his mark by his hand making an 'X' as the Testator.*

*In or around 1926/27, one of his daughters bought an action against the Trustees and the court said that the provision of land for free temporary housing was unworkable and ordered that the parcel of land was to be conveyed to the Plaintiff. She passed away before this was done and there has been no effort to convey the property to her descendants.*



*It was also a term of the Trust that portions of the proceeds of the sale were to be paid to Paget Parish Church and Paget Glebe School. This was never done until Mr. Kirk Kitson or a company controlled by him purchased that parcel of land now known as "Honey Hill" which is north of the South Shore Road between the white pillars just east of Harvey Road. In fact, about 40 yards up that drive sits the ruin of the old Slave House of Mr. James Richardson.*

*Upon that sale, a cheque in the sum of \$500,000 was paid to Paget Parish Church known as St. Paul's Church in Paget. This was confirmed during our research by Lady Lloyd, the widower of the late Deputy Governor, Sir Peter Lloyd, who I knew well. I noticed that she was picking up the same books in the Archives that I had just replaced and I realized that we were following the same evidential trail.*

*A few days in a temperature-controlled records room revealed that every year since 1872, the land tax has been paid by the James Richardson Trust.*

*We met with one, now the late Mr. Durham Stevens, who was once the collector of taxes for the poor people. A few detailed and pointed questions later; a sudden bolt of dementia kicked in and we had to leave his residence. We were never afforded another meeting with him prior to his death.*

*The late James Richardson's family tree has provided anecdotal evidence and can be seen through the flow of unusual names through the generations. We were told that the Paget Parish Archives were damaged by fire so that the births, marriages and deaths cannot be followed from that source.*

*We also traced one of James Richardson's daughters, now the late Ruth-Anne Stovell. It is believed that her great grandchildren are known to me.*

*Unfortunately, funding was not available to continue with the in-depth research although I remained in touch with my then client, the now late Mr. Dilton Lightbourne.*

*Mr. Lightbourne had collected his file as his niece wanted control of the case, but to my surprise, the case proceeded no further, sadly.*

*The files should be in the possession of his widow, Mrs. Lightbourne.*

*I will be more than willing to further assist in this matter.*

*Signed by Eugene Rick Woolridge, Ashes Management Consulting. Dated 5<sup>th</sup> June, 2020."*

- (h) a Google Maps Aerial View of South Road and relevant properties<sup>263</sup> which the Claimant used to identify the boundaries of the said property, forming the basis of the claim in respect of the James Richardson Estate. The Claimant stated that on the northern side, Kitson & Company had built condominiums in the area now known as “Honey Hill” and that the construction of those condominiums was in no way associated and of no benefit to James Richardson’s descendants. However, he said that he understood that on the northern side there were some cottages that were built and refurbished by Coral Beach; one cottage in particular never had an assessment number until perhaps ten years ago, but it’s now occupied”;
- (i) the Family Tree of the Richardson family was admitted in evidence<sup>264</sup> and the Claimant confirmed his lineage:
- *“James Richardson, my great, great, great grandfather;*
  - *his daughter, Janet Richardson, was my great, great grandmother who married Peter Stovell. They had that one daughter, Clementine which would be my great, great grandmother;*
  - *Clementine had children for Samuel T. Lightbourne. That’s where my Lightbourne name came from. He was a white man. From that union came other children, but Alonzo Lightbourne is my great grandfather;*
  - *And from that union with Ruth Stovell came Astin Denmark Lightbourne, my grandfather; and*
  - *from there was my father and myself. My father’s name is Gladstone Lightbourne. Uncle Dilton also is in that same line. Astin and Gwendolyn Lightbourne had Gladstone.”*
- (j) Official documents submitted in evidence to show lineage included:
- (a) Certificate of Birth of Astin Denmark dated 16<sup>th</sup> May, 1906<sup>265</sup>;
  - (b) Certificate of Birth of Gladstone Denmark Lightbourne dated 14<sup>th</sup> July, 1932<sup>266</sup>;
  - (c) Certificate of Birth of Winston Craig Lightbourne dated 20<sup>th</sup> September, 1958<sup>267</sup>
  - (d) Certificate of Death of Astin [Esten] Denmark Lightbourne dated 28<sup>th</sup> August, 1980<sup>268</sup>; and
  - (e) Certificate of Marriage of Alonzo Lightbourne and Ruth Stovell dated 27<sup>th</sup> February, 1890<sup>269</sup>.

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<sup>263</sup> COI - Exhibit CL-10.

<sup>264</sup> COI - Exhibit CL-11.

<sup>265</sup> COI - Exhibit CL-12.

<sup>266</sup> COI - Exhibit CL-13.

<sup>267</sup> COI - Exhibit CL-14.

<sup>268</sup> COI - Exhibit CL-15.

<sup>269</sup> COI - Exhibit CL-16.

## Findings of Facts

1. The Supreme Court Judgment 1932 No. 4 between Catherine Amanda Williams and the former Trustees of the Trust appears to have been amended in manuscript as to who should take possession of the 10 acres of land. The words “next of kin” appear to have been deleted via a strike-through and replaced with something illegible<sup>270</sup>. Therefore, the COI cannot confirm that Catherine Amanda Williams had actually been declared the next of kin by the Court.
2. The COI accepts that Alonzo Lightbourne and Ruth (Stovell) Lightbourne were married. The pictorial version of the Family Tree submitted<sup>271</sup> shows that Clarissa was connected with the Deceased, but it unclear how they were related. It further shows that Ruth Stovell was unmarried, but the Claimant produced a copy of the marriage certificate dated 15<sup>th</sup> May, 1906 that proves she was married to Alonzo Lightbourn<sup>272</sup>;
3. The COI cannot confirm a clear familial connection with the Deceased. The Claimant stated that Catherine was the only child of the Deceased (as she alone pursued a claim for her father’s property). Whilst the CD&P memo dated 5<sup>th</sup> February, 1970 provides that it was presumed that the Deceased was predeceased by two sons who were named in his Will, Ashes Management Limited’s letter of 5<sup>th</sup> June, 2020<sup>273</sup> refutes the claim that upon the death of the Deceased in 1876, the Deceased’s family had predeceased him. Further, Ashes confirmed that the Deceased’s wife passed thirteen years after he did, in or around 1889, and that seven of his nine children survived him. Based on this conflicting evidence between the Claimant’s assertion and that of CD& P’s memo and Ashes’s findings, the COI cannot determine who are the legal beneficiaries of the Deceased’s estate;
3. The COI cannot confirm the familial connection between Janet Richardson, Catherine Amanda Williams and the Deceased. Although they may have been sisters, as the Family Tree suggests, the COI concludes that Janet Richardson’s side of the family may not have necessarily benefitted from Catherine’s estate. She was said to have been survived by a son and grandson and they and their descendants would have legally been entitled to the 10 acres of the southernmost portion of northern side of the Deceased’s property. However, both Janet and Catherine may have been beneficiaries of the remaining 10 acres forming part of the Deceased’s estate and originally in the ownership of the Trustees and thereafter to each of their surviving family members and descendants of the Deceased, The COI does accept that there may be a bloodline connection to the Deceased between the Claimant and Catherine.
4. Site plans were produced, but no conveyances or other deeds were entered in evidence to confirm title to the property at “Honey Hill” or any part thereof, if subdivided. Based on the said CD &P memorandum, the COI accepts that the Deceased owned the property which was described in his Will, that a land Trust was established and that former Trustees had been appointed to administer the Trust;

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<sup>270</sup> COI - Exhibit CL-6

<sup>271</sup> COI - Exhibit CL-11

<sup>272</sup> COI - Exhibit CL-16

<sup>273</sup> COI - Exhibit CL-9

5. The Claimant testified that the portion of “Honey Hill” property on which Kitson & Company built condominiums (on the northern side of South Road) had nothing at all to do with his claim. However, based on paragraph 3, the COI does not accept that that portion of the property was not originally part of the 20 acres owned by the Deceased and there is no evidence to track the history of ownership from the Estate or Trust to current owners. For the purposes of the findings of fact, however, that property was at one point owned by the Deceased in spite of the Claimant’s view on ownership of that portion of the property.
6. The Will of Catherine Amanda Williams, including a Codicil dated 4<sup>th</sup> September, 1931, was recorded in the Book of Wills, No. 39 page 299. The Will was probated on 11<sup>th</sup> May, 1935 and the gross value of her estate amounted to Fifty Pounds (£50) which she left to her son, Francis Aleaza Williams, and grandson, Charles H Williams. in equal shares as tenants in common, bearing in mind that no transfers of property had taken place before Catherine’s death. A copy of Catherine’s Will was obtained from the Bermuda Government Archives. Francis Williams and Charles Williams would have been the rightful beneficiaries under Catherine’s Will. Although there’s a familial connection between Catherine and family, Janet Richardson and family and the Deceased, as shown on the Family Tree produced in evidence, the Claimant may not be entitled to Catherine’s estate remaining in the 10 acres that is the subject of this claim<sup>274</sup>.

## **Trust Related Matters**

1. The CD&P 1970 memorandum refers.
  - (a) On J H Dale’s survey of the properties devised by the Testator, there are three lots, viz: cottage and lot on south side of the southernmost portion no longer held by the Trustees of the James Richardson Trust and the two continuous placers on the northern side of the South Road, containing in all 14 acres 14 perches. The remaining portion of Lot A is marked on the Paget Parish map as Lot 13 of Tract 20 and Lots B and C comprise Lot 32 of Tract 19. The southernmost portion consisting of 14 acres 14 perches no longer held by the Trustees of the Trust. There was no power of sale and no evidence was produced before the COI to give an historical account of how that property had been carved out of the Trust and for whose benefit, if not for the benefit of the beneficiaries.
  - (b) Although, according to 4(d), the former Trustees did not have the power of sale, under 6(e), the former Trustees were permitted to advise as to how to proceed. Further, 6(e) provides that the saleable value of these properties would be very large and the income thereof would far exceed the present or obtainable benefit receivable by St Paul’s Church in Paget. There is no evidence of the Trustees obtaining powers to sell or to develop the properties either by Court Order or by Private Act. There was mention of a Court Order in 2012 made by Justice Ian Kawaley, but a Judgment given was not produced before the COI, even though it

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<sup>274</sup> COI - Exhibit CL-11

was repeatedly requested. Therefore, the COI cannot consider the actions taken by the former Trustees to sell or dispose of such property to be valid and in accordance with the intention of the Deceased's wishes.

- (c) Lot B – described as [unclear] acres with a cottage was conveyed by deed dated 26<sup>th</sup> June, 1847, by Samuel C Nelmes and wife to James Richardson for his life and in remainder to his sons James B Richardson and David W Richardson as joint tenants in fee simple, at the price of Sixty Pounds (£60). It further states that it was presumed that the two sons of the said James predeceased him without becoming entitled to Lot B by inheritance. The COI cannot confirm if the Deceased's two sons had predeceased him nor does the COI accept that they were presumed (rather than confirmed) to have predeceased their father. Further, if the Deceased's wife had indeed survived him, she was said to have life tenancy in the property. The COI cannot confirm what transpired upon her death.
- (d) The COI would have preferred to have seen a copy of the Deceased's Will rather than having CD&P's précis of events, although the COI does acknowledge that the document was introduced into evidence in the said civil matter. The Deceased's Will was granted Probate on 24<sup>th</sup> June, 1876 and recorded in Book of Wills No. 23 – page 385. This was requested, but for reasons unknown, the COI was not provided with a copy of the same. The Deceased's Will was the original source of instructions post-death and would have been helpful in resolving some of the legacy issues in this matter.
- (e) The COI does, however, accept that the Trust was lawfully established but cannot without sight of a copy of the Will confirm if all distributions or appointments out of the Trust were legally carried out. If a (Will) Trust was automatically created upon the Deceased's death in 1876, then the COI cannot confirm how the Trust has survived, given the rule against perpetuity when holding Bermuda real property. This law was changed over the years from 80 years then to 100 years at the very most that a land Trust could continue, unless appointed upon another Trust, say for example, the ““Honey Hill” Trusts”. If this was the case, then what authority or power was exercised in order to achieve this? Copies of any document prepared to achieve this will need to be considered. Based on this, the COI does not believe the Trust to be valid.
- (f) The COI accepts the intended effect of the 1932 Order, but does not accept that if no action was taken by Catherine prior to her death that the 10 acres fell outside of the Trust based on the Court Order only. Further action was required to be taken in order to effect the transfer. The COI is of the opinion that if no action was taken, the property continued to form a part of the corpus of the Trust and dealt with accordingly, pursuant to the Trustees' discretionary powers, albeit limited in scope. Additionally, Amicus had requested proof of a subdivision having taken place and no proof had been provided to the COI by the Claimant.

- (g) Further, the COI is of the opinion that if the Deceased initially owned 20 acres of the said property and 14 of which did not form a part of the Trust, as indicated by CD&P's memo, then those 14 acres must have included a part of Catherine's Court-ordered share of the Estate/Trust property because of the failed Trust.
- (h) Amicus had indicated that its client, the late Dilton Lightbourne, was at the time seeking to probate Catherine's Will (**Exhibit CL 5**). Catherine's probated Will, retrieved from Bermuda Government Archives, revealed that at the date of death her estate was valued at Fifty Pounds (£50). This proves that her estate did not include the Deceased's property as ordered by the Court. Therefore, the COI is of the opinion that that the property remained in the possession of the James Richardson Trust: there was no separation of title of that portion of the Deceased's property from the ownership of the Trustees.

### Issues Arising/Legal Consideration post-COI

Under Bermuda's Trusts and Estates laws, the following questions arise:

1. Did the Will of James Richardson create a Will Trust or was this created by a declaration of trust?
2. How has the James Richardson Trust been able to survive to date when Bermuda Trust laws prohibit the holding of Bermuda land in a Trust in perpetuity? Has the James Richardson Trust, in fact, failed? If so, in which year did it fail, as the Trustees would have been acting ultra vires as the Trust powers in handling what then became the Deceased's Estate assets free from the Trustees' powers since that time. Who then become the named beneficiaries under the Deceased's Will? That would need to be determined.
3. How did Coral Beach become owners of a part of the Deceased's property, i.e., by adverse possession or with the acquiescence of the Trustees?
4. Was the "Honey Hill" Trust's property sold resulting in an appointment onto those Trusts (for example, via a purchase of property by Kitson) from the James Richardson Trust? As the Trust's deeds and documents are confidential, this may only be determined by review of the actual Court Order granting the power of appointment, since it appears from CD&P's memo that there was no provision for the sale of Trust property or, alternatively, if time had permitted, a subpoena could have been issued by the COI to CD&P which would have held or currently holds the records of the Trust (and possibly estate records).
5. How did the Bermuda Audubon Society come into possession of the land to the west of Coral Beach, including the two cottages to the immediate west of Coral Beach gate? (Same question being asked in relation to Coral Beach in .3 above.)
6. By what authority did Kitson & Company act to pay \$500,000 to St. Paul's Church in Paget?

7. It should have been possible to highlight the difference in the spelling of names by including both names (one as an alias) with or without the “e” in ‘Lightbourne’ and ‘Lightbourn’ and ‘Gladston’ or ‘Gladstone’, as long as details in the official documents are verified by the Registrar. Also, ‘Astin’ on the Family Tree is spelt ‘Esten’. Inconsistency of this nature was a common occurrence when names were recorded on the old Bermuda Birth and Death Registers before a proper system of registration was established, often creating difficulty when one is trying to obtain official documents required for travel, establishing parental lineage, claiming inheritance, etc.
8. Are there any Trust Account records that show the outgoings and income of the Trust over the years?
9. What is the current status of the James Richardson Trust?
10. The Ashes Management’s letter indicates that pertinent information accessed by the firm in relation to this matter was then passed on to the wife of the late Dilton Lightbourne. Does the file still exist?

For the avoidance of doubt, the utility of the above questions raised may assist in resolving this matter going forward.

## Recommendations

The COI did not have sufficient evidence upon which to make a definitive determination in this matter. However, the evidence presented is sufficiently compelling for the COI to recommend that a full investigation is carried out to resolve all legacy issues in connection with this claim. As the work of the COI will be ending on 31<sup>st</sup> July, 2021, it is further recommended that a law firm be engaged to continue the work of Amicus Law Chambers Limited and Ashes Management and Consulting which are no longer retained to assist the Claimant and his family in this matter.

Further, this matter is complex and will require professional legal advice of a wills and estates lawyer to deal with the estate administration matters, and/or a property lawyer to deal with property matters and/or a trust lawyer to investigate the validity of the James Richardson Trust, bearing in mind that the standard applicable fee charged by such professionals for the provision of services may prohibit the Claimants from taking this matter forward without financial assistance. Also, if the file(s) of Ashes Management and Consulting could be retrieved from Ms. Lightbourne, then it would help in reducing the cost of such services as it appears that much of the groundwork has already been done in relation to this matter.

For this reason, it is also a recommendation of the COI that the Claimant be permitted to seek advice through Government’s Legal Aid Office in order to pursue this matter to its conclusion.

# Case 017 – Estate of Herman Montgomery Bascome Smith

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## Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte and Mr. Jonathan Starling,

## Commissioner Recused

Mr. Quinton Stovell was recused from the proceedings due to a close association with an interested party in this matter.

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## Introduction

This matter is an on-going dispute over landownership of Lot 33.3, Spanish Point, Pembroke. The property was owned by Mr. Herman Montgomery Bascome Smith, the grandfather of Claimant Gena Robinson and great grandfather of Claimant Britney Robinson. The property is now owned by Richard David Robinson and his wife, Gena Robinson, who recently purchased the property from Gena's parents. Mr. Newbold Smith, Gena's father, is the son of Herman Montgomery Bascome Smith. There have been three Supreme Court cases involving the Chiappa Family, Spanish Point Boat Club and the Windsor Development Company Ltd. relating to the disputed land. The defendant in all three cases was the Herman Smith Family.

The Claimants have carried out extensive research into the history of ownership of Lot 33.3, Spanish Point, Pembroke and they have documented legal actions brought against Herman Smith who, the Claimants allege, was left powerless to hold on to a portion of his land. Referring to Supreme Court Case No. 18, 1947, the Claimants state that Herman Smith lost the case and his land because: (1) the presiding judge had ruled unfairly and was also actually conflicted; (2) there was misrepresentation by Herman Smith's attorney and (3) an incorrect legal description of the Plaintiff's claim against the Abstract of Title was used. Losing this case was the beginning of several more legal actions against the Herman Smith Family.

The battle continues between the Robinson family and the Spanish Point Boat Club which has built a structure ("the Structure") on the western side of the Robinson property, directly in front of their homestead at 2 Plaice's Point, Pembroke West. The Robinsons claim that the Structure is literally built on the beach and has blocked their water views and prevented access to the small beach<sup>275</sup> and that it has depreciated the value of their family homestead.<sup>276</sup>

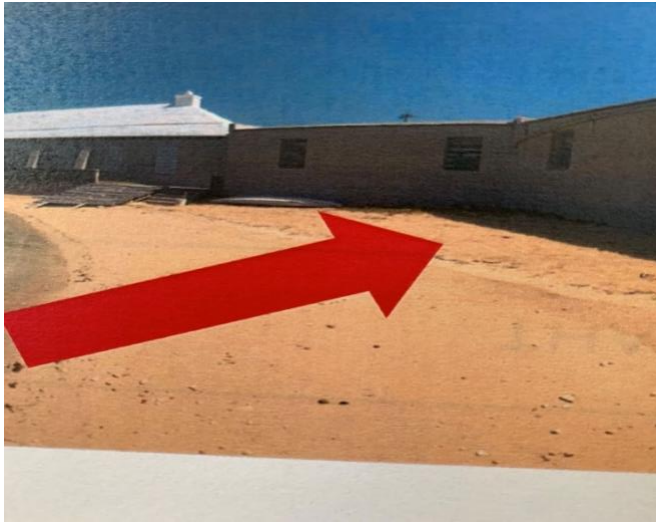
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<sup>275</sup> COI – Exhibit BR-7

<sup>276</sup> COI – Exhibit BR-2., pp. 45



### **“The Structure” Photo in front of Robinson Homestead**



This 74-year-old dispute over landownership continues to remain a bone of contention for the Robinson Family as the Structure is a constant reminder not only of the loss of family property, but the pain and anguish that have affected generations of the Smith/Robinson families.

### **Adverse Notices**

Adverse Notices to be sent to Spanish Point Boat Club and the Estate of E.T. Richards were ordered on 18<sup>th</sup> January, 2021. Spanish Point Boat Club was not able to be served on 20<sup>th</sup> January, 2021. Both notices were then sent on 27<sup>th</sup> January, 2021.

### **Summary of Facts**

Claimant Gena Robinson submitted a claim to the COI stating that she had evidence of the unlawful or irregular means by which her family land in Spanish Point Pembroke had been taken. On 7<sup>th</sup> June, 2020, the Claimant submitted additional information to support her claim. She stated that Spanish Point Boat Club had built an horrific structure that blocked water views, water rights and access to a small beach.<sup>277</sup> She assisted in the preparation of a statement, signed by her daughter, Claimant Britney Robinson, dated 6<sup>th</sup> January, 2021.<sup>278</sup> In addition to these submissions, the COI received an Addendum to the Witness Statement, signed by the Claimants and dated 17<sup>th</sup> January, 2021, Their claims were heard by the COI on 18<sup>th</sup> January, 2021 and were supported by an extensive Power Point presentation comprising 46 slides.<sup>279</sup>

Claimant Gena Robinson, alleged that her grandfather’s property had been taken by “unlawful and irregular means by which her family land was plundered in Spanish Point.”<sup>280</sup> She alleged that Spanish Point Boat Club had illegally built a structure on their family owned property, Lot Plan

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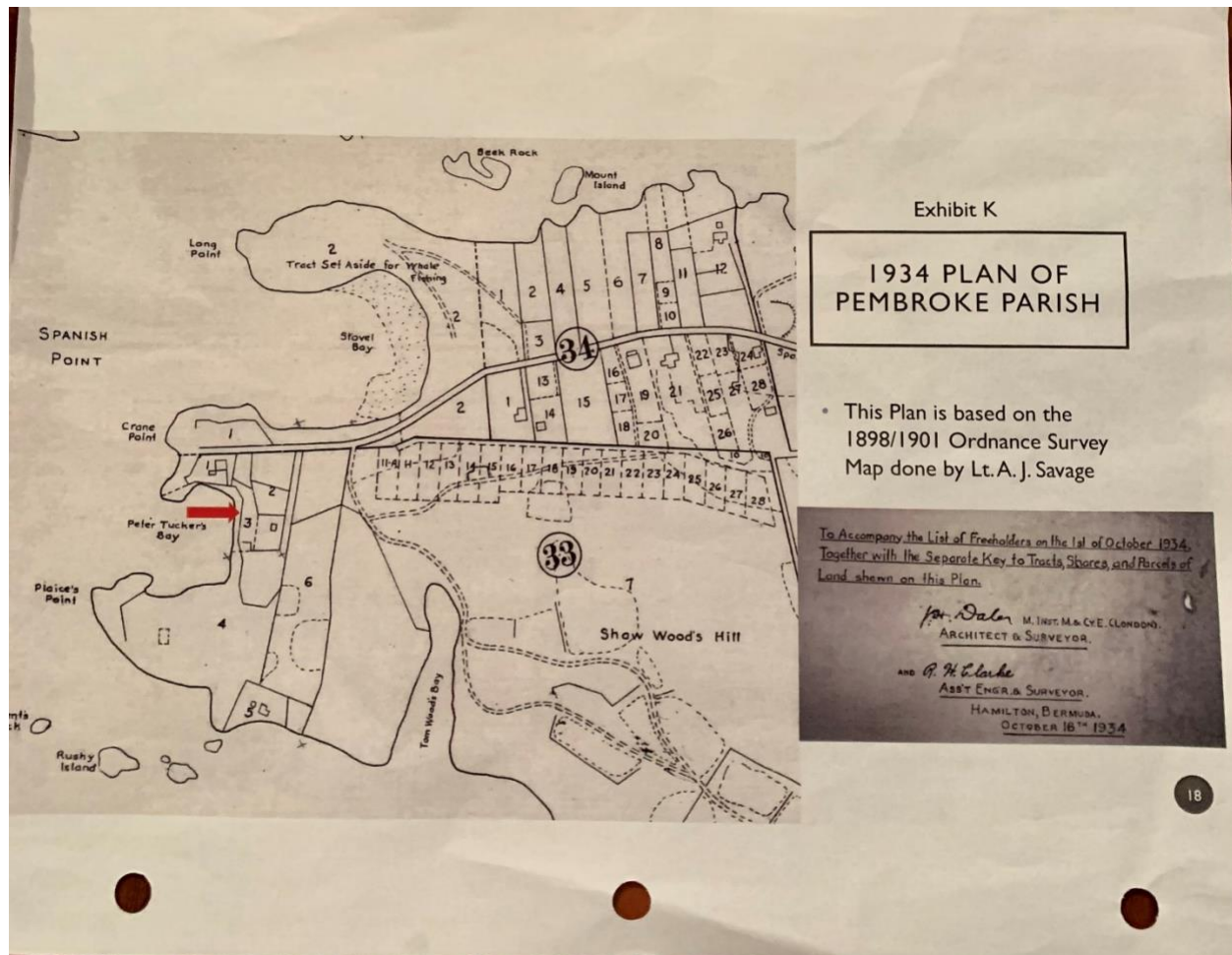
<sup>277</sup> COI – Exhibit BR-7

<sup>278</sup> COI – Exhibit BR-1

<sup>279</sup> COI – Exhibit BR-2

<sup>280</sup> COI - Exhibit BR-1.

No. 33.3, Spanish Point, Pembroke West. She stated that the original property was one lot and that over a period of years, from 1940 to 1947, Spanish Point Boat Club members had divided the property by continuously erecting fencing without seeking permission, thus claiming the land. Over the years, Herman Montgomery Bascome Smith repeatedly removed the fencing.<sup>281</sup>



Claimant Britney Robinson gave evidence that her great-grandfather, Herman Montgomery Bascome Smith, had acquired property known as Lot Plan No. 33.3, located in Spanish Point Pembroke from his aunt, Adelia Anne Robinson, on 7<sup>th</sup> June 1946. Transfer of property to her great-grandfather, Herman M. B. Smith, was published in a notice in *The Royal Gazette* dated 10<sup>th</sup> June, 1946, page 12 under the signature of Bascome Smith. The notice advised members of the public that they had until 30<sup>th</sup> June, 1946 to remove items from the Spanish Point property formerly owned by Adelia Robinson. As far as Claimant Britney Robinson was aware, no one came forward to challenge the notice of change of ownership. In addition to the public notification, a letter dated 24<sup>th</sup> June, 1946 from the law firm Appleby & Spurling to the Pembroke Vestry Clerk gave notice of the conveyance of the property dated 7<sup>th</sup> June, 1946 from Adelia Anne Robinson to Herman

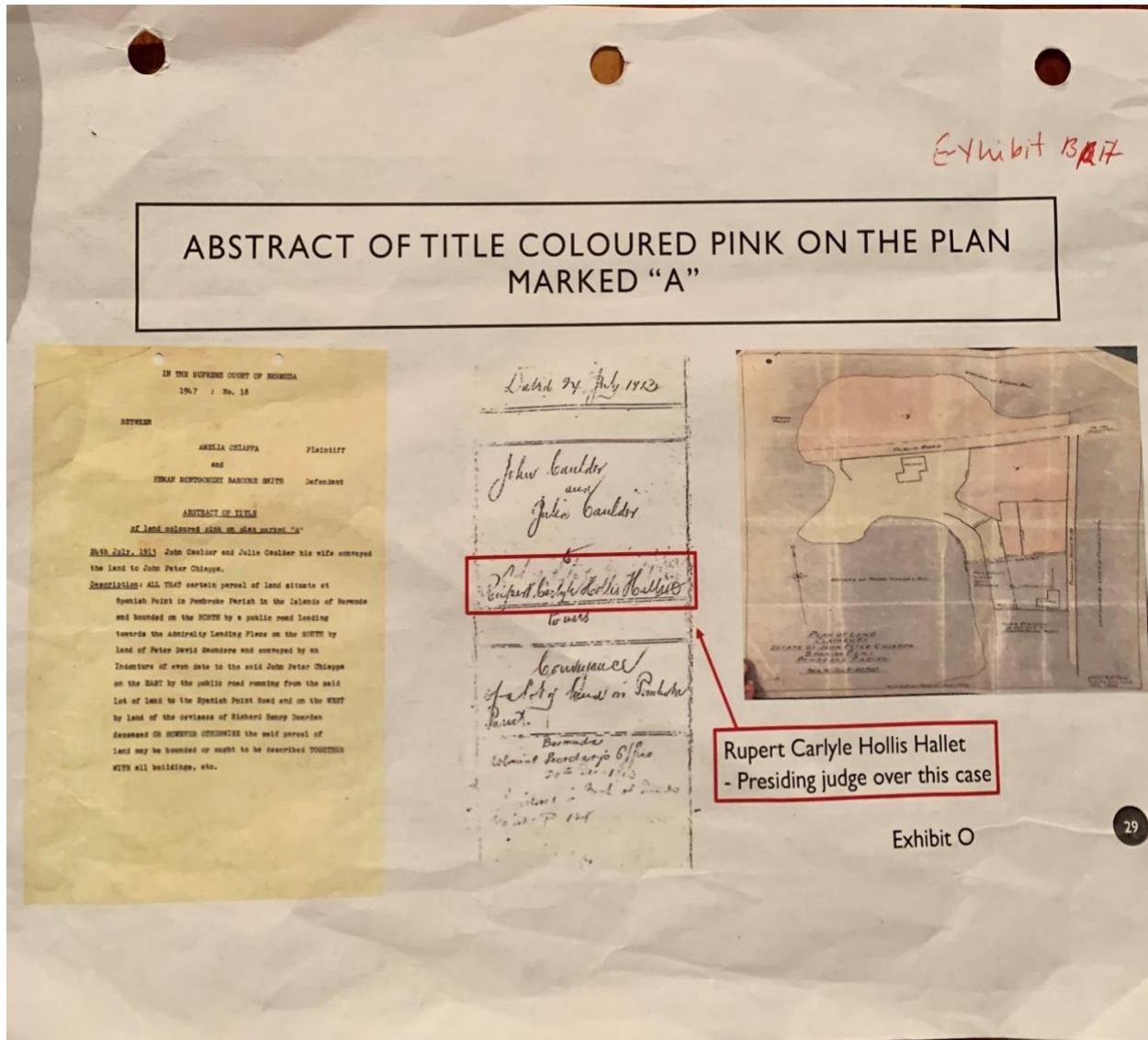
<sup>281</sup> COI - Exhibit BR-1

Montgomery Bascome Smith. Also, on 24<sup>th</sup> June, 1946, Appleby & Spurling sent a letter to the Pembroke Vestry Clerk giving notice that Adelia Robinson had sold the property to Herman Montgomery Bascome Smith, advising the necessary changes be made in the Parish Vestry Books. This notice was in accordance with the provisions of the Parish Vestries Act 1929. Adelia Anne Robinson had paid land tax on Lot Plan No.33.3 until the transfer of property to her nephew, Herman Montgomery Bascome Smith, who continued to pay the land tax to the Vestry. Herman Montgomery Bascome Smith erected a fence on his property and eight months after the public notification, Amelia Chiappa took legal action against him claiming that he had wrongfully taken possession of the southern portion of her land. This was the beginning of several other legal challenges. Claimant Britney Robinson submitted the other legal challenges as follows:

1. **The First Supreme Court Case, No.18 of, 1947.** Claimant Britney Robinson described this case as “The beginning of Supreme Court Case” between Amelia Chiappa, the Plaintiff, who issued a writ of summons to Herman Montgomery Bascome Smith, the Defendant, claiming that he had illegally taken possession of the southern portion of her land in Pembroke Parish by placing soil on the property and that she was making a claim for damages. She claimed that her great-grandfather lost the Supreme Court Case partly as a result of:

- a) Misleading documentation, in particular the legal description of land at Spanish Point, Pembroke described in the Plaintiff’s statement of claim which states; *“The Plaintiff is entitled to possession of a parcel of land situate in Pembroke Parish in the islands of Bermuda bounded northerly by the public road leading from Clarence Hill to a spot on Spanish Point Shore, commonly called the Admirals Landing Place, southerly in part by the waters of Peter Tucker Bay, in part by land of the Defendant and in part by a strip of land three (3) feet wide reserved for a right-of-way separating the land now being described for other land of the Plaintiff. However, The Plaintiff, recites her title and how she acquired this land from Mr. Peter Tucker. But Mr. Peter Tucker conveyed the land recited in the Abstract of Title to Mrs. Richard Samuel Joel in 1880. The description of that conveyance states it was bounded southerly by waters of the ocean forming a bay. The Plaintiff’s statement of claim states the southern border is in part by waters of Peter Tucker’s Bay, in part by a strip of land three (3) feet wide reserved for a right-of- way. Based on this, there is a discrepancy in her recitation of title versus her claim statement and also what appears on the document in the diagram which indicates that the southern border was not only bounded southerly by the bay, but also bounded southerly by another portion of land.”*
- b) The land described in the Plaintiff’s Abstract of Title coloured in pink and marked “A” states: *On the 24<sup>th</sup> July, 1913 John Caulder and Julie Caulder his wife conveyed land to John Peter Chiappa. However, the actual deed written, on the 24<sup>th</sup> July, 1913, John Caulder and Julie Caulder Conveyance to Rupert Carlyle Hollis Hallett to Uses. Land in Pembroke Parish. Rupert*

Carlyle Hollis Hallett was the presiding judge for Case No. 18 of 1947.” Despite his actual conflict of interest, he presided in the matter instead of recusing himself.



c) Misrepresentation by attorney, E. T Richards.

2. **The Second Supreme Court Case, No.10 of 1959**, referred to by Claimant Britney Robinson as “Spanish Point vs Her Great-Grandfather”. The Plaintiff, Spanish Point Boat Club, claimed that the Defendant, Herman Montgomery Bascome Smith, had on 18<sup>th</sup> and 25<sup>th</sup> January, 1959 wrongfully entered and erected barbed wire fences on a parcel of land

that was leased to them for one year. The Plaintiff claimed for damages for injury to the premises. The Statement of Claim was sent to Mrs. Lois M. Browne, attorney for the Defendant, and signed on 18<sup>th</sup> February, 1959 by the Plaintiff's attorney, Mr. L. J. Madeiros. It appears that the case did not proceed or there was no verdict.<sup>282</sup>

Claimant Britney Robinson continued with giving evidence regarding the Chiappa family. She pointed out that a Private Bill Notice to incorporate a company to be named Windsor Development Limited, which included a parcel of land in Spanish Point, Pembroke West, was published in *The Royal Gazette* on 17<sup>th</sup> January, 1964. Newbold Smith, the son of Herman Montgomery Bascome Smith, sent a letter, dated 31<sup>st</sup> January, 1964 to Appleby Spurling & Kempe with reference to the Bill to incorporate a portion of property in Spanish Point, Pembroke West by Mr. John Peter Chiappa and his sister, Mrs. Mary Dallas, the grandchildren of Amelia Chiappa. Mr. Newbold Smith informed the law firm that he was in possession of a portion of the property located at Spanish Point, Pembroke West, with a house on a portion of the property that John Chiappa and Mary Dallas intended to incorporate in Windsor Development Limited. Newbold Smith stated that he had lived in the house for fifteen years without any interference. Further, he stated that he was in possession of the deeds which were drawn by Gray & Smith. He pointed out that the "three foot right-of-way was not in the correct position".<sup>283</sup>

A letter dated 14<sup>th</sup> February, 1964 was then sent to the Joint Standing Committee of Private Bills, the House of Assembly, regarding Notice of Intended Petition of the Bill to Incorporate Windsor Development Limited. The Petitioners were Albert Jones and Newbold Smith. The Joint Standing Committee on Private Bills met on Friday, 18<sup>th</sup> February, 1964. The Windsor Development Limited Company Act 1964 was adopted without the inclusion of Newbold Smith's land in Spanish Point, Pembroke due to the existing dispute over the land title issues. Thus, an attempt to take a part of Mr. Newbold Smith's land by including it in the Windsor Development Limited Private Bill failed.<sup>284</sup>

3. **The Third Supreme Court Case, No. 216 of 1969.** Five years after the incorporation of Windsor Development Limited, John Henry Dallas, in his position as a Director of the company, took legal action against several residents in Spanish Point over encroachment issues. Herman Montgomery Bascome Smith and his son Newbold Smith were two of the five Defendants.<sup>285</sup> In 1971, the Plaintiff, John Henry Dallas, gave Notice of Discontinuance against Defendants Newbold Smith and Herman Montgomery Bascome Smith and one other Defendant. The Discontinuance Notice dated 29<sup>th</sup> December, 1971 was prepared by the Plaintiff's attorney, Appleby Spurling & Kempe, and addressed to Messrs. Vaucrosson, Attorney, Ms. Lois M. Browne, Attorney, Mr. Eric Jones, Attorney and Mr. Herman Montgomery Bascome Smith. The Plaintiff, John Henry Dallas, withdrew his claim against the other two Defendants.

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<sup>282</sup> COI - Exhibit BR-17.

<sup>283</sup> COI - Exhibit BR-20.

<sup>284</sup> COI - Exhibit BR-20.

<sup>285</sup> COI - Exhibit BR-21.

Claimant Gena Robinson recalled that as a child her family had built a wall to prevent the sea water from flowing into their yard. She remembered that there was an oleander hedge in front of the wall and that they had access to the beach. Spanish Point Boat Club had subsequently built a shed and erected wire fencing and it is believed that Herman Montgomery Smith continued to pull down the wire fencing whenever it was erected. Following the death of Herman Montgomery Smith, the fencing remained in place for several years until a hurricane demolished it. The exact date that the Structure was built is unknown, but the Claimant Gena Robinson recalled that her father, Newbold Smith, had travelled abroad and that upon his return, the Structure had been erected by Spanish Point Boat Club.<sup>286</sup>

Importantly, Claimant Britney Robinson presented copies of a Bermuda Planning Aerial Views of Lot 33.3, Spanish Point, Pembroke for the period 1941 through 1981. She posited that based on these Exhibits, between 1946 and early 1962, to the outer band of 1973, the Herman Montgomery Bascome Smith's family had access to the beach. The aerial views showed that portion of the Structure appeared in 1973. The property was conveyed to Herman Montgomery Bascome Smith on 7<sup>th</sup> June, 1946. After several Court cases, Spanish Point Boat Club continued to erect the fence which prevented the Robinson family having access to the beach. As stated earlier, years later the effects of a hurricane brought the fence down." The Claimant noted seeing an advertisement in the newspaper giving public notification that Spanish Point Boat Club wished to carry out works on its property at Spanish Point Pembroke, which also included erecting fencing. In response to this advertisement, the Claimant wrote a letter to the Department of Planning expressing her objection which in effect put a stop to the fence being erected once again. It was then agreed by the Robinson family to allow the Spanish Point Boat to carry out the works without erecting the fencing. The Planning Department then allowed the club to carry out the works during June 2015. The Claimant submitted that even after this agreement, Spanish Pont Boat Club still tried to erect the fencing. She said that she contacted the Department of Planning again and that they came on site once again and stopped the installation of the fencing. It appears that the Spanish Point Boat Club ignored the law and the Department of Planning's involvement and continued to erect the fencing on a portion of Land at Lot 33.3 which is now owned by the Claimant Gena Robinson and her husband, Richard Robinson.

### **Supporting Documentation of Landownership of Lot 33.3, Spanish Point Pembroke**

1. Deed of Gift. On 19<sup>th</sup> July, 1888, a Deed of Gift was drawn for a parcel of land and a cottage in Spanish Point, Pembroke from Jerimiah Hinson to William Brown. A photo of the deed is taken from the original Deed of Gift which was in the possession of Claimants Gena Robinson and Britney Robinson<sup>287</sup>.

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<sup>286</sup> COI – Document GR-007

<sup>287</sup> COI - Exhibit BR-3

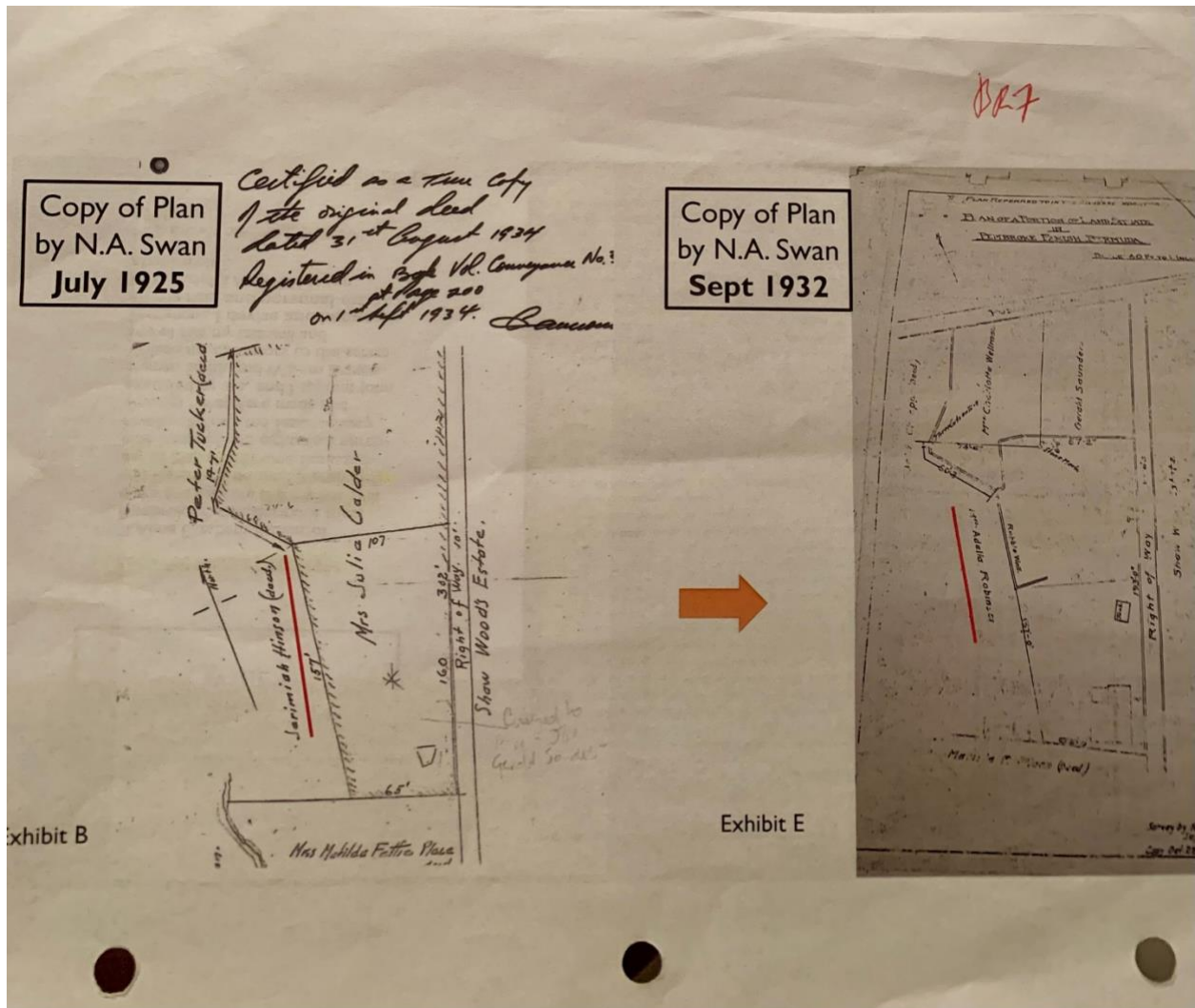


2. Last Will and Testament of William Brown, dated 24<sup>th</sup> July 1915. He devised and bequeathed all his real property and personal property to his wife, Anne Elizabeth Brown, the sole executrix of his last Will and Testament.
3. The Last Will and Testament of Anne Elizabeth Brown, dated 7<sup>th</sup> May, 1918. She devised and bequeathed all her real property and personal property to Adelia Anne Robinson. The executors of her estate were John Herman Smith and William Francis.<sup>288</sup>
4. The Last Will and Testament of Mrs. Anne Elizabeth Brown who died on the 30<sup>th</sup>, March 1921. In the Supreme Court of Bermuda, John Herman Smith and William Francis, the Executors of the Estate of Anne Elizabeth Brown, gave an oath they would administer the estate according to law. The Will was recorded and signed by the Registrar General on 28<sup>th</sup> February, 1924.
5. The Lot Plan by N. A. Swan dated 1925 and the Lot Plan dated 1932 show Adelia Robinson owning the same piece of land, previously owned by Mr. Jeremiah Hinson who gifted the property on 19<sup>th</sup> July, 1888. This is the same property that Adelia Robinson sold to her nephew, Herman Montgomery Bascome Smith, on 7<sup>th</sup> June 1946. The Lot Plan dated 1925 was certified as a true copy of the original deed dated 31<sup>st</sup> August, 1934, registered in Book Voluntary Conveyance on page 200 on 1<sup>st</sup> September, 1934.<sup>289</sup>

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<sup>288</sup> COI – Exhibit BR-6

<sup>289</sup> COI – Exhibit BR-8



6.

7. The earliest Land Tax Ledger found at the Bermuda Land Registry is dated 1945. Prior dates of record were damaged when the records were transferred from the Vestry. The Claimants asserted that Amelia Anne Robinson paid land tax for Catherine Anne Brown for the period 1915 to 1921. Amelia continued to pay land tax when she inherited the property from Mrs. Catherine Brown through June, 1946 when she conveyed the property to Herman Montgomery Bascome Smith. Law firm Appleby & Spurling advised the Vestry to change the assessment records of ownership from Amelia Robison to Herman Smith.<sup>290</sup>

8. Property Transfer Particulars: On 7<sup>th</sup> June, 1946, the date of the transfer of Plan Number 33.3, Serial Number 103, from Adelia Robinson to Herman Montgomery Bascome Smith by way of Purchase. The date accepted was 19<sup>th</sup> July, 1946. Received in the

<sup>290</sup> COI – Exhibit BR-9



- Office on 24<sup>th</sup> July, 1946. “Property Transfer Particulars” were signed by the surveyor, Robert H. Clarke<sup>291</sup>.
9. Notice of Landownership: On 10<sup>th</sup> June, 1946, the following Notice was placed in *The Royal Gazette*: “*To whom it may concern, any person or persons having anything on the land at Spanish Point formerly owned by Adelia Robinson, kindly remove same by June 30<sup>th</sup>, 1946.*” signed Bascome Smith”.<sup>292</sup>
  10. On 24<sup>th</sup> June, 1946, Appleby & Spurling on behalf of Herman Montgomery Bascome Smith, gave written notification to the Parish Vestry Clerk of Pembroke Parish of the transfer of property from Adelia Ann Robinson to Herman Montgomery Bascome Smith. The property was conveyed as fee simple, the legal description of the property: *All that parcel of land at Spanish Point in Pembroke Parish bounded by North by land formerly of Peter Tucker deceased and now in the possession Richard Henry Duerden on the South by land of Richard Shaw Wood, on the East by land formerly of said Peter Tucker and devised by him to Julia Smith and on the West by the Sea together with the Cottage (now in ruins).*” The description of the land is the exact description of the land in the Deed of Gift dated 19<sup>th</sup> July, 1888 from Jeremiah Hinson to William Brown.<sup>293</sup> This is the same property inherited by Adelia Ann Robinson from William Brown’s wife Anne Elizabeth Brown which Adelia Robinson then sold to her nephew, Herman Montgomery Bascome Smith.
  11. On 24<sup>th</sup> June, 1946 Appleby Spurling, the Attorneys for Adelia Ann Robinson, sent a letter to the Vestry Clerk of Pembroke that gave notice that she had sold her property to Herman Montgomery Bascome Smith. The notice was in accordance with the requirements of the Parish Vestry Act 1929.<sup>294</sup>
  12. Vestry 1946 Property Transfer Record Book. On 19<sup>th</sup> July, 1946, the Vestry Record in Book B Folio 72 for Adelia Ann Robinson shows Lot33-3 was transferred to Herman Montgomery Bascome Smith.<sup>295</sup> The Vestry Assessment Book shows the name change to Herman Montgomery Smith.<sup>296</sup>
  13. A penned letter from Herman M.B. Smith states that Adelia Robinson paid land tax from 1921 to 1946.<sup>297</sup> However, due to damage of documents held at the Parish Vestry, the earliest Tax Ledger that can be found is 1945.

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<sup>291</sup> COI – Exhibit BR-12

<sup>292</sup> COI – Exhibit BR-15

<sup>293</sup> COI – Exhibit BR-9

<sup>294</sup> COI – Exhibit BR-9

<sup>295</sup> COI – Exhibit BR-11

<sup>296</sup> COI – Exhibit BR-10

<sup>297</sup> COI – Exhibit BR-18

## Case Details

### 1. Supreme Court Case No.18 of 1947

- a) Supreme Court Case No 18, 1947 was between Amelia Chiappa, Plaintiff and Herman Montgomery Bascome Smith, Defendant. <sup>298</sup> The Lot Plan used as evidence by Amelia Chiappa in the land dispute with Herman Montgomery Bascome Smith was the same Lot Plan described in the 19<sup>th</sup> July, 1888 transaction between Jeremiah Hinson and William Brown. The same Lot Plan was used to describe the ownership of land inherited by Adelia Anne Robinson who then sold the property to Herman Montgomery Smith.
- b) On 3<sup>rd</sup> of February, 1947, a Writ of Summons witnessed by the Hon. Sir Cyril Gerard Brooke Francis, Kt., Chief Justice, was addressed to Herman Montgomery Smith, eight months after *The Royal Gazette* notification by Bascome Smith as the owner of the Spanish Point land.
- c) On 14<sup>th</sup> February, 1947, Appleby & Spurling, attorneys for Herman Montgomery Bascome Smith, sent a letter to Conyers, Dill & Pearman, attorneys for Amelia Chiappa, stating that the Defendant required a Statement of Claim to be delivered.
- d) On 3<sup>rd</sup> March, 1947, Conyers, Dill & Pearman sent Amelia Chiappa's Statement of Claim to Appleby & Spurling. Paragraph 1 refers to a "*Parcel of Land situated in Pembroke Parish bounded northerly by the public road leading from Clarence Hill to a spot on Spanish Point shore commonly called the Admiral's Landing Place.*" Paragraph 8 of the Statement of Claim: "*On or about the early part of June, 1946, the Defendant, wrongfully took possession of the Southern portion of the land described in paragraph 1 hereof and still wrongfully keeps possession thereof.*"<sup>299</sup>
- e) On 19<sup>th</sup> March, 1947, Appleby & Spurling responded to Conyers Dill & Pearman: "*The Defendant is in possession by himself or his tenant of the premises referred to in paragraph 8 of the Statement of Claim*".<sup>300</sup>
- f) On 7<sup>th</sup> June, 1946, a copy of the final draft of conveyance between Adelia Ann Robinson and Herman Montgomery Bascome Smith was signed by Appleby & Spurling. <sup>301</sup> The legal description of the property is the same legal description for the property used in the original Deed of Gift from Jeremiah Hinson to William Brown. Mr. William Brown's wife, Anne Elizabeth Brown, inherited the property from her husband William Brown and Adelia Ann Robinson inherited the same property from Anne Elizabeth Brown and subsequently sold it to her nephew, Herman Montgomery Bascome Smith.<sup>302</sup>

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<sup>298</sup> COI – Exhibit BR-17

<sup>299</sup> COI – Exhibit BR-17

<sup>300</sup> COI – Exhibit BR-17

<sup>301</sup> COI – Exhibit BR-17

<sup>302</sup> COI – Exhibit BR-17

- g) On 9<sup>th</sup> December, 1946, Conyers Dill & Pearman sent a Notice of Trial to Appleby & Spurling which was set for 19<sup>th</sup> December, 1947.<sup>303</sup>
- h) On 15<sup>th</sup> December, 1947, E.T. Richards sent a letter to Conyers, Dill & Pearman to inform the company that Appleby & Spurling no longer represented the Defendant, that he now represented the Defendant, Herman Montgomery Bascome Smith.<sup>304</sup>
- i) On 31<sup>st</sup> January, 1947 Mr. E.T. Richards, was called to the Bermuda Bar.<sup>305</sup>
- j) On 30<sup>th</sup> December, 1947, the Registrar W. Norman Parker issued a letter for all to attend the Chief Justice's Chambers concerning the application for Herman Montgomery Bascome Smith to have the Court case tried with a jury.<sup>306</sup>
- k) From 15<sup>th</sup> to 19<sup>th</sup> March, 1948, Court Case No18 was heard by the Hon. R.C. Hollis Hallett, Assistant Chief Justice. There were eight jurors.<sup>307</sup> Judge Hollis Hallett would have been aware that the property description used in the case was incorrect as the property in dispute had been conveyed from John and Julia Caulder to Rupert Carlyle Hollis Hallett.<sup>308</sup> However, Amelia Chiappa, in her Statement of Claim, described the property being conveyed from John and Julie Calder to John Peter Chiappa.
- l) On 19<sup>th</sup> March, 1948, after an hour and 22 minutes, the jury ruled in favour of Mrs. Amelia Chiappa.<sup>309</sup> Herman Montgomery Bascome Smith lost the case and his land. He told his attorney, Mr. E.T. Richards, that he wanted to appeal the Court's decision. Mr. Richards told him that an appeal did not make sense as it would cost £300.00. Mr. Herman Smith was also required to pay £60.00, in damages, £3.10 to Mr. Clarke for giving evidence and a legal bill of £55.00 Richards. Mr. Bascome Smith refused to pay any money as he felt he had no justice.
- m) Claimant Gena Robinson testified that she was given documentation which was found in a brown paper bag which contained a penned letter by her great-grandfather, Herman Montgomery Bascome Smith, regarding specifics leading up to Supreme Court Case 18, 1947, notes during the case and what transpired after the case. The brown paper bag also contained the Original Deed of Gift which transferred the Spanish Point property from Jeremiah Hinson to William Brown. The same property was conveyed to William Brown's wife, Anne Elizabeth Brown, then Amelia Robinson inherited the same property from Anne Brown, then sold the property in June, 1946 to Herman Montgomery Bascome Smith.
- n) **The Verdict:** Evidenced by documentation between Plaintiff Amelia Chiappa and Defendant Herman Montgomery Bascome Smith 1) "From the evidence you have

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<sup>303</sup> COI – Exhibit BR-17

<sup>304</sup> COI – Exhibit BR-17

<sup>305</sup> COI – Exhibit BR-17

<sup>306</sup> COI – Exhibit BR-17

<sup>307</sup> COI – Exhibit BR-17

<sup>308</sup> COI – Exhibit BR-17

<sup>309</sup> COI – Exhibit BR-17

obtained from the title deeds and the witnesses, has the plaintiff proved that the lands described in the title deeds are correctly shown and coloured green and pink on the plan? The response, signed by the jury foreman, was yes. 2) *“Has the Defendant and his predecessors in title or any of them had continuous possession or any part of the property shown in green and pink on Exhibit A for a period of twenty or more years prior to the 3rd February 1947? If so, describe or define the land in possession and state the date of commencement of the possession”* The response, signed by the jury foreman on 19<sup>th</sup> March, 1948, was no. Damages nil. The Verdict was in favour of the Plaintiff, Mrs. Amelia Chiappa.

2. **Second Supreme Court Case, No.10 1959** between Spanish Point Boat Club, the Plaintiff, and Herman Montgomery Bascome Smith, the Defendant. The Plaintiff, claimed Herman Montgomery Bascome Smith, the Defendant, on the 18<sup>th</sup> and 25<sup>th</sup> of January, 1959 wrongfully entered and erected barbed wire. No record was found of a verdict.<sup>310</sup>
3. **Third Supreme Court Case, No. 216, 1969** between John Henry Dallas, the Plaintiff, and Ethel Jones, First Defendant (Executor of Albert W. Jones, Deceased), Second Defendant, Newbold W. Smith, the son of Herman Montgomery Bascome Smith. The Third Defendant, Herman Montgomery Bascome Smith, the Fourth Defendant, Carlton K. Wellman and the Fifth Defendant, Elliot and Dorothy Williams. In his Statement of Claim, the Plaintiff, stated he was entitled to a parcel of land in Pembroke Parish as stated in Indenture dated 9<sup>th</sup> July 1960 between Amelia Chiappa of the First Part, John Peter Chiappa, Cecil Christopher Chiappa and Mary Jane Dallas (formerly Chiappa,) and Lawrence John Madeiros of the Fourth Part.<sup>311</sup>
  - a) A Private Bill Notice for Windsor Development Limited, Windsor Development vs Albert Jones and Newbold Smith, was published in The Royal Gazette of 17<sup>th</sup> January, 1964.
  - b) On 31<sup>st</sup> January, 1964, Mr. Newbold Smith, Claimant Britney Smith’s grandfather, sent a letter to Appleby, Spurling & Kempe stating: *“Gentlemen, in reference to the Bill to incorporate a portion of property in Spanish point Pembroke West by Mr. John Peter Chiappa and his sister Mrs. Mary Dallas, I beg to inform you that I am in possession of a portion of the property in paragraph three of the list of properties. I also have a house on the said portion of property and I have been living in the house for the past fifteen years without any interference. I have my deeds for this portion of property which were made out by Graham Smith. I would also like to add that the three foot right-of- way is not in the correct position. Yours truly, Mr. Newbold Smith.”*
  - c) A draft copy of the 1947 Conveyance between Adelia Ann Robinson and Herman Montgomery Bascome Smith was sent from Appleby, Spurling & Kempe, Herman

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<sup>310</sup> COI – Exhibit BR-19

<sup>311</sup> COI – Exhibit BR-21

Montgomery Bascome Smith's attorney in the 1946 case, to Mr. Charles Vaucrosson, attorney for the First Defendant, Ethel Jones, and Executor for Albert W.I. Jones, deceased. Documentation required for the 1969 Court Case 216. The filed version of this conveyance has not been located.

- d) On 14<sup>th</sup> February, 1964, a letter from Coleridge A. Williams, attorney for Albert I. Jones and Newbold W. Smith, was addressed to the Chairman of Joint Standing Committee on Private Bills, House of Assembly. The letter was regarding Notice of Intended Petition to incorporate a company, Windsor Development Limited.<sup>312</sup>
- e) An 18<sup>th</sup> February, 1964 Report of Joint Standing Committee on Private Bills to the Hon. President and Legislative Council, the Hon. Speaker and the House of Assembly states that the Committee had examined the petitions and the relative Bills listed and in each case was satisfied that there had been compliance with the rules having to do with Private Bills of both Houses. The Report pointed out that the Windsor Development Company Act 1964 was adopted without the inclusion of land that Albert Jones and Newbold Smith owned.<sup>313</sup>
- f) During the Court case, the Plaintiff, Mr. John Henry Dallas, represented by David Brewster of Appleby, Spurling & Kempe, informed the Chief Justice, the Hon J.C. Summerville, that he did not wish to proceed with the case. He agreed that the two Defendants, Ethel Jones, represented by Mr. Charles Vaucrosson, and Elliot and Dorothy Williams represented by Mr. Eric Jones, had good title to their land. Mr. Robert H. Clark, surveyor for the Parish Vestry, cross-examined by Mr. Vaucrosson, gave evidence of title of the land dating back to 1876. The Plaintiff, a director of Windsor Development Limited and the husband of Mary Jane Dallas (Chiappa), the granddaughter of John Chiappa and Amelia Chiappa, agreed that the two Defendants had good title to the land and subsequently removed the fences.
- g) On 29<sup>th</sup> December, 1971, Appleby, Spurling & Kempe gave Notice of Discontinuance against, Newbold Smith, Second Defendant, Herman Montgomery Bascome Smith, Third Defendant, and Carlton K. Wellman, Fourth Defendant. The notice was sent to the Defendants' attorneys, Ms. Lois M. Browne, Messrs. Vaucrosson and Jones and to Herman Montgomery Bascome Smith. The Plaintiff, John Henry Dallas withdrew his claim against Ethel Jones and Elliott Williams and Dorothy Suzanne Williams, Fifth Defendant, declaring they held proper title to their land.

## Key Issues

1. The unfair trial of the Defendant, Herman Montgomery Bascome Smith, Claimant Gena Robinson's grandfather, and the Plaintiff, Amelia Chiappa Case No.18 1947. There was a clear conflict of interest between the sitting Judge, the Hon. R. C. Hollis Hallett, Assistant Chief Justice, and the Plaintiff, Amelia Chiappa.

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<sup>312</sup> COI – Exhibit BR-20

<sup>313</sup> COI – Exhibit BR-20

2. Misrepresentation by E. T. Richards, attorney for Mr. Herman Montgomery Bascome Smith. Mr. Herman Smith brought to the attention of Mr. Richards the conflict of interest between Judge Hollis Hallett and the Plaintiff, Amelia Chiappa before the trial commenced. Mr. Richards, when asked, stated that he had no objection to Assistant Chief Justice Hollis Hallett presiding over the case.
3. The Abstract Title used in the case did not describe the property description in the claim statement of the Plaintiff, Amelia Chiappa. This omission not only caused Herman Montgomery Bascome Smith to lose the case and his land, but also the beginning of several other court cases over many years causing the Smith/Robinson Families pain and anguish.
4. The illegal development of the Structure at Spanish Point Boat Club. The Department of Planning was involved in preventing Spanish Point Boat Club from erecting fencing on the Robinson family property at Lot 33.3, Spanish Point, Pembroke West as early as June 2015. The Structure continues to remain a bone of contention for the Robinson family.
5. The Structure has depreciated the value of the Robinson family homestead, prevented proper access to the beach and blocked their water views.

## **Conclusion**

The Structure remains in front of Claimant Gena Robinson's family homestead. It still causes anguish to the family which has no water views and no proper beach access. Additionally, the Structure has lowered the fair market value of their property. Herman Montgomery Bascome fought the battle of landownership against the Chiappa family, Spanish Point Boat Club and John Dallas (Windsor Development Company). Herman Smith's son, Newbold Smith, had continued the battle until his death in 2012. Following his death, the Claimants continue to fight to have access to their land, beach access and the water view of the sound, but remain faced with seeing the Spanish Point Boat Club Structure. The Robinson family members wish their land to be returned to them.

## **Recommendation**

Based on the evidence provided, the COI recommends that the Department of Planning investigate the matter of subdivision and encroachment of Lot 33.3, 2 Plaiice's Point, Pembroke West.

## Case 024 – Estate of Grace Charlotte Phillip Oates

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### Commissioners

Mr. Wayne Perinchief (Acting Chairman), Mr. Jonathan Starling and Mr. Quinton Stovell

### Commissioners Recused

Mrs. Justice (Ret'd) Norma Wade-Miller, Mrs. Maxine Binns, Miss Frederica Forth and Mrs. Lynda Milligan-Whyte were recused from the proceedings due to a close association with an interested party in this matter.

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### Introduction

This case is a complex one involving a total of nine properties. The Claimants, Ms. Velda Franco, her aunt Mrs. Cecilia Cann and her brother Mr. Hugh Hollis, brought the case before the COI on behalf of their family, submitting a detailed presentation in support of their case. Essentially, the case involves land in Spanish Point, Pembroke West, predominantly in the Boss's Cove area, and also properties situated in High Point Road, Tulo Valley and Plaice's Point Road. Ultimately, all nine properties are claimed as historically part of the Estate of Samuel Wood and Ann Amelia Wood, ancestors of the Claimants. Claimant Ms. Franco alleges that her family has good title to the properties, illustrating possession and the transfer of landownership by testamentary disposition to her great grandmother, Mrs. Charlotte Alice Wood Wellman, her grandmother Mrs. Margaret Genevieve Hollis née Wellman and her father, Mr. George Llewelyn Hollis. In the words of Claimant Ms. Franco, their great grandmother and grandmother, *'fought to their death to have the following properties returned to them, that was legally willed to them.'*

The Claimants allege theft of prime real estate land with waterfront access in some cases and being dispossessed in circumstances where they importantly assert that they are still in possession of the original deeds for some of the properties. They allege that a Joseph Burch Shaw Wood was paid by the residents of "Shaw Wood Gardens" to assist in illegally transferring landownership for properties owned by Grace Charlotte Phillip Oates to the "Shaw Wood Gardens" group. This alleged incident, the Claimants assert, occurred while some of the deeds were in the hands of the lawyer Charles Vaucrosson. Further, they allege that there is no documentation of a legal transfer of monies or documents from properties in Boss's Cove to "Shaw Wood Gardens"; however, some of the owners were required to pay double to ensure that their paperwork appeared valid and that all the information was the same from one owner to the next.

Importantly, the COI was informed that the Claimants' family had since the 1940s instituted on a number of occasions contentious legal proceedings in the Supreme Court of Bermuda and lodged objections to proposed development by the Department of Planning, either challenging or objecting to claims of ownership. The COI does not have the legal authority to review any matters that were placed before the Court, but notes that the family had hired law firms and lawyers over

the years to mount their legal challenges. The legal challenges have not had the effect of the family retaining land which they allege were dispossessed unjustly.

Claimant Franco outlined the objective of the claim: *“to share a timeline based on the documentation found and based on the will of Miss Amelia Woods to say that these properties were willed to her daughter and at no time did she during her living on earth (sic) occupied or owned, (sic) these properties were taken from her...”*

Appearing before the COI on Tuesday, 19<sup>th</sup> January, 2021, Claimant Franco on behalf of her family claimed properties in Boss’s Cove, High Point Road, Plaice’s Point, Bluck’s Point, Shaw Wood Park, Mill Creek and Tulo Valley.

The Claimants also included in their presentation a key family history which provides a common thread running through most, if not all, of the property claims in question, described as the alleged injustice they had suffered in the historic land loss of family property. To that end, this is summarized below. It is noted that the Claimants were able to provide more evidence or background information for some of the identified properties than for others. Nonetheless, each of the identified properties is addressed individually below.

## **Family History Summary**

The Claimants state that the recorded ownership of the property in dispute began with Samuel Wood Esq., born in 1756. He died 30<sup>th</sup> December, 1833 and was buried 1<sup>st</sup> January 1834. Samuel Wood had two children with his wife Susanna and a son Joseph Julius “Bulla” Wood with Ruth Dunscombe, a house servant. Julius “Bulla” Wood was born on 1788 and died between 1835 and 1870.

Julius “Bulla” Wood was emancipated 18<sup>th</sup> February, 1827. He married Hannah Dunscombe and they had three children, Elisa, Elizabeth and Richard Wood. Richard Wood was born about 1815 in Bermuda and died 11<sup>th</sup> January, 1904 at the age of 81. He married twice; his first marriage was to Nancy Wood and his second was to Anne Amelia Wood née George.

Richard Wood owned property at Plaice’s Point where he lived with his wife Nancy who was an invalid and died in the home as a result of a fire. The property was then known as Burnt House. Richard and Nancy had one child, Roseann Wood, who died in 1914.

After the death of Nancy, his first wife, Richard Wood married Anne Amelia George. Richard and Anne Amelia Wood had three children, Eleanor Emeline Wood, Susanna Wood and Grace Charlotte Phillip Wood. The third child, Grace Charlotte Philip Wood, was born 31<sup>st</sup> July, 1854 and died 24<sup>th</sup> May, 1956 at age 101. Grace Charlotte Philip Wood married John Oates and they had no children. John Oates was an Englishman from Dover, Kent who came to Bermuda with the 53<sup>rd</sup> Shropshire Regiment, UK from 1870 to 1875. He was born in 1846 and died in 1933, aged 87.

Susanna Wood married Arthur James Saunders; she died February 1904 and Arthur 21<sup>st</sup> April, 1921. They had eight children, one of whom died in infancy.



1. Frank Saunders
2. Mary Eleanor Saunders
3. Edith Amelia Saunders
4. Charlotte Saunders
5. Eva Saunders
6. Robert Saunders
7. Ada Susan Saunders

Grace Charlotte Philip Oates and her husband John Oates ran a laundry business in Boss's Cove, Pembroke. The building remains to this day<sup>314</sup>.

Charlotte Alice Wood Wellman née Saunders, known as Ma Wellman, was born 14<sup>th</sup> December, 1886 and died in 1979 at the age of 93. She married George Harvey Trimingham Wellman, born 23<sup>rd</sup> September, 1877. His parents were Joseph Harvey Wellman and Agnes Ophelia Trimingham. He died at the age of 91. Their children were:

1. George Alexander Leroy Wellman (Flossy)
2. Beatrice Trott – née Wellman (Aunt Sis)
3. Dorothy Elliott - née Wellman
4. Margaret Genevieve Anastasia Hollis -née Wellman (Mama Jenny).

## Properties Claimed

Parts of the claim are contentious, having been subject to determination by the Courts of Bermuda. The substantive claim involves nine properties in the Spanish Point area of Bermuda. Each of these cases will be approached separately accordingly:

- 1) #7 Boss's Cove Road
- 2) #9 Boss's Cove Road
- 3) #11 Boss's Cove Road
- 4) #18 Boss's Cove Road
- 5) Lot of land on east side of Boss's Cove Road/Highpoint Lane
- 6) #16 Plaice's Point Road
- 7) #18 Plaice's Point Road
- 8) #1 Newman Lane

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<sup>314</sup> COI - Exhibit VF-5, pp. 14-20

- 9) Quarter of an acre of land in Tulo Valley.

While treated separately, the key questions related to each property are the same, namely:

- 1) Do the Claimants prove historical ownership of the property?
- 2) Do the Claimants prove evidence of the loss of the property through:
  - a. Theft of property; or
  - b. Dispossession of property; or
  - c. Adverse possession claims; or
  - d. Other unlawful or irregular means.

## Adverse Notices

Arising from the allegations made by the Claimants, adverse notices were sent to parties to whom the allegations were directed, affording them an opportunity to respond to the claims. The notices included an invitation to seek standing before the COI, providing the parties an opportunity to respond to the complaint. Parties to whom standing was granted were served with all documents submitted by the Claimants in support of their claims, transcripts of the evidence before the COI and all relevant documents.

Seventeen adverse notices were sent out in relation to this case. Six responses were received. No parties attended COI Hearings; however, a representative of Sir John Swan attended the COI to seek standing.

Notices were published in *The Royal Gazette* where personal service could not be affected.

Notices were issued to seventeen parties:

William Nigel Prescott and Gloria Prescott  
Victor and Coral Corriea  
Valeria Joan Marie Roberts  
Stanford Erminston Richardson  
Sir John Swan  
Robert Horace Petty  
Richard Shawwood [sic] – Shaw Wood Gardens Ltd.  
Patricia Lynn Pimental  
Neil Paynter  
Kevin Cabral  
John Kyle  
Estate of John MacMillan Stevenson Patton  
Estate of James Appleby Pearman  
Estate of Edmund Charles Gibbons

Coral Rayner  
Barbara Patricia Cabral  
Andre Paynter

*\* It should be noted that none of the parties to whom adverse notices were issued responded or attended the hearing of evidence, excepting a representative of Sir John Swan who attended the COI. Standing was given to the party who took no further part in the proceedings.*

## Key Legal Terms Considered by the COI

The COI notes that the authors of ‘The Law Relating to Unregistered Land’, Maudsley & Burns, Land Cases and Materials 6th Edition, Butterworths, Page 5, state that:

*“... the system in essence is one whereby the estate owner proves his title to land by showing from deeds and documents in his possession that he derives his title lawfully from some person or persons who have been in peaceful possession for a long period of time. In the nature of things, the title to his estate can never be proved absolutely, for there may have been interference with the rights of the true owner many years back “. With the assistance of the Limitations Act, proof of title during the last fifteen years is, for practical purposes sufficient and a purchaser is now required to trace the title back to a good root of title at least fifteen years old. On completion of the purchase the deeds are handed over to the purchaser, and he will make title in a similar manner when he decides to sell. no action shall be brought by any person to recover any land after the expiration of twenty years from the date on which the case of action accrued.”*

**Introduction to the Modern Law, Modification of the Common Law of Equity and the Doctrine of the Bona Fide Purchaser for Value of the Legal Estate Without Notice, Cheshire and Burn’s Modern Law of Real Property, 15<sup>th</sup> Edition, Butterworth, 1994, Page 61 ...a man who is purchasing land should investigate the title by requiring the vendor to ‘prove his title by producing evidence to show that the interest which he has contracted to sell is vested in him, and that is in unencumbered by rights and interests enforceable against the land by third parties. Under the system of unregistered conveyancing, proof of title takes the form of requiring the vendor to set out the history of the land in what is called an abstract of title with a view to showing how the interest he has contracted to sell became vested in him, so as to prove that for a given number of years he and his predecessors have rightfully exercised dominion over the land consistent with that interest.**

## Extraneous Considerations

The COI was not influenced by anything heard in mainstream or social media or generally outside of the COI Hearings, nor has any sympathy or prejudice been shown for the Claimants or the persons to whom adverse notices or findings were issued. The COI has determined the claim on the basis of the documents submitted by the Claimants and the parties to whom adverse notices were issued, some of which were tendered as Exhibits and the oral evidence provided by all parties.

## **False Document**

A document is false if the whole or any material part thereof purports to be made by, or on behalf of or on account of a person who did not make it, nor authorize its making.

## **Forgery**

Forgery is the making of a false document in order that it may be used as genuine. Forgery of the document may be complete even if the document when forged is incomplete or does not purport to be or is not such a document as would be binding or sufficient in law.

## **Hearsay**

Some of the documents relied on were unsigned copies of witness statements and the makers of the statements were not called as witnesses before the COI. The COI permitted the Claimants to rely on the contents of these documents. The COI was cognizant of the fact that the Claimants were inviting it to treat the ‘statements’ as true and that they were in fact made and certainly the issue of the statements being hearsay evidence and inadmissible would arise.<sup>315</sup> Importantly, the COI was entitled to receive any relevant evidence which might otherwise be inadmissible in a court of law.<sup>316</sup> The strict rules of evidence did not apply to determine the admissibility of evidence.

## **Existence of Documentation to Show Basis of Acquisition and/or Proof of Ownership**

Notwithstanding the fact that the Claimants were in possession of the original deeds, new title has been issued to the residents and occupiers. To arrive at a finding that the residents or occupiers had acquired possession by unlawful or irregular means, there must be evidence that at the time the party acquired the property he/she possessed the requisite knowledge of unlawful behaviour and or participated or turned a blind eye to the unlawful behaviour.

Mrs. Debbie Reid, Land Registrar, Land Title and Registration Department, opined:

*“Fraud and forgery are the most troublesome aspects of guarantee and indemnity. The success of the registration of the title depends partly on the integrity of the register. A bona fide purchaser must have faith in the completeness and accuracy of the contents of the register. If a purchaser acquires title from a person who, it is later discovered, had acquired the title by fraudulent means, then it would be inequitable to deny the purchaser, who acted in good faith, his enjoyment of the property. Therefore, the owner who was fraudulently denied occupation of the property should be compensated for his loss unless the fraud was*

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<sup>315</sup> Subramaniam v. DPP [1956] UKPC “Evidence of a statement made to a witness by a person who was not himself called as a witness might or might not be hearsay. It was hearsay and inadmissible when the object of the evidence was to establish the truth of what was contained in the statement. It was not hearsay and was admissible when it was proposed to establish by the evidence, not the truth of the statement, but the fact that it was not made

<sup>316</sup> Rules of Procedure and Practice, Commission of Inquiry into Historic Losses of Land in Bermuda, Evidence, Rule 17

- *Wholly or partly a result of the owner's actions, or*
- *Wholly a result of the owner's lack of proper due care.*

*The bona fide purchaser in occupation remains in possession of the property. The registry may then take steps to recover the compensation paid by way of a court action against the fraudulent party.*” (COI Emphasis)

## Summary of Facts

### **#7 Boss's Cove Road**

The Claimants rely on key points raised in the presentation, ‘Our Family Legacy’<sup>317</sup>. This is a triangular piece of land located in the northern section of Boss's Cove.

They rely on the possession of original deeds for #7 Boss's Cove. These deeds, they argue, were held on behalf of the Claimants' family by the law firm Hallett & Whitney and that these same deeds were in the possession of the same law firm until May 1946. It is on this basis that the Claimants assert ownership of the property and therefore reject any claims to ownership by any other party.

The Claimants assert that the property is currently owned by a Mr. John Kyle who, in turn, acquired it from a Ms. Wendy Evans Kyle.

The Claimants challenge a 26<sup>th</sup> May, 1937 conveyance by a Joseph Burch Shaw-Wood of a number of Boss's Cove properties to Edmund Graham Gibbons, Henry James Tucker and Edmund Gosling Gray. #7 Boss's Cove was included in this conveyance. The Claimants argue that the conveyance was fraudulent, pointing out that the deeds were not at the time of the conveyance in the possession of Joseph Burch Shaw-Wood, but rather in the possession of the law firm Hallett & Whitney where they had resided from 1934 to 1946 following their deposit there by the family in 1934. The Claimants maintain that their family had not transferred the property in 1937 during this time and therefore assert that Joseph Burch Shaw-Wood could not have legally sold the properties in question. The Claimants refer to this conveyance of 26<sup>th</sup> May, 1937 as a ‘falsified document’<sup>318</sup>.

After reviewing the evidence presented by the Claimants in reference to this case, the COI addressed the questions posed:

*1) Do the Claimants prove historical ownership of the property?*

The COI concluded that the evidence before it proved the Claimants' historical claim of ownership of the property.

*2) Do the Claimants prove evidence of the loss of the property through:*

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<sup>317</sup> COI - Exhibit VF-5, pp. 134-147

<sup>318</sup> COI - Exhibit VF-5, pp. 21-29

- a. *Theft of property; or*
- b. *Dispossession of property; or*
- c. *Adverse possession claims; or*
- d. *Other unlawful or irregular means.*

Based on the evidence presented by the Claimants, the property was among the properties conveyed by Joseph Burch Shaw-Wood on 26<sup>th</sup> May, 1937 to Edmund Graham Gibbons, Henry James Tucker and Edmund Gosling Gray. However, the Claimants remain in possession of the original deeds. The Claimants emphasize that there has been no sale or the transfer of any of these properties to a Joseph Burch Shaw-Wood and that, as such, he could not have legally conveyed those properties in May 1937 or at any time.

The COI was satisfied that the family was dispossessed of this property and that the dispossession may have been by adverse possession, theft or other unlawful or irregular means. However, the COI was unable to make a finding as to how the family was dispossessed. Importantly, the COI cannot speculate. The mere fact that the original deeds were being held for the owner or that the owner was in possession of the original deeds is not enough to infer culpability. Unfortunately, it does not follow nor can it be inferred that the occupier acquired possession by theft. At this time, further evidence is required to determine how the family was dispossessed, as title may have been obtained by adverse possession.

#### ***#9 Boss's Cove Road***

This is a 0.145 acre rectangular plot of land on the western shore of Boss's Cove. The Claimants allege that the deeds were held on behalf of their family by the law firm Hallett & Whitney from 23<sup>rd</sup> July, 1934. It is on this basis that the Claimants assert ownership of the property.

The property is currently in the possession of a Mr. Victor Bento Corriea. The Claimants assert that on 19<sup>th</sup> December, 1985, the property came into the possession of one Mr. Carl Soares who had acquired it from his mother, Marguerite Soares. There is no additional evidence presented concerning how the property came to be in the possession of the Soares family prior to 1985.

However, it is noted that this property shares a similar history with that of #7 Boss's Cove Road regarding a conveyance by a Joseph Burch Shaw-Wood of a number of Boss's Cove properties to Edmund Graham Gibbons, Henry James Tucker and Edmund Gosling Gray. Included in this conveyance was #9 Boss's Cove Road. The Claimants argue that the conveyance was fraudulent, pointing out that the original deeds were not in the possession of Joseph Burch Shaw-Wood, but, rather, in the possession of the law firm Hallett & Whitney on the behalf of the Claimants' family and that these deeds, deposited in 1934, remained with the law firm in 1946 with no transfer of the properties by the Claimants' family during that time.

There was no evidence presented by the Claimants of a previous challenge to the possession of this property. After reviewing the evidence presented by the Claimants in reference to this case, the COI addressed the questions posed.

The COI was satisfied that the family was dispossessed of this property and that the dispossession may have been by adverse possession, theft or other unlawful or irregular means. However, the COI was unable to make a finding as to how the family was dispossessed. Importantly, the COI cannot speculate. The mere fact that the original deeds were being held for the owner or that the owner was in possession of the original deeds is not enough to infer culpability. Unfortunately, it does not follow nor can it be inferred that the occupier acquired possession by theft. At this time, further evidence is required to determine the means by which the family was dispossessed, as title may have been obtained by adverse possession.

### **#11 Boss's Cove Road**

This is a rectangular plot of land located on the western shore of Boss's Cove. The building on the property is divided into two apartments; the northern apartment is currently owned by Mr. Kevin Cabral and the southern apartment is currently owned by Mrs. Barbara Patricia Cabral.

As noted with the previous properties discussed above (#7 and #9 Boss's Cove), this property was subject to a conveyance by a Joseph Burch Shaw-Wood to Edmund Graham Gibbons, Henry James Tucker and Edmund Gosling Gray. The Claimants argue that the conveyance was fraudulent, pointing to the fact that the deeds were not in the possession of Joseph Burch Shaw-Wood, but, rather, at the time of the conveyance were in the possession of the law firm Hallett & Whitney at the behest of the Claimants' family. The Claimants in their submission relied on a number of documents as proof of the transfer of ownership.

Importantly, Charlotte Elizabeth Wellman, the great grandmother of Claimant Franco, was the respondent to a 1961: No. 148 Civil Jurisdiction suit filed in the Supreme Court of Bermuda which, the Claimants allege, touched and concerned #11 Boss's Cove Road. Chief Justice the Hon. Myles John Abbott in his Judgment wrote "... *the land in dispute is shown in blue colour on the plan (hereinafter called the "plan") annexed to the probate of the will of one Grace Charlotte Philip Oates...the applicants case is that Ambrose acquired absolute sole ownership of the land in dispute by virtue of a deed said to have been executed in July 1927 and made between Mrs. Oates(1) her husband John Oates(2) Daniel(3) and Ambrose(4) whereby the parties of the first part released all their respective interests in the land in dispute to Ambrose. The respondent's case is briefly that Mrs. Oates acquired one undivided third share in the land coloured pink and blue on the plan by descent as one of the heirs-at-law of her mother Mrs. Wood, one undivided share by conveyance thereof by Robert Saunders and the third undivided third share by conveyance from Ambrose, and that she thus became sole owner of the whole of the said land...I hold on the evidence before me that the rule calling upon the Vestry to show cause must be discharged...this judgment does not confirm or impugn the validity of the titles sought to be set up by the applicant and the respondent.*"

The Hon. Chief Justice did not render a decision on the ownership of the properties in question, leaving that important matter unanswered. The ownership of this property has been the subject of a legal challenge for many years which has not yet been resolved as far as the Claimants are concerned.

The Claimants submitted for the COI's consideration the will of Grace Charlotte Philip Oates admitted to Probate in the Supreme Court of Bermuda on 28<sup>th</sup> September, 1956 and the will of

Charlotte Alice Wood Wellman dated 7<sup>th</sup> February, 1967. Interestingly, the fourth provision of Grace Charlotte ‘Phillip’ Oates’s will states- “ *my two storey dwelling house and my laundry with the parcel of land held therewith situate at Spanish Point in Pembroke parish aforesaid and bounded NORTH-EASTERLY by land of the estate of my mother Ann Amelia Wood, deceased, now in possession of Joseph Soares Figuerido SOUTH-EASTERLY by the Waters...*”

The Claimants brought to the COI’s attention the fact that Grace Charlotte Philip Oates initiated proceedings against the said Joseph Soares Figuerido [1949 No.11 In the Supreme Court of Bermuda] claiming “... *THE PLAINTIFF IS ENTITLED TO POSSESSION of an irregular shaped parcel of land situate in Pembroke Parish in the Islands of Bermuda comprising Lot 1B and Lot 2 of a parcel of land originally purchased by Ann Amelia Wood from Robert Alexander Tucker on or about the Sixth day of November One thousand eight* <sup>319</sup>*hundred and seventy- eight. This land is occupied by the defendant...*” This action was filed 25<sup>th</sup> April, 1949.

The Claimants allege and view with suspicion ‘plans of land’ and infer that the fraudulent creation of a plan of land is meant to be and is a part of a conspiracy to dispossess the family, for example (1) “plans of land portion of the property of Charlotte Oates Bosses Cove, Pembroke dated March 1958 by Wycliffe M. Stovell” and (2) ‘plan of land’ in Pembroke Parish surveyed and plotted by T.M du B. Godet, 4<sup>th</sup> June, 1958 . The Claimants challenge the second plan and actual credibility and authenticity of the T.M. du B. Godet plan of land and submit <sup>320</sup> “*Plan of land, dated 4<sup>th</sup> June 1958, Surveyed and Plotted by TM du B Godet for Boss’s Cove Lot A ( #18) AND LOT b (#7). Note: Three months later, the Estate of Ann Amelia Wood, has been drafted with the name of Joseph Soares*”

After reviewing all the documents including plans of land, wills with probate annexed\*, documents filed in Court, notes, Indentures, maps and all Exhibits presented and relied on by the Claimants in reference to this case, the COI addressed the questions posed:

1) *Do the Claimants prove historical ownership of the property?*

The COI concluded that the evidence before it proved the Claimants’ historical claim of ownership of the property.

2) *Do the Claimants prove evidence of the loss of the property through:*

- a. *Theft of property; or*
- b. *Dispossession of property; or*
- c. *Adverse possession claims; or*
- d. *Other unlawful or irregular means.*

The COI was satisfied that the Claimants have proven ownership of the historic property and that they were dispossessed. The means by which this was achieved and the timeline must be determined and considered as a matter of priority as the painstaking challenges to address these concerns have gone unresolved for almost seventy years. A prima facie case of dispossession has

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<sup>319</sup> COI - Exhibit VF-5, pp. 85 - 86

<sup>320</sup> COI - Exhibit VF 5, pp. 86

\* The COI cannot and shall not review any decision of any Court of Bermuda but takes notice of the matter as merely part of a systemic pattern.



been established. However, with respect to the circumstances under which Joseph Soares Figuerido acquired the land of Charlotte Oates, no finding is being made at this time.

Time has not allowed the Claimant or the COI to interrogate this matter in the manner befitting of the historical loss. Claimant Franco outlined to the COI the many challenges<sup>321</sup> that the Claimants had faced investigating this complex matter and obtaining documentation, a process which had not yet been completed. The COI reiterates that this case is exceedingly complex and that it has been exacerbated by the number of years that have passed since the alleged dispossession. In the COI's view, to conduct further investigations and inquiries at this time to determine the circumstances of the dispossession or to reconstruct the events of the past have been a challenge. Additionally, there is a live issue which arises, one that cannot be ignored, that is, whether there was a legal change of ownership as contemplated but not decided on in the Courts<sup>322</sup>. The issue that arises is whether the family was dispossessed through adverse possession. In this regard, it was the COI's finding that at this time there was insufficient evidence before it regarding the means of the dispossession.

Consequently, the COI could not conclude how or by what means the Claimants' family was dispossessed. Most importantly, the COI cannot speculate. Unfortunately, the matter of ownership has never been resolved in the Courts and time has run out to seek a declaration through the Courts on this matter.

## Recommendation

A mechanism needs to be employed with legislative backing and enforcement to assist Claimants who can prove being dispossessed in cases other than by a claim of adverse possession but who are out of time regarding seeking redress from the Courts. Via the proposed mechanism, Claimants would be able submit a claim for compensation before a specially established statutory authority.

### **#18 Boss's Cove Road**

This is a 0.118 acre triangular plot of land located on the western shore of Boss's Cove. The Claimants submit that this property is a part of the Estate of Mrs. Ann Amelia Wood willed to her daughter, Mrs. Grace Charlotte Philip Oates née Wood. Claimant Franco gave evidence that the property was "*not built at the time I grew up in Boss's Cove...*"

The following documents were submitted by the Claimants to illustrate ownership claimed by third parties. The Claimants allege that their family did not legally pass an interest in the land to any of the named transferees:

- (1) A memorandum of Voluntary Conveyance dated 5<sup>th</sup> September, 1974 to Carl Hugh Paiva (Grantee) from Florence Marie McHale (Grantor) registered on 10<sup>th</sup> September, 1974 at Registrar General's Office.
- (2) Notice 02/76 to the Registrar General's Office <sup>323</sup>dated 13<sup>th</sup> January, 1976; conveyance fee simple in possession to Stanford Erminston Richardson from Carl Hugh Paiva.

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<sup>321</sup> COI - Exhibit VF-3

<sup>322</sup> Civil Jurisdiction 1961: No. 148 Eunice Ford (Applicant) and Pembroke Parish Vestry (Respondent) and Charlotte Wellman (Respondent)

<sup>323</sup> *Registrar General (Recording of Documents) Act* .1955. (Bermuda.)

- (3) Notice 91/76 to the Registrar General's Office with attached Schedule and Plan of Land dated 5<sup>th</sup> April, 1976.
- (4) Notice 33/77 to the Registrar General's Office with attached Schedule and Plan of Land, dated 28<sup>th</sup> March, 1977: owners Gary Allan Roberts and Valerie Joan Marie Roberts purchased from Leroy Theophilus Pyke.
- (5) 28<sup>th</sup> March 1977 letter from Appleby Spurling and Kemp to Hallett Whitney and Patton, attorneys at law.
- (6) Notice 01/138 to the Registrar General's Office with attached Plan of Land dated 6<sup>th</sup> March, 2002. Registrar General Land Transfer, noting the voluntary conveyance in fee simple to Carolyn Joann Rayner, Andre Stuart Paynter, Renee Shawmanderlynn Makeda Astwood and Kenneth Neil Paynter purchased from Valerie Joan Marie Roberts.

(1) *Do the Claimants prove historical ownership of the property?*

The COI concluded that the evidence before it proved the Claimants' historical claim of ownership of the property.

(2) *Do the Claimants prove evidence of the loss of the property through:*

- a. *Theft of property; or*
- b. *Dispossession of property; or*
- c. *Adverse possession claims; or*
- d. *Other unlawful or irregular means*

The COI was unable to decide this matter due to insufficient evidence. Evidence of the means of the dispossession is unclear, whether it was by adverse possession or by unlawful or irregular means. The Claimants need to complete their research in this regard.

### ***Lot of Land on East Side of Boss's Cove/High Point Road***

This claim relates to essentially the entire eastern shore<sup>324</sup> of Boss's Cove, involving at least eight properties.

The Claimants argue that this property was part of the Estate of Mrs. Ann Amelia Wood. They submitted before the COI that they rejected claim to ownership of the property by any other party.<sup>325</sup> For example, a Land Application Notice from the Dallas Family Trust to develop the land<sup>326</sup> was challenged by the family. The Claimants submitted to the COI documentary proof of the challenge and objection.

(1) *Do the Claimants prove historical ownership of the property?*

The COI concluded that the evidence before it proved the Claimants' historical claim of ownership of the property.

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<sup>324</sup> COI - Exhibit VF-5, pp. 174

<sup>325</sup> COI - Exhibit VF 5, pp. 179-189

<sup>326</sup> COI - Exhibit VF-5, pp. 177

*(2) Do the Claimants prove evidence of the loss of the property through:*

- a. Theft of property; or*
- b. Dispossession of property; or*
- c. Adverse possession claims; or*
- d. Other unlawful or irregular means.*

The COI was unable to decide this matter due to insufficient evidence. Evidence of the means of the dispossession is unclear, whether it was by adverse possession or by unlawful or irregular means. The Claimants need to complete their research in this regard.

#### **#16 Plaice's Point Road**

The Claimants allege that this property is a part of the Estate of Richard Wood and that he left Plaice's Point Road after there was a house fire and moved to #11 Boss's Cove<sup>327</sup> to live with his second wife, Ann Amelia Wood. Richard and Ann Amelia Wood were the parents of Grace Charlotte Philip Oates née Wood. The property is bounded on three sides by water, to the north by Peter Tucker's Bay and to the south and west by the Great Sound. The Claimants reject all claims made to the property as evidenced by the Notices to the Registrar General's Office<sup>328</sup> which they exhibit. The Claimants submit that the zoning of Plaice's Point for development was a challenge to their family's interest and right to ownership.<sup>329</sup>

*(1) Do the Claimants prove historical ownership of the property?*

The COI concluded that the evidence before it proved the Claimant's claim of historical ownership of the property.

*(2) Do the Claimants prove evidence of the loss of the property through:*

- a. Theft of property; or*
- b. Dispossession of property; or*
- c. Adverse possession claims; or*
- d. Other unlawful or irregular means.*

The COI was unable to decide this matter due to insufficient evidence. Evidence of the means of the dispossession is unclear, whether it was by adverse possession or by unlawful or irregular means. The Claimants need to complete their research in this regard.

#### **#12 Plaice's Point Road**

Notices of Transfer filed with the Registrar General's Office<sup>330</sup> indicate that ownership is vested in parties other than the Claimants' family. The Claimants reject claims to ownership of the .047

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<sup>327</sup> COI - Exhibit VF-5, pp. 192

<sup>328</sup> COI - Exhibit VF-5, pp. 195-200

<sup>329</sup> COI - Exhibit VF-19, pp. 54-117

<sup>330</sup> COI - Exhibit VF-5, pp. 204-209

acres<sup>331</sup> of land at 18 Plaice's Road by all other parties. Interestingly, the Plan exhibited by the Claimants refers to #12 Plaice's Point Road and not #18 Plaice's Point Road. Further, the Claimants rely on correspondence to the then Minister of Planning arguing that the construction of a building on the land was illegal. The Claimants rely on the testamentary disposition from the Estate of Ann Amelia Wood as proof of historical ownership.

*(1) Do the Claimants prove historical ownership of the property?*

The COI was unable to conclude definitely on this matter as time did permit a proper and thorough analysis of the available documentary evidence.

*(2) Do the Claimants prove evidence of the loss of the property through:*

- a. Theft of property; or*
- b. Dispossession of property; or*
- c. Adverse possession claims; or*
- d. Other unlawful or irregular means.*

The COI was unable to decide this matter due to insufficient evidence. Evidence of the means of the dispossession is unclear, whether it was by adverse possession or by unlawful or irregular means. The Claimants need to complete their research in this regard.

**#1 Newman Lane**

This is a 0.05 acre property located on Newman Lane in Spanish Point. It is noted that in the aerial photo provided by the Claimants, #1 Seagull Lane is accidentally outlined while #1 Newman Lane, although visible, is not.

This property was willed to Charlotte Alice Wood Wellman née Saunders and subsequently to Margaret Genevieve Hollis née Wellman. Margaret Genevieve Hollis willed the property to her daughter Cecilia Lynne Shernette Cann who, the Claimants assert, is the current legal owner.<sup>332</sup> The Claimants provide a number of pieces of evidence to support their claim of legal ownership of the property. In particular, they provide evidence of the partition of land, conveyances and other documents in their possession concerning the property. The earliest of these is a 1907 gift of a parcel of land, identified as the property in question and a 1928 Partition of Land document which identifies the property, along with a 1928 Supreme Court petition concerning this partition. Importantly, there is a 23<sup>rd</sup> December, 2004 letter from the Bank of Bermuda confirming that the property, #1 Newman Lane, was used as collateral for a loan and that the deeds had been held by the bank until the loan was repaid. This is further reinforced by a 2004 Deed Receipt document from the law firm Trott & Duncan listing the Claimants as the legal owners of the property in question.

The Claimants point to a 2018 Land Transfer Notice from the law firm MJM Limited to the Land Title Registry Office which states that the property was acquired by a Robert Everton Murray Kennedy on 7<sup>th</sup> August, 2018 from a John Arthur Murray Kennedy and a Calvin Raymond

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<sup>331</sup> COI - Exhibit VF-5, pp. 206

<sup>332</sup> COI - Exhibit VF-5, pp. 218

Wellman, listed as the Executors of the Estate of Inez Ruth Carolyn Kennedy, acquired through vesting assent.

In the Hearing dealing with this property, the Claimants noted that in 2007, upon the death of Margaret Genevieve Hollis (the then owner), the property was occupied by a Kennedy and a Virgil, their distant relatives. However, no evidence was provided of any rental agreement supporting this arrangement. The Claimants noted that the then occupants did propose purchasing the property; however, this offer was declined by the Claimants' family who cited other property matters they wished to attend to at the time. As such, the Claimants argue that the property remained in their family's ownership and that, accordingly, the 2018 Land Transfer Notice should be considered invalid.

*(1) Do the Claimants prove historical ownership of the property?*

The COI was satisfied that the Claimants proved historical ownership of the property by their family. It is clear that the Claimants' family possessed the property, as evidenced by the letter from HSBC concerning the deeds held as security for a loan.

Additionally, there is no evidence before the COI that the Claimants' family subsequently sold the property. The Claimants state that in 2007 their family was approached about selling the property, but no such sale was executed.

*(2) Do the Claimants prove evidence of the loss of the property through:*

- a. Theft of property; or*
- b. Dispossession of property; or*
- c. Adverse possession claims; or*
- d. Other unlawful or irregular means.*

The COI cannot at this time conclude the means by which the property was lost but recommends to the Claimants that they seek legal advice regarding recovery of this property post-haste.

***Quarter of an Acre of Land, Tulo Valley***

This matter relates to a quarter of an acre of land at Tulo Valley, Pembroke Parish. The Claimants stated that they had in their possession the original deeds for the land in question. They presented as Exhibits what they said were the original deeds. However, the entire document was barely legible as it was very old and torn.

The Claimants also provided a Deed of Release dated 1936 between a number of persons with the surname Chiappa and John Shaw Burch Wood (see slides 244-261). Based on the evidence provided (see slides 265-267), the Claimants argue that this 1936 Deed of Release was fraudulent, primarily on the basis that the persons named were not in possession of the deeds (they remain with the Claimants) and the documents used for the transaction in question were false.

The foregoing notwithstanding, the deeds are vague with respect to the location and exact description of the land in question and the nature of the alleged loss of property is not clear. The COI notes that this general area is one of historic contention between various parties and the

Government. The Claimants presented for the COI's consideration an article from the 29<sup>th</sup> December, 1978 edition of *The Royal Gazette* featuring the late Margaret Genevieve Hollis (see slides 262-263) and citing the naming of a road in the area as 'Controversy Lane' to mark the controversy over landownership in this area.

The COI is aware that this matter has been contested in Court previously. However, the records of such Court cases were not presented to the COI for consideration.

*(1) Do the Claimants prove historical ownership of the property?*

There is limited information before the COI concerning this claim. However, the COI is confident that the Claimants are in possession of a deed for a quarter of an acre of land in the general area of Tulo Valley. The COI, taking note of the 29<sup>th</sup> December, 1978 article in *The Royal Gazette* [reproduced on slide 262 of VF-5], accepts that there is historical controversy surrounding the ownership of this piece of land.

Unfortunately, due to the limited nature of evidence before the COI and the general description of the plot of land in the 1877 deed, the COI is unable to come to any firm conclusion on the claim of ownership advanced by the Claimants for this property.

*(2) Do the Claimants prove evidence of the loss of the property through:*

- a. Theft of property; or*
- b. Dispossession of property; or*
- c. Adverse possession claims; or*
- d. Other unlawful or irregular means.*

As noted, there is a limited amount of evidence before the COI in support of this claim, including the general description of the property provided in the 1877 deed. As a result, it is not possible for the COI to come to any firm position on the question of property loss. The COI notes the likelihood that there is additional information that can be brought forward concerning this claim and regrets that the Claimants were unable to provide this information within the COI's timelines. This lack of information prevents the COI from reaching a firm conclusion concerning this case. Nonetheless, the COI encourages the Claimants to continue to research this issue.

## **Conclusion**

The COI notes that the Claimants have provided copious and detailed information for review. However, the COI regrets that it is unable to reach a conclusion for most of the properties involved as a result of the Claimants' inability to complete their research. This has been compounded by a difficulty in properly reading certain very old legal documents due to their fragility. Other documents presented required specialized analysis due to their being written in difficult-to-read 19<sup>th</sup> century period cursive.

## **Recommendations**

It is recommended that the Government consider establishing a permanent mechanism of state machinery to review claims concerning the historic loss of properties. The mechanism should be

fully resourced with human and financial resources to address all claims and concerns post this COI, ultimately with a view of having a legal framework in place to facilitate remedies and/or an award of compensation. Furthermore, more research is required, especially of the outcome of relevant Court proceedings initiated related to address concerns and disputes. To that end, the COI recommends that the Government provide, at a minimum, assistance to the Claimants sufficient for them to conduct further research. The importance of this recommendation is highlighted by the fact that the Claimants were restricted from completing their research due to COVID-19 protocols rendering them unable to fully access documents upon which they sought to rely. The results of this research would go a long way in answering some of the lingering questions regarding how the land was lost.

## Case 025 – Estate of Thomas Henry Smith

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte and Mr. Jonathan Starling

### Commissioner Recused

Mr. Quinton Stovell was recused from the proceedings due to a close association with an interested party in this matter.

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### Introduction of Claim

A joint claim was made for and on behalf of the Estate of Thomas Henry Smith (“the Deceased”), formerly of Sinky Bay in Southampton Parish, to the Commission of Inquiry into the Historic Losses of Land (COI) by Ms. Pattie Jean Moore and Ms. Juanita Joanna Patrice Jones, cousins and descendants of the Deceased (together, “the Claimants”). Formal statements were submitted to the COI by Ms. Moore and Ms. Jones on 13<sup>th</sup> January, 2021<sup>333</sup> and on 29<sup>th</sup> January, 2021<sup>334</sup>, respectively. The basis of the claim is that the Deceased did not have the capacity to sign his Will dated 31<sup>st</sup> August, 1955 (“the Will”), which is the subject of the claim and that a fraudulent act had been done by the Estate Executors, such fraudulent act resulting in certain members of the Claimants’ family being disinherited while other members with whom the Deceased did not have a close relationship benefitted from his estate.

### COI Hearings

The Claimants attended COI Hearings on 22<sup>nd</sup> January, 2021 at the Royal Bermuda Regiment, Warwick Camp, South Road, Warwick Parish, on 3<sup>rd</sup> February, 2021 at the Willowbank Resort & Conference Centre, Somerset Road, Sandys Parish and on 24<sup>th</sup> March, 2021, again at the Royal Bermuda Regiment, Warwick Camp. They tendered documentary evidence in support of their claims.

### Adverse Notices

An Adverse Notice was issued by the COI on 13th March, 2021 in respect of the Estates of Vivian Thomas Wilson (Vivian), Gayous Edmund Powell and Berkeley Morrit Wilson. A letter dated 9<sup>th</sup> March, 2021 was also served on Ms. Wanda “Wendy” Butterfield, a cousin of the Claimants. In accordance with COI Rules, the published Notice and letter were intended to give persons or their representatives an opportunity to seek standing, if they so wished, to make representations before

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<sup>333</sup> COI - Exhibit PM-3

<sup>334</sup> COI - Exhibit JJ-1



the COI regarding the Claimant's claim. The sole response received was from Ms. Butterfield who confirmed that she wished to appear before the COI to respond to the claim.

## Summary of Facts

1. The Claimants confirmed what was presented in their Witness Statement, that:
  - (a) they had gone to the Bermuda Government Archives with their aunt, Edith Darrell, and found the Last Will & Testament of the Deceased, Thomas Henry Smith. They became concerned when they saw his name "*Thomas Smith*", written in cursive on the execution page of the said Will. It was a known fact among family members that the Deceased could neither read nor write and they could not imagine him forming the letters of his name as it appeared on the Will. The signature was much too legible from what they could remember of their grandfather's handwriting;
  - (b) they believed that a fraudulent act was done which benefitted Vivian Wilson, a nephew of the Deceased and one of the Executors of his Will, and his heirs.<sup>335336</sup> This, the Claimants said, called into question the authenticity of both the signature and the said Will;
  - (c) it was a known fact that the Deceased was an alcoholic and that he may have been taken advantage of in that state. The Claimants further stated that he was living in his nephew Vivian's unfinished cellar, enduring inhumane conditions, as witnessed by his granddaughter, Lydia Jones;
  - (d) the Deceased's family could not comprehend that he would leave his estate to his nephew Vivian and heirs and a monetary gift of only One Hundred Pounds (£100) to his only daughter, Louise Simmons (Louise), who, they said, "He doted over and had been the apple of his eye";
  - (e) they do not consider the signature to be a forged signature, but that a fraudulent act was done on the part of Vivian and Granville Trimmingham Wilson (Granville). The Claimants referred to a letter dated 30<sup>th</sup> March, 2008, signed by Louise's daughters Lydia Jones, Dorothy White, Winifred Jones and Edith Darrell, addressed to Vivian and copied to the immediate families of both Vivian and Granville.<sup>337</sup> They stated that this letter was written to raise the issue about the signature on the Will and the fact that because the Deceased could not read or write, they felt that a fraudulent act was carried out by Vivian and Granville. They felt that Vivian and Granville had taken advantage of the Deceased because of his shortcomings, particularly his alcoholism and his inability to read and write. The Claimants were also seeking to "clear the air" between them so that the Deceased's estate matter could be settled once and for all and to do the right thing on behalf of their mother and grandmother, Louise<sup>338</sup>, and

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<sup>335</sup> COI - Exhibit PM-2, pp. 3

<sup>336</sup> COI - Exhibit PM-1, pp. 1

<sup>337</sup> COI - Exhibit PM-1, pp. 1 and 3

<sup>338</sup> COI - Exhibit PM-3, pp. 6

- (f) Louise had often asked for a copy of her father's Will and was told that it could not be found. As a result of this alleged fraudulent act, Louise's health was greatly affected and the loss of her inheritance was something she took to her grave. As a consequence of their mother/grandmother Louise being disinherited from receiving anything more from her father's estate, her children and grandchildren were left to struggle, living from paycheck to paycheck, not being able to finish high school or even attend college. They noted that Vivian's children and grandchildren had the privilege of attending college because of the inheritance received by Vivian from the Deceased's estate. Claimant Ms. Moore stated that her mother's family had grown up "being classed as living in the Poor House".

### **The Deceased's Lineage**

2. Further, the Claimants gave evidence that:

- (a) the Bermuda Slave Registers from 1821 and 1834 show that one Robert Bassett was a slave owner who at one time owned 17 slaves, one of them named Jack Wilson (**Exhibit 5**). The records show that "Johannah" Bassett was a relative of Jack Wilson and a descendant of Robert Bassett.<sup>339, 340;</sup>
- (b) "Joanna" Bassett had a daughter named Frances Bassett who was known as "Ma Fanny", born into slavery and who married a Rowling as evidenced by an extract from the book entitled "*Southampton Wilson Kinfolk*"<sup>341</sup>. The Descendants of Joanna Bassett are shown in the family tree and Ahnentafel Report provided by Claimant Ms. Jones<sup>342;</sup>
- (c) Ma Fanny had a son, William Thomas Bassett, who emigrated to the United States (or went to sea) and never returned to Bermuda. He had a child Benonine who was raised by Ma Fanny;
- (d) Benonine was mother of the Deceased, Granville and Ellen, all of whom had the surname "Wilson". She later married Archibald Jones for whom she had three other daughters, Kathleen, Anita and Alexandria;
- (e) the Deceased was a fifth-generation descendant of Robert and "Joanna" Bassett. He and Cornelia Edell Simmons had a daughter, Louise Simmons. The Claimants rely on a descendancy chart prepared by Ms. Jones, showing the familial connection between Ma Fanny, Benonine, the Deceased and Robert Bassett<sup>343;</sup>

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<sup>339</sup> COI - Exhibit JM-11

<sup>340</sup> COI - Exhibits JJ-2 and JJ-11

<sup>341</sup> COI - Exhibit JJ-4, JJ-5, JJ-6 and PM-3

<sup>342</sup> COI - Exhibit JJ-7

<sup>343</sup> COI - Exhibit JJ-10

- (f) the decadency chart also shows that Lydia was the daughter of Louise (**Exhibit JJ-13**)<sup>344</sup>. However, the Claimants also confirmed that Louise also had other surviving daughters: Dorothy White, Winifred Jones and Edith Darrell;
- (g) Winifred Jones is the mother of Claimant Pattie Jean Moore and Lydia Jones is the mother of Claimant Juanita Jones<sup>345</sup>; and
- (h) as part of the Wilson family history, an extract of the book entitled *The Missing Mr Reid* makes reference to Chapter 11 of the book entitled *Southampton Wilson Kinfolk*, written by Nellie Eileen Wilson, daughter of Granville and Lillian Wilson.

### Property Ownership

3. Claimant Ms. Moore gave evidence in her Witness Statement that the Deceased owned 19 acres “from Cross’s Bay all up the hill by Princess Hotel” in Southampton Parish<sup>346</sup>. Additionally, the Claimants relied on the following evidence in support of their claim of ownership of the Wilson family’s Southampton property:
  - (a) The Bermuda Historical Quarterly (pages 1 and 2)<sup>347</sup>, Southampton Parish records show that, as a freeholder, one Robert Bassett, owned 12½ acres of land valued at £308 and a further 6 acres valued at £15.13.4. (**JJ-12**). The property was also described in Chapter 11 of the book *Southampton Wilson Kinfolk* as consisting of a large estate that lay on the southern border of the Gibb’s Hill Lighthouse property and included “Bobs Lake” near St Anne’s Anglican Church, “Christian’s Bay”, below the Reefs, and “Boat Bay”, “Sinky Bay” and “Cross Bay.”<sup>348</sup> This evidence was presented to the COI to show that this property was once owned by Robert Bassett and then all or a part of the Bassett Estate was subsequently owned by his descendants, which included the Deceased.
  - (b) The original Will of Robert Bassett dated 19<sup>th</sup> April, 1819 was tendered in evidence.<sup>349</sup> Robert Bassett died leaving his entire estate for his slave descendants. However, the descendants were said to have misplaced the Title Deeds to the Bassett Estate property.<sup>350</sup> The relevance of this is that without the Deeds, it would be extremely difficult for anyone to prove title to any property that formed a part the Bassett estate.
  - (c) Ma Fanny for several decades paid the taxes on the Sinky Bay and Cross Bay, Southampton properties. Granville, her grandson, lived with her from his early teen years and when she became too old to work, he assumed the responsibility of paying

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<sup>344</sup> COI - Exhibit JJ-13

<sup>345</sup> COI – Exhibit JJ-1

<sup>346</sup> COI - Exhibit PM-3

<sup>347</sup> COI – Exhibit JJ-12

<sup>348</sup> COI – Exhibit JJ-4

<sup>349</sup> COI – Exhibit JJ-15, pp. 1 - 2

<sup>350</sup> COI - Exhibit JJ-1

taxes and also for her care.<sup>351</sup> The Claimants stated that when Ma Fanny died in 1905, Granville applied for possession of the property through squatter's rights.<sup>352</sup>

- (d) Further to (c) above, by a Partition Deed of 30<sup>th</sup> May 1930 (also referred to at paragraph 3(g)(ii)), Granville shared the property with his sister, Ellen Wilson, and the Deceased. The application for possession took place around 1930. The property location and holdings were then explained: the Deceased's property was known as "Cross Bay". The next portion of the property going towards the Reefs Hotel, known as "Sinky Bay", belonged to Ellen and the property to the west of Ellen's belonged to Granville. The three (3) pieces of property were said to have "stretched from the water's edge up the hill and beyond South Shore Road and that the South Shore Road passed right through the properties";
- (e) The Deceased died on 26<sup>th</sup> July, 1960 and his Will (probate granted on 13<sup>th</sup> August, 1960) appointed Vivian and Granville to be Executors of his estate.<sup>353</sup> The gross value of his estate was valued at Nine Hundred and Fifty Pounds (£950). The Deceased had also purportedly gifted his parcel of land at "Cross Bay", Southampton, together with all other real estate to which he may have been entitled at the time of his death, to nephew Vivian and his heirs.<sup>354</sup> As a consequence, Louise's family was claiming that they were disinherited while Vivian and his family had benefitted from the Deceased's estate upon his death.
- (f) The Claimants stated that the property referenced in the Deceased's Will, "Cross Bay", to which this claim relates (**PMJJ-1 page 9**), also refers to a "house at Sinky Bay, pink house on the water across from where the Sonesta Beach Hotel was formerly located, currently occupied by Wanda Butterfield, who they claimed was the daughter of Vivian. The relevance of this is that the Claimant stated that Ms. Butterfield was in fact benefitting from the Deceased's estate while they and their families were not. However, the Partition should be able to confirm that the Sinky Bay property was conveyed to the Deceased's sister, Ellen, Ms. Butterfield's grandmother.
- (g) the Claimants stated that between 1947 and 1955 there were four sales of the Deceased's property to various people, some of whom were family members. They also stated that two named persons involved in the transactions were Vivian Wilson and Granville Wilson and that they had copies of documents that showed this.
- (h) The following documents were tendered in evidence as proof of the Deceased's ownership of land, based on the wording in the description of the various Indentures being used as security documents for the borrowings of those persons named in the respective Deeds:<sup>355</sup>

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<sup>351</sup> COI - Exhibit JJ-5, pp. 1

<sup>352</sup> COI - Exhibit PM-3

<sup>353</sup> COI - Exhibit PM-2, pp. 3 - 5

<sup>354</sup> COI - Exhibit PM-2

<sup>355</sup> COI - Exhibit JJ-9

- (i) Heads of Mortgage page 318, showing an entry dated 25<sup>th</sup> April, 1950, referring to an Indenture dated 30<sup>th</sup> January 1947 and made between the Deceased, the Mortgagor and Edmund Gosling Gray. Also, that document references lands being conveyed by the Deceased being transferred to David Lincoln Wilson and Reuben Josiah Wilson respectively.
- (ii) Heads of Mortgage, page 159, showing an entry dated 2<sup>nd</sup> November 1954 which refers to a Partition dated 1<sup>st</sup> May, 1930 made between the Deceased and his wife Lillian Wilson and Ellen Wilson.
- (iii) Heads of Mortgage, page 407, showing an entry dated 30<sup>th</sup> October, 1951: Mortgagors Berkeley Merrit Wilson and Nathaniel Ledrew Wilson and Violet Wilson his wife, referring to land owned by the Deceased.
- (iv) A Voluntary Conveyance dated 22<sup>nd</sup> September, 1951 and registered on 25<sup>th</sup> September 1951 shows that the Deceased gave Lydia Jones property as a wedding gift. The property's location is described as being next to that of Ellen Wilson, sister the Deceased.<sup>356</sup>

### **Third Hearing, 24<sup>th</sup> March, 2021**

In response to the Claimants' submission, an Adverse Notice was served on Ms. Wanda "Wendy" Butterfield who appeared before the COI on 24<sup>th</sup> March, 2021 at the Willowbank Resort & Conference Centre to clarify that she was the daughter of Berkeley Wilson rather than Vivian Wilson, as previously stated by Claimant Ms. Jones. Ms. Butterfield explained that her father was very kind to the Simmons family and that she did not think she should be responsible for something that had nothing to do with her. Ms. Butterfield also confirmed that her grandmother was Ellen Wilson, sister of the Deceased, that she was a child when the Deceased died and that any knowledge of the matter in relation to this claim would be hearsay. Ms. Butterfield further stated that the Claimants should contact Ellen's family and get more history from them.

At the end of Ms. Butterfield's submissions, Claimant Ms. Moore stated:

*"I wish the Inquiry would come to some conclusion and things get settled and I hope that my family will have some type of recognition and compensation due to all the suffering they've been through. Thank you."*

In closing, Claimant Ms. Jones stated:

*"I must say this has been very interesting to me, this whole process. Um, again, I will, I'm speaking for my mom, Lydia Jones, who is present here today and she is the daughter, the oldest daughter of Louise. Louise is the only daughter of Thomas Henry Smith. My mother is an eyewitness of the inhumane treatment that was shown*

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<sup>356</sup> COI – Exhibit JJ-8

*to her grandfather by his sister Ellen's children which included Vivian and Josiah and Berkeley and Ledrew, the rest of them, the rest of the family.*

*“From what I've gathered, from the research that I've done, it is clear to me that my great grandfather's property was actually stolen from him. That's my conclusion. He was a very kind man and like Ms. Butterfield said, my mom would have a lot of information and she loved her grandfather and her grandfather loved his daughter Louise and he loved her and her sisters, my mom and her sisters. And it's no way, no way under God's Heaven that Thomas Henry Smith would have left... would have wrote a Will to leave his daughter, his only daughter, One Hundred Pounds (£100), and the rest of his entire estate to nephews and especially Vivi Wilson, and his daughters, daughters that Thomas Wilson...he wasn't even around them and didn't really know them. So, why in the world would Papa, as mom would call him, do that when he doted over his own daughter and his granddaughters.*

*“When it comes to the signature of his Will, my grandfather couldn't read or write and that was indicated about Granville and Thomas Smith, about their education, or lack of, in the book ‘The Missing Mr. Read’ which was written by Nellie Musson who is the daughter of Granville Wilson.... so I cannot comprehend or see (my grandfather) even able to write in cursive ‘Thomas Smith’, as it has said, as it appears on his Will according to my mom who used to feed her grandfather several times through the week, who saw him sleeping in a cellar on a mattress and they were all up in the main house. But they didn't care. They did not care. All they wanted was what he had. And they took it. They stole it. So for him to be able to write his name as clear as that, Thomas Smith, in cursive, I don't see it. And my mom who's sitting right here today, every time she looks at it, she says my Papa did not write that. That's all I have to say. Thank you. “*

Claimant Ms. Jones acknowledged and accepted Ms. Butterfield's clarification that her father was Berkeley Wilson and not Vivian Wilson, a son of Ellen Wilson who was the Deceased's sister.

## Media

The Claimants explained that the Ombudsman for Bermuda at the time, Arlene Brock, made available to them two extensive databases made from 1821 and 1934 of Slave Registers which were held at the Bermuda Government Archives.<sup>357</sup> Research of the databases showed that Robert Bassett owned several slaves.

(Since the Hearing, Ms. Brock wrote to the COI to clarify that the Slave Registers had been commissioned by the English Government in anticipation of compensating slave-owners throughout the colonial empire. Further, the former Ombudsman stated that in 2009 the Office of the Ombudsman merely investigated and made recommendations about barriers to access to such information in the Archives. In particular, she ensured that the searchable Slave Register databases, prepared by Dr. Virginia Bernardt, were made available to the public at the Bermuda National Archives, Bermuda College, Bermuda Library and National Trust.)

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<sup>357</sup> COI - Exhibit JJ-11

## Issues Arising

Based on evidence:

- (a) The Claimants wished to rely on the Ahnentafel Report (undated) which shows Ma Fanny as the daughter of “Joanna” Bassett. However, that Report also states that her biological father was unknown.<sup>358</sup> There is also conflicting evidence given by the Claimants because Claimant Ms. Jones stated that there was a question as to whether “Johannah” Bassett was the actual daughter of her slave master whilst Claimant Ms. Moore stated that Joanna and Robert Bassett had a child together. That was Ma Fanny. Further, in relation to “Johannah” Bassett, the Death Record of Johannah (not tendered in evidence) shows that she died leaving a son and a daughter (Ma Fanny?) but documents tendered in evidence exclude mention of a son. This matter requires clarification as Johannah’s son may have potentially been the proper heir to the Bassett estate, if he survived Ma Fanny. Thus, his heirs may have been entitled to all or a part of the Deceased’s estate.
- (b) There is a variance in the spelling of the Christian name “Joanna”. In **Exhibit JJ-6**, it is spelt J-O-A-N-N-A. In **Exhibit JJ-4**, the name is spelt J-O-H-A-N-N-A-H. Therefore, confirmation is required to determine if that this is one in the same person. There is also confusion around the surname of both Johannah/Joanna. The COI could not assume that the this was one in the same person who was a descendant of Robert Bassett;
- (c) Ma Fanny was said to be a Bassett, but her first three children were Wilsons. There is no evidence that she married a Wilson, although there is evidence that she married a Jones, whilst another family tree shows her surname as Rowling. This matter needs to be clarified;
- (d) The Deceased and Corneila Simmons were not married<sup>359</sup> and there is confusion around the surnames “Rowling”, “Wilson” and “Bassett” of Francis, William and Benonie, which supposedly shows familial ties back to Robert Bassett. The spelling of “Francis” versus “Frances” will also need to be confirmed in order to show clear familial connections and also gender of the person to whom reference is made.
- (e) A dependency chart shows Lydia Jones as the only child of Louise (**Exhibits JJ6 and JJ13**). The question arising, therefore: were Lydia’s siblings the legal daughters of Louise? If not, a clear direct bloodline connection to the Deceased is established through Lydia only, providing that familial ties are also confirmed in respect of earlier generations, as previously queried. The other three daughters will need to show how they are related to Robert Bassett.

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<sup>358</sup> COI - Exhibit JJ-7

<sup>359</sup> COI - Exhibits JJ-5, JJ-6 and JJ-10

- (f) The descriptions of properties referred to in the various Mortgage entries from the Book of Mortgages<sup>360</sup> produced in evidence confirms the Deceased's ownership of property in Southampton. However, some of the wording in those documents is peculiar in that the use of the words "or recently of Thomas Smith" appears not be concerned about the correct ownership of the property being sold and/or also indicates that a property transfer of some sort may have previously taken place. However, such conclusion cannot be confirmed based on the evidence.
- (g) The Book of Mortgages does show that large tracts of land had been sold in the same area as the Deceased's purported property location, but it is inconclusive as to whether any part of the property sold, particularly the entry dated 14<sup>th</sup> March, 1955 showing a transfer of 19.049 acres, was, in fact, previously sold or the Deceased or his family dispossessed of their property which was transferred to H. D. Butterfield, a well-known banker (again referred to in paragraph (r).
- (h) The Mortgage documents in paragraph 3(g)(i) to (iii) describe certain properties being used as security for the Mortgagors' borrowings and evidences the fact that the Deceased did legally own and sold various properties in Southampton. However, there is no evidence of Granville (other than the 1930 Partition) or Vivian being directly involved in these transactions (as referenced in paragraph 3(g).
- (i) The description of each property used as security and without having an opportunity to obtain and review the documents shows certain boundary descriptions of neighbouring properties to that of the Deceased's property. This information could be used to determine the exact location and its approximate size of the property.
- (j) In the past, the Deceased had entered into legal arrangements with respect to his property or parts of his property as evidenced by, for instance, the said 1930 Deed of Partition and Voluntary Conveyances. However, copies of these document were not submitted in evidence. The Conveyance could have been used to determine, without the Title Deed, how the Deceased signed the legal document, as he is said to have been incapable of reading and writing. How did he know where the property was located and its size? At what stage of his life, if he was able, did he lose legal capacity?
- (k) Southampton Parish Vestry receipts provide proof of payment of taxes, but not proof of ownership by the Deceased or his family. There appears to have been a systemic flaw in the registration of land process, a flaw which had been identified in other claims submitted to the COI in connection with historic land losses. For example, someone could continue to pay taxes on a property unaware that the ownership title of the property had been transferred to another person. The system of registration of such transfers, as explained by Mr Wentworth Christopher in his testimony to the COI, was indeed carried out by the relevant Parish Vestries. However, this process was based on the documents submitted to the Vestry for registration of title on transfer by lawyers. These were taken at face value, with no

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<sup>360</sup> COI - Exhibit JJ-9



independent verification of ownership being done by the Vestry as evidence of legal ownership.

- (l) A copy of the 1<sup>st</sup> May, 1930 Partition Deed was requested by the COI, but not produced. Therefore, the manner in which documents had been signed by the Deceased prior to the Will could not be confirmed. The questions: Was there a special clause for signing used, a clause which would provide for the making of a mark to show that the Deceased understood the nature and effect of the disposition of his assets and who he was intending to benefit? Alternatively, were documents signed by someone who was empowered to do so, for example, a Power of Attorney. Information of this nature was not produced.
- (m) Commissioners were unable to determine if Granville's coming into ownership of the Southampton property by squatter's rights was as a direct result of the original Deeds of Robert Bassett being mislaid or lost and that he could prove his dependency to Robert Bassett or his having lived on the property (including the time that he lived with Ma Fanny) for the statutory period required to be successful in his "squatter's rights" claim. The Claimants failed to produce for the COI's consideration supporting documentation of this nature.
- (n) There is evidence of a Partition. However, the COI cannot confirm that this document shows Granville's coming into possession of property in Southampton Parish and then dividing it into three shares - between himself, his sister Ellen and the Deceased. The COI could not confirm that it was "Cross Bay", the property over which he claimed squatter's rights. This action by Granville also contradicts the Claimants' assertion that he took advantage of the Deceased's shortcomings in order to take his property. Also, there no evidence of Granville deriving any benefit from the Deceased's property. Further, there is conflicting evidence of Granville's relationship with the Deceased. In her testimony of 24<sup>th</sup> March, 2021, witness Ms. Butterfield refers to him as the Deceased's nephew rather than his brother. This information is also stated on the Grant of Probate.<sup>361</sup> However, in the letter dated 30<sup>th</sup> March 2008 from the Deceased's daughters to Vivian, the first paragraph refers to Granville as Vivian's brother.<sup>362</sup>
- (o) The Deceased's probate documents show that the gross value of his estate amounted to Nine Hundred and Fifty Pounds (£950) or thereabouts. The COI cannot confirm if this amount included the value of the property at "Cross Bay". The Claimants did not show evidence of a Conveyance transferring the title of the property at "Cross Bay" to Vivian and his heirs or whether that property was the property over which Granville supposedly obtained squatter's rights.
- (p) Reference is made to the Claimants' evidence at paragraph 5. The signature on the Deceased's Will should be compared, in the first instance, with the said Voluntary Conveyance transferring a portion of his estate to his granddaughter Lydia as a

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<sup>361</sup> COI - Exhibit PM-3

<sup>362</sup> COI - Exhibit PM-1

wedding gift and any other documents that he may have executed in the past. Currently, there are no supporting documents in this regard except evidence of an entry recorded on 22<sup>nd</sup> September, 1951 in the Book of Voluntary Conveyances (given to the COI, but not entered into evidence).

- (q) Was the property securing the borrowings of two of the Mortgagors satisfied, releasing the ownership of the property back to the original owners? There is a possibility that the two Mortgagors may have defaulted on their mortgage and the land used as security, then transferred to the Mortgagees. Copies of entries in the Mortgage Register do not show such mortgages being satisfied as there is no handwritten note, as customarily made, across the entry itself to this effect, except in the case of Berkeley Merrit Wilson, Nathaniel Ledrew Wilson and Violet Wilson, his wife.
- (r) Copies of entries of the Southampton Parish Assessment Book which was submitted to the COI but not formally entered into evidence by Claimants show the following entries on 14<sup>th</sup> March, 1955:
  - (i) 19.049 acres of land, including “Boat Bay”, were transferred from H. D. Butterfield and others to Southampton Hotel Company Limited (Sonesta Beach Property), then to Nettie S Miller for Eight Thousand Pounds (£8,000) on 16<sup>th</sup> February, 1960; and
  - (ii) 9 acres of land, “Sinky Bay”, including several lots were transferred from [unclear] William Frith to Southampton Hotel Company Limited (Sonesta Property), then to Nettie S Miller for Four Thousand, Five Hundred Pounds (£4,500) on 16<sup>th</sup> February, 1960.

These entries appear to be related to certain of the landholdings of the Deceased’s family (including Granville’s and Ellen’s) but cannot be confirmed at this time.

- (s) Claimants had consulted on laws of Wills and estates in Bermuda. However, the legal advice given was not introduced in evidence.<sup>363</sup>

## Findings of Fact

1. It is not uncommon to have different variations of the spelling of someone’s name or, in fact, to have two or more persons with the same name, all spelt differently as referred to in (a) to (e) above. However, the documents in evidence submitted did not clearly establish familial ties back to Robert Bassett, particularly as the evidence does not confirm Johanna nor Ma Fanny having a clear familial connection with Robert Bassett. Additionally, the Ahnentafel Report and family tree upon which the Claimants placed reliance are not official sources for proof of lineage. In the absence of absolute proof, the COI does not accept that the Claimants have proven absolute familial ties.

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<sup>363</sup> COI - Exhibit PM-1: evidence that the Claimant sought legal advice on the law relating to trust and wills, but this advice was not introduced in evidence. It would have assisted the Commission in reaching a more conclusive determination.

2. Although three (3) of the four (4) Mortgage Book entries referred to in (f) to (i) above were not directly related to the Deceased's borrowings, the description of the properties in the security documents for the various borrowings does prove that the Deceased, upon the date of those entries, did in fact own property in Southampton Parish. It was not confirmed that the Deceased continued to own any property upon his death. As no site plans were introduced in evidence, the COI could not get a true sense of the physicality of the property which is the subject of this claim.
3. The Deceased had entered into legal arrangements with respect to his property in the past, as evidenced by a Deed of Partition and Voluntary Conveyances.<sup>364</sup> However, copies of these documents were not submitted in evidence as proof that the Deceased did have the legal capacity to enter into such arrangements. The signature on each document could have been used to determine the manner in which he signed. There was no evidence put forward that he indeed lost capacity. Because a person is an alcoholic does not prove that he did not have capacity during moments of lucidity. The COI is of the opinion that the Claimants have not provided sufficient evidence of the inability of the Deceased to read and write or lacked testamentary or legal capacity to conduct his own affairs at the time of making the 1955 Will.
4. The Vestry receipts referred to in (k) relating to the payment of land tax are not proof of ownership of property, but do indicate specifically on which property taxes were being paid. The COI concludes that Vestry receipts are not conclusive evidence of ownership of property based on the fact that anyone can make a payment on behalf of someone else, if the proper details are given.
5. The evidence does not show that Granville shared ownership of property with the Deceased and sister, Ellen, as the 1930 Partition purporting to prove and this was not submitted in evidence. Also, there is no evidence to show that brother Granville was involved in any property transactions depriving the Deceased of his property. The Deceased's Will appoints him an Executor, but not a beneficiary under the Will. There was also no proof of wrongdoing by nephew Vivian except that he was witness to the 1955 Will of which he was also a beneficiary.
6. The Claimants did not provide evidence of a conveyance transferring the title of "Cross Bay" to Vivian and heirs upon the death of the Deceased.
7. The Claimants stated that they did not consider the signature to be a forged signature, but that a fraudulent act was done by the Executors. There is no evidence to make a determination of a fraudulent act being done in this case if the signature is also not being called into question.

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<sup>364</sup> COI - Exhibit JJ-8

## Legal Issues Considered and Addressed Post-COI

The following legal issues were considered:

1. Blacks Law Dictionary - the definition of “Fraudulent”: Based on fraud, proceeding from or characterized by fraud; done, made, or effected with a purpose or design to carry out a fraud. A statement or claim or document is “fraudulent” if it was falsely made or caused to be made with the intent to deceive. To act with “intent to defraud” means to act wilfully and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.
2. The definition of “Theft”: Section 331 of the Criminal Code of Bermuda 1905 refers. Broadly, a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. It is immaterial whether the appropriation is made with the view to gain or made for the person’s own benefit. The words ‘thief’ and ‘steal’ are construed accordingly. The same section defines dishonesty.
3. The status of the Deceased’s capacity, his Will and any beneficiaries of his Estate prior to the Wills Act 1988:
  - (a) Did the deceased have the mental capacity to enter into the Will, prior to or at the time it was drawn up based on his legal incapacity (alcoholism) in order to do so?
  - (b) Currently, under the 1988 Act, persons named as beneficiaries in a Will should not also be a witness to the Will; the gift is void although the Will is still valid. Was this the case pre-1988?
  - (c) The law provides that if a person is unable to sign a document, the inclusion of a special clause is required stating the person understands the nature of action and to whom he is disposing his assets and that he agrees to the same by affixing his signature to the Will, by whatever mark he uses, which is then witnessed.
  - (d) How was the Deceased able to execute previous conveyances and other legal documents legally if he was unable to read or write? Did he have capacity, but somehow lost the same for whatever reason? Were these transactions carried out on his behalf by a Power of Attorney? Answers to these questions will need to be determined.
  - (e) It may be necessary to have an expert handwritten comparison of the signature of both the Deceased and witnesses to determine whether a fraudulent act was intended by someone, if in fact the Deceased himself did not sign as Testator.
  - (f) Based on the large transfer of land in Southampton in 1955, it could be possible that title to the Deceased’s property was actually transferred by others without his knowledge, even though land tax continued to be being paid by his family.

- (g) What were the laws in place regarding children born out of wedlock, for estate purposes, if three of Louise's daughters are not the blood descendants of the Deceased? The answer to this question will be of significance in the event that the Deceased's Estate is ever determined in favour of the Claimants and the family they are representing.
- (h) Are there any restrictions to bringing a pre-1984 (Limitation Act 1984) estate claim in respect of a fraudulent act, if proven?

## Recommendations

1. Based on the above, there are many questions beyond the remit of the COI that will require further research in order to make a final determination. Also, given time constraints imposed on the COI, it would more prudent for the Claimants to engage a Wills and estates attorney and a conveyance attorney to continue to assist with ascertaining and resolving all legacy estate and property ownership issues;
2. Further, research will also need to be conducted into the Vestry system in place at the time for registering land transfers, particularly as it relates to this matter and any subsequent systems used for the registration of land transfers. This research is necessary to understand fully the impact of an incorrectly recorded or fraudulent transfers on future landownership. (Cross-reference other COI cases in which certain Vestry entries have been called into question as the Claimants believe that "Cross Bay" still formed a part of the Deceased's estate as at the date of his death and currently.)
3. Theft or conversion of the Deceased's property may be determined if the Claimants are minded to obtain professional advice in relation to this matter.
4. This claim may need to be re-considered later if further documents are produced to substantiate the claim being made by the Claimants.

## Case 031 – Estate of Solomon Thaddeus James Fox

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell

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### Introduction

“Before the land grab in the early 1940s, St. David’s was a largely sustainable, primarily black community that had developed a complex ecosystem of culture, internal economics and agriculture driven by farming and fishing”.<sup>365</sup> Consequently, the decision to build the U.S. Army Base without consultation of the primarily black community was not accepted and a number of reasons were attributed to this “apparent” oversight, such as race economics and victimization. Most of the black families were forced to live in four prefabricated barracks until their permanent homes were constructed. The prefabs totalled six apartments. Solomon Fox and his wife were one of the first six families temporarily housed”.<sup>366</sup>

Arguably, the process of the land grab had the effect of realigning the ecosystem, changing the lives of persons who were forced to suffer from the loss of livelihood, being dispossessed and having to accept begrudgingly the terms of the deal, while demonstrating its grievances over the duration of the process which began in September 1940 and continued until after World War II ended. This discrimination and wrongdoing occurred during the processes of the selection of St. David’s as the site for the Army Base, the devaluing of the land, homes and livelihood of St. David’s Islanders, and the process of arbitration and displacement.<sup>367</sup>

Mrs. Marlene Warren (“the Claimant”) gave a statement to the COI on 25<sup>th</sup> November, 2020. She is the granddaughter of Solomon Thaddeus James Fox and Rose Elizabeth Sinclair Fox who owned a property in St. David’s where they resided. The Foxes’ property was taken by compulsory purchase for the purpose of the development of the United States Army Bases during World War II. Mrs. Warren submitted that the sale price of the property was undervalued, resulting in unfair compensation for her grandfather. The Rehabilitation document specifies that the difference in measurement between the old and new house is accounted for by a different method of measurement and the inclusion of the bathroom. However, the document further states that the area of the new house exclusive of the bathroom is slightly less than the old house. **(Exhibit MW8)**. The difference in measurements of the Foxes’ old house and their new house was a significant 3,124 cubic ft. The St. David’s Committee did not have the cost to build the new house. There is a note on the document that points out that the Board of Works cubage figure includes total works: house, foundation, tank, pits and any necessary trenching. The document is signed by N.B. Dill, Chairman of the St. David’s Committee. **(Exhibit MW8)**. The comparative analysis does not

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<sup>365</sup> Swan, Dr. Quito. “*Historic Land Grabs in Bermuda: St. David’s, World War II and the US Base*” (2020)., COI - Exhibit QS-1, pp. 6

<sup>366</sup> Swan, Dr. Quito. (2020)., Supra-No.365, pp. 47

<sup>367</sup> Swan, Dr. Quito. (2020)., Supra-No.365, pp. 6

include three key words in appraising Mr. Fox's property, Location, Location, Location, as his property known as Lot D.66 had fantastic water views, mature fruit trees, a vegetable garden and an 8ft. right-of-way to the waters of the harbour. Based on this information, it appears that Lot D.66 should have had a much higher evaluation. Mrs. Warren advised that the apparent "trade off", that is, relocation to the Texas Road property that her grandparents were invited to purchase was not comparable to the property they owned. She believed it was of a lesser value. In addition, her grandparents, having lived in their homestead for 44 years, were at that time able to live off their land and fish from the waters. That was how they sustained their family. They were very happy then, even though the home lacked modern conveniences; this was their castle, their homestead. Therefore, they had a great emotional attachment to their property. To relocate them under the guise of expropriation showed a great lack of empathy by the Government of the day, especially when one takes into account the fact that her grandfather was handicapped and required the use of a wheelchair. When the time came for her grandparents to relocate to Texas Road, her grandfather had to be transferred by ambulance.

## Summary of Facts

Mrs. Marlene Fox wrote to the COI on 25<sup>th</sup> May, 2020 for her case to be considered. Her claim was heard by the COI on 25<sup>th</sup> November, 2020. Mrs. Warren's paternal grandparents, Solomon Thaddeus James Fox and Rose Elizabeth Sinclair Fox, owned 0.20 acres in St. David's with views of Castle Harbour along with an 8ft. right-of-way to the waters of the harbour. Mrs. Warren's grandparents' home was a four-room wooden house with a wooden roof. Surrounding the property were several fruit trees and a vegetable garden. She said that her grandparents had suffered the loss of their home and property in St. David's so that the United States Government could build the U.S. Base at that location. To add insult to injury and proof of the loss suffered, evidence was submitted referencing the owners' valuation form dated 17<sup>th</sup> May, 1941. Mr. Solomon Fox gave an itemized value of his property in the amount of £1125<sup>368</sup> and the United States Government was prepared to offer only £422. Mrs. Warren's grandmother, Mrs. Rose Elizabeth Sinclair Fox, on behalf of her husband rejected this offer by a letter to the Department of Public Works.<sup>369</sup> The final award to Solomon Fox was £748. In addition to this award, Mr. Solomon Fox was awarded a home of similar size which was built on Texas Road, St. David's.

On 14<sup>th</sup> January, 2021, the COI held a second Hearing for Mrs. Warren who gave additional evidence of an Indenture dated 23<sup>rd</sup> July, 1943 between Cyril Hilton Smith, Director of Public Works, and Solomon Thaddeus James Fox of St. David's Island in the Parish of St. George's.

## Finding of Facts

1. The unfair appraisal method used to determine the value of Mr. Solomon Fox's property known as Lot D.66 located in St David's had the effect of devaluing the value of the property. There were significant variances in the valuations of property provided by United States Government, the Board of Public Works and the Official Arbitrators.

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<sup>368</sup> COI - Exhibit MW-9

<sup>369</sup> COI - Exhibit MW-12

2. Mr. Fox was required to purchase the Government-owned property known as Lot 12A located on Texas Road for the sum of £652.10, leaving very little from the award of £748 to sustain himself and his family. After the expropriation exercise, they were left with the difference of £95.10.
3. Mr. Solomon Fox was a disabled senior who was dispossessed of his property where he and his wife had lived for 44 years. They were happy and content living in a property that was debt free, a property where they could literally live off the land. They were required to relocate to a property on Texas Road where there were no fruit trees, no vegetable garden, no grape vine, no views of the ocean, no access to the ocean to fish. Mr. Fox and his wife were more than likely traumatized by this transition, knowing they were having to start a new life at their advanced age with very little money. This relocation appears to have been not only a traumatic experience for Mr. and Mrs. Fox, but one that was bereft of the touch of humanity, despite the execution of the lawful exercise called expropriation.
4. The greatest beneficiaries for this Compulsory Purchase were the Bermuda Government, the British Empire and the Government of the United States of America, as these relationships were strengthened politically and economically. The fourth page of the document depicts a lot plan taken from the deed book showing the total area of the tract, also by survey, as .20 acres.<sup>370</sup> War Department Corps of Engineers, U.S. Army appears on this document as well as Bermuda Air Base Bermuda Islands Land Acquisition property of Solomon T.J. Fox. Dated March, 1941.
5. The owners' valuation dated 17<sup>th</sup> May 1941 relied on Case 28 which shows a total valuation of Lot D.66 comprising 0.20 acres. The Land Value is £100, Building £400, Loss of Crops £100, Additional Cost of Reinstatement £400, Compensation for Compulsory Dispossession £125. The Total Valuation is £1125.<sup>371</sup> The total valuation prepared by the United States Government was £422, the Board of Works £816, EBG £822 and the Official Arbitration Board £748.<sup>372</sup> These amounts illustrate that there were significant variances in the valuations of Lot D.66. A letter dated 31<sup>st</sup> July, 1941 from the Public Works Department to Mr. Solomon Fox states that the United States Government was prepared to agree to the payment of £422 as full compensation for the expropriation of their property, Lot D.66. in St. David's, and that the above-mentioned amount was the highest that the Board was permitted to offer. The letter went on to state that should Mr. Solomon Fox not accept the amount, the settlement would be made by arbitration.<sup>373</sup>
6. The War Department of the United States Engineers Office carefully detailed the process of the Compulsory Acquisition. A document dated 29<sup>th</sup> May, 1941 from the War Department U.S. Engineers Office, St. George's, Bermuda gives a description of improvements and other data pertinent to the properties at the Bermuda Air Base. The U.S.

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<sup>370</sup> COI - Exhibit MW-8

<sup>371</sup> COI - Exhibit MW-9

<sup>372</sup> COI - Exhibit MW-11

<sup>373</sup> COI - Exhibit MW-11



Engineers described Mr. Fox's property as "Parcel No. D-66, total area of 0.20 acres. 4 room frame dwelling, 5,407 cubic ft. Wood post foundation, pine flooring, interior walls unfinished, painted - ceilings open. Electric lights. No water. Tank. Stone 448 cubic ft., stone privy 225 cubic ft. and rubble wall 180.cubic ft. The property is owner occupied."<sup>374</sup> The difference in measurements of the old house and the new house is a significant 3,124 cubic ft. The St. David's Committee did not have the funds to build the new house. There is a note on the document that points out that the Board of Works cubage figure included total works: house, foundation, tank, pits and any necessary trenching. The document is signed by N.B. Dill, Chairman of the St. David's Committee.<sup>375</sup> The comparative analysis does not include three key words in appraising Mr. Fox's property, Location, Location, Location, as Lot D.66 had fantastic water views, mature fruit trees, a vegetable garden and an 8ft. foot right-of-way to the waters of the harbour. Based on this information, it appears that Lot D.66 should have had a much higher evaluation. Mr. and Mrs. Fox and wished to start out with no debt and relocating would mean practically starting a new life under quite different circumstances. They preferred not to be in debt, a situation and that it would be impossible under the conditions being offered by the American Government. (**Exhibit MW 12**).

7. On 16<sup>th</sup> June 1941, Mr. Fox had to hand over the deeds to his property in St. David's to the St. David's Land Titles Tribunal. This Tribunal was appointed under the Act 22 of 1941. The deeds, certified by the Chairman of the Tribunal, showed that Mr. Fox was the sole owner of Lot D.66 consisting of 0.20 of an acre with a four-room wooden house, stone privy, stone tank and a rubble wall. The total area of Mr. Fox's house is 6,250 cubic ft. with measurements provided by U.S. Engineers.
8. An extract from *Base Colonies in the Western Hemisphere* (pp.57) by Dr. Steven High reveals that a February 1941 dispatch from Neville Butler of the British Embassy in Washington, DC to the U.S. State Department outlined proposed procedure. Each colony would furnish the United States with information on seven points: the price which the owner paid for the property, the date of acquisition, the cost of any subsequent improvements, the assessed value of the property for taxation purposes, the amount of property tax paid, an indication of local practice of usual local ratio between assessed property and current selling price and evidence of real estate price. The colonies would be "invited to furnish the United States representatives so far as possible with information on the seven points". The initial offer would thus be based on the U.S. assessment on fair market value. If agreement could not be reached, the matter would be taken up by Great Britain and the United States. To move things along, the British Government agreed to pay the difference between the Bermuda Arbitration award and the American offer<sup>376</sup>. Mr. Solomon Thaddeous Fox was to relocate to Lot 12A on Texas Road consisting of 0.26 of an acre and the cost of this lot is £140.18. The new home offered to Mr. and Mrs. Fox comprised a four-room stone house, including a bathroom, and had a living space of 9,374

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<sup>374</sup> COI - Exhibit MW-8

<sup>375</sup> COI - Exhibit MW-8

<sup>376</sup> COI - Exhibit MW-7

cubic ft. The new home was slightly smaller than the home from which they would be relocated.

9. This information suggests that the initial offer to Mr. Fox could have been a lot higher. Instead, an unfair lower price offered, not taking into consideration the true market value of the property and causing Mr. Fox emotional distress.
10. On 11<sup>th</sup> August, 1941, Mrs. Fox sent a letter to the Director of Public Works stating the full payment of sum offered by the U.S. Government was not acceptable. She expressed in the letter that the U.S. Government was not in a position to place a value on the property as the U.S. Government did not know the market conditions in Bermuda and therefore, the amount being offered was not fair. She considered the first offer from the owners to be fair. The letter went on to say that she hoped the Board would give her objections fair consideration as her husband was an invalid who could provide no assistance to her; at their current location, she was able to step into the little garden at any time to gather fruits and vegetables.
11. On 6<sup>th</sup> October, 1941, a Tribunal Hearing (Arbitration) was held as a result of Mr. Fox rejecting the United States offer of £422 for his property in St. David's. Mr. Fox was too ill to attend the Hearing, with the result that his wife represented him. The Hearing notes confirmed that attached to Lot D.66 were 50 banana trees, 5 large orange trees, 4 lime trees, 3 loquat trees and one grape vine. Not planted for the year were crops valued at £30. Two moves were required for Mr. and Mrs. Fox, one to the temporary quarters (barracks) and then their permanent residence once it was constructed on Texas Road. The claim included £15 for an ambulance. There were two valuations, £1,052 and £1,388. A 20 % compensation rate of each value equated to the land having an actual value of £210 and the building an actual value of £278 for a total property value of £488. 20% of this amount or £97, the two moves at £10 and reinstatement at £153 were all added to the property value of £488 for a total of £748. Thus, the sum of £748 was awarded to Mr. Fox for his Lot D.66.<sup>377</sup> The difference between the owners' valuation of £1125 and the amount that was awarded at the Tribunal Hearing was £377.
12. A parcel of land on Texas Road, St. David's was acquired by the Bermuda Government for the purposes of sale to the dispossessed St. David's Islanders.<sup>378</sup>
13. Subsequently, the total amount of £652.10 shillings, not £748, was accepted by the Bermuda Government in full satisfaction of the cost of the parcel of land and dwelling house being conveyed to Mr. and Mrs. Fox.<sup>379</sup> **(Exhibit MW16).**
14. The Bermuda Government then sold Lot 12A to Mr. Fox for the total sum of £652.10 shillings in accordance with the Public Works Department Act of 1930.<sup>380</sup>

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<sup>377</sup> COI - Exhibit MW-10

<sup>378</sup> COI - Exhibit MW-16

<sup>379</sup> COI - Exhibit MW-16

<sup>380</sup> COI - Exhibit MW-16

15. Bermuda Air Base, Parcel Index Map dated 15<sup>th</sup> March, 1941 showing the Leased Area of St. David's Island further illustrates that Lot D.66 was owned by Solomon T.J. Fox. The Map and Parcel Index were provided to the COI by its Chief Investigator. The map, obtained from Bermuda Archives on 14<sup>th</sup> January 2021, shows the total number of parcels of land expropriated from St. David's Islanders as 114. An additional six parcels listed are shown on the map as owned by the Bermuda Colonial Government, making the total of those listed on the map as 120 parcels.<sup>381</sup>

## Conclusions

1. Based on the evidence presented to the COI, it is determined that the claim made by Marlene Warren has been substantiated as follows:
  - Fair market value was not taken into consideration by the Official Arbitrators who sent a letter to the Chairman of the Board of Public Works confirming that the total award to Solomon Thaddeus Fox for his lot of land D.66 was £748. Based on the significant variances in the appraised values, the location of Mr. Fox's property, its views of Castle Harbour and the 8ft. right-of-way to the waters of the harbour, the sale price was less than it should have been.
  - The award to Solomon Thaddeus James Fox in the amount of £748 quickly diminished. The Indenture dated 23<sup>rd</sup> July, 1943 between Cyril Hilton Smith, Director of Public Works, and Solomon Thaddeus James Fox of St. David's Island in St. George's Parish showed the total award for Solomon Thaddeus James Fox as determined by the Official Arbitrators was £652.10, an amount accepted by the Bermuda Government as full satisfaction of the cost of the parcel of land and dwelling house. Thereafter, Mr. Solomon Fox paid £652.10 into the Public Treasury to purchase the property known as Lot12A of the Texas lots.
  - There was economic gain at the expense of Solomon Thaddeus James Fox and his family.

## Recommendation

Based on the findings set out above, the COI believes that a mechanism should be put in place by the Bermuda Government for determining adequate compensation for Claimants who have brought claims in their own right as descendants of the actual victims as a remedy for financial loss and psychosocial factors which resulted from the unfair displacement.

The Bermuda Government may want the United Kingdom to provide financial assistance in this matter considering the following headline in *The Royal Gazette* of 20<sup>th</sup> November, 1940: "Governor Explains U.S Bases at St. David's: Residents Accept Decision in Loyalty to Empire."

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<sup>381</sup> COI - Exhibit CA-2

In a meeting with the residents of St. David's on 19<sup>th</sup> November, 1940, Governor Bernard played the loyalty card to convince the people of St. David's to accept that it was in the best interests of Bermuda and the British Empire that they give up their homes so that the Americans could build a military base at that location. In that meeting, Governor Bernard said: "*Bermuda is taking a big part in the Empire scheme. Demands are being made on all parts of the Empire and this is their demand on us*".<sup>382</sup>

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<sup>382</sup> Swan, Dr. Quito. "*Historic Land Grabs in Bermuda: St. David's, World War II and the US Base*" (2020)., COI - Exhibit QS-1, pp. 18 - 19

## Case 034 – Estate of John Samuel Talbot

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell.

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### Introduction

This claim was made on behalf of the Estate of John Samuel Talbot (“the Deceased”) by way of a joint submission to the COI by Joann Bernice Adams and Dwayne Disney Talbot<sup>383</sup> (“the Claimants”) who informed the COI that they were cousins and direct descendants of the Deceased.

The Claimants attended COI Hearings at the Royal Bermuda Regiment, Warwick Camp, Warwick Parish on 26<sup>th</sup> November, 2020 and 16<sup>th</sup> March, 2021 and jointly presented to the COI, relying on several documents tendered in evidence in support of their claim.

### Summary of Facts

The Claimants alleged that the manner in which awards were arbitrarily meted out (by the three-man Commission) appointed pursuant to the Bermuda Development Company Limited (No. 2) Act 1920 (BDCL) to assess property compulsorily purchased from residents and/or landowners of Tucker’s Town, St George’s Parish (“Tucker’s Town”) was “inequitable, unequal, prejudicial and ad hoc”. The Claimants submitted various documents in evidence<sup>384</sup> seeking to prove, that:

- the Deceased was not adequately compensated for 2 acres of expropriated property and that the process was unjust; and
- the entire process applied by BDCL for the forced expropriation of Tucker’s Town properties was unjust.

### The Deceased’s Lineage

The Claimants relied on the following evidence:

- (a) the Deceased was born on 11<sup>th</sup> November, 1860 in Tucker’s Town to parents James and Joanna Talbot (née Darrell) as shown by a copy of the Methodist Baptism record<sup>385</sup>;

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<sup>383</sup> COI - Exhibit JBA-1

<sup>384</sup> COI - Exhibit JBA-2

<sup>385</sup> COI - Exhibit JBA-4a

- (b) the Deceased had twelve (12) brothers and sisters: Princess, Joseph, James, William, Lydia Ann, Serena, Catherine, Benjamin (B.D.), Julia Anna, Naomi, Harrington and Lora Anne;
- (c) the Deceased married Winifred Elizabeth Smith, also of Tucker's Town, on 14<sup>th</sup> June, 1900, as shown by a copy of the Methodist Groom Marriage record<sup>386</sup>. They had four children, born in Tucker's Town: Almira, Dorcas, Helen and Aimee (Amy); and
- (d) Dwayne Disney Talbot is the grandson of Helen Talbot. His mother, Edith Claretta (Talbot) Usher, was Helen's daughter as shown on the Ancestry Talbot Clan Genealogy<sup>387</sup> and Joann Bernice Adams nee Davis is the granddaughter of Amy Bernice (Talbot) Davis. Her father, Eric Melvin Davis, was Amy's son, as shown on the Ancestry Talbot Clan Genealogy<sup>388</sup>.

## Landholding

The Deceased's father originally purchased 11 of the lots (103 or more acres) in Tucker's Town in 1862 from the heirs of Benjamin Dickinson Harvey.<sup>389</sup> In 1896, the Deceased's mother, Joanna, inherited 19 acres of the said land upon her husband's death.

The Deceased was gifted 2 lots of land totalling 14½ acres in Tucker's Town from his parents:

- (a) in 1896, he inherited 7 acres of land devised to him by his father's Will dated 23<sup>rd</sup> February, 1893.<sup>390</sup> A transcribed copy of the said Will was also provided;<sup>391</sup>
- (b) in 1910, he inherited 7½ acres of land devised to him by his mother's Will dated 13<sup>th</sup> November, 1903, indicated as lot #10, coloured (brown) (should be red) on the map that accompanied her Will dated 13<sup>th</sup> November, 1903.<sup>392</sup>
- (c) Lot #10 was located using Google Map Ariel view to identify the location of Deceased's property in Tucker's Town.<sup>393</sup>

## Compulsory Purchases of Land by BDCL

The Claimants stated that:

- (a) the compulsory purchase of land from Tucker's Town landowners by BDCL was carried out in an inequitable, unequal, prejudicial and ad hoc manner and

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<sup>386</sup> COI - Exhibit JBA-4b

<sup>387</sup> COI - Exhibit JBA-4c

<sup>388</sup> COI - Exhibit JBA-4d

<sup>389</sup> COI - Exhibits JBA-4e and JBA-6

<sup>390</sup> COI - Exhibit JBA-4f

<sup>391</sup> COI - Exhibit JBA-4a, pp. 8

<sup>392</sup> COI - Exhibit JBA-4g

<sup>393</sup> COI - Exhibit JBA-6

awards in exchange for such lands were arbitrarily meted out. As a consequence, BDCL systematically removed Bermudians from their homes, obliterating their health, welfare and livelihood;<sup>394</sup>

- (b) the Deceased was awarded £1,000 for his 12½ acres with a wooden cottage in 1921, according to *The Royal Gazette* article dated 11<sup>th</sup> February, 1921.<sup>395</sup> However, records indicate that instead of receiving compensation for the full 7 acres that his father had gifted to him, the Deceased was only compensated for 5 of the 7 acres for which he received £400 as recorded in the same article<sup>396</sup>;
- (c) *The Royal Gazette* of 24<sup>th</sup> February, 1921 also recorded that a jury awarded the Deceased £600 for his 7½ acre waterside lot. Mr. F. G. Gosling, Secretary of BDCL was called as a witness in this case.<sup>397</sup>

The Claimants further asserted that:

- (i) Mr. E.F. Gosling, Secretary of BDCL participated in all aspects of the compulsory purchase and issuance of awards and he had a major impact on swaying the jury appointed by BDCL. Because of this, Mr. Gosling had firsthand knowledge, all the information on what others had been offered and what they had subsequently accepted in terms of the amount paid for each for their respective lands and he had the power to persuade the jury who ultimately decided on the amount of the award<sup>398</sup>;
- (ii) there were conflicting views of the attributes of the Tucker's Town land as seen by the residents and by the BDCL as acquirer of such land;
- (iii) the black population was disrespected and shown contempt by those involved in the expropriation process. With one or two exceptions, they were all of African descent;
- (iv) the BDCL expropriation impacted families in Tucker's Town in all respects as these events impacted on their health, welfare and livelihood; and
- (v) the Petitioners against compulsory purchase of their property were penalized for standing up for themselves, family and their home as a matter of principle.

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<sup>394</sup> COI - Exhibit JBA-4

<sup>395</sup> COI - Exhibit JBA-4h

<sup>396</sup> COI - Exhibit JBA-4i

<sup>397</sup> COI - Exhibit JBA-4i

<sup>398</sup> COI - Exhibit JBA-4j

## Awards Granted

The Claimants compared the award of £1,000 granted to the Deceased for 12½ acres<sup>399</sup> to the awards made for land of other expropriated properties, as reported by *The Royal Gazette* article dated 28<sup>th</sup> January, 1921<sup>400</sup>, and noted the disparity in awards granted and the need for review:

- (a) Mr Benedict Prieth, owner of 4 acres of property in Hamilton Parish with waterfront on Harrington Sound and containing a large house and a small cottage, was offered £2,900 but was awarded £4,000.<sup>401</sup> Based on this assessment, the Claimants argue that the Deceased should have been awarded £12,500 for his properties;
- (b) a property of approximately one acre and belonging to Mr. George Steward McLean of Shippensburg, Pennsylvania, adjoining that of Mr. Prieth, was originally purchased for £166. The jury awarded its owner £240.<sup>402</sup> If the same criteria had been applied to the Deceased's land, he could have received £3000 for his 12.5 acres;
- (c) Mr. George Smith, owner of 7 acres with a stone cottage, had agreed to part with his property and to accept in exchange a piece of property with two cottages in Smith's Parish plus £400 cash.<sup>403</sup> An equivalent property plus £712 could have been awarded to the Deceased; and
- (d) Mr. Charles Hollis, employed by the BDCL as foreman of their works in Tucker's Town, was the owner of rather less than 1/4 acre with a stone cottage. Mr. Gosling, on behalf of the Company, offered to give him a lot measuring 100 x 100 and situation near Mangrove Lake, a four-room cottage with kitchen and all modern conveniences. In addition, he was given £100.<sup>404</sup> Based on these assessments, the Deceased could have received £5,000 and also been compensated with an equivalent property and home.

## Property Comparisons

The Claimants informed the COI of their layman's comparison of properties in the current property market for compensation purposes:<sup>405</sup>

- (a) Rego Sotheby's International Realty advertised on their website [www.regosothebyrealty.com](http://www.regosothebyrealty.com), Site 1A Glebe Hill, Hamilton Parish measuring 1.34 acres for BD\$2,950,000.00:

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<sup>399</sup> COI - Exhibit JBA-4

<sup>400</sup> COI - Exhibit JBA-4, pp. 24

<sup>401</sup> COI - Exhibit JBA-4, pp. 13 and DDT-1, pp. 12

<sup>402</sup> COI - Exhibit JBA-4 and DDT-2, pp. 13

<sup>403</sup> COI - Exhibit JBA-4 and DDT-2, pp. 13

<sup>404</sup> COI - Exhibit JBA-4, pp. 25 and DDT-2, pp.13

<sup>405</sup> COI - Exhibit JBA-4, pp. 26 - 27



- (i) Based on this listing, the value of the Deceased's 12.5 acres of property would in today's market be \$27,518,656.70;
- (ii) Based on this listing, the value of the Deceased's 14.5 acres of property would in today's market be \$31,921,641.80; and
- (b) KW Bermuda advertised on their website [www.kwbermuda.com](http://www.kwbermuda.com), Lantana, Ledgelets Drive, Sandys Parish measuring 9.73 acres for BD\$16,900,000.00:

Based on this listing, the value of the property owned by the Deceased in today's market would be BD\$25,184,994.86.

## Finding of Facts

Based on documents tendered in evidence, the COI:

- (a) could not confirm the names of the Deceased's siblings, as only 9 of 12 siblings are named in their parents' Wills and there were no official documents submitted to confirm lineage, save the Deceased was specifically named in his parents' respective Wills as their son. Again, there were no official records confirming the connection of the Deceased with his children;
- (b) could not confirm the name of the Deceased's wife as the evidence provided shows that he married Rosabelle Winifred Smith and not Winifred Elizabeth Smith. If lineage is proven, then the following findings are accepted in (c) to show a familial connection to the James and Joanna Talbot and potential beneficiaries;
- (c) confirms that the Deceased owned 2 (two) lots comprising 14½ acres of land in Tucker's Town which he inherited from his parents, James and Joanna Talbot (paragraph 4. above);
- (d) confirms that the Deceased was awarded £1000 for 12½ acres (of 14 ½ acres) of land owned by him which was compulsorily purchased by BDCL (refer to paragraph 5. above);
- (e) agrees that Mr. E.F. Gosling, as Secretary of BDCL, participated in every aspect of the Tucker's Town land expropriation, valuation of the same and court proceedings, involvement which amounts to a conflict of interest in all respects. Participation in all aspects may not be a conflict, but there was an opportunity for manipulating the process with insider information and he had significant powers of persuasion over the jury (paragraph 6);
- (f) agrees that the Deceased's property value was higher than comparative property values per acre, but only as relates to 12 ½ acres. If he was being paid for 14½ acres, then the award granted would have reduced the true value per acre. The COI also agreed that the Deceased's property was purchased at an undervalued price of £400 by BDCL;

- (g) agrees that the Deceased was permanently deprived of the use and enjoyment of two (2) unpaid acres of land, since expropriated, being the subject of this claim. Whilst the compulsory purchase of land was lawfully sanctioned, the taking of two (2) acres without compensation to the Deceased by BDCL could be tantamount to there being an intention by BDCL or representatives to permanently deprive the Deceased of the use and enjoyment of those two acres or, alternatively, it can be considered conversion of such land by BDCL, having been acquired without proper compensation at the time of expropriation. Such claims deal mainly with expropriation cases, but the COI also considered that residents may be able to claim through unfair practices by BDCL or its representatives as land may not have been acquired at full market value from landowners and residents;
- (h) acknowledges that the compulsory purchase of Tucker's Town lands from landowners may have been lawfully sanctioned. However, the related processes and procedures for ensuring that BDCL was able to secure all lands required to carry out its primary objective of establishing a "winter playground" for wealthy Americans and British elites may not have been fair and equitable in all cases. Such expropriations resulted in the systematic removal of an entire community from their homes, obliterating their economic sustainability, thereby impacting their health, welfare and livelihood;
- (i) agrees that the integrity of the entire process for compulsory purchase of property in Tucker's Town in the 1920s is called into question as being unequal, inequitable, prejudicial and carried out in an ad hoc manner;
- (j) recommends that a mechanism should be established by the Government to award compensation to the Estate of the Deceased in respect of the said two acres provided they have legal standing on behalf of the ancestors to make the claim; and
- (k) concludes that the BDCL's acquisition of land from Tucker's Town landowners generally was carried out in an inequitable, unequal, prejudicial and ad hoc manner and awards were arbitrarily meted out. As a consequence, the BDCL systematically removed hundreds of Bermudians from their homes, obliterating their health, welfare and livelihood.

## Legal Issues considered

The legal issues considered:

- (a) The Limitation Act 1984 provides the limitation periods for various types of action, including recovery of land, which is 20 years:
- (b) Section 18 provides, "*Extinction of title to land Subject to this Act at the expiration of the period prescribed by this Act for any person to bring an action to recover*

*land (including a redemption action) the title of that person to the land shall be extinguished.”; and*

- (c) The time limit of a personal estate of deceased person is subject to section 23(1) and (2)—

*“no action in respect of any claim to the personal estate of a deceased person or to any share or interest in any such estate (whether under a will or on intestacy) shall be brought after the expiration of 20 years from the date on which the right to receive the share or interest accrued; and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of 6 years from the date on which the interest became due.”*

- (d) The Criminal Code Act 1907 provides the basic definition of theft:

*Section 331: “A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly.”*

- (e) If there was no Will, then the laws of intestacy at the time of his death will prescribe, statutorily, who would be the eligible beneficiaries of the Deceased’s estate.

## Recommendations

Under the Limitation Act 1984, the Claimants may be time-barred from pursuing reparation and/or compensation in respect of their claim via the Courts.

Therefore, the COI recommends that:

- (a) based on the evidence of theft, the matter be referred to the Office of the Director of Public Prosecution [DPP] to take any and all legal actions required in addressing this matter. The COI recognizes that a criminal act may have been perpetrated but for the following reasons: (i) the passage of time, (ii) the identification of those actually culpable, (iii) the fairness of a process one hundred (100) years later, implying vicarious liability to any officer of the BDCL or the BDCL as a corporate body for actions of the company in 1921. However<sup>4</sup>, the COI recognizes also that in all the circumstances it may not be in the public interest to pursue the matter and the DPP may decline to initiate a prosecution. It is therefore prudent to recommend that the Bermuda Government consider establishing a mechanism by which Claimants may be compensated for loss, recognizing that the remit of the COI does not allow the award of damages or compensation for loss suffered; and
- (b) an Order be made by the Government for a settlement for the benefit of all eligible beneficiaries of the Deceased’s estate in the form of a monetary settlement, based on market valuations of properties in the 1920s, plus compounded interest to the

current year (2021) and/or by conveyance of comparable acreage of property within Tucker's Town, taking into consideration:

- (i) the passage of time, current property market values and other comparable properties with similar characteristics; and
- (ii) the position of any bona fide purchasers of the Deceased's property.

## Case 035 – Matter of Robert Moulder

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### Commissioners

Mr. Wayne Perinchief (Acting Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte and Mr. Jonathan Starling.

### Commissioners Recused

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman) and Mr. Quinton Stovell were recused from the matter due a perceived conflict of interest

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### Brief Outline of Arguments

Mr. Robert Moulder (“the Claimant”) on 8th June, 2020 electronically submitted a Claim to the COI. He indicated in that submission that:

*“...I am willing to give oral evidence in public and seek to have standing as a party who has been and continues to be greatly affected by the dispossession of land. My case is an example of how this type of land theft can be accomplished, where people who did not have a valid claim to ownership were provided with deeds and I have in my possession an abundance of evidence to show how this was accomplished by the creation of deeds and sworn (but untrue) affidavits. I believe that my evidence will also be useful to the Commission in general, as it illustrates how land theft could have occurred in other cases historically where the parties may not have as complete a paper trail as I do...I continue to suffer from the effects of a claim wrongly brought against me using an invalid deed. Among other things, I have never been compensated for the enormous financial losses due to, among other things, a delay in starting my intended development during the years that the court proceedings took place, complete inability to carry out parts of the intended development including the construction of two new houses and loss of rents...It is not an exaggeration to say that the false court claim of adverse possession begun in 2004 ruined my life and in attempts to seek compensation I am at risk of losing my home to pay court costs to the Slaughters, Michael Cranfield, Stephen Cook and Cox Hallett Wilkinson, the very parties who participated in the false claim.”*

On 20th October, 2021, the Claimant wrote to the COI and further stated,

*“... As I have repeatedly stressed, the circumstances leading to the grab of my land have never been properly before the courts; in other*

*words, there has never been a trial where the evidence supporting dishonesty was looked at and the merits of such evidence weighed. Further, no-one has ever been examined or cross-examined on this evidence. Instead, the focus of the court proceedings from 2004 to 2007 was fighting over **who** owned the land and **how** my land came to be included in someone's deeds and how they were able to purportedly mortgage the said land-and the later proceedings initiated by me were were struck out.*

*By March 2007, I had fully recovered my land, with the injunction against me fully lifted, and it had been found by the courts that the people who had made a claim to my land did not own it nor did they have any rights or easements over any part of it. By then it was clear to me that the whole thing had been a deliberate attempt to wrongfully take over my land and that I had been dragged through the courts and suffered enormous financial and other damage due to the dishonest acts and conspiracy of those involved. It is **that** discovery that led to my filing actions in the court from 2010 which, if such actions had resulted in trial, would have exposed **how** my land came to be wrongfully included in the Slaughter deeds. But as I have said, and now say again, the evidence has never been put to the test because my proceedings from 2010 were struck out.*

*I understand that the very definition of a strike out is to dispense with a case at an early stage, so I respectfully submit that it should be obvious that my claim was not heard and that fact is clear from the relevant judgments.*

*I will add that my claims were struck out primarily due to what could be called a technical point, and that the courts were persuaded into believing that my claim was made too late and that I was time barred. I do not believe that to be true (and prominent lawyers consulted agree with me) but in any event **the Commission is not bound by the rules of court so cannot dispense with my application for the supposed reason that the courts did...(COI emphasis).***

*My application to the Commission was made because the circumstances surrounding what happened to me and the false claim against my land need to be aired not only for my benefit but for the benefit of the public as well, and as indicated before one outcome that I hope for is a referral to the Department of Public Prosecutions for further action."*

Importantly, the Claimant has admitted the fact that he has had the land of which he was dispossessed returned to him after a three-year (17<sup>th</sup> February, 2014 - March 2007) legal challenge which ended by way of an Order of the Court of Appeal of Bermuda.

## Location of Land in Question

Part of 10 Bridge View Lane, Sandys Parish

## Outline of Facts “Synopsis” as stated Verbatim by the Claimant

*“In October 1999, a significant area of what was my land (forming part of 10 Bridge View Lane, Sandys) was supposedly sold (without my knowledge) by Michael Cranfield who owned adjoining property and claimed to have acquired (1) ownership of my land due to adverse possession and (2) right-of-way over my land due to long use. Essentially, what happened was what I refer to as ‘land theft by deed’, as the supposed purchasers Paul and Janet Slaughter were provided with deeds that they later used in 2004 to masquerade as the true owners and file a Supreme Court action against me where I was wrongly labelled a trespasser.”*

## Documents Submitted in Support of Claim

Forty-four (44) documents were submitted to the COI to include:

- Witness statements given by the Claimant
- “Moulder Court of Appeal March 2007 Judgment”
- “Moulder letters to Bank-2014”
- “Moulder copy of 2014 emails to Bank”
- “Moulder- Copy 2015 emails between J. Chambers and Clarien Bank”
- “Moulder- Slaughter extract from 2010 affidavit”
- “Bridgewater Lane Report 2 Q-Ship Full”
- “Moulder- Slaughter 2005 transcript sample”
- “Moulder-Sample transcripts from 2005 trial Slaughter giving evidence”
- “Moulder-Stephen Cook transcript page”
- “Moulder- Exhibits to affidavit sworn by Stephen Cook”
- “Moulder-Sample transcripts from 2005, trial Cranfield on stand ”
- “Moulder Land issue summary”
- “Moulder, a synopsis”
- “Prior to ownership 1994 Planning Application seeking to create new right-of-way”
- “Cranfield Claiming Adverse CD & P Correspondence”
- “Application by Robert Moulder”
- “Case 179 of 2009-compressed”
- “Commission of Inquiry urgent letter 12<sup>th</sup> October, 2020”
- “Cranfield to Slaughter Conveyance”
- “**Exhibit A** - Application- Additional Evidence including Summaries Email Correspondence”
- “**Exhibit B** - A Synopsis of Bobby Moulder’s Story”
- “**Exhibit C** - Copy of a Memorandum of Mortgage between Paul Jeremy Slaughter & Janet Slaughter, Mortgagor & Capital G. Bank Limited, Mortgage”
- “**Exhibit D** - Copy 2015 emails between J. Chambers and”
- “**Exhibit E** - Copy of 2014 emails between R. Moulder, Fotak, Turin, Clarien Bank”

- “**Exhibit F** - Supreme Court Case No.53 (2010) Moulder v Cox Hallett Wilkinson & Stephen Cook & Michael Cranfield & J.M Slaughter with supporting documents”
- “**Exhibit G** - Letter from Michael Cranfield to Raymond Davis 14<sup>th</sup> November, 1995, Plus a Plan”
- “**Exhibit H** - Cranfield Transcript- 9/2/2005”
- “**Exhibit I** - P.J. Slaughter Transcript-9/2/2005”
- “**Exhibit J** - P.J. Slaughter Transcript- 9/2/2005 Continued”
- “**Exhibit K** - First Affidavit of P.J. Slaughter”
- “**Exhibit L** – S. Cook Transcript- 11/2/2005”
- “**Exhibit M** - Supreme Court Case No. 53 (2010) Moulder v Cox Hallett Wilkinson & Stephen Cook & Michael Cranfield & J.M. Slaughter”
- “**Exhibit O** - Moulder Key Point Summary”
- “**Exhibit P** - 2014 Letters to Clarien Bank”
- “**Exhibit Q** - Copy of Moulder Key Point Summary”
- “**Exhibit R** -2014 Letters not addressed to parties”
- “**Exhibit S** - Q Ship Enterprises Survey Report 2014”
- “Michael Cranfield Affidavit”
- “Response to Mr. R. Moulder 200619”
- “Copy of STATEMENT OF WITNESS-ROBERT MOULDER”
- “STATEMENT OF WITNESS-ROBERT MOULDER
- “STATEMENT OF WITNESS-ROBERT MOULDER”

## Appearances Before the COI by the Claimant for Hearings

The Claimant appeared before the COI on 26<sup>th</sup> January, 2021, 4<sup>th</sup> February, 2021, 11<sup>th</sup> March, 2021 and 23<sup>rd</sup> March, 2021. On 13<sup>th</sup> July, 2021, there was a further Hearing in the absence of the Claimant who did not complete his submissions and withdrew from the Hearing on 23<sup>rd</sup> March, 2021 citing that the proceedings were unfair and that he was being denied the right to having his testimony broadcast to the public, declaring before he departed, “*I will have to seek Judicial Review.*”

**Importantly, in the absence of the parties to whom adverse notices were issued, the COI reopened the matter which was closed and admitted into evidence all documents upon which The Claimant had intended to rely, but which had not been tendered into evidence as Exhibits.** By letter dated 13<sup>th</sup> July, 2021, the Claimant and the parties to whom adverse notices were issued were formally advised by the COI of the reopening of the claim in their absence. (See letter in Appendix)

## Commissioners Regulating Their Own Proceedings and Conducting In Camera Hearings

The COI decided to hold the Hearings in camera after 26<sup>th</sup> January, 2021 sitting. This arrangement was made to preserve the integrity of the process and afford a fair Hearing to all parties, including the Claimant and the parties to whom adverse statements had been directed by the Claimant on 26<sup>th</sup> January, 2021. Guided by section 8 of the Commission of Inquiry Act 1935 and the Rules of Procedure and Practice, the COI decided not to televise or broadcast the Hearings with a view in



mind that, after hearing the evidence from the Claimant, it would make a determination thereafter regarding the issues of relevance and, more importantly, whether the probative value outweighed the prejudicial effect of any of the evidence to be given.

## Hearings

On 26<sup>th</sup> January, 2021, the Claimant began his submission to the COI and then proceeded to name Mr. Michael Cranfield, Mr Paul Slaughter and Mrs. Janet Slaughter, Mr. Stephen Cook, Mr. Paul Harshaw and the institutions of Cox Hallett Wilkinson, Capital G (Clarien Bank), Wakefield Quin and Conyers Bermuda. He adversely named them stating that “lawyers, real estate agents and banks” played a role in his being dispossessed.

## Adverse Notices Issued to Adverse Parties to be Granted Standing before the COI

Adverse Notices were immediately issued by the COI on 24<sup>th</sup> February, 2021 to:

- Wakefield Quin Ltd.
- Clarien Bank Ltd.
- Conyers Bermuda
- Paul and Janet Slaughter
- Michael Cranfield
- Paul Harshaw
- Stephen Cook
- Cox Hallett Wilkinson Ltd.

Material containing the Claimant’s submissions (witness statements) and Exhibits and transcripts were shared by the COI with the parties named above. Wakefield Quin, Clarien Bank, Conyers Bermuda, Paul and Janet Slaughter and Paul Harshaw declined the invitation to attend the Hearing and/or to respond to the Claimant’s submissions. Standing was granted by the COI to Mr. David Kessaram (appearing for Cox Hallett Wilkinson), Mr. Stephen Cook and Mr. Michael Cranfield representing themselves.

At the 23rd March 2021 sitting held in camera, some participants attended the meeting by the Zoom platform, the Claimant made further submissions to the COI in the presence of Mr. David Kessaram (appearing for Cox Hallett Wilkinson Law Firm), Mr. Stephen Cook representing himself and Mr. Michael Cranfield representing himself. The Claimant withdrew from the sitting before its conclusion citing that the process was unfair, that he was being denied the right to having his testimony broadcast to the public, declaring before he departed: “*I will have to seek Judicial Review.*”

## RESPONSE TO CLAIMANT'S SUBMISSIONS BY PARTIES WHO WERE GRANTED STANDING

**MR. DAVID KESSARAM**

43:51: I'm grateful, Mr. Chairman. The first thing I would wish to seek is some guidance from the Tribunal regarding the mandate and the terms of reference because we could spend a lot of time discussing what happened in this case, from the very beginning, right up until the present day, because it is still going on, but I understood from what was said earlier that the terms of reference of this Commission are restricted to hearing evidence on land losses. That is, what I understood by that was that the Commission wishes to hear evidence from people who have experienced land loss in the past and are still victims of that complaint. As was indicated earlier in these proceedings today, Mr. Moulder was successful in persuading the Court of Appeal that a wrong had been done to him in that land of his, which was claimed to be acquired by others through adverse possession, was not correct, that he still retained the right to his land and he was restored to his rightful ownership of the land by virtue of Court of Appeal Judgments and there were two of them, I can't remember whether the one that has been produced is the first or the second, but there were two (2) Court of Appeal Judgments in which he was, I believe, both successful in having the entirety of the rights which he said were taken from him, restored to him. In other words, Mr. Moulder is not the victim, as matters presently stand, of a land loss. He has used the court process and the system of justice that is available to all citizens of this country. He has utilized that process to have his rights restored.

**MR. DAVID KESSARAM**

46:32: What happened after that is that Mr. Moulder embarked on an exercise, through the courts again, to seek compensation from all of those he considered to be involved in a conspiracy to defraud him of his land through an action for damages against my firm, Cox Hallett Wilkinson, Mr. Cook personally, the Slaughters who had purchased the neighbouring land, I believe, and Mr. Cranfield, of course, who was the owner of the land before he sold it to the Slaughters. So Mr. Moulder embarked on a course of action to seek compensation from all of the individuals who

he claimed were involved in a conspiracy to defraud him of the land in question. So he brought an action in the Supreme Court for damages against all of those individuals I just named and the Defendants to that action sought to have it struck out on the basis that the claim, as it was framed in his statement of claim, disclosed no reasonable cause of action. One of the allegations that Mr. Moulder made against the Defendants was a fraudulent conspiracy, the same allegation that has been made in different guises ever since.

**MR. DAVID KESSARAM**

48:39: But the Defendants applied to the Chief Justice to have that entire action struck out. They were successful. The Chief Justice struck out the claim on the basis that there was no reasonable cause of action for a number of reasons, not only the one that, the fraud claim that Mr. Moulder knew the truth all along, but for a number of reasons, including that the claim was statute barred and including that the Defendants owed Mr. Moulder no duty in negligence or otherwise. So, that decision hasn't been put before you. I think if the guidance I get from you warrants it, we can have all of those Judgments put before you because there was more than one. Mr. Moulder appealed the Chief Justice's striking out decision. I should add that not only did the Chief Justice strike out the action, but he awarded costs of the proceedings to date against Mr. Moulder. Mr. Moulder, then appealed that decision to the Court of Appeal and we have a lengthy Court of Appeal decision, again dismissing Mr. Moulder's appeal and awarding costs against Mr. Moulder.

**MR. DAVID KESSARAM**

50:12: Mr. Moulder was not happy with that. He then brought a new court action against the same Defendants, a new action altogether, claiming that the strikeout application in his previous action, the decision that was obtained in that previous action striking out his action, was obtained by a fraud on the court. And the subsequent Chief Justice, Mr. Richard Ground, had retired as Chief Justice by then. The new Chief Justice, Mr. Justice Ian Kawaley, heard that claim and struck it out on the basis that that cause of action had no prospects of success and again, costs were awarded against Mr. Moulder. There were three

(3) sets of costs. I'm not sure about this, but I have a sneaking suspicion that Mr. Moulder may have even appealed that decision, in fact, I remember now, and I can confirm that Mr. Moulder did appeal the subsequent decision of the Chief Justice striking out his second action and that too was dismissed by the Court of Appeal with cost. So there are four (4) sets of costs orders against Mr. Moulder which the Defendants now wish to have paid. They have been assessed by the court in taxation proceedings, amounts have been determined as to how much Mr. Moulder owes in costs, but which he hasn't paid, and they're now seeking to enforce the decision, the cost orders against him, against whatever assets he has. For one reason or another, trying to get the bailiffs to execute those Judgments has been somewhat problematic and one of the reasons was no one seemed to be interested in purchasing the only substantial asset that Mr. Moulder has, which is his house in Somerset. No one seemed to be willing to pay the market price for it, so the Defendants went to court, at least two (2) of the Defendants went to court, to get from the court a Writ of Venditi, what's called venditioni exponas, which would allow the bailiff to sell the house for whatever amounts could reasonably be obtained, whether it was below the market price or not. And that now is the subject of a challenge on the basis that it is unconstitutional by the bailiff. So the bailiff now is in the fight, saying that the execution processes that the Judgment creditors are now employing to get paid their costs is unconstitutional. It's being, well, the original cost order was in 2010, so it's now eleven years since that decision and the assessment of those costs, that the Judgment debtors have been trying to get paid what is owed to them under decisions of the court. Eleven (11) years they have been trying to get paid what's owing to them under decisions of the court, the Supreme Court and the Court of Appeal in Bermuda, and they have achieved nothing so far in terms of recoupment of their legal costs.

. MR. DAVID KESSARAM

54:32: The matter, the constitutional argument that the Attorney General on behalf of the bailiff is raising with the Supreme Court is coming up on the 12th of April, next month. But the point I am trying to get to

and the guidance I am seeking is whether everything that occurred in this case subsequent to the Court of Appeal decisions, restoring Mr. Moulder's rights to him, is relevant or not to the mandate and the terms of reference of this Commission because if they are, if the Commission considers that it is relevant for them to know everything that is being said about the Defendants subsequent to the restoration of his land to him, then we can be here for a very long time because numerous allegations have been made against them and allegations of a very serious nature against professional people, as well as lay people, serious allegations of fraud and improper dealings. Now, those allegations have to be answered if they're allowed to be left on, if the Commission considers that it is within its remit to hear this part of the story. It will take time, but if it has to be done, it will be done because not only are, well, Mr. Cook is a professional person, he can speak for himself, but allegations have been raised against him of a very serious nature that would affect his professional standing. But if it is irrelevant because Mr. Moulder's rights were restored to him, that he is not a victim, as matters stand of land loss, then we needn't go into it. So that is the guidance that I am seeking from the Tribunal so that we know what we have to deal with going forward.

**HON. WAYNE PERINCHIEF**

57:08: Yes, Mr. Kessaram, thank you for your submission. Counsel, I might make a comment now and for the record that Mr. Moulder seeks to raise his hand and have some input. However, at this point I wish to remind Mr. Moulder that he recused himself from this process. You have been allowed to sit, but sir, we will hear, we will hear those who are given adverse standing. As we let you speak unimpeded, they must speak. No, I will not, sir. Counsel.

**MR. STEPHEN COOK**

59:16: Thank you, Chairman, and I'm appreciative of the opportunity to speak because as Mr. Kessaram points out, Mr. Moulder's allegations are very serious allegations, particularly for a professional who has been practising for a very long time. I can assure the Commission that in the process of the due diligence in doing the conveyance of Mr. Cranfield to the Slaughters, I went through the standard procedures

for that. I relied on the evidence of title that was provided to me by Mr. Cranfield and his attorneys, Conyers, Dill & Pearman. The documentary title related to the freehold land and I don't think that's an issue. As to the possessory land, the evidence was comprised of about eight (8) affidavits of various people who had either occupied the house or neighbours or whatever, and it's that on which I relied in concluding that there was a good argument that Mr. Cranfield had in succession to his predecessors the necessary 21 years plus of valid possession which would have entitled him to claim that he had freehold title to the possessory land. I should point out here that the Planning Act does not, in fact, make it necessary for Planning approval to create title by adverse possession. That is because the definition of sub-division relates to \_\_\_\_\_; adverse possession is acquisition by action and inaction. So, it does not require Planning approval of sub-division. So you can clear that off as far as Mr. Moulder and his surveyor's propositions. Beyond that, I can say also that the information as to the state of the title to the possessory land was made known to all parties involved. The agent made that claim before a contract was signed. The contract itself explicitly set out the condition and of the possessory title and, in the conveyance itself, there's a clear distinction made between the documented title for the freehold plan and the evidence of possession in support of the title, possessory title to the possessed plan. So all that was stated clearly, so there certainly wasn't any conspiracy. Certainly, all what happened is Conyers Dill sent me their affidavits, I looked at them, made a few questions and then I made my own professional judgment.

**MR. STEPHEN COOK**

1:03:43: Basically, I think that's about it unless anyone has any questions, but I thought Mr. Kessaram put the matter very well and hope that the Commission will find that notwithstanding the nefarious conclusions of Mr. Moulder, in fact, everything was indeed, all the participants were behaving in an innocuous manner. They were not seeking to take something from Mr. Moulder that we did not own. They proceeded on the basis that he had already lost land by the adverse

possession by Mr. Cranfield and his predecessors in title. Thank you.

**HON. WAYNE PERINCHIEF**

1:04:12: Thank you, Mr. Cook. The next person who has standing, Mr. Cranfield, do you wish to make a comment, sir, or ask...?

**MR. MICHAEL CRANFIELD**

1:04:30: Thank you, Commissioner and the whole Commission of Inquiry board. I don't really have anything else to add. Like I said, I had a contract with the Slaughters, the contract set out specifically what the affidavits were all about. The contract said I could not give good title to the property described as whatever you want to call it, Possessory Adverse Ownership or anything like that. The Slaughters said that they would go ahead with the deal, provided I was to supply them with these affidavits and I supplied them with the affidavits that were acceptable to them and we went ahead. And that was the last I heard of it until I was called to be a witness, I think in an Appeals Court, many years later and, I mean, that's all I can say. I'm presuming that somewhere in Mr. Moulder's evidence is the original contract of sale and purchase and that very plainly sets out and is signed by all parties as to what the deal was. That's about all I can say. Whatever happened after that is history and has been a pain for the last, well, since 2010, that's eleven (11) years now, and it's a burden. Man, the things that Mr. Moulder and other parties that Mr. Moulder has worked with have said in the press have hurt my, my professional life. I no longer have a job I used to have, whether that was because of it or not, but when people start banding about allegations of fraud, financial institutions look very hard at their employees and discover or decide on a risk basis which way they're going to go and that's all I can say. I don't know whether that was the reason that I was no longer working at the financial institution, but it was all around about the time that these allegations came out.

**HON. WAYNE PERINCHIEF**

1:06:51: Thank you very much, Mr. Cranfield. I believe that is the end of the update for those persons having standing to make a comment, unless there was anyone who was online but not on video. Counsel, I'll ask you to

make any comment or relevant comment that you wish at this point, sir.

## Issues

1. Does the scope of the Inquiry allow the Commissioners to inquire into the dispossession of land in circumstances where the land has been recovered by the Claimant?
2. Whether Commissioners may regulate own proceedings.
3. Whether Commissioners may review decision(s) of the Supreme Court of Bermuda.
4. Whether Commissioners can inquire into and consider the merits of allegations and or hear new evidence ‘supporting dishonesty’, being relied on by the Claimant regarding his being dispossessed of land, in respect of a matter previously determined by the Supreme Court of Bermuda.

## Findings of Fact

- The Claimant was dispossessed of land, Part of 10 Bridge View Lane, Sandys Parish.
- The Claimant repossessed the land and was placed back in possession in 2007 by virtue of the decision of the Court of Appeal of Bermuda.

## Discussion

The COI can and did regulate its proceedings. The COI does not share the view that having heard the proceedings in camera, the Claimant was denied a fair Hearing. Importantly, the fact that the proceedings were not broadcast did not constrain the Commissioners from carrying out their sworn duty nor did it render the process unfair as the Commissioners are the persons before whom claims were to be brought. The duty of the Commissioners was to hear the claim and, respectfully, televising the proceedings was not mandatory, but lay in a discretion which the COI can regulate. The COI cannot review the decision of a Court of Bermuda and afortiori is not empowered to consider the matters the Claimant sought to invite it to hear and decide, namely legal or other issues post the land being returned to him. As unfortunate as the present state of affairs of the Claimant may be, those are his legal challenges and finances. The COI has no jurisdiction to hear, much less determine, these matters.

## Conclusion

The Claimant had been dispossessed of land, Part of 10 Bridge View Lane, Sandys Parish, and he retained possession of the land by virtue of a Judgment of the Court of Appeal of Bermuda, Robert Moulder and Paul Jeremy Slaughter and Janet Murray Slaughter Civ. App. No. 1 of 2007, delivered 9 March 2007. There the Court said in its reasons for Judgment “...the declaration contained in the order dated the 5<sup>th</sup> December, 2006 set aside and the injunction contained in the order of the 8<sup>th</sup> December, 2006 and the 17<sup>th</sup> January, 2007 be discharged”. In summary, the Respondents to



*the Appeal had established a right-of-way over certain land belonging to the Claimant and injunctive relief had been given by a Judge of the Supreme Court on the 5<sup>th</sup> December, 2006.”*

Acknowledging, Mr. Robert Moulder’s statement of purpose as outlined that is,

*“... As I have repeatedly stressed, the circumstances leading to the grab of my land have never been properly before the courts; in other words, there has never been a trial where the evidence supporting dishonesty was looked at and the merits of such evidence weighed. Further, no-one has ever been examined or cross-examined on this evidence. Instead, the focus of the court proceedings from 2004 to 2007 was fighting over **who** owned the land and **how** my land came to be included in someone’s deeds and how they were able to purportedly mortgage the said land-and the later proceedings initiated by me were struck out,”*

the COI is not empowered in this or any case to review or to consider any material touching and concerning any matter(s) where the Supreme Court and/or the Court of Appeal of Bermuda had rendered a Judgment, as these matters are not within the COI’s jurisdiction or mandate. It is most unfortunate that it was perceived that the COI was the forum conveniens where ‘evidence supporting dishonesty’, as the Claimant alleges, and flowing from the Court Judgment **could be heard** (COI emphasis) and/or the merits of such evidence weighed by having persons examined or cross-examined.

The COI reiterates that it accept that this case is an example of a land grab and that the Claimant’s land was returned to him by a Court process which he initiated. A fortiori issues raised by the Claimant regarding his legal challenges post the Court of Appeal Judgment and after the land was returned to him, including his social, economic and psychological wellbeing, are unfortunately matters where the law does not permit the COI to inquire into the circumstances.

## **Recommendations**

There are no recommendations.

## Case 037 – Estate of Fred Hendrickson, Sr.

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell.

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### Introduction

Justin Robinson (“the Claimant”) is the son of Fred Hendrickson, Jr. and grandson of Frederick Hendrickson, Sr. He brought forward the claim on behalf of his father, now deceased, and the only son of Fred Hendrickson, Sr.

In 1954 Mr. Fred Hendrickson Sr. married Etoi Blakeney and became the stepfather to Carol-Ann Blakeney, later Carol-Ann Furbert, and Albertha Rosetta Harris (née Green). Frederick Hendrickson’s wife passed away in 1998.<sup>406</sup>

Father and son (Fred Sr. and Jr.) were in business together and had an on-going relationship prior to Fred Jr. having a massive stroke in February 1987. He was unable to communicate, use his right arm or walk properly. It took over ten years for Fred Jr. to recover. However, he predeceased his father on 22<sup>nd</sup> August 2012.

The Claimant stated that his grandfather showed early signs of dementia during 2012 and it is his understanding that Carol-Ann Furbert and Rosetta Harris conspired to take possession of his grandfather’s estate. He further claimed that his grandfather owned the following properties:

1. 38 Clarendon Road, Bermuda
2. 8 Town Hill, Bermuda
3. 16 Town Hill, Bermuda
4. 29 Dundonald Street, Bermuda
5. 1020 Autumn Harvest Drive, Virginia Beach
6. 908 Pecan Point Road, Virginia Beach
7. 775 Whitehurst Landing Road, Virginia Beach

The Claimant was seeking redress as he alleged that the properties transferred to the ownership of the stepdaughters was done by irregular means. He also claimed that there was no record at the Registry General of Carol-Ann Furbert and Albertha Rosetta Harris having been formally adopted by Fred Sr., thus he challenged the validity of the stepdaughters having obtained Power of Attorney.

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<sup>406</sup> COI - Exhibit JR-2

## Adverse Notices

Adverse notices were sent to the following individuals on 13<sup>th</sup> March, 2021. The COI received no response from the individuals named.

1. Barbara Gibbons Creed
2. Carol-Ann Furbert
3. Albertha Rosetta Harris Greene-Jack

## Summary of Facts

The Claimant appeared before the COI on 1<sup>st</sup> February, 2021. He said his father was Fred Robinson and his mother was Margaret Robinson. His father changed his name to Fred Hendrickson in his younger years and changed it back to Fred Robinson and the Claimant was given the name Justin Robinson. His claim was submitted on behalf of his grandfather's estate, the Estate of Frederick Lennon Hendrickson.

The Claimant gave evidence based on his written witness statement<sup>407</sup>, outlined as follows:

1. The First Power of Attorney dated 30<sup>th</sup> March, 1999 effected over Fred Sr.'s estate. Shirley Richardson, Fred Sr.'s sister-in-law, was granted Power of Attorney.
2. Power of Attorney dated 6<sup>th</sup> August, 2003 was prepared appointing Carol-Ann Furbert and Albertha Rosetta Harris, revoking the previous Power of Attorney.
3. Power of Attorney dated 15<sup>th</sup> October, 2003 was prepared by Wakefield Quin granting Power of Attorney to Betty Hendrickson Burch, Fred Sr.'s niece, revoking the previous power of Attorney dated 6<sup>th</sup> August, 2003
4. Power of Attorney dated 23<sup>rd</sup> May, 2004 prepared in Virginia Beach, Virginia by Barbara Gibbons Creed, a cousin to Fred Sr.'s stepdaughters. Power of Attorney reverted to Carol-Ann Furbert and Albertha Harris and was registered in Bermuda on 15<sup>th</sup> November, 2004.
5. Sometime in 2012, Fred Sr. and Carol-Ann Furbert had an argument that resulted in the Police being called. Fred Sr. was arrested and removed from his property.
6. It was the Claimant's understanding that during this time, his grandfather may have been showing signs of early dementia.
7. He believed that due to my grandfather developing dementia, Carol-Ann and Albertha had him admitted to Mid Atlantic Wellness Institute ("MAWI").
8. Carol-Ann Furbert and Albertha Harris attempted to have his grandfather admitted to MAWI permanently.

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<sup>407</sup> COI - Exhibit JR-2

9. After assessments were carried out on his grandfather, MAWI confirmed that he was fit to return home. However, Fred Sr. was told that he could not return to his property.
10. His stepdaughters placed his grandfather in Elder Care Rest Home, Devonshire.
11. During his father's final year, there were multiple efforts to keep him from contacting his father.
12. When Fred Sr. was admitted to Elder Care Rest Home, the Claimant and his family on several occasions attempted to visit. However, their visits were denied by Mrs. Trott, the supervisor, who informed them that only Carol-Ann Furbert and Albertha Harris were allowed access.
13. The Claimant's father, Fred Jr., passed on 22<sup>nd</sup> August, 2012.
14. Four months before the passing of Fred Jr., three (3) letters were prepared by attorney Dennis Dwyer of Wakefield Quin:
  - To the Elder Care Rest Home Facility expressing the concern of his family's and his concerns that his grandfather had been left there and advising them that the Power of Attorney that was being used by Carol-Ann Furbert was invalid.
  - To the Registry General to question the Power of Attorney for Carol-Ann Furbert that was prepared in Virginia, referring to his grandfather's business and his three homes in Virginia.
  - To the Administrative Assistant at the Legal Aid Office: *"Application for Leroy Frederick Robinson regarding legal aid rejection. It appears that the committee has assumed that Mr. Robinson is a member of the household where he resides, but this is not the case. The applicant's only source of income is the financial assistance. The applicant has a valid legal complaint, and we have advised that if necessary, he should apply to the Supreme Court in respect of his father, Frederick Hendrickson, Sr., either under Section 10 or 11 of the Power of Attorneys Act 1944. And or alternatively, for the appointment of him as receiver under the provisions of the Mental Health Act 1974. Steps may also have to be taken under the Senior Abuse Register Act 2008. The applicant is totally dependent upon the state and has no interest financially or otherwise in the property in which he resides and pays rent."*

#### **Pieces of Evidence Submitted For Case 037**

- JR- 1** – Application to the COI from the Claimant, J.W. Robinson  
**JR-2** – Claimant's Statement to the COI  
**JR-3** – Power of Attorney dated 6<sup>th</sup> August, 2003  
**JR-4** – Power of Attorney dated 15<sup>th</sup> October, 2003  
**JR-5** – Virginia Beach Power of Attorney dated 27<sup>th</sup> May, 2004.

**JR-5a** – City of Virginia Beach, Virginia, USA, dated 15<sup>th</sup> May, 2004  
**JR-6** – Letter from Wakefield Quin dated 25<sup>th</sup> May, 2012  
**JR-7** - Letter from Wakefield Quin dated 25<sup>th</sup> May, 2012  
**JR-8** – Letter from Wakefield Quin dated 25<sup>th</sup> May, 2012  
**JR-9** – Caveat dated 9<sup>th</sup> October, 2013  
**JR-10** – Supreme Court Caveat of L.F. Robinson dated 16<sup>th</sup> November, 2012  
**JR-11** – *The Royal Gazette* Funeral Notice dated 16<sup>th</sup> November, 2012  
**JR-12** – Document of Notes dated 1<sup>st</sup> February, 2021  
**JR-13** – Extract from Obituary of Fred Sr. (aka Old House)  
**JR-14** – Information from Registrar Search Results.  
**JR-15** – Heads of Voluntary Conveyance dated 24<sup>th</sup> May, 2004  
**JR-16** – Memorandum of Confirmation and Voluntary Conveyance  
**JR-17** – Reconveyance Deed dated 27<sup>th</sup> July, 2018  
**JR-18** – Notice to Registrar General dated 8<sup>th</sup> Match, 2012  
**JR-19** – Deed of Conveyance dated 13<sup>th</sup> July, 2018  
**JR-20** – Form of Notice to LTRO of Entitlement dated 13<sup>th</sup> July, 2018  
**JR-21** – Deed of Conveyance, Teaghialgh Trust  
**JR-22** – Heads of Voluntary Conveyance dated 25<sup>th</sup> April, 2001

## Findings of Facts

### Powers of Attorney in Chronological Order

1. 30<sup>th</sup> March, 1999, from Frederick Leonard Hendrickson to Shirley Richardson.<sup>408</sup>
2. 6<sup>th</sup> August, 2003, drawn by Grant & Associates, Barristers & Attorneys.<sup>409</sup> Frederick Leonard Hendrickson to Carol-Ann Louise Furbert and Albertha Rosetta Harris. Mr. Hendrickson revoked the Power of Attorney dated 30<sup>th</sup> March, 1999 to Shirley Richardson, registered in Registry General Book of Deeds Number 196 pages 81 to 83.
3. 15<sup>th</sup> October, 2003, drawn by Wakefield Quin, Barristers & Attorneys and Notary Public. Frederick Leonard Hendrickson to Betty Rovine Hendrickson Burch, Frederick Hendrickson's niece.<sup>410</sup> This Power of Attorney revoked the power of attorney dated 6<sup>th</sup> August, 2003 which appointed Carol-Ann Louise Furbert and Albertha Rosetta Harris.
4. 27<sup>th</sup> May, 2004, drawn by Grant & Associates. Frederick Leonard Hendrickson to Barbara Gibbons Creed, cousin to Frederick Leonard Hendrickson's stepdaughters Carol-Ann Furbert and Albertha Greene<sup>411</sup>. This Power of Attorney revoked all previous Powers of Attorney and was governed by the laws of Virginia. This Durable General Power of Attorney was subscribed, sworn to and acknowledged on 27<sup>th</sup> May, 2004 by Frederick Leonard Hendrickson before a Notary Public in Virginia, Beach, Virginia.

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<sup>408</sup> COI - Exhibit JR-3

<sup>409</sup> COI - Exhibit JR-3

<sup>410</sup> COI - Exhibit JR-4

<sup>411</sup> COI - Exhibit JR-2

5. 4<sup>th</sup> April, 2013, drawn by Trott & Duncan Ltd. From Albertha Greene appointing her son, Albert Curtis Harris, her true and lawful attorney to carry out the following act with regard to her interest in real property at 38 Clarendon Road, Hamilton Parish FL04 and the vacant lot of land adjoining the aforementioned land.<sup>412</sup>

### **Conveyances and Reconveyances in Chronological Order**

1. Voluntary Conveyance dated 25<sup>th</sup> April, 2001. Grantor: Frederick Leonard Hendrickson to Grantees Carol-Ann Louise Furbert and Albert Curtis Harris. The property conveyed was known as Grove Annex, 8 Town Hill Road, Flatts, Smith's Parish FL 07 having assessment numbers, 110303016, 110304012, 110305019, 110306015 and 11030701.<sup>413</sup>
2. Voluntary Conveyance dated 27<sup>th</sup> May, 2004, drawn by Grant & Associates. Frederick Leonard Hendrickson to Carol-Ann Furbert, Albertha Rosetta Greene, Albert Curtis Harris and Earl Jabral Chike Furbert. Property conveyed was Lot 31, Clarendon Road, Hamilton Parish.<sup>414</sup>
3. Voluntary Conveyance dated 31<sup>st</sup> December 2005. However, notice drawn by Moniz & George, Barristers & Attorneys, sent during 2012 to Registrar General. Frederick Leonard Hendrickson to Carol-Ann Furbert and Albertha Rosetta Greene. Property conveyed consisted of a three-apartment dwelling having assessment numbers 080137016, 080137113 and 080137210 located at 38 Clarendon Road, Hamilton Parish.<sup>415</sup>
4. Reconveyance dated 13<sup>th</sup> July, 2018, drawn by Conyers Dill & Pearman from Clarien Bank to Carol-Ann Furbert to Albertha Rosetta Green. Property reconveyance 38 Clarendon Road, Hamilton Parish FL 04.
5. Form of Notice to Land Title Registrar dated 13<sup>th</sup> July, 2018, prepared by Conyers Dill & Pearman. Conveyance from Carol-Ann Furbert, Albertha Rosetta Greene, Albert Curtis Harris and Earl Jabari Chike Furbert to Diana Dorn Antonition. Property, a strip of land for a right-of-way located at 31 Clarendon Road, Hamilton Parish. The strip of land was formerly part Lots 3 and 4 right-of-way, Clarendon Road.<sup>416</sup>
6. Deed of Conveyance dated 18<sup>th</sup> January, 2019, drawn by Wakefield Quin Limited from Carol-Ann Furbert and Albertha Green as beneficial owners of Lot 3, Clarendon Road, Hamilton Parish. They sold this property for \$285,000 with the grant of a right-of-way to Kirsten Elisabeth Beasley and Rachael Layton Rance in their capacity as Trustees of Teaghlaigh Trust.<sup>417</sup>

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<sup>412</sup> COI - Exhibit JR-21

<sup>413</sup> COI - Exhibit JR-22

<sup>414</sup> COI - Exhibit JR-5a

<sup>415</sup> COI - Exhibit JR-18

<sup>416</sup> COI - Exhibit JR-20

<sup>417</sup> COI - Exhibit JR-17

## Caveats

1. A Caveat was filed on 9<sup>th</sup> October, 2013 in the Supreme Court of Bermuda Probate Jurisdiction by Wakefield Quin in the Estate of Leroy Frederick Robinson (a.k.a. Fred Robinson) who died on 22<sup>nd</sup> August 2012. *Let no Grant be sealed in the Estate of Leroy Robinson (a.k.a. Fred Robinson) without notice to Justin W. Robinson, c/o Wakefield Quin Limited, Barristers & Attorneys.*<sup>418</sup>
2. A Caveat was filed on 9<sup>th</sup> October, 2013 in the Supreme Court of Bermuda Probate Jurisdiction by Wakefield Quin Limited, Barristers & Attorneys in the Estate of Frederick Leonard Hendrickson (a.k.a. Fred Hendrickson) who died 7<sup>th</sup> November, 2012. *Let no Grant be sealed in the Estate of Frederick Leonard Hendrickson ( a.k.a. Fred Hendrickson) without notice to Justin W. Robinson, c/o Wakefield Quin Limited, Barristers & Attorneys.*<sup>419</sup>

## Key Issues

1. The validity of the Power of Attorney dated 27<sup>th</sup> May, 2004 drawn in Bermuda by Grant & Associates. Frederick Leonard Hendrickson to Barbara Gibbons Creed, a cousin to Fred Sr.'s stepdaughters. The Power of Attorney is governed by laws of Virginia and makes mention of four properties located in Virginia. It is significant to note that a Power of Attorney over real property can only be drawn in the jurisdiction where the land is situated.
2. Voluntary Conveyance drawn by Grant & Associates dated 27<sup>th</sup> May, 2004 from Frederick Leonard Hendrickson to Carol-Ann Furbert, Albertha Rosetta Greene, Albert Curtis Harris and Earl Jabral Chike Furbert. Property conveyed: Lots 2 and part of Lot 3, 31, Clarendon Road Hamilton Parish. This property was conveyed on the same day that Frederick Leonard Hendrickson gave Power of Attorney to Barbara Creed. Power of Attorney dated 27<sup>th</sup> May, 2004, drawn in Bermuda by Grant & Associates, bearing a \$25.00 stamp and signed by Frederick Leonard Hendrickson, mentions four properties situated in Virginia Beach, Virginia, USA and was notarized in Virginia. The document states: "*The foregoing Durable General Power of Attorney was subscribed, sworn to and acknowledged before me on 27<sup>th</sup> May, 2004 by Frederick Leonard Hendrickson, the Principal, as his free act and voluntary deed.*" The following questions arise: Why was it necessary to have a lawyer draw up the Power of Attorney in Bermuda when the properties referred to in the Power of Attorney are not located in Bermuda, but in Virginia? Where was Frederick Leonard Hendrickson at the time that the Power of Attorney was signed, in Bermuda or in Virginia? This matter requires further investigation.
3. The Durable General Power of Attorney prepared in the United States dated 23<sup>rd</sup> February, 2005 was contested by the relatives of Frederick Leonard Hendrickson. Dennis Dwyer of Wakefield Quin, the relatives' lawyers, sent a letter to the Registry General dated 25<sup>th</sup> May,

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<sup>418</sup> COI - Exhibit JR-10

<sup>419</sup> COI - Exhibit JR-9

2012 indicating that the relatives were contesting the validity of that Power of Attorney and asserting that it did not revoke the previous Power of Attorney dated 15<sup>th</sup> October 2003 in favour of Betty Rovine Hendrickson Burch. The letter stated that steps would be taken to apply to the Supreme Court in accordance with the provisions of section 11, Power of Attorneys Act 1944. It appears that this matter is unresolved.

This letter is recorded as an Exhibit.<sup>420</sup>

420 COI - Exhibit JR-6



Frederick Hendrickson, Sr. and his grandson, Justin Robinson. This appears to be a conflict of interest.

## Conclusion

Several Powers of Attorney have been drawn from 1999 through to 2013. However, most questionable is the Durable General Power of Attorney prepared in the United States dated 23<sup>rd</sup> February, 2005 which was contested by the relatives of Frederick Leonard Hendrickson as to its validity and the effects it has over the previous Power of Attorney dated 15<sup>th</sup> October, 2003 in favour of Betty Rovine Hendrickson Burch. As the validity of this Power of Attorney has been raised by the Claimant, steps should be taken to apply to the Supreme Court under the Provisions of the Power of Attorneys Act 1944.

## Recommendations

1. This case needs to be further investigated and if it is determined that properties sold were not in accordance with legal documentation, then the Claimant may have a valid claim.
2. The Department of Immigration to be contacted to give confirmation if Frederick Leonard Hendrickson was travelling on 27<sup>th</sup> May, 2004 to determine whether he was before the Notary Public in Virginia Beach, USA. The documents were purportedly signed in front of the Notary Public, Mr. William A. Whesy III. As stated on the document, *“To hereby certify that on the day of the date, hereof before me personally appeared Frederick Leonard Hendrickson, known to be the person named in the deed, hereto annex marked and initialed by me and the said Frederick Leonard Hendrickson did then acknowledge before me that he has signed, sealed and delivered the said Deed as an act and deed for the purposes therein expressed and that the signature described to the said Deed the opposite. The seal thereon was the signature and handwriting of the said Frederick Leonard Hendrickson in testimony where I the said Notary Public have hereto set my hand and notary seal this 27th day of May, 2004 William A. Whesy”*.
3. An expert needs to verify the signature of Frederick Leonard Hendrickson on the Power of Attorney dated 27<sup>th</sup> May, 2004.
4. There should be follow up with the Registry General as Dennis Dwyer, Attorney of Wakefield Quin Limited, addressed a letter to that Department on behalf of the relatives of Frederick L. Hendrickson with regard to the validity of the Power of Attorney Registered 15<sup>th</sup> November, 2004.

## Case 039 – Estate of Emelius Darrell

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### Commissioners

Mr. Wayne Perinchief (Acting Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte and Mr. Jonathan Starling

### Commissioners Recused

Mrs. Justice (Ret'd) Norma Wade-Miller and Mr. Quinton Stovell were recused because of perceived conflict of interest.

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### Adverse Notices

Government of Bermuda, Letter dated 29<sup>th</sup> July, 2020  
Estate of Gayous Powell, Newspaper Notice dated 19<sup>th</sup> March, 2021  
Estate of Edward T. Richards, Newspaper Notice dated 19<sup>th</sup> March, 2021  
Estate of Wycliffe Stovell, Letter dated 19<sup>th</sup> March, 2021

### Background

Emelius Daniel Darrell ("the Deceased") owned several Southampton Parish properties which were inherited by his son, George Wellington Darrell, and, upon his death, by his son, John Nathaniel Darrell. One of the properties is the current location of Heron Bay School [now Heron Bay Primary School]. Cynthia Fishington ("the Claimant"), daughter of George William Darrell and granddaughter of the Deceased claimed that prior to the full development of Heron Bay School, there was on the lot as an existing building which was used as a school for black children. The Claimant asserted that the Deceased handed over the building and the land on which it sat to the Bermuda Government, but he did not convey any additional property to Government for the full development of the school.<sup>421</sup>

The Darrell family has had many legal battles with Government spanning some sixty-eight years over properties owned or formerly owned by the Deceased. The claim before the COI pertained to the land upon which Heron Bay Primary School is located. The Claimant maintained that in addition to the Deceased donating the original building to Government, he also allowed the use of additional land for a playing field. However, in 1977 the Government extended the school grounds and proceeded to bulldoze further into the land on the south side of the original playing field. John Wellington Darrell objected to this development and despite his objection, Government extended the playing field. Other properties that formerly comprised part of the Deceased's estate are also part of the claim heard by the COI.

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<sup>421</sup> COI - Exhibit CF-1

John Nathaniel Darrell, grandson of the Deceased, carried on the legal battle against Government through the years and did everything possible to retain ownership of the various properties formerly owned by his grandfather. He drew public attention through the news media,<sup>422</sup> including *The Royal Gazette*,<sup>423</sup> sent letters to Members of Parliament,<sup>424</sup> the Bermuda Government,<sup>425</sup> various Government Departments,<sup>426</sup> the Attorney-General<sup>427</sup>, His Excellency the Governor<sup>428</sup> and even to Her Majesty the Queen.<sup>429</sup> He spent countless hours and a great deal of money fighting legal battles against the Government and in doing so lost thirty-seven properties, two taxis and died almost penniless man<sup>430</sup> with the legal matters still unresolved.

## Summary of Facts

Claimant Cynthia Fishington, one of four Claimants, provided for COI a witness statement dated 22<sup>nd</sup> January, 2021. At the Hearing before the COI on 2<sup>nd</sup> February, 2021, she was joined by Claimant Nathan Darrell, son of John Darrell and grandson of George Wellington Darrell; Claimant Donald McMahon, grandson of George Wellington Darrell and nephew of John Darrell; and Claimant Halle Teart, great great-granddaughter of George Wellington Darrell and great great great-granddaughter of the Deceased. Claimant Teart, the primary presenter for the Claimants, read for the COI the witness statement dated 23<sup>rd</sup> of January, 2021.

In that witness statement, Claimant Fishington stated that her father, George Wellington Darrell, was a ferry boat pilot and that when he left that position. he worked from home as a stone cutter. He owned a very large property in Southampton consisting of several gardens. She stated that the boundaries to the property had been identified and that Gayous Powell, a representative of the Southampton Vestry, and Wycliffe Stovell, a property surveyor, had on more than one occasion removed the boundary stakes that had been put in place by her father. She also claimed that her father was only required to pay taxes on part of his land.

Claimant Fishington stated that her father gave the deeds to his land to attorney E.T. Richards for safe keeping because he trusted him as Mr. Richards was married to her father's cousin. She said that years later, when the Hamilton Hotel burned, down, E.T. Richards told her father that the deeds were destroyed in the fire. Thereafter, Gayous Powell, the Southampton Vestry representative, and others were aware that deeds to the property of George Wellington Darrell no longer existed.<sup>431</sup> Therefore, the Darrell family had to carry out extensive research and incurred huge legal debts to prove they were the rightful owners of properties in Southampton Parish.

Claimant Teart presented on behalf of her family a detailed power point presentation comprising 156 pages titled "The Estate of Emelius Darrell".<sup>432</sup> Claimant Teart, stated: "*The aim of this presentation overall, is not to further prove the validity of this claim as this has already been*

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<sup>422</sup> COI - Exhibit HT-12

<sup>423</sup> COI - Exhibit DM-9(c)

<sup>424</sup> COI - Exhibit HT-17

<sup>425</sup> COI - Exhibit DM-13(c)

<sup>426</sup> COI - Exhibit DM-14(c)

<sup>427</sup> COI - Exhibit HT-16

<sup>428</sup> COI - Exhibit HT-18

<sup>429</sup> COI - Exhibit HT-12

<sup>430</sup> COI - Exhibit HT-12

<sup>431</sup> COI - Exhibit CF-1

<sup>432</sup> COI - Exhibit HT-31

*proven, but rather to inform the Commission of the results of the status of this claim.*”<sup>433</sup> She said that John Darrell had been a very determined man whose mission was to prove that the Darrell family had owned the four lots of land in Southampton since the 1800s.

### **Chronological Ownership of Land and Other Supporting Documentation**

1. 1888 Daniel Davis Darrell owned four lots in Southampton. He had inherited the four lots from his father, Daniel Davis Darrell
2. 1947 Emelius Daniel Darrell died .
3. 1950 George Wellington Darrell inherited the four lots
4. Property Land Tax requests were in the name of “Estate of Emelius Darrell”
5. Land Tax bills were paid through to 1971
6. A copy of the Southampton Parish Vestry Record Book dated 19<sup>th</sup> January, 1939 in relation to Daniel Davis Darrell. Vestry Tax and transfer of property to Emeilius Daniel Darrell. This document had been stamped by the Land Title Registry Office dated 21<sup>st</sup> January, 2021.<sup>434</sup>
7. A copy of the Freeholders Registry dated 10<sup>th</sup> February, 1938. Listed at number 27 is the name Emelius Darrell. Obtained from Government Archives.<sup>435</sup>

The above is evidence of ownership of lots located in Southampton, one of which is described in the Book of Mortgages No. 10 page 319 as shown below.<sup>436</sup>

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<sup>433</sup> COI – Transcript File TDTR-2

<sup>434</sup> COI - Exhibit HT-6

<sup>435</sup> COI - Exhibit HT-7

<sup>436</sup> COI - Exhibit HT-5

£50. at seven per centum per annum.

Registered, 30<sup>th</sup> October, 1888.

Archibald Alison  
Colonial Secretary.

Heads of Mortgage.

Date of Mortgage. 14<sup>th</sup> December, 1885.

Mortgagors. Daniel Davis Darrell and Rebecca Harriet  
Darrell his wife.

Mortgagee. Alice Louise Rouse.

Property mortgaged. A Parcel of Land in Southampton  
Parish bounded on the North by land formerly of  
Anthony Darrell deceased and now in the occupation or  
possession of William Ricketts and there measuring  
one hundred feet on the South by land formerly of  
Thomas Cooper deceased and now in the occupation or  
possession of Joseph Francis Darrell and there measuring  
one hundred feet on the East by land in the possession of  
Forster Mallory Cooper and there measuring seventy five  
feet and on the West by a Trile Road running North and  
South or thereabouts and leading from the Public Road  
near the store of the said Forster Mallory Cooper to the  
South Longitudinal Road and there measuring seventy  
five feet which said Trile Road separates the Parcel  
of Land now being described from land formerly of  
Thomas White deceased and now or late in the possession  
of Rose Ann Bean or however otherwise the said parcel  
of land may be bounded or may measure or ought to  
be described together with the Cottage or Tenement  
thereon erected and the appurtenances.

Sum secured. Forty pounds with interest thereon

£50. at seven per centum per annum.

Registered, 30<sup>th</sup> October, 1888.

Archibald Alison  
Colonial Secretary.

Heads of Mortgage.

Date of Mortgage. 14<sup>th</sup> December, 1885.

Mortgagors. Daniel Davis Darrell and Rebecca Harriet

The COI heard that Mr. John Darrell had gone through great lengths to have his properties in Southampton returned to his ownership and in doing so drew attention to this matter both locally and internationally:

1. Correspondence to several Governors of Bermuda, notably a letter dated 10<sup>th</sup> June, 1988 to H.E. the Governor Viscount Dunrossil.<sup>437</sup>
2. Civil Rights (UK) letter dated 27<sup>th</sup> February, 1990 to Her Majesty Queen Elizabeth II with reference to John Darrell Court cases stating “Justice Delayed is Justice Denied”,<sup>438</sup> writer Rudy Narayan.
3. Letter dated 29<sup>th</sup> March, 1990 on behalf of John Darrell by Rev. Barry Fraser to Prime Minister Margaret Thatcher.
4. Correspondence dated 14<sup>th</sup> May, 1992, from John Darrell to Her Majesty Queen Elizabeth II.
5. News report dated 25<sup>th</sup> October, 2002 about the John Nathaniel Darrell Story written by Jonathan Kent and printed on page 8 of the *Mid Ocean News*. The headline, “*Battling John scores a moral victory, but he’s run out of cash*”.<sup>439</sup> The news report gave an in-depth exposé of John Darrell’s legal fight with the Bermuda Government to retain ownership of his land.

The COI heard further that Mr. Darrell wrote to all Members of Parliament, Members of the Senate and to the *Mid Ocean News* which referenced “My Allegations of Mal-Administration and Injustice”. The inaction by the Governor and the Government of Bermuda were included in Mr. Darrell’s letter along with the following:

- An Investigation during the early months of 2001 ordered and carried out by both the Bermuda Police and the Office of the Director of Public Prosecutions;
- Investigations ordered by Her Majesty Queen Elizabeth II;
- Reports of findings which confirmed his allegations and recommendations that he be compensated (copies endorsed) were submitted to the Heads of the investigating Department and later to the Governor;
- A copy of Mr. Darrell’s letter to Her Majesty Queen Elizabeth II; and
- Her Majesty the Queen’s letter of response dated 1<sup>st</sup> February, 2000. The Queen had asked the Private Secretary to thank Mr. John Darrell for his letter and to say that it had been passed to the Governor General of Bermuda.

Her Majesty the Queen’s response of 1<sup>st</sup> February, 2000 follows. It also formed a part of Detective Inspector David Cart’s Report dated 5<sup>th</sup> June, 2001.

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<sup>437</sup> COI - Exhibit HT-18

<sup>438</sup> COI - Exhibit HT-26

<sup>439</sup> COI - Exhibit HT-12



TITLE  
" I "



BUCKINGHAM PALACE

The Queen has asked the Private Secretary to thank Mr. John Darrell for his letter, and to say that it has been passed to the Governor General of Bermuda so that this approach to Her Majesty may be known, and consideration given to the points raised in the letter.

1st February, 2000.

### Police Investigation by Detective Inspector David Cart

1. The Police investigation carried out by Det. Insp. Cart sets out a proposal which was prepared by Mr. John Nathaniel Darrell in a letter given to Det. Insp. Cart on 14<sup>th</sup> April, 2001.
  - a) Det. Insp. Cart wrote in his Report.: *"Whilst I cannot find a criminal offence worthy of investigation, there does appear to be some merit in his complaint from a civil point of view. It certainly appears that the Riviera Estate Road was built on his property and Government cannot or will not produce documents substantiating their ownership of the land they claim. Mr. Darrell is virtually penniless, having spent everything he owned to prove his point. He cannot afford to take out further court actions, which could drag on for years. The only solution I can see is for the Government Planning Department to undertake a full review of his claim, and the plans which he disputes to determine once and for all whether he was*

*disadvantaged by incorrect judgements in the courts and if he should be compensated in some way by the Government.”<sup>440</sup>*

- b) The Cart Report was sent to the Commissioner of Police and subsequently to the Department of Public Prosecutions where it became the basis for an in-depth legal opinion written by Crown Counsel Anthony Blackman. This was in response to a request for an opinion requested by the Director of Public Prosecutions, Khamisi M. Tokunbo.
- c) Evidence of the Det. Insp. Cart’s Report, Crown Counsel Anthony Blackmans’s Legal Opinion and the Director of Public Prosecution’s letter to the Commissioner of Police are shown below:

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<sup>440</sup> COI - Exhibit HT-12



BERMUDA



POLICE

COPY

To: Commissioner of Police  
 Attn: David Cart - Detective Inspector  
 From: David Cart - Detective Inspector  
 Subject: Alleged Fraud - John Nathaniel Darrell

Div/Dept: CCD  
 Date: 5th June 2001

Sir,

In July 2000, the complainant in this case;

Mr. John Nathaniel Darrell  
 DOB: 8<sup>th</sup> Jan 1938  
 Retired Stonemason  
 H/A: 71, Sleepy Hollow Drive  
 Hamilton Parish.

Mr. Darrell had been directed to this office following letters sent to Her Majesty the Queen, The Governor and the AG's Chambers. He was eventually referred to the police by the DPP when the issue of fraud was raised.

I met with Mr. Darrell and discussed his complaint, which appeared to me to be a purely civil matter and I subsequently provided him with a short letter to this effect.

In October 2000, the matter resurfaced and Mr. Darrell was again referred to this office. Over the months since Mr. Darrell has visited this office on numerous occasions, producing various documents relating to his problem and attempting to outline to me the nature of his complaint.

Mr. Darrell himself concedes that a very complicated situation exists which is not easy for any person to understand. The narrative provided below, read in conjunction with the attached documents, sums up his complaint;

In 1888 the complainant's Great Grandfather, Daniel Davis Darrell died. Prior to his death (in 1885), the complainant contends, he was the owner of four adjoining portions of property in Southampton, one of which is described on page 319 in the Book of Mortgages #10 (Docs 1A & 1B). At the time of his death, according to the complainant, his Grandfather Emilius Darrell inherited the four properties including the one previously described. - The deeds to some, if not all, of these properties were once in the possession of the complainant's father, and subsequently in the possession of his father's lawyer (E.T. Richards) and should be inferred to exist based on the ownership of adjoining properties as outlined later in this report.

The Darrell property is referred to in a conveyance of adjoining property from Joan O'Flaherty to Gayous Edmund Powell, which is dated the 30th June 1939. At that time Joan O'Flaherty conveyed a piece of property about 3.5 acres in size, located to the immediate west of a portion of Darrell properties, to Mr. Powell. This document describes three of the properties bordering the eastern boundary of the O'Flaherty land as being owned respectively by Alice Maud Joynes, Emilius Darrell and Mr. George A. Williams (Docs 2A). A plan (attached) from a 1912 deed for that area shows the land which Joan O'Flaherty owned was originally owned by H.W. Dallas upon which was subsequently drawn the approximate position of the Bermuda Railway, but the most significant aspect of this conveyance is that it makes no mention of Government's ownership of any land to the east of the O'Flaherty property in 1939.

On the 22<sup>nd</sup> December 1959 Mr. Powell sold a piece of property amounting to some 12.5 acres to Benjamin Rego (Doc 2B). There are two schedules in that conveyancing document which describe the size of these lots as 3.58 acres and 9.04 acres respectively. The description of these lots seems to indicate that the larger section of that property was to the south of the Railway land and the smaller section was to the north of the railway land which is confusing when comparing it to the properties which border it to the east. The 2<sup>nd</sup> schedule of that document, relating to the larger section indicates that its border to the east extended for 584' and encompassed land at its north eastern end which was owned by the railway company, then by Emilius Darrell in the center and by George Arnold Williams along the south eastern end. It



almost suggests that the land described in the O'Flaherty deed must overlap that described in the second schedule of the 1959 Powell conveyance. The 1<sup>st</sup> Schedule to that document does show Government's ownership of a 356' stretch of land on the eastern boundary, upon which the Heron Bay School had been built, but Government have never been able to produce deeds to show their ownership of this land.

The situation is even more confusing when the above documents are compared with the Marshall & Lawton Plan dated 14<sup>th</sup> October 1959 (Doc 2C), which describes the Riviera Estate as sub-division. This plan encompasses all of the property sold by Powell to Benjamin Rego, as outlined above, plus some additional property. This plan fails to properly describe the Tribe Road which passes through that land, the property overlaps the Tribe Road on its eastern boundary and encompasses a strip of land belonging to Mr. Darrell upon which the Riviera Estate Road was built which will be referred to in more detail later in this report. 1

The complainant enlisted the services of Christopher Crisson, a local Civil Engineer & Surveyor who studied that area extensively, and who prepared a plan of that area to show how the properties existed in 1888 when inherited by Emilius (Doc 4A).

This plan, dated the 6th Feb 1995 shows the borders of each portion of property and, outlines the dimensions of one the portions referred to in Docs 1A & 1B above, as being owned; to the north by William Lightbourne (100ft), to the East by Forster Mallory Cooper (75'), to the south by Joseph Francis Darrell (and formerly by Thomas Cooper - then deceased) (100'), and to the west by the Government Tribe Road (75'). The Flaherty Conveyance, he contends, fails to recognise the Tribe Road to the west, which separates the properties.

The complainant also contends that two conveyancing documents to Gayous Powell from 'The Pitts' family describe and confirm the existence of the Tribe Road to the west of property owned by Emilius. (Doc 6A) The approximate position of the Tribe Road is also shown on the Robert H. Clark plan received by the complainant's father in August 1953 which was allegedly copied from the J.H. Dale plan of 1932. (The complainant disputes some aspects of the redrawn 1932 plan) (Doc 6B).

In 1947 Emilius died and left the property he owned to the complainant's father George Wellington Darrell (b1912-d1988). A receipt for payment of 'Land Tax' confirms this, dated the 25th October 1947, which recognizes the complainant's father as the property owner. Demand Notices to the complainant's father in 1971 indicate that he was still paying land tax on the said properties but describes the inherited property as 'The Estate of Emilius' because E.T. Richards (complainant's father's lawyer) had failed to convey the property into the complainant's father's name in February 1950 (Doc 7A & 7B).

A 1943 deed and subdivision in respect of property then in the ownership of George Arnold Williams (formerly owned by Horace Cooper - 1928 and then owned by Ormond Ralph Loblein after that) shows that property to the North was owned by the estate of Joseph DeRosa and to the west by the Estate of Emilius Darrell. A 1956 deed in respect of a Mr. Anthony Rabaine further confirms ownership of the property belonging to the complainant's father (George Darrell) by referring to the estate of Emilius Darrell (Doc 8A & Doc 8B).

The last will and testament of Mr. Darrell's father dated the 29th Jan 1987, which has been probated, indicates that he leaves all of the property he owns to his son (the complainant) John Darrell (Doc 9A). A voluntary conveyance dated 5 weeks later (6th March 1987) prepared by Brown & Wade confirms that there is no Benjamin Darrell ownership and there is no Horace Cooper as recorded in the 1924 deed and Government plans. (Doc 10A). A deed of confirmation dated the 11th September 1991, prepared by Appleby Spurling & Kempe, confirms his father's ownership of 75% of the property owned by his grandfather. He contends that it only reflects 75% because a slice of property measuring 20' at the northern end and increasing in width to 60' at the southern end was misused in 1962 to form the Riviera Estate Road to the West of his property. Another section of his property to the south was misused to form lots #48 to 54 of Sunnyside Park (Doc 11A).

The complainant contends that a plan prepared by Robert H Clarke, allegedly traced from a 1932 plan prepared by J.H. Dale, (Doc 6B) is false in that it shows the property owned by a Benjamin Darrell to be 20' further to the east than was recognised in earlier plans. The complainant contends that there was no Benjamin Darrell in existence from 1885 to date. It is not known why the name of Benjamin Darrell was introduced - perhaps by error. The land referred to on this particular plan is the complainant's land but the net effect of this plan was to move the property over to the east which allowed for the future development of the Riviera Estate Road to the west, an event which took place in 1962.



Government cannot produce, or will not produce, the original 1932 J.H. Dale plan, nor will they produce the 1943 and 1953 sub-divisions of that area which he further contends will show that Emilinus Darrell is the owner of property to the North boundary of lot 47 Sunnyside Park and to the West Boundary of Lot 40 to 47 of the Sunnyside Park. The 1953 plan of Sunnyside Park, prepared by Wycliffe Stovell is accurate except that it shows land owned by Mr. Darrell as being that of the Colonial Government. The land to the west of lots 40 to 47 of Sunnyside Park is also falsely represented as being owned by George Arnold Williams (Docs 13A 13B & 13C).

In 1974 there was a court case brought by the Bermuda Government to assert their claim to his father's land and in furtherance of their case Government produced an area map but no supporting deeds or plans (Docs 14A). During those proceedings Government failed to justify their ownership of the Colonial Land as shown on the 1953 Sunnyside Park sub-division plan (Doc 14B) but his father's lawyer in those proceedings, Ann Cartwright, failed to put forward an adequate challenge to Government to produce the documents supporting the area map, (which he contends was false) which resulted in the case going against his father. The effect of this case was the incorrect recognition of Sunnyside Park (Lots 48-54) and the incorrect recognition of the Riviera Estate Road (Doc 14C & 14D).

The complainant contends that the incorrect position reached by the court in this case was the basis of the problem, which exists today and subsequent court cases have further compounded and complicated the situation.

In 1977 the complainant knocked down some fences, which had been erected by the Government and separated his land, below the old Railway right of way to the rear of the Heron Bay School. This led to a court case in HMC with Government suing the complainant for \$594.00. When it came to trial the Crown's Prosecutor (name unknown) met with the complainant outside of Magistrates Court but knew nothing about the case and subsequently adjourned it. When the matter eventually came to trial later that year, Government prosecutors dropped the amount of their claim to \$55 but the complainant refused to be pacified and a trial was held in 1978 with Mr. Nadarajah as the Magistrate. Once again Government failed to produce the appropriate documents to support ownership of the land and on this occasion the magistrate correctly found in favor of the complainant and held that Government had failed to show any right to erect a fence separating the property. In reaching his judgment the magistrate completely ignored the decision reach by the court in the 1974 case.

In 1978 there was a further court case brought about by Government (Mr. Ralph Marshall MP Public Works & Engineering) laying claim to the entire parcel of property and leaving the Darrell family with nothing (Doc 14C). In that case Mr. Marshall relied on the 1953 sub-division (Doc 14A) in support of his case. The Judge in that case, Mr. Walter Robinson (formerly the attorney on behalf of Sunnyside Park owners (1953) and attorney for the complainant's father in 1963, and who had prepared a deed in 1964 in favor of W. Brown and the complainant, went against those earlier positions and decided in favor of Government in respect of Darrell owned land (Doc 16A 16B & 16C).

He ruled that the house in which the complainant was residing was his property but the exhibits introduced in the case reflected it as belonging to Benjamin Darrell. Exhibit 10 in that case was a plan prepared by Quinton Stovell, of the Public Works Department, allegedly based on the 1/3/1930 J.H. Dale plan, which is an incorrect document. In the same judgment he incorrectly recognized the boundaries surrounding the lot of land on which the house was situated. Benjamin Darrell never existed and could never have owned that land (Doc 16D).

In 1979 the complainant enlisted Robert H Clarke to survey the land which resulted in a further plan showing the portion of land allegedly owned by Benjamin Darrell, Horace Cooper and Government (as per the 1953 sub-division) was actually owned by the complainant and that the Riviera Estate Road cut through a portion of property further to the west on the eastern side of the Tribe Road (Doc 17A).

In 1982 the complainant found two plans at the Department of Planning, one by Wycliffe Stovell (1953) (Doc 14B) and the second was a revised version of that prepared by Bermuda Caribbean Engineering Consultants Ltd. (BCEC) in 1982 (Doc 18A) which confirms Government's ownership to the property which they should have produced in 1974. These plans were in conflict with all the deeds and plans, which were accepted by the courts as exhibits in 1978.

In 1983, after years of frustration in trying to resolve his ownership, the complainant bulldozed his personal property (to the West of Lot 33 and to the North of Lot 47 Sunnyside Park) in a further effort to reassert his claim to the land and this brought about a further court case, instituted by Government, where the prosecutor, Mr. Austin Ward (Now C.J.) attempted to have Mr. Darrell locked up in Casemates for trespassing on the land. The complainant's lawyer,

Page 74a, contd.

Mrs. Lele Browne Evans (Now A.G.) challenged Mr. Ward over this issue on his way out of court and Mr. Ward never returned to pursue the case, leaving the matter still pending (Tobias [Doc 15A]).

In 1967 the complainant took further action by using violence to block the Rivers Estate Road directly across his residence, which was his land, as supported by earlier deeds ([Doc 1A, 1B, 1A & 1B]). This led to a further court case brought by Government. Government failed to produce documented proof of their ownership of the Rivers Estate Road ([Doc 14B]) and ignored the deeds referred to on page 16 of the judgement ([Doc 15A]). A letter to the complainant from the HC (Mr. Parnes) dated 6/4/1968 ([Doc 15B]) supports the complainant's claim to the house as accepted by the court in 1979 judgement by Walter Robinson. Judge Hall failed to acknowledge the 1945 deed ([Doc 6A]) that confirmed the Tythe Road as shown on the Robert H Clarke plan ([Doc 6B]).

Judge Hall also delivered a judgement on the qualifications of the Government Surveyor, Mr. S. Johnson who had prepared a plan of the area for Government ([Doc 10C]) which was based on the 1950 Kensington Park sub-division, but was inaccurately revised by Mr. Howell in 1979 ([Doc 14B]), and further revised and relied upon by (RCRC) in 1982 ([Doc 15A]) showing Government's ownership to the Telford Estate as adjacent to lots 26/27 of Kensington Park and the land adjacent to lots C/ & 41 as belonging to the Colonial Government. When this plan is compared with the George Arnold Williams deed of 1903 ([Doc 8A]) it shows that the Telford estate was adjacent to lots 23/24 of Kensington Park and that the property adjacent to lots C/ and 41 was the property of Emilie Darvell and not the Colonial Government. On the Howell plan ([Doc 14B]) the Telford estate had been moved into what is now South Heights.

Mr. Johnson's plan further complicated the whole issue by showing Horace Cooper's ownership to a part of the property, which he accepts was previously shown as the Colonial Government. Horace Cooper only ever owned Lots 1 to 47 of what became Kensington Park. The plan also indicates that ownership of property to the north of a portion of lot 41, and to the north of the entire lot 22 of Kensington Park was also owned by Horace Cooper and given the land to the North of his property as being land owned by the complainant. This plan is in conflict with all deeds and Government plans but well suited Government's position in the case they brought against the complainant.

In 1980 the complainant started to become ill. - Back in 1982 the complainant owned his own house, which he rented. He was a nurse and accountant by trade and in the years that followed built many houses. During the years from 1980 until he fell ill he had used the proceeds from his work to support his battle for his property but when he became ill this source of revenue ceased. He continued to receive financial support from both banks and both financial and moral support from some members of his family and friends. Everyone, including the banks, had accepted his contention that the courts had reached their decision by reliance on misleading evidence presented by the Bermuda Government.

In 1980 the BWTB (Kathy Lightbourne - Lease Officer) stored the various documents and agreed to provide Mr. Darvell with a loan to fight his claim to the 47 by 27 strip of property, a part of which had been encroached up by the Rivers Estate Road. Over the next two years the complainant's loan obligation grew to \$120,000.00, which he had used to meet various personal debts and legal obligations.

In 1986/87, as collateral for that money, his brother (James Darvell) pledged his Hamilton Parish property.

The complainant discovered that he couldn't move at that time against the property encroached by the Rivers Estate Road and so he used the Robert H. Clarke plan (1979) which had been copied from Mr. Gustave Darvell's 1978 plan. This was to provide him with a stronger position by incorporating other parts of the Emilie Darvell property into the Deed of Confirmation based on the accepted voluntary conveyance of the 4th March 1967 ([Doc 15A]).

In September 1981, the complainant contacted that BWTB's lawyer, Simon Parnes (Appellate Sparring & Rump), did two letters for his friend David Simons, Bermuda Caribbean Engineering Consultants Ltd. with the knowledge and support of Kathy Lightbourne.

4) In the mortgage deed, which Parnes prepared, he failed to reflect the complainant's eastern boundary extending to 100 feet, which would encompass the Rivers Estate Road. He showed the boundary to be only 80' which conflicted with the plan prepared by Simons but nevertheless 43 & 47's very own letter of 1978 ([Doc 11A]) as read in conjunction with the Southampton Parish Vestry Record ([Doc 11B]) both of which clearly show the property extending 100 feet to the road.



- b) As a second favor he failed to reflect the true position of the south boundary (Doc 21C) to Mr. Darrell's property as also shown in the Deed of Confirmation previously prepared by him (Doc 11A).

Note: Doc 21C reflects the ownership of a triangular section of property which was fenced off by the complainant and his father in 1954 and is specified in the conveyance relating to W.G. Brown & John Darrell (Doc 16B). At the same time they erected fences surrounding the entire lot of Darrell owned properties to the south of the Railway, as well as its border along the eastern side of the Tribe Road. Although Government threatened legal action (Docs 16E & 16F) no action was ever taken as they had no deeds to support their threats and most of that fence still remains today and some of the posts remain on the portions of property Government now claims to own. In 1977 the complainant and Mr. George Arnold Williams (the owner of the land on which Sunnyside Park was later built, Lots 1 - 47) discovered that the triangular section referred to above, plus the remaining triangular section of property, both of which lay to the north of what is now Lot 54 were consolidated to create Lot 55. This had been done by Wycliffe Stovell but alerted the complainant to the fact that his father owned much more property than he had originally thought. He found that the land which now forms lots 48 to 54 of Sunnyside Park were also owned by his father. Mr. Williams refused to do anything with lot 55 and in 1982 BCEC were instrumental in that 'Lot', being conveyed to someone else to the detriment of Mr. Darrell. It was as a consequence of this activity, he believes, that Mr. Somers and Farmer had to structure the mortgage pertaining to his property in such a way as to disguise that situation.

The complainant's health and financial situation deteriorated further. At one point he had been paying for two U.K. lawyers and a U.K. Queens Counsel but was eventually unable to get his case heard due to Governments misuse of the Limitation Act.

In 1992 the complainant's brother requested his deeds back to use them for his own purpose and in the BNTB converted the \$120,000 loan to a mortgage taking the property as outlined in the plan produced by Somers as collateral.

In 1995 the complainant was diagnosed as having bone marrow cancer, which created further hardship on himself and his family and further reduced his ability to fight for his property. He was given one week to live but eventually recovered and is now in remission.

Mr. Crisson prepared the plan of the area (Doc 4A) for Mr. Darrell and subsequently wrote to Justin Williams in 1997, who was then the lawyer for BNTB specifying that the bank could not lay claim to the complainant's property as it had never been properly registered in accordance with the Planning Act 1974 in the first place. He tried to arrange a meeting with the banks lawyers and Kathy Lighbourn to press the point but a meeting was never held.

In May 1998, by which time the complainant's efforts to re-claim his land had consistently failed the BNTB brought an action to possess Mr. Darrell's house/property in order to offset the loan and accrued interest. Mr. Austin Ward who found in favor of the bank and awarded them the property judged the case. In reaching this judgment Mr. Ward would not listen to the complainant's case (as witnessed in court by the complainant's nephew) and appears to have contradicted the position he was fighting for in 1983.

As a part of that case the bank filed what appeared to be a micro-fiche generated copy of the 1930 J.H. Dale plan in support of their claim (Doc 22A dated 1/3/30), which was accepted by Mr. Ward. That document is apparently based on the 1924 J.H. Dale plans, which Government used in court in 1978 and 1979 (Doc 22B (dated 10/10/24)) and Doc 22C (dated 1/3/30)). All three are plans of the same area.

It should be noted that plan (Doc 22C) was re-drawn by Quinton Stovell (Public Works Dept.) in 1970, is the one which was relied on by the court in the 1979 judgment by Walter Robinson and is the one referred to in those proceedings as the multicoloured plan (See Doc 22D). This plan shows the correctly re-drawn boundary to Mr. Lightbourne's property to the west of the property in the name of Percy Dodwell. The complainant has made hand written notations on the bottom left hand corner of Doc 22C to reflect the true boundaries of the F Darrell property and his father's (not Benjamin Darrell's) property as supported by the 1922 and 1924 deeds. He has also shown where the true eastern boundary to his father's property laid. This plan should be compared to the Crisson plan (Doc 4A) which illustrates the conflict.

In 1983 the complainant's position in respect of the land which was now shown as the complainant's on the BCEC plan of 1991 was Government's yet in reaching his decision in 1998 Mr. Ward accepted the bank's claim on the basis that the land described in that plan was the



complainant's. If Mr. Ward had accepted that situation back in 1983 then Mr. Darrell's drawn out battle would have been unnecessary!

The complainant recognizes the fact that the Sunnyside Park sub-Division has to remain intact as the owners have purchased that property. He also recognizes the fact that the Riviera Estate Road has to remain where it is presently positioned even though it cut through his property.

Mr. Crisson prepared a further plan (Doc. 23A) showing how all of those properties should be re-zoned, not only to correct the title to land, which the complainant contends is his, but also to protect present property owners by clarifying ownership of all the surrounding properties. The complainant would also like to see;

- a) Riviera Estate Road re-named Wellington Drive in keeping with the land owned by his father, which was known as Wellington Lands in 1964,
- b) The road giving access to the property owned by Joseph DeRosa, from Sunnyside Park, be re-named as Emilius Drive East and,
- c) The road inside Sunnyside Park giving access to lots 48-54 is renamed Emilius Drive West.

This plan would need further revision to provide protection to lots 55 & 56 of Sunnyside Park in accordance with the PLP Memo.

It is the complainant's contention that the Government and the courts have made incorrect decisions with regard to his claim based on false or misleading plans and documents which the courts have accepted to his detriment. He does not see why he should be forced to take any civil action to substantiate his claim and that the Governor should cause a review of the decisions made by the courts, to correct this miscarriage and to properly compensate the complainant for his loss.

It is this position, which the complainant requests be referred to the Governor.

Mr. Darrell last visited me on the 14<sup>th</sup> April 2001 and provided me with a letter and additional documents (attached) outlining his claim.

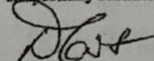
He arrives at his claim of \$150 million on the basis that he built, and had to sell, 37 houses in order to finance the lawyers who fought this issue on his behalf. He had built these homes for only a few thousand dollars each from the 50's onwards and would have still owned them today had he not sold them to finance his legal battle. The present day value of those houses, plus interest on \$75 million resulting from a poor judgment by Chief Justice Astwood in 1987, brings the present value to \$150 million.

I have pointed out to him that the above claim could never be justified which he finds hard to accept. He feels that the U.K. Government and/or the Governor have a responsibility to investigate the decision of the Bermuda courts and that Government officials are not living up to the oaths they took

Mr. Darrell is an old man who has been pursuing his cause for years. He is sincere in his claim. Whilst I cannot find a criminal offence worthy of investigation, there does appear to be some merit in his complaint from a civil point of view. It certainly appears that the Riviera Estate Road was built over his property and Government cannot or will not produce documents substantiating their ownership of the land they claim.

Mr. Darrell is virtually penniless, having spent everything he owned to prove his point. He cannot afford to take out further court actions, which could drag on for years. The only solution I can see is for the Government Planning Department to undertake a full review of his claim, and the plans which he disputes, to determine once and for all whether he was disadvantaged by incorrect judgments in the courts and if he should be compensated in some way by the Government.

Respectfully submitted.



D. Cart  
Detective Inspector  
Commercial Crime Department - Fraud Unit.

DCOP Jackson,

Sir,

In accordance with your instruction I met with Mr. Darrell. During the course of the last week or so we have reviewed and revised the original report and have referenced the relevant documents supporting his contention.

The attached folder of documents provided to me by Mr. Darrell may be forwarded with this report, as they do not lend themselves to being easily copied and Mr. Darrell has another set for his own use.

  
D. Cart.  
5/6/01.





The Office of the Director of Public Prosecutions

2<sup>nd</sup> Floor, Global House  
43 Church Street  
Hamilton HM 12  
Bermuda

Tel: (441) 296-1277 Fax: (441) 296-8464

**MEMORANDUM**

Our Ref: ALB/mir

(please quote in all replies)

To: Khamisi M. Tokunbo, Director

From: Anthony L. Blackman, Crown Counsel

Date: 8<sup>th</sup> August, 2001

Re: Allegation of Fraud by Complainant, Mr. John Nathaniel Darrell

In furtherance of your request for advice on the captioned, a précis of the facts is in order. The facts fall within a compass in my submission.

The virtual complainant Mr. John Nathaniel Darrell resides at Sleepy Hollow Drive, Hamilton Parish, Bermuda. The virtual complainant's great grandfather Daniel Davis Darrell owned four (4) portions of real estate in Southampton parish. On his death in 1888 the complainant's grandfather Emilius Darrell inherited the aforementioned four (4) properties. In 1947 Emilius died and he left the property he owned (i.e. the property he inherited from Daniel Darrell) for George Wellington Darrell - the complainant's father. There is unquestionable proof of this as notices for Land Tax payments were made up to 1971. It should be noted however, that the description of the property on the Land Tax request forms was the "Estate of Emilius" because one E.T. Richards who was the lawyer of the complainant's father, did not convey the property into the name of the complainant's father in 1950. In my submission this act commenced the legal problems which followed.

Ownership of the properties belonging to the complainant's father is further provided by a 1956 deed, which makes reference to the estate of Emilius Darrell.

The Last Will and Testament of George Wellington Darrell (the complainant's father) dated 29<sup>th</sup> January 1987 and duly admitted to probate on the 27<sup>th</sup>



September 1999, showed a devise of all Real Estate which was inherited from his father Emelius Darrell to his son John Nathaniel Darrell. On the 6<sup>th</sup> March 1987 a voluntary conveyance was executed between George Wellington Darrell and the complainant. The conveyance confirmed that there is no Benjamin Darrell ownership and no Horace Cooper as recorded in a 1924 deed and Government plans. A deed of confirmation dated 11<sup>th</sup> September 1991 prepared by Appleby Spurling & Kempe indicated that the complainant's father owned 75% of the property formerly owned by the complainant's grandfather. The virtual complainant alleges that a 20 foot piece of property at the Northern end which increased to 60 feet in width at the Southern end was misused to form the Rivera Estate Road to the West of his property. He further alleges that another section to the South was also misused to form Lots 48-54 of Sunnyside Park.

A plan submitted by Robert H. Clarke which appears to have been traced from a plan of 1932 prepared by Jim Dale shows that Benjamin Darrell (who does not exist) owns property 20 feet further to the East. This was not recognised in earlier plans. What this plan did in effect was to move the property over to the East, which facilitated the Riviera Estate Road to the West. Another legal problem now created by this plan. The original 1932 plan prepared by Mr. Dale has never been produced. It is believed that this plan will show that Emilius Darrell is the owner of property to the North boundary of Lot 47 Sunny Side Park and to West boundary of Lots 40 to 47 of the Sunnyside Park.

In 1953 a plan of Sunnyside Park prepared by Wycliffe Stovell shows land owned by Mr. Darrell as being that of the Colonial Government. It also shows that land to the West of Lots 40 to 47 of Sunnyside Park is owned by George Arnold Williams. This is not correct. A further legal problem is now created.

In 1974 the Bermuda Government instituted Court proceedings to assert their claim to the virtual complainant's land. An area map was produced by the Government but no supporting deeds. The case went against the complainant. The effect was incorrect recognition of Sunnyside Park Lots 48-54, an

incorrect recognition of the Riviera Estate Road. This decision apparently forms the basis of the virtual complainant's concern as it exists today.

In 1977 the complainant knocked down some fencing which was erected by the Government and had separated his land. A Court case ensued and the then Magistrate Mr Nadarajah ruled in favour of the complainant. The Magistrate ruled that the Government did not produce the appropriate documents to support ownership of the land. This ruling was contrary to that of 1974.

In 1978 another Court case was instituted against the complainant. A claim was made to the entire parcel of property. Success for the Government would have signalled goodbye to the complainant's property. It is to be noted that the Judge who determined the case Mr. Walter Robinson, was the Attorney for Sunnyside Park owners in 1953 and the Attorney for the complainant's father in 1963. He in the role of Attorney in 1964 prepared a deed in favour of the complainant. However, in adjudicating the case, he decided in favour of the Government. The act of determination by the Judge in my submission was a clear violation of the principles of Natural Justice and obvious bias. It is also worthy to note that the Judge ruled that the house in which the complainant resided (according to the plan of 1930 by J.H. Dole) belonged to the non-existent Benjamin Darrell. Further legal confusion.

In 1979 Robert H. Clarke surveyed the land. His survey showed that the portion of land allegedly owned by Benjamin Darrell, Horace Cooper and the Government was actually owned by the complainant. It further showed that the Riviera Estate Road had in fact been cut through a portion of the complainant's property.

In 1982, the complainant found two plans at the Department of Planning. Both plans confirmed Government's ownership to the property. These plans were in conflict with all the deeds and plans which were in existence. More legal confusion.

In 1983 the complainant bulldozed his personal property. Another court case followed.



In 1987 the complainant blocked the Riviera Estate Road directly outside his residence. Another court case followed. Judge Hull heard the matter and ruled in favour of the Government. His ruling was buttressed on the 1953 Sunnyside Park sub-division which was prepared by Wyliff Stovell.

During the period 1988 to present the complainant's health has deteriorated. His finances has also dwindled. He still wants to fight the Government. He is still of the opinion that he has been cheated out of his land. He now alleges fraud.

***Issue whether or not there is evidence of the criminal offence of fraud and if so by whom.***

### **Discussion**

To defraud is to deprive by deceit. It denotes impropriety and the obtaining of property by unlawful means. The mental element of Mens Rea must be satisfied.

Having read the documents submitted, there is nothing in my opinion to substantiate fraudulent conduct by any party. What is obvious to me is professional negligence and a blatant breach of the Rules of Natural Justice.

Professional Negligence in my opinion occurred from 1950 when E.T.Richards who was the Attorney for the complainant's father, did not convey the property to the father of the complainant. Further, evidence can be seen in the following:-

- A plan of 1932 submitted by Robert Clarke which showed one Benjamin Darrell (who did not exist) as owning property.
- The 1953 plan of Sunnyside Park prepared by Wycliffe Stovell which showed the land owned by the Darrells as being owned by the Colonial Government and the land to the West of Lots 40 to 47 of Sunnyside Park to be owned by George Arnold Williams.

- The two plans produced in 1982 which were in conflict with all plans and surveys produced up to that point, including those relied on by the Court in 1974.
- In my submission a clear breach of Natural Justice occurred in 1978 when Mr. Water Robinson, the presiding Judge, a former attorney for Sunnyside Park owners and the attorney for the complainant's father in 1963, did not remove himself from the trial. He eventually ruled against the virtual complainant.

**CONCLUSION:**

There is evidence of shoddy work by the professional surveyors and some attorneys. There is no doubt in my mind that the virtual complainant has been unfairly dispossessed of his land. From the documents submitted, I am of the opinion that the Riviera Estate Road does in fact pass through the complainant's property. The documents produced and indeed the legal representation which the complainant received in the early proceedings must also be questioned. It so happened that the Crown was better able to prove its case and it did so based on the documentary evidence that was available.

I am of the opinion that there has been no direct or fraudulent conduct on the part of the Crown. The problem was inconsistent and misleading documents (plans). This is indeed a civil matter. Considering the amount of litigation that has already taken place and the financial status of the complainant, I am afraid that unless he receives some gratuitous payment/compensation, his efforts to keep what appears to be his (the property) were all in vain, indeed a sad situation when one considers the quest by the Darrells to own their share of "the littlerock" and the offending individuals have all passed.

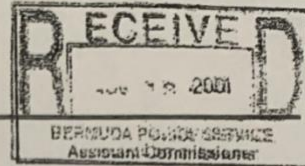
Respectfully submitted,  
*Anthony L. Blackman*  
Anthony L. Blackman  
Crown Counsel



**The Office of The Director of Public Prosecutions**

Global House, 43 Church Street,  
Hamilton HM 12, Bermuda

Telephone: (441) 296-1277  
Fax: (441) 296-8464



Your Ref:

Our Ref:

KMT/mir

13<sup>th</sup> August, 2001

Commissioner of Police  
Attention: Carlton E. Adams  
Assistant Commissioner

**Re: Allegation of Fraud**

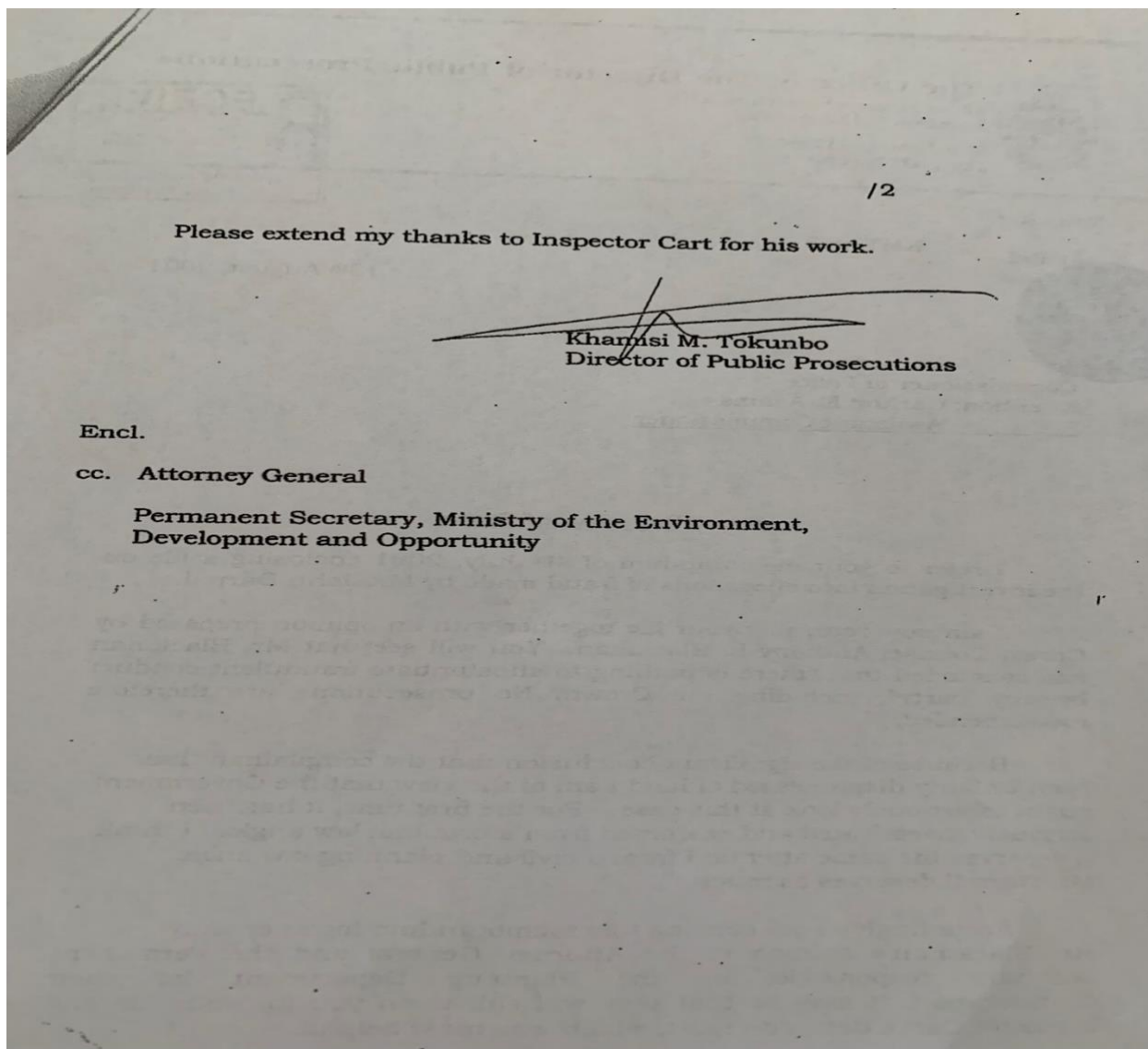
I refer to your memorandum of 4<sup>th</sup> July, 2001 enclosing a file on the investigation into allegations of fraud made by Mr. John Darrell.

I am now returning your file together with an opinion prepared by Crown Counsel Anthony L. Blackman. You will see that Mr. Blackman has concluded that "there is nothing to substantiate fraudulent conduct by any party", including the Crown. No prosecutions are therefore recommended.

Because of the significant conclusion that the complainant has been unfairly dispossessed of land I am of the view that the Government ought to seriously look at this case. For the first time, it has been seriously investigated and examined from a criminal law angle. I think it deserves the same attention from a civil and planning law angle. Mr. Darrell deserves as much.

Accordingly, I am copying this memorandum together with Mr. Blackman's opinion to the Attorney General and the Permanent Secretary responsible for the Planning Department for their consideration. It may be that they will call upon you for your file and Inspector Cart's detailed report, which was most helpful.





### **Highlights: Reports and Court Hearings**

1. Crown Counsel Anthony Blackman, in a letter to the Director of Public Prosecutions dated 8<sup>th</sup> August, 2001, provided a legal opinion comprising five pages<sup>441</sup> in which he supported the ownership claim to property made by John Nathaniel Darrell. Blackman referenced that "Ownership of the Properties" belonging to the Complainant's father is further provided by a 1956 deed which makes reference to the estate of Emelius Darrell.
2. In 1974, the Bermuda Government brought a case to assert its claim to the Darrell property. The Government produced an area map but no supporting Deeds or plans. The Government won its case.

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<sup>441</sup> COI - Exhibit HT-13

3. Det. Insp. Cart's Report contained the following observations about the 1974 Court case: *"During those proceedings Government failed to justify their ownership of the Colonial Land as shown on the 1953 Sunnyside Park subdivisions plan, but his father's lawyer in those proceedings, Ann Cartwright, failed to put forward an adequate challenge to Government to produce the documents supporting the area map which he, Darrell, contends was false...which resulted in the case going against his father."*
4. The effect of this case was the incorrect recognition of Sunnyside Park (lots 48-54) and the incorrect recognition of the Riviera Estate Road. Mr. Darrell contended that the incorrect position reached by the Court in this case was the basis of the problem which existed to that day and that subsequent Court cases had further compounded and complicated the situation.
5. In 1977, Mr. John Darrell knocked down some fences which had been erected by the Government and separated his land below the Railway right-of-way and to the rear of Heron Bay School. The Government took him to Court as a result. Magistrate the Wor. K.C. Nadarajah found in favour of Mr. Darrell and went against the 1974 judgment on the basis that the Government failed to produce the appropriate documentation to support ownership of the property.
6. In 1978, the Government brought another Court case, with Mr. Ralph Marshall, JP, MP, Minister of Public Works and Engineering, laying claim to the entire parcel of property (4 lots) leaving the Darrell family with nothing. The judge in that case, Mr. Walter Robinson, formerly the attorney on behalf of Sunnyside Park owners in 1953 and attorney for the Darrell family in 1963, who had prepared a Deed in 1964 in favour of W.G. Brown and Mr. Darrell, went against those earlier positions and decided the case in favour of Government.
7. There were several inconsistencies in Judge Robinson's judgment regarding the case.

### **Chronological Order of Events Pertaining to the Land**

1. In 1979, Mr. John Darrell enlisted Robert H. Clarke to survey the land which resulted in a further plan showing the portion of land allegedly owned by Benjamin Darrell and Horace Cooper and Government (as per a 1953 subdivision) was actually owned by Mr. John Nathaniel Darrell and that the Riviera Estate Road cut through a portion of property further to the west on the eastern side of the Tribe Road.
2. In 1982, Mr. John Darrell found two plans at the Department of Planning, one made by Wycliffe Stovell (1953) and the second a revised version of that plan prepared by Bermuda Caribbean Engineering Ltd. (BDEC) in 1982. The revised plan allegedly confirmed Government's ownership of the property. These plans conflicted with all the deeds and plans which were accepted by the Courts as exhibits in 1978.
3. In 1983, Mr. John Darrell bulldozed his personal property in a further effort to support his claim to the property. Government brought a Court action against him. The prosecutor,

Mr. Austin Ward, was challenged by Mr. Darrell's lawyer, Mrs. Lois Browne-Evans. Mr. Ward did not pursue the case, leaving the matter unresolved

4. In 1987, Mr. John Darrell took further action by using rubble to block the Riviera Estate Road outside his residence. When Government took him to Court because of this incident, Government failed to produce documented proof of ownership of Riviera Road while Mr. Darrell produced his deeds which supported his ownership of his residence (as supported by earlier deeds).
5. The letter of 6<sup>th</sup> April, 2000 from Solicitor General Mr. William Pearce to Mr. Darrell supported the latter's claim that he owned the house in which he lived.
6. Judge David Hull failed to acknowledge the 1945 deed that confirmed the Tribe Road as shown on the Robert H. Clarke plan. In 1989, Judge Hull also delivered a judgment on the qualification of the Government Surveyor, Mr. S. Johnson, who had prepared a plan for Government which was based on the 1953 Sunnyside Park sub-division, but was incorrectly revised by Mr. Stovell. Mr. Johnson's plan conflicted with all deeds and Government plans but supported Government's position in the cases they brought against Mr. Darrell.
7. In 1988, Mr. Darrell became ill and he next year borrowed money from BNTB (Kathy Lightbourne, Loan Officer) which agreed to provide the loan to fight his claim to a 60'x20' strip of property, a part of which had been swallowed up by the Riviere Estate Road. Over the next two years, his loan obligation grew to \$120,000. In 1990/91, James Darrell, his brother, pledged his Hamilton Parish property as collateral for the loan.
8. In September 1991, Mr. Darrell contended that BNTB's lawyer, Simon Farmer of Appleby Spurling & Kempe, did two favours for his friend David Summers, Bermuda Caribbean Engineering Consultants Ltd., with the knowledge and support of BNTB's Kathy Lightbourne.

## Conclusion

The Darrell family has fought long, hard and expensive legal battles against the Government in an effort to retain their properties. John Darrell did everything he could do while in good health, while in sickness, until the end of his life. A headline in the *Mid Ocean News* captures his challenges: "Battling John scores a moral victory but he's run out of cash" The Darrell family maintains that he lost thirty-seven properties and two taxis in his 50-year fight for the estate which he had inherited through his grandfather, Emelius Daniel Darrell.

Upon the conclusion of the COI Hearing on 18<sup>th</sup> March, 2021, Claimant Teart on behalf of the Darrell family stated:

*"It's been nearly 70 years since the first efforts of George Darrell to assert his claim to the Estate of Emelius Darrell as was inherited by him. We recognize that the Commission is*



*not a governing body and cannot come to any legal conclusion. However, our bid to the Commission is not necessarily to prove that the four properties in question rightfully belong to the Darrell family, as this has been proven by John Darrell many times within the past years and supported and acknowledged by various authorities. Rather, our bid to the Commission is threefold, and reflects the wishes of John Darrell and the surviving relatives.*

*“Firstly, we want to identify the status of the inhabited land that belongs to the Estate of Emelius Darrell, especially considering that the Heron Bay School is set to close and a portion of the existing land remains undeveloped and uninhabited at the moment.*

*“Secondly, we want the Commission to submit an official recommendation to compensate the family of John Darrell. In 2002, John Darrell requested a sum of roughly \$175 million which is now valued at roughly \$252 million for compensation for the 37 houses, two taxis, and numerous other damages and debts incurred by him during that 50 plus years that he spent fighting for the Estate of Emelius Darrell, and we are sure that this number in reality should be much larger to account for the generational wealth and opportunity robbed from the descendants of George Darrell who would have been supported and benefitted if the property was not stolen from its rightful owners.*

*“Thirdly, we would like the Commission to submit a recommendation to the Premier of the Government of Bermuda to publicly acknowledge the wrongdoings of the involved parties, and the inaction thus far to address this longstanding issue. Other requests by John Darrell include that the Riviera Estate Road be renamed to Wellington Road, after George Wellington Darrell and that the Sunnyside Park Road to be renamed Emelius East and Emelius West. We appreciate the time that the Commission has taken to hear the case of John Darrell and hope that some resolve may be brought to the family and descendants from Emelius Darrell, George Darrell and John Darrell. And we hope that the name of John Darrell will be cleared and, not only cleared, but honoured for his longstanding fight for the family's rightful land. His resilience be recognized as a historical act not only for our family, but also for the many other families that he attempted to help as well. We call for justice for John Darrell and the Darrell family and the countless others that were dispossessed of their land. So once again, thank you<sup>442</sup>.*

## Recommendations

The COI agrees with the following recommendations:

1. A Civil and Planning assessment be carried out by the relevant Government Departments in order to assess and correct the survey, planning and land registration issues raised by John Darrell in his claim mentioned in Detective Inspector Cart's Report dated 5<sup>th</sup> June, 2005. Director of Public Prosecutions Kamishi Tokunbo in his letter dated 13<sup>th</sup> August, 2001 to the Commissioner of Police agreed with that recommendation in the Cart Report.

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<sup>442</sup> COI – Transcript File TDTR-10

2. Contingent upon any discovery of loss of land and or revenue by the Darrell family, suitable, equitable restitution be made to those members of the Darrell family, taking into consideration generational wealth and opportunities lost as a result of past wrongdoings by the Bermuda Government, especially considering that Heron Bay School is set to close and a portion of the existing land remains undeveloped and uninhabited. This uninhabited land may offer a resolution to the matter.
3. Develop a methodology whereby members of the public who believe that they have been unlawfully dispossessed of their land may seek redress, a methodology that is fair from an economic, political and social perspective, one that is transparent and ensures all people are treated in a fair and just manner in the future
4. Order an audit of transfer of records from the Vestry system to the Government system which transpired in 1971 for correctness of transfer of landownership, the collection of taxes and, in particular, missing Vestry records.

The Commission further agrees to the following:

- Government should consider changing the name of Riviera Estate Road to Wellington Drive in keeping with the land owned by George Wellington Darrell and known as Wellington Lands in 1964
- Government should consider changing the name of Sunnyside Park Road to Emelius Drive East and Emelius Drive West.

## Case 042 - Estate of Lemuel Norman Tucker

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Mrs. Lynda Milligan-Whyte and Mr. Jonathan Starling

### Commissioners Recused

Ms. Frederica Forth and Mr. Quinton Stovell were recused from this case to avoid the perception of bias.

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### Introduction

This case concerns the various properties related to a Mr. Lemuel Tucker. In general, Mr. Tucker's property is reported to have covered an extensive portion of land in Warwick Parish bordered to the south by the Atlantic Ocean, to the west by the Southlands Estate, to the north by Dunscombe Road and to the east by Tribe Road #2. This case is unusual in that the COI received separate submissions from two of Mr. Tucker's descendants, V.P. Talbot and David William Burch ("the Claimants"), each submission relating to the same plot of land. Ultimately, the two descendants agreed to merge their claims into a single claim under V.P. Talbot. Unfortunately, Mr. Burch died in between hearings of this case.

The primary focus of this case relates to the property between the Atlantic Ocean and South Shore Road known historically as the Tucker Estate and today alternatively as either the Grand Atlantic Condominiums or the Bermudiana Beach Resort property. The Claimants referred to other properties in the area also; however, these properties did not feature prominently in the evidence tendered or by the Claimants in their testimony. It is also worth noting that the Claimants recognized at the outset that their claim was based largely upon family oral history.

### Summary of Facts

There were 12 Exhibits tendered for this case:

**DB-1** – Voluntary Conveyance dated 1939 – This evidence consists of five pages: (i) a cover page stamped by the Registry of the Supreme Court; (ii) a map of the area in question, marking out the various properties and their ownership, titled 'Plan of a Portion of Land in Warwick Parish Bermuda', dated both November 1938 and February 1939, created by N.A. Swan and signed at the bottom by Lemuel Tucker; and (iii) three pages, dated 22<sup>nd</sup> February, 1939, detailing the particulars of the Voluntary Conveyance in question.

**DB-2** – David Burch Statement – This constitutes Mr. Burch's witness statement of 12<sup>th</sup> March, 2021 to the COI. The key points of this statement are (i) he was representing his family regarding

ownership of properties in Warwick; (ii) a claim that the land housing the Bermudiana Beach Resort, formerly the Grand Atlantic Condominiums, was part of said property owned by his family; (iii) that the family had records related to land on Dunscombe Road that was conveyed to his mother, Etoile Burch, in 1939; (iv) that by virtue of a 2016 Supreme Court ruling this property (referenced in (iii)) was now legally owned by Westend Properties Ltd. due to the length of time it had occupied the property with no action taken by his family to assert ownership; and (v) an assertion that the family believes there is additional property in the area that they had claim to but were limited by finances in asserting such claims or identifying the properties.

**SC1** – Google Aerial Image of area – This shows the total area, outlined in red, that the family claims was at one time in the possession of their ancestors. It also marks out areas (with various colour outlines) that are either relevant to the case in question or are used as landmarks to assist the viewer in his orientation of the property. Additionally, for the sake of orientation, the image includes the Southlands property to the immediate west of the area in question.

**SC-2** – Black and white aerial photograph of area from South Shore – This is an aerial photo from the Southlands beachfront overlooking the general area outlined in **SC-1**.

NB → It should be noted that **SC-1** and **SC-2** are on the same page and that there is text at the base of this page that provides context to the two images. It is important to note that the witness referred to red outline overlaid on **SC-1** as boundaries of his ancestors' estate.

**SC-3** – Advertisement dated 25<sup>th</sup> April, 1887 – This consists of a newspaper advertisement (it is not clear from which newspaper, however it may be inferred that it is from *The Royal Gazette*) concerning the sale of the Southlands property. Accompanying this advertisement is a block of text written by the witness providing some historical context of property ownership by his family. The block of text in question does not directly reference the advertisement it accompanies and it should be noted that the Southlands property is separate to the estate of the family in question. It is understood that the Southlands property is referenced solely for the sake of context as the property directly adjoining the estate which the family claims. The key relevance of the block of text is that the Claimants are trying to determine the approximate date that the estate came into the possession of their ancestor, Mr. Lemuel Tucker. Based on some premises built within the text, the witness speculates that the estate came into the family's possession at some time in the 1920s.

**SC-4** – Plan of plot of land – This is a plan dated January 1945 titled 'Plan of Plot of Land Situated Near 'Southlands' – Warwick Parish – Bermuda. It also has a sub-heading that reads 'Sub-divided according to instructions from Lemuel Tucker – Owner'. In general, it provides a plan of landownership along what is understood to be named Dunscombe Road today, but marked as simply 'Public Cross Road' on the plan. Three lots owned by Mr. Lemuel Tucker are outlined, along with reference to neighbouring properties owned by J.W. Edness to the east and F. Hutchings to the west and south.

**SC-5** – Notes of Sean Pol O'Creachmhaol [*pronounced 'Sean Paul O'Crockwell'*] - This consists of a single page of texts by the aforementioned composed of eight paragraphs. In summary: (i) provides some context for the properties outlined in **SC-1**, notably the personal home of Mr. Lemuel Tucker; (ii) a discussion about the eastern boundary of Mr. Lemuel Tucker's property, making reference to

the U.S. Navy Anti-Aircraft Training Center, current site of the Bermudiana Beach Resort; (iii) further discussion of property which the family claims via its oral history, specifically, a plot of land on the northeast of the area currently housing the Bermudiana Beach Resort; (iv) speculation that Mr. Lemuel Tucker owned land on the northern side of South Shore Road and on the eastern side of southern Dunscombe Road; (v) a description of the eastern boundary of Mr. Lemuel Tucker's land at his death in 1945, making reference to the lots illustrated in **SC-4** and also referencing the legal case referred to in **DB-2** regarding Westend Properties; (vi) a discussion on Mr. Lemuel Tucker selling or gifting lots of land in the area; (vii) further discussion of lots of land formerly in possession of Mr. Lemuel Tucker, specifically a house referred to as 'Grace Louise Taylor's (Adcock)' home, and the property currently housing LITT Restaurant, formerly Swizzle Inn Warwick; and (viii) speculation on whether Mr. Lemuel Tucker sold a lot that is described in this paragraph.

**SC-6** – Further notes of Sean Pol O Creachmhaoil – This is also a single page of notes composed of eight paragraphs. In summary: (i) a brief description of dead ends found along Dunscombe Road; (ii) uses the dead end as points of reference in relation to the western boundary of Mr. Lemuel Tucker's estate with the Southlands Estate; (iii) a brief history as to how the residence of the witness V.P. Talbot came into his possession from their ancestor, Mr. Lemuel Tucker; (iv) a brief historical overview of how the U.S. military came to occupy property in the area; (v) further historical discussion relating to the US military in Bermuda; (vi) additional discussion relating to the U.S. military presence in Bermuda, with specific reference to the establishment of the U.S. Navy Anti-Aircraft Training Center, claiming that the eastern part of this was placed on property that the family claims to have been owned by Mr. Lemuel Tucker, albeit noting that this property is not referenced in Mr. Lemuel Tucker's will; (vii) a discussion about more recent property purchases in the area, involving the waterfront property claimed to be owned by Mr. Lemuel Tucker's estate, including a reference to the new owners (Willowbank) apparently having checked the land registration records and finding that the property was still registered as part of Mr. Lemuel Tucker's estate; and (viii) a discussion on how the Government built the current Bermudiana Beach Resort on the site of property the family believes is theirs.

**SC-7** – Aerial picture of area dates 1994 – An aerial photo of the waterfront site, taken from the west (over Southlands) looking east.

**VPT-1** – Will of Lemuel Tucker – This is a nine-page document dated 19<sup>th</sup> December, 1945. The first six pages consist of the three cover pages (page one, page four and page six), an introductory page acknowledging Philip Henry Tucker and Christina Eunice Ophelia Tyrell as the respective Executor and Executrix of the will (page two) and a page each signed by the aforementioned affirming their relation to the deceased (brother and daughter respectively; pages three and five). The will proper is found on pages seven and eight, while page nine consists of a plan of the plot of land, identical to that of **SC-4**. The will makes reference to the division of Mr. Lemuel Tucker's estate. The division is subsequently illustrated in the plan (see **SC-4**). No other properties are referenced in the will.

**VPT-2** – Indenture dates 12<sup>th</sup> June, 1939 – This consists of a five-page document and relates to the sale of land by Mr. Lemuel Tucker to a Mr. Edwin Day Joseph Evelyn. The land is described as being numbered 4 in an annex to the document (but missing here) and being bounded northerly by

a roadway or land set apart from a roadway; easterly by a plot of land numbered 5 in the missing annex; westerly partly by land previously owned by a James Morgan and currently owned by a Lyle B. Torrey; the southern boundary is not fully described. However, while the annex with the plan of the land is absent from this index, it is included in **COI-3** and **COI-4**, described below.

**VPT-3** – E-mail dated 5<sup>th</sup> May, 2021 – This is an email from the Claimant, V.P. Talbot, to the COI. It makes reference to the document described above as **SC-1**. It details the witness seeking assistance in locating deeds for the Southlands property (on the basis that this would describe the estates to the east of that property, the subject of the Claimant’s interest) and deeds relating to the alleged purchase of property (specifically, the Bermudiana Beach Resort site) by Mr. Lemuel Tucker from a Mr. Joseph Lusher in 1936. These deeds would prove the family’s historical claim to this property. The e-mail acknowledges that the family is relying on oral history and it is not certain if their ancestor owned it.

Additionally, while not formally tendered as evidence, the following documents are relevant and are treated as evidence for the purpose of the case review.

**COI-1** – E-mail from V.P. Talbot dated 7<sup>th</sup> June, 2020 – This e-mail initiates the claim and serves in lieu of a witness statement. It emphasizes that the essence of the claim is the historical ownership of the area currently occupied by the Bermudiana Beach Resort. The family believes that this property belonged to their great grandfather, Mr. Lemuel Tucker, and that it was leased from him to the Bermuda Government and then subleased to the U.S military. The family believes that the property should have been returned to their ownership once the U.S. military vacated the area. It also notes a relationship to Case 029, Talbot, a Tucker’s Town case.

**COI-2** – E-mail from Sean Pol O Creachmhaoil dated 31<sup>st</sup> January, 2021 – An e-mail exchange between COI Investigator Larry Smith and Sean Pol O’Creachmhaoil. The key aspect of this exchange is a speculative interpretation of the will (see **VPT-1**) with specific reference to what is referred to as the Grand Atlantic site (Bermudiana Beach Resort). Additionally, the e-mail exchange provides context for the properties outlined (by colour) in **SC-1**.

**COI-3**– Sale & Purchase Agreement for 58 Dunscombe Road, undated – This is a four-page document which provides a description of the land being purchased by the Claimant VP Talbot and refers to the **VPT-2**. Included in this is a black and white version of the plan referred to as annexed in **VPT-2**, but absent from that evidence.

**COI-4** – A conveyance document dated 12<sup>th</sup> June, 1939 – This is six-page document and is identical to **VPT-2**, except that it includes the annex referred to but missing in **VPT-2**. A black and white copy is also found in **COI-3** above.

**COI-5** – Records from the Land Title Registry Office regarding Henry Lemuel Wainwright Tucker – This is a two-page document. The first page is a copy of the Land Title Registry Office’s records for the aforementioned and the second page is a receipt for the copy. The entry dates in the records are January 1954, January 1957, May 1958, March 1960 and September 1977.

**COI-6** – Plan of a portion of land in Warwick Parish – This is identical to the plan referred to in **DB-1(ii)**.

**BHC-1** – Indenture of Conveyance and Release dated 13<sup>th</sup> December, 2011 – This is a 16-page document outlining the conveyance and release of the Grand Atlantic property between Atlantic Development (Bermuda) Limited, the Bermuda Housing Corporation and the Bank of N.T. Butterfield. It provides a description of the property in question, now the site of the Bermudiana Beach Resort, along with a historical chain of ownership in the third and fourth schedules (pages seven to twelve). Also included is a plan of the site (pages 14 and 15). It is worth noting that the names Lemuel Tucker and Joseph Lusher are absent from this document.

**BHC-2** – Deed of Conveyance dated 18<sup>th</sup> May, 2012 – This 17-page document is similar to **BHC-1** and involves the same entities. The property in question is described in the first and second schedule (pages four to six), while the historical chain of ownership is similarly outlined in the third and fourth schedules (pages seven to twelve). A plan of the property is included on pages 14 and 15. It is worth noting that the names Lemuel Tucker and Joseph Lusher are absent from this document.

**BHC-3** – Deed of Conveyance and Release dated 1<sup>st</sup> November, 2012 – This is a similar document, consisting of 17 pages, and relating to other aspects of the Grand Atlantic property. The same entities named in **BHC-1** are involved again. The document provides a description of the property in question (the first and second schedules, pages five to seven). A historical chain of ownership of the property in question is provided in the third and fourth schedules (pages eight to thirteen). A plan of the property in question is included on pages 15 and 16. It is worth noting that the names Lemuel Tucker and Joseph Lusher are absent from this document.

## Issues

The key questions raised in this case are:

- Was the Grand Atlantic/Bermudian Beach Resort property historically the property of Mr. Lemuel Tucker?
- If so, was Mr. Lemuel Tucker fairly compensated for the loss of this land? And,
- If so, should the land in question have been returned to Mr. Lemuel Tucker or his estate/descendants?

## Discussion of Facts

The fundamental question to be answered in this case is whether the current site of the Bermudiana Beach Resort was ever historically part of the Claimants' family estate, in particular that of Mr. Lemuel Tucker. The subsequent questions (outlined in *Issues* above) cannot be addressed without first establishing whether the property was, indeed, once owned by Mr. Lemuel Tucker.

The Claimants have provided several documents which do not explicitly prove ownership of the property in question, a fact which they concede (see, for example, minute 10.25 of the 15<sup>th</sup> March,

2021 transcript<sup>443</sup>). All that can be determined authoritatively from the documents provided is that Mr. Lemuel Tucker did own various properties along Dunscombe Road (particularly the western portion). No clear evidence is provided that indicates claim of ownership for any property to the south of Dunscombe Road. Indeed, the COI reiterates that the Claimants are open in stating that their claim to ownership is based on family oral history rather than any hard evidence as borne out through the documents provided.

Additionally, the documents **BHC-1**, **BHC-2** and **BH-3** provide the historical chain of ownership for the Bermudiana Beach Resort property dating back to the 1870s and make no reference to Mr. Lemuel Tucker or to a Mr. Joseph Lusher who, according the family oral history, sold the property to him.

## Findings of Fact

The COI sought to answer the primary question of whether the Bermudiana Beach Resort property was ever owned by Mr. Lemuel Tucker and thus constitutes land lost by the family. Secondary questions arising from this were:

- 1) Was Mr. Lemuel Tucker fairly compensated for the loss of this land? And
- 2) Should the land in question have been returned to the estate of Mr. Lemuel Tucker?

Based on the evidence before the COI, the conclusion is that there is no evidence that the property in question was ever owned by Mr. Lemuel Tucker. As such, the secondary questions are considered moot.

It is worth noting, however, that of all the cases presented to the COI, this one was severely impacted by the death of Mr. David Burch, one of the Claimants, midway through the hearing of the case. The third wave of Covid-19 in Bermuda also impacted this case. It is recognized that Mr. Burch may have had additional evidence in his possession or that he knew where to obtain more evidence but was unable to do so prior to his death. Additionally, it is acknowledged that following Mr. Burch's death, his family have had difficulty locating or identifying any additional evidence relevant to this case that he may have had in his possession.

## Adverse Finding

Based on the evidence before the COI, no adverse findings were identified.

## Recommendation

The COI recognizes that the combined impact of Mr. Burch's death and the third Covid-19 wave severely impacted the evidence available to the Claimants to submit to the COI for consideration.

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<sup>443</sup> “Just family talk. Um, it is very well known amongst my family that my great grandfather was [a] very, very kind man and parceled off pieces of land to unfortunate individuals back in the 1930s and 1940s. And that talk amongst the family was that that [sic] land belonged to him, but all of a sudden it was gone. And I don't know how that happens. I do not know how that occurred. I do not know the circumstances of around of how that land transferred from, from ownership by my great grandfather; which I stated I don't have evidence of ownership by my great grandfather, to being presently owned by the Bermuda Government today.” – VP Talbot, minute 10:25, 15<sup>th</sup> March, hearing. COI Transcript VPTTR-1



As such, there is the potential for further investigation of this case by the Claimants' family based on new information that was unearthed through the COI Hearings and investigations.

## Case 044 – Estate of Joanna Talbot

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell.

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### Introduction

This case is part of the Tucker's Town case as a whole and concerns a property that the family lost as part of the expropriations there. In particular, it refers to a plot of land inherited by Mr. Walter Smith ("Mr. Smith"), the great, great grandfather of Jonathan Nathaniel Jervis ("the Claimant"). Mr. Smith, along with his sister, Ms. Naomi Smith, were 'willed' the plot (the plot is described in a plan tendered as evidence; however it appears to correspond roughly with the tee of the current 16<sup>th</sup> hole of the Tucker's Point Golf Club to the current location of the Island Brasserie restaurant; the exact acreage is uncertain) from their grandmother, Ms. Joanna Talbot. This is set out in paragraph five of Ms. Joanna Talbot's will which includes a map with the relevant lot so identified.

The Claimant provides a number of documents (birth certificates and an obituary of a relative) to prove their relationship with Mr. Smith. A key contention of the Claimant is that Mr. Smith, who in 1920 was the alleged sole owner of the plot in question, was allegedly compelled to sign legal documents agreeing to the sale of the property as part of the expropriations. Further, it is alleged that whilst under this compulsion, he was not allowed to consult his wife (or other persons outside of the expropriators) for assistance in reviewing the legal documents. Significantly, Mr. Smith was illiterate and thus unable to review the documents himself. Subsequently, the family was evicted from the property by the arrival of a company of soldiers who oversaw their eviction.

Importantly, the family gave the following statement in relation to what their appearance at the COI meant for them:

*"It means acknowledgement of what has happened, also offered an opportunity to actually understand what actually happened, understanding the time in which it occurred, the individuals who were directly there who no longer are with us. With the information that I've provided, it outlines or explains how the reference or mentioned plot of land was inherited by my great grandfather, Walter Smith. However, the trail, or the paper trail I should say, of what happened to that land actually is unknown to myself and hasn't been seen. Understanding the story, it would be great to gain some clarity of actually what occurred and if what occurred was actually fair and just."* Minute 13.54 of the transcript.

## Summary of Facts

There were six pieces of evidence tendered as part of this case by the Claimants:

**FW-1** – A Government of Bermuda Certificate of Birth for Claimant Jonathan Nathaniel Jervis, the principal witness providing evidence for this case, with registration date 10<sup>th</sup> September, 1991. The evidence was tendered by Ms. Fay Whalley, Mr. Jervis’s grandmother.

**JJ-1** – The Claimant’s witness statement dated 8<sup>th</sup> March, 2021. It outlines the key arguments of the case: (i) speaking as a representative of the family tracing its ancestry to a Mrs. Joanna Talbot, his great great grandmother; (ii) The family argue that a plot of land in Tucker’s Town was willed to Mrs. Joanna Talbot by will dated 8<sup>th</sup> February, 1911 (see **JJ-2**); (iii) The said plot of land was subject to the land expropriation involved with the purchase of property as part of the Tucker’s Town redevelopment; (iv) In particular, their ancestor Walter Isabell Smith (the then occupant of the plot) was illiterate and forced to sign legal documents regarding his property while being denied the assistance of someone literate, specifically his wife, Geneva Smith; (v) They argue that this prevented their ancestor from making an informed decision or asserting his rights at the time, including preventing them from advocating for a fairer compensation; and (vi) The remainder of the statement largely details their family history subsequent, including working as servants in Tucker’s Town.

**JJ-2** – The will and plot of land of Joanna Talbot, a four-page document. The first three pages describe the properties that she is leaving as an inheritance and to whom while the fourth page consists of a plan of lots of land in the Tucker’s Town area corresponding to lots of land identified in the will proper. The will is dated 8<sup>th</sup> February, 1911. The plot of land which is central to this case is identified as Lot 4 on this map (in the central north of the map) and described in paragraph 5 of the will (on the first page). This lot of land is recorded as being willed to her grandchildren Walter Alexander Smith (from whom the witness, Mr. Jervis, derives ancestry) and Naomi Mabel Smith. The map is stamped by the Bermuda Archives. It is worth noting that Case 034 – Estate of John Samuel Talbot, also references this will for a different plot of land.

**JJ-3** – A two-page document entitled “A” Certificate of Birth for Ms. Isabell Edith May Smith, born in November 1964. The date of registration is listed as 5<sup>th</sup> December, 1964. The first page of the document contains relevant information related to the birth in question while the second page contains the certification and seal of the then Registrar General. Ms. Isabell Smith is the mother of the Claimant.

**JJ-4** – A two-page document entitled “A” Certificate of Birth for Ms. Fay Julia Ann Smith, born in May, 1943. The date of registration is listed as 14<sup>th</sup> August, 1943. The first page of the document contains relevant information related to the birth in question, while the second page contains the certification and seal of the then Registry General. Ms. Fay Whalley is the grandmother of the Claimant.

**JJ-5** – Obituary of May Rosaline Smith. This is a three-page document consisting of a scanned copy of an obituary (in booklet form) for Ms. May Rosaline Smith. While the obituary booklet is undated, it records the date of Ms. Smith’s death as 12<sup>th</sup> September, 2011. The first page of the

document contains the scanned copy of the first two pages of the booklet, providing biographical information of the deceased; the second page of the document contains the next two pages of the booklet, the first of which provides additional biographical information of the deceased and the second contains images of the deceased and a poem or hymn; the final page of the document contains the final two pages of the booklet, containing additional photos of the deceased along with the birth and death date of the deceased. The most relevant part of this document appears on the first page where the first paragraph details the history of the family being removed from their property in Tucker's Town by soldiers; the third paragraph provides information about working as a domestic servant in Tucker's Town following the redevelopment. Ms. May Smith is the great grandmother of the Claimant.

## Issues

The COI must consider the following issues that arise from this case:

- Does the family have a direct connection to the plot of land through Mr. Walter Smith? Is the family able to prove descent?
- Did Mr. Smith own the plot of land in question at the time in question?
- If Mr. Smith did own the plot of land, was the expropriation of his property:
  - Conducted fairly?
  - Fairly compensated?

## Adverse Notices

No adverse notices were issued in relation to this case.

## Discussion of Facts

For the ease of reading, the section is broken down according to the three (3) questions identified in *Issues* above.

1 – Does the family have a direct connection to the plot of land through Mr. Walter Smith? Is the family able to prove descent?

In seeking to address these questions, the Claimant provided multiple pieces of evidence in the form of birth certificates (**FW-1**, **JJ-3** and **JJ- 4** for Jonathan Jervis, Isabelle Smith and Fay Whalley respectively) as well as an obituary of a relative, May Rosaline Smith, **JJ-5**. Based on the review of these documents, the COI is satisfied that the Claimants and the family more widely are indeed descendants of Mr. Smith and, by extension, Ms. Joanna Talbot. The COI does note the discrepancy in the middle name of Mr. Smith, evident between the will in question and other family evidence. However, the COI is minded that this is not material and is more indicative of a clerical error than anything else.

## 2 – Did Mr. Walter Smith own the plot of land in question at the time in question?

The Claimant provides no direct evidence to prove that Mr. Smith was indeed the property owner of the plot of land specified as Lot 4 in the will of Ms. Joanna Talbot. Rather, the Claimant relied on three lines of argument to support this assertion:

- 1) The will of Ms. Joanna Talbot (see **JJ-2**) indicates that Mr. Smith (along with his sister Ms. Naomi Smith) were to inherit the plot of land following Ms. Joanna Talbot's death.
- 2) Family history (oral) is that Mr. Smith was living on this plot of land at the time of the Tucker's Town expropriation.
- 3) The obituary of Ms. May Smith also asserts that Mr. Smith was living on this plot of land (or the general area) at the time of the Tucker's Town expropriation. It is likely that this is the source of the family history referenced above.

The COI concedes that the execution of a will demonstrates intent to share or divest property; in this instance it does not necessarily prove that the property genuinely came into the possession of Mr. Smith. Furthermore, the Claimant was unable to provide the COI with a copy of the agreement presented to Mr. Smith concerning the expropriation, and was uncertain of the precise location of the plot of land in question. On this important point, the COI noted that in other similar claims, the families involved have been able to demonstrate some level of ownership of the property in question. In this case, the Claimant's evidence was more of a circumstantial nature and more so a reliance on oral history. Importantly, the paucity of documentation in proof does not provide a basis for the COI to take matters further.

Ultimately, the evidence for Mr. Smith being the owner and/or resident of the property at the time of the expropriation in 1920 is inconclusive. All that can be said is that (i) there exists a will demonstrating an intent for Mr. Smith to inherit the property; and (ii) an oral history of the family that he did so. Without corroborating evidence, the COI cannot conclusively say that this was the case. The only conclusion that the COI can reach is that there is a proven family connection to Mr. Smith.

## 3 – If Mr. Walter Smith did own the plot of land, was the expropriation of his property:

- Conducted fairly?
- Fairly compensated?

As noted above, the COI could not definitively conclude that Mr. Smith was indeed the resident and/or owner of the plot of land referred to in the will of Ms. Joanna Talbot at the time of the Tucker's Town expropriations.

Having said this, the reported forced eviction of Mr. Smith is similar to other stories regarding how matters in Tucker's Town were handled. Although some residents were compensated at the time, the COI was not able to ascertain from the evidence or testimony before it whether Mr. Smith was compensated.

The reported manner in which the expropriation was undertaken, as per the testimony of the Claimant, does make it appear that the family was not afforded due process; additionally, the COI notes that due to the racial dynamics of that time, many black residents of Tucker's Town probably felt that they had no recourse when presented with documentation by white officials, including police officers, reinforced by the use of military force to evict persons. However, the COI is unable to conclude whether Mr. Smith was indeed the owner or resident of the plot of land in question. As a result, the COI cannot similarly conclude whether Mr. Smith was compensated, fairly or unfairly. There is, unfortunately, simply a lack of evidence available to the COI to determine this, one way or another. All that the COI can conclude is that the oral history is similar to testimony presented by other Claimants, that many, particularly black residents, were illiterate and apparently prevented from seeking advice from literate persons whom they could trust to advise them neutrally. This further reinforces the appearance that the expropriations at this time were not conducted fairly.

As such, the COI is unable to conclude whether the expropriation of this property was conducted fairly or unfairly. This is especially the case in as much as no information was available to indicate what compensation Mr. Smith may or may not have received for the plot of land in question. Quite simply, it is not possible for the COI to reach a determination on whether the family was compensated fairly.

## **Findings of Fact**

As with the previous section, this section is broken down according to the three questions confronting the COI in this case.

1 – Does the family have a direct connection to the plot of land through Mr. Walter Smith? Is the family able to prove descent?

On review of the evidence provided by the witness, the COI is of the conclusion that the Claimant's family does have a direct familial connection with Mr. Smith.

2 – Did Mr. Walter Smith own the plot of land in question at the time in question?

The COI could not definitively conclude whether Mr. Smith owned or was resident on the plot of land in question at the time in question.

3 – If Mr. Walter Smith did own the plot of land, was the expropriation of his property:

- Conducted fairly?
- Compensated fairly?

As the COI cannot conclude on the basis of evidence available to it that Mr. Smith was the owner/resident of the plot of land at the time, or even what compensation was received, the COI simply is not able to answer these questions.

## Adverse Finding

Due to the inability to confirm whether Mr. Smith was the owner/resident of the plot of land at the time, it is not possible to issue any adverse findings on the basis of the evidence before the COI.

## Conclusions

The COI could not determine a key question as to whether Mr. Walter Smith was fairly compensated for the plot of land in question. Indeed, as with the other Tucker's Town cases hat it heard, the COI was hampered by the lack of available records concerning compensation for this expropriation.

It is known that the deeds of lands expropriated were often collected by the expropriators. However, the COI was unable to determine whether these or other records were still in existence. A combination of limited resources available to the COI (time and financial) as well as the challenges posed by the Covid-19 pandemic no doubt hampered the COI's ability to determine definitively whether such records still existed. As such, a key recommendation is that the Government commit additional resources to investigating and securing whether such records exist. A review of these documents will greatly enhance the understanding of this key part of Bermudian history.

Beyond this, this case, like those of other Tucker's Town related cases, reflects either the lack of, or the breach of, the rule of law at that time.

## Recommendations

Critical information which would help to answer the questions before the COI relating to this matter are, quite simply, missing. In particular, the COI has been hampered by the loss of records relating to which properties were expropriated, from whom and what compensation was given. The existing records available to the COI provide this information for only some plots of land in Tucker's Town and not the entirety of the plots involved. This fact, however, does not mean that such records do not exist.

As such, the only recommendation the COI can make relating to this case is that the Government commit resources to locating the relevant missing documents in all cases of expropriation during the period of 1919 to 1922 (roughly covering the Tucker's Town expropriation period). Should these documents be located, only then will it be possible to revisit this case and the questions arising from it.

## Case 046 – Estate of Joseph Bean Wilson

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte and Mr. Quinton Stovell

### Commissioner Recused

Mr. Jonathan Starling was recused from this matter.

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### Introduction

This case concerns Five Star Island, a well-known location in Southampton Parish. Five Star Island, formerly known as “Wilson Island” as evidenced by an old map dated 1898-1899 which illustrates the geographical area, comprises 2.11 acres or 91,911.60 square feet.

Claimant, Mrs. Maude Janette Chentouf, gave evidence that her great, great grandfather, Joseph Bean Wilson, had owned the island and had been forced to hand it over because of his inability to repay a debt which grew out of a gentleman’s agreement. Mrs. Chentouf argued that the collateral value of the island was far greater than the sum of money that Mr. Wilson had borrowed and was seeking to receive fair compensation.

### Chronological Order of Ownership, Exhibit<sup>444</sup>

Five Star Island has had several owners since the 17<sup>th</sup> century:

1. John and Catherine Wilson - 17<sup>th</sup> century, original owners – Department of Archives)
2. No record of ownership for the 18<sup>th</sup> century.<sup>445</sup>
3. Jane Helen Melville Salton in the early 19<sup>th</sup> century purchased the island which became known as Melville Island. (Department of Archives Record Book of Claims)
4. Charles Foster Whitter Cooper, 15<sup>th</sup> November, 1932, by way of a Voluntary Conveyance from parents Alexander Cooper and Laura Ann Cooper. (Land Registry)

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<sup>444</sup> COI - Exhibit EJD-1

<sup>445</sup> COI - Exhibit EJD-1



5. Alfred Valentine Leman, 2<sup>nd</sup> December 1938, acquisition by Alien Act 1926 from Charles Foster Whitter Cooper.
6. Morris Alvin Gibbons, 9<sup>th</sup> August 1950, by conveyance from Alfred Valentine Leman. (Notice of Parish Vestry Clerk)
7. Alice Stephano, 23<sup>rd</sup> February, 1951, acquisition by Alien Act from Morris Alvin Gibbons. The Stephano family manufactured cigarettes with the brand name “Five Star”, hence the name change of the Island to Five Star Island.
8. Curt Englehorn, German national, 28<sup>th</sup> May, 1970, received by acquisition from Alice Stephano.
9. Carolin Englehorn, German national, in 2012 following receipt of Department of Immigration permission to acquire the island.

## Summary of Facts

The claim before the COI was submitted by Claimant Maud Janette Chentouf on 24<sup>th</sup> November, 2020. Oral evidence was heard on 2<sup>nd</sup> December, 2020. The Claimant is the great great granddaughter of Joseph Bean Wilson. Najib Chentouf who resides in Morocco is a virtual Claimant; he is the great great great grandson of Joseph Bean Wilson. Claimant Mrs. Chentouf’s evidence was based on oral history of her father, Rudolph Wesley Robinson Wilson, who told her that her great great grandfather had owned Wilson Island. No documentary proof of Mr. Wilson’s ownership of the island was produced by the Claimants nor did a COI investigator assigned to assist the claim find any documentary evidence. It must be stated that the absence of supporting documentation being placed before the COI regarding the claim does not mean that the claim is untrue. Rather, it simply means that there is no evidence in support of the claim which satisfies the requisite standard of the claim before any finding can be made.

Claimant Mrs. Chentouf stated in evidence that she had been told two stories about the ownership of Five Star Island: First, “The Forty Thieves” had stolen the property from her great great grandfather, Joseph Bean Wilson. Second, her great great grandfather had been forced to sell his property for ten barrels of potatoes. In her statement, she asserted that Joseph Bean Wilson wanted to plant potatoes on a property now known as “Hill Top Farm” located at Tribe Road #3, Southampton. As he had no funds with which to purchase the potato slips, the Bermuda Company gave him the potato slips. In return, he surrendered the deeds to Wilson Island, now known as Five Star Island, with the promise that when the potatoes were harvested, he would sell ten barrels of potatoes and with the proceeds pay off his debt to the Bermuda Company which would then return his deeds to him. Unfortunately, as a result of a blight there was no harvest of potatoes and Mr. Wilson was unable to repay the debt to the Bermuda Company which retained the deeds.<sup>446</sup> The Chentouf family feels that the loss of Wilson Island for potato slips was unfair and they are seeking fair compensation.

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<sup>446</sup> COI - Exhibit MC-1

A COI investigator gave evidence that there was a potato blight and that a crop of potatoes was given a value of £40,000 as published in an article in *The Royal Gazette* dated 30<sup>th</sup> December, 1919.<sup>447</sup>

## Findings of Facts

- There is no supporting documentation in proof of ownership of Wilson Island by Joseph Bean Wilson.<sup>448</sup>
- The conveyance documentation for the early 1800s is missing, with the result that there is no supporting documentation of ownership of Wilson Island for nearly 100 years.<sup>449</sup>
- In 1895, Mr. Bean Wilson's name was entered into the Register of Freeholders for Southampton Parish, indicating that he was a property owner and entitled to vote.<sup>450</sup>
- Joseph Bean Wilson owned several acres of land in Southampton.<sup>451</sup> However, there is no evidence that he owned Wilson Island/Five Star Island.
- In 1925, Joseph Bean Wilson conveyed several parcels of land to his children by way of voluntary conveyance. There is no evidence of a voluntary conveyance of Wilson Island/Five Star Island to his children.
- The last will of Joseph Bean Wilson who died in Southampton Parish on 15<sup>th</sup> February, 1944 was probated in the Supreme Court on 13<sup>th</sup> December, 1945. His son, Arnold Inglefield Wilson of Warwick Parish, and his nephew, Henry Granville Wilson of Southampton Parish, were appointed as the executors of his estate.
- Joseph Bean Wilson left all his real estate to the two eldest sons of his daughter Mildred Allen, the wife of Henry Allen of Devonshire. All of his personal estate was left to his daughter Bernice Vendetta Wilson. There is no mention of Wilson Island in the will.
- There is no documentation evidencing a loan between Joseph Bean Wilson and the Bermuda Company in support of the claim that a contract or a gentleman's agreement was in place between them, the basis of the claim that Mr. Wilson's deeds were used as collateral and that his property was lost by dispossession due to his failure to repay the debt.

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<sup>447</sup> COI – Exhibit EJD-7

<sup>448</sup> COI – Exhibit EJD-1, pp. 1

<sup>449</sup> COI – Exhibit EJD-1, pp. 1

<sup>450</sup> COI – Exhibit EJD-1, pp. 1

<sup>451</sup> COI – Exhibit EJD-1, pp. 1

## **Conclusion and Recommendation**

There was no evidence produced to support the Chentouf (Wilson) family's claim that Joseph Bean Wilson formerly owned Five Star Island and that he had lost the island because of his inability to repay a debt. Due to a lack of supporting documentation, the Chentouf (Wilson) family has no basis for its claim to ownership of Five Star Island.

The Chentouf (Wilson) family is advised to continue its research to show proof of ownership of Five Star Island/Wilson Island.

## Case 049 – Estate of Henry Thompson North

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### Commissioners

Mrs. Justice (Ret'd) Norma Wade-Miller (Chairman), Mr. Wayne Perinchief (Deputy Chairman), Mrs. Maxine Binns, Ms. Frederica Forth, Mrs. Lynda Milligan-Whyte, Mr. Jonathan Starling and Mr. Quinton Stovell.

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### Introduction

This case involves the expropriation of land as part of the Tucker's Town expropriations and is focused on the area currently occupied by the Loren Hotel and the beach known as Pink Beach. Ms. Katherine Harlow ("the Claimant") brought this case before the COI out of concern for the way in which the property was expropriated from her grandfather, Mr. Henry 'Harry' Thompson North, a Member of Colonial Parliament at the time. A key dispute in this matter is that the owner is alleged to have been made to sell his land in the understanding that it was for the public benefit in terms of creating a public amenity (park and beach), whereas it was instead promptly sold off to a foreign developer

### Summary of Facts

There are nine pieces of evidence for this case. Each is considered and described below:

**KH-1** – This is a two-page document, consisting of scanned images of a map of the plot of land in question. The first image features the Atlantic Ocean to the southeast, Mangrove Lake to the northwest and a plot of land between the two, with the parish boundary between Smith's Parish and Hamilton Parish marked out by a semi-dotted line on the western side of the map. This plot of land depicted in the map roughly corresponds to Pink Beach East and the area of land upon which the Loren's standalone six-bedroom vacation home known as 'The Residence' stands.\* Included in the map is South Road, with an arrow and note 'Road to Tucker's Town' and two areas shaded in pink to the north and south of the road in question. Acreages are given for these northern and southern shaded areas, 1.45 acres and 1.38 acres, respectively. There is also an area shaded in faint yellow with an accompanying note 'area shown in yellow 0.83 acres'. The second image (page two) is also a map of a plot of land in the area but featuring a plot of land to the northeast of Mangrove Lake. This image has the road Harrington Sound Road along the northern border and a portion of Mangrove Lake in the southeast border; while it is not clear in the image, there is a road along this border that corresponds with what is known today as Judkin Lane. There are several what appear to be roads throughout the central area of the image; however, none of these roads are currently in existence, implying that they were dirt tracks at the time. To the southwest border appears a road marked out with dotted lines; while this road is not named, it corresponds with the current location of Ramgoat Hill Road. The southern border of this image has a plot of land labelled 'Bermuda National Trust' which corresponds to the current location of the Bermuda National Trust nature reserve in the area known as the H.T. North Nature Reserve. It is understood the property

was gifted to the Bermuda National Trust by the Claimant's grandfather and subsequently named after him). While there are various properties listed on the image, labelled with their owners' names, the primary focus of the image is an area of 8.567 acres outlined in pink and marked with the name 'Henry Thompson North'.

*\*It is noted that Pink Beach consists of an East and West beach, divided by a rocky promontory roughly corresponding to the primary built structure of the current Pink Beach Club*

**KH-2** – This is a three-page document (although the third page is blank) consisting of the witness statement of the Claimant dated 1<sup>st</sup> October, 2020 and signed by both the Claimant and a witness, Mr. Hashim Estwick, who was an investigator for the COI. This document provides the key points of this case, which may be summarized as:

- a) The Claimant is the granddaughter of Henry Thompson North, her mother being Mary Frances Trott North, the youngest of Mr. North's three daughters.
- b) Her grandfather was a landowner in the area around Mangrove Lake in Bermuda and also a Member of Colonial Parliament where he was affectionately known as 'The Objector General'<sup>452</sup>.
- c) The Claimant writes how her mother had relayed the history of the loss of the property in question to her: *"...my mother told me that my grandfather had once owned a private beach which was known as Pink Beach. It was a beach attached to his other landholdings and other family lands. It was in an area where his family-owned land near Mangrove Lake in Smith's Parish close to what is known as Tucker's Town. The beach was used by the family as an amenity for swimming and picnics. My mother told me that there was an old shipwreck there which they used to play on and have family picnics. A lot of my grandfather's land was used for farming as he used to export produce as his main source of income. He also owned a quarry on Harrington Sound Road. I believe the beach when our family owned it, was undeveloped – it was a beach amenity adjoining other lands."*
- d) Her grandfather was said to have been *"very distressed as he had been forced to sell the Pink Beach property by the Government. He was in Government at the time. He did not want to sell the property and he did not need to sell it. I believe this would been in the 1920s..."*.
- e) It is stated that the property had been compulsorily purchased and that the Government had subsequently sold it to a foreign developer at a profit; her grandfather was upset that the property had not been offered back to him for purchase.
- f) In particular, her grandfather is said to have understood that *"...the beach was purchased by the Government for the 'national good' rather than being sold to an outside developer. He felt he had been betrayed or 'stitched up'..."*.

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<sup>452</sup> While not part of the evidence, the origin of this designation is provided in a 29<sup>th</sup> May, 1957 *Bermuda Recorder* article of his death, explaining he earned the moniker 'because of his consistent and impassioned opposition to what he considered extravagant spending of public money.' <https://bnl.contentdm.oclc.org/digital/collection/p15212coll1/id/3130/>

- g) The Claimant states her belief that despite the sale, her grandfather was granted a right of access to the beach until his death in 1957 and that this right was not subsequently extended to family members.
- h) The Claimant stresses that her grandfather, despite being a Member of Colonial Parliament, was an ‘outsider’ – *“He was not one of the Forty Thieves, despite his land holdings. For him, land was important to cultivate produce, and he worked hard to support his family.”*

**HAE-1** – This is an extract from the Savage Map featuring Castle Harbour with St. David’s and St. George’s Islands. The plot of land relevant to this case is not featured on this map.

**HAE-2** – This is a two-page document prepared for the COI by its Investigator for this case, Mr. Estwick. It consists of an initial summary of the witness statement and then contains eight (8) bullet points of summary descriptions of documents relevant to the case collected by the Investigator: (i) land required in connection with the Tucker’s Town Development scheme referring to Mr. H.T. North; (ii) a conveyance document of land with reference to Mr. H.T. North dated 1922; (iii) a plan of land at Judkin Lane, dated 1975, referencing land formerly owned by Mr. H.T. North (see **HAE-3**); (iv) a Supreme Court of Bermuda Probate Jurisdiction dated 1925 regarding the administration of Mr. H.T. North’s personal estate (see **HAE-4**); (v) a Supreme Court of Bermuda Probate Jurisdiction concerning the estate of Mr. H.T. North dated 1957 (see **HAE-5**); (vi) a document from the Parish Vestry Clerk for Smith’s Parish dated 1963 referring to acquisition of a parcel of land by The Pink Beach Limited from a Dorothy Mary Allnatt (see **HAE-6**); (vii) a document from the Registrar General, dated 1963, referring to the acquisition of a parcel of land in Smith’s Parish from a Dorothy Mary Allnat by The Pink Beach Limited; and (viii) a witness statement from the Claimant, Ms. Katherine Harlow (see **KH-2**).

**HAE-3** – This is a single page document consisting of a plan of land. It bears the writing in the bottom left hand of the document “Plan of Land at Judkin Lane & Sommersall Rd. – Mangrove Lake Smith’s Parish & Hamilton Parish Bermuda [sic]”. It also bears on the bottom right hand of the document the note “Robert H. Clarke Engineer & Surveyor Hamilton Bermuda”. The plan features a road marked as ‘South Public Road’ along the southern boundary; Mangrove Lake composes most of the eastern half of the plan; Sommersall Public Road is marked on the lower west of the document, with Judkin Lane marked at a roughly northeast track of the plan. Along the eastern half of the property, over the area marked Mangrove Lake, there is a strip marked out with the marking ‘Bermuda Properties Limited’. It bears the date ‘March 1975’.

**HAE-4** – This is a three-page document, dated 4<sup>th</sup> April, 1925, a copy of a Supreme Court of Bermuda Probate Jurisdiction concerning the will of a Ruthven Thompson North. The probate begins halfway down the first page, the upper half of the page referring to a separate matter. In the first page, Henry Thompson North and Benjamin Chauncey Curling Outerbridge are named as co-executors of the will and estate of the aforementioned Ruthven Thompson North. The second page of the document contains statements from the two aforementioned executors affirming that the annexed document marked ‘A’ is the true and last Will of Ruthven Thompson North, that they will serve as administrators of the deceased’s personal estate and that the gross value of the deceased’s personal estate amounts to £100. The third page consists of the annexed document marked ‘A’ referred to in the second page and consists of the last Will and Testament of Ruthven Thompson

North. It has three numbered paragraphs. The paragraph numbered '1' states that Henry Thompson North is the son of the deceased and appoints him and Benjamin Chauncey Curling Outerbridge as the executors and trustees of the deceased's estate. The paragraph numbered '2' clarifies the definition of 'trustee' from paragraph 1. The paragraph numbered '3' sets out that the deceased's estate is to be allocated in the following manner: (a) his wife, named as Frances Catherine Hunter, to inherit all of his estate; (b) after his wife's death, one half acre on the northern and eastern sides of his land to go to the deceased's son, Stuart Atwood North, and, at his death the property to go to the deceased's daughter, Cassie Irene Musson North; and (c) the remainder of the estate to go to his aforementioned daughter, Cassie Irene Musson North. It is signed by the then Registrar General.

**HAE-5** – This is a seven-page document, dated 1<sup>st</sup> November, 1957, a Supreme Court of Bermuda Probate Jurisdiction concerning the estate of H.T. North. The first page of the document provides a summary of the entire document, noting that H.T. North died on 25<sup>th</sup> May, 1957, that his last Will and Testament is annexed to this document and that a Katherine Ann North and the Bank of Bermuda Ltd. are named as the executors of the deceased's estate. The rest of the first page along with the second page consist of an oath from the executors that they will serve as the executors for the deceased's estate; a James Vesey Murdoch is named as representing the Bank of Bermuda. Pages three to seven, marked 'A' on page three, consists of the aforementioned annexed last Will and Testament referenced on page one. It consists of 11 numbered paragraphs which may be summarized as follows:

- i. Appoints the aforementioned executors.
- ii. Addresses payment of debts.
- iii. Bequeaths all the furniture and household effects in the house 'Mercer Heights' to his daughter, Mary Frances Trott Moehring.
- iv. Bequeaths the residue of his personal estate to his wife, Katherine Ann North, but should she predecease him, the personal estate to be divided in equal shares between his daughters, Catherine Margaret Burnet, Jean Underwood Outerbridge and Mary Frances Trott Moehring.
- v. Devises one undivided moiety of and in all that parcel of land in Hamilton Parish referenced in an annexed map delineated in pink. The parcel of land in question is further described in this paragraph, 0.762 acres bounded to the northwest by Harrington Sound and to the northeast by land formerly part of the property 'Mercer Heights'. This parcel of land is devised to his daughter, Mary Frances Trott Moehring. An additional parcel of land is also included in this devise, described as being 0.365 acres in size, outlined in brown in said annexed map, bounded to the northwest by Harrington Sound, north-easterly by the land previously described and south-easterly by other land of his coloured green in the annexed map.
- vi. Devises his undivided share in a house and land formerly forming a part of a tract of land known as 'The Poincianas' in Devonshire Parish to his son-in-law.
- vii. Devises his undivided share in a parcel of land in the Town of St. George's known as 'Caledonia Park' and also his undivided share in a parcel of land known as 'Olive Bank Plantation' in Warwick Parish to his daughter, Jean Underwood Outerbridge.

- viii. Devises all the residue of his real estate to his wife, and if she pre-deceases him, in equal shares to his three daughters.
- ix. Devises and bequests that if '*the residue of my real and personal estate hereinbefore contained shall fail*', then the residue be devised and bequeathed to his daughter, Mary Frances Trott Moehring.
- x. Directs his wife on how to dispose of her inheritance as per clauses 4, 8 and 9, in the form of his 'wish' but not binding in law.
- xi. Empowers the trustees on various matters as directed in sub-clauses (a) to (f).

It is noted that the referenced annexed map is not contained in this document.

**HAE-6** – This is a three-page document dated 28<sup>th</sup> May, 1963, addressed to the Vestry Clerk of Smith's Parish. The first page of the document specifies that it is written in accordance with the Parish Vestries Act 1929 and states that as of 26<sup>th</sup> April, 1963, Pink Beach Limited '*became entitled in fee simple to all the parcel of land in Smith's Parish described as follows*', and then proceeds to provide a description of the parcel of land in question. In summary, the parcel of land is described as consisting of 11.475 acres, bounded to the north by the South Shore Public Road, to the east by land formerly of a Dorothy Mary Allnatt and now of Pink Beach Limited, to the south by the Atlantic Ocean and to the west by the land of a Elma Winifred Cooper. It notes that this includes the clubhouse and cottages on the property as well. It concludes '*by purchase from Dorothy Mary Allnatt and we request that the same be transferred to us in the Parish Assessment Book accordingly*.' It is signed by their attorneys, Dill and Pearman. The second page contains a short paragraph from a Dorothy Mary Allnatt to the Parish Vestry giving notice that she has '*sold the property above described in respect of which I am now assessed to the Pink Beach Limited and request that the necessary alterations be made in the Parish Books*.' It is signed by her attorneys, also Dill and Pearman. The third page consists of a map of the parcel of land described on page one, with the parcel of land outlined in pink. The map is dated 1<sup>st</sup> April, 1960 and bears the title 'Plan of Land in Smith's & Hamilton Parishes Bermuda'. Prominent on the map is a line towards the eastern aspect of the map marked as representing the border of Smith's and Hamilton Parishes. The map also includes the note: 'Plan compiled from various plans by R.H. Clarke and V.T. Blee'. Guided by the location of the Parish boundary and the curvature of the South Shore Road, the parcel of land in question corresponds with Pink Beach West and the current location of the Villas and Hotel Suites of the Loren and Pink Beach Club.

## Issues

The following key issues arise from this case:

- 1) Was the property in question, currently the site of the Loren/Pink Beach, once part of Mr. Henry Thompson North's property?
- 2) Was the said property expropriated from Mr. Henry Thompson as part of the Tucker's Town land expropriation?
- 3) If the land was so expropriated, was Mr. Henry Thompson fairly compensated for said land?



## Adverse Notices

No adverse notices were sent as part of this case.

## Discussion of Facts

It is not clear, based on the evidence before the COI, whether the property, currently the site of the Loren/Pink Beach, was ever the property of Mr. Henry Thompson North. Based upon the evidence presented to the COI, the only land that can be said to have been in the possession of Mr. Henry Thompson North is to the north of the Loren/Pink Beach property, bordered to the east by Mangrove Lake and to the north by Harrington Sound. This is based on the contents of his will (**HAE-5**) and the second page of the maps in **KH-1**. While the first page of the maps in **KH-1** does clearly show a parcel of land corresponding to Pink Beach East, it lacks any names attributing ownership and there is no clear primary reference to said property in any of the other evidence seen by the COI. Indeed, the only reference to the said property is in the witness statement (**KH-2**) of the Claimant herself, based on oral history told to her as a child. It is not clear from the witness statement whether the beach so referred to was Pink Beach East or Pink Beach West or the two beaches together.

Additionally, it is not clear that any property of Mr. Henry Thompson North was expropriated as part of the Tucker's Town development. While **HAE-2** does make reference to land required in conjunction with the Tucker's Town development and refers to property owned by Mr. Henry Thompson North, the document to which this refers was not made available to the COI, thereby preventing the COI from gaining any clarity on the matter.

With respect to property purchased by Pink Beach Limited to create the Pink Beach Club, now the property known as the Loren/Pink Beach, the only information available to the COI was **HAE-6** which notes the purchase of property from a Dorothy Mary Allnatt. Based on the map provided in this document, the land purchased by Pink Beach Limited from Ms. Allnatt corresponds solely to what may be referred to as the Pink Beach West portion of the current Loren/Pink Beach property. The land that may be referred to as Pink Beach East and mapped in the second page of **KH-1** is certainly part of the Loren/Pink Beach property today; however, it is unclear at what point in time it was acquired by, presumably, Pink Beach Limited. Based on the map included in **HAE-6**, the Pink Beach East property was owned by the estate of a Charles Blair McDonald as of 1960. While this does not preclude either Pink Beach West or Pink Beach East having once been the property of Mr. Henry Thompson North and subsequently expropriated as part of the Tucker's Town development and later coming into the possession of Dorothy Mary Allnatt and Charles Blair McDonald, respectively, the COI is unable to affirm that such was the case.

However, it should be noted that the Charles Blair MacDonald referred to as the owner of an estate corresponding to Pink Beach East in **HAE-6** was a director of the Bermuda Development Company Limited and was one of the primary actors in the Tucker's Town development<sup>453</sup>. He was, indeed, one of the most famous golfers in the U.S. and was involved in the Tucker's Town development from the outset, having been part of the initial 1919 expedition that initiated the

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<sup>453</sup> Francis, Dr. Theodore, (2020) "Tucker's Town, Tourism and Captured Lands", COI – Exhibit TF-2, p.53.

project<sup>454</sup>. Based upon this information, the COI can infer that Pink Beach East was expropriated as part of the Tucker's Town development. However, the COI is unable to conclude definitively from whom the land was expropriated.

Additionally, no evidence was provided to the COI demonstrating compensation to Mr. Henry Thompson North for any property expropriated from him as part of the Tucker's Town development.

## Findings of Fact

Based upon the information made available during the Hearing,

- the COI finds that the ownership of either Pink Beach West or Pink Beach East is unproven.
- along with the report by Dr. Theodore Francis relating to the Tucker's Town development, the COI finds that it is probable that Pink Beach East was expropriated as part of the Tucker's Town development. However, the COI is unable to determine from whom the property was expropriated.
- the COI is unable to determine whether the expropriation of Pink Beach East as part of the Tucker's Town development involved fair compensation.

## Conclusion

The COI was unable to come to any conclusion regarding whether Mr. Henry Thompson North owned property relating to the Loren/Pink Beach property or whether any of his properties were expropriated from him as part of the Tucker's Town development. Indeed, at best the COI can infer that the Pink Beach East parcel of land was expropriated as part of the Tucker's Town development. However, the COI cannot conclude that this parcel of land was expropriated from Mr. North.

Based upon the oral history provided by the Claimant, the COI may conclude that it is probable that Mr. North did indeed own the parcel of land corresponding to Pink Beach East. However, it is not possible to state this categorically based on the information before the COI.

Similarly, based on Mr. North being a Member of Colonial Parliament at this time and his having voted in favour of the Tucker's Town development and related powers of expropriation, had he any land subsequently expropriated it is probable that he was compensated fairly for it, especially in light of the racial dynamics at that time – as a white Bermudian and part of the power structure (irrespective of his being considered an 'outsider', as the Claimant suggested), it is probable that he had more access to power than others facing expropriation in the area. Indeed, the only aspect that the Claimant puts forward regarding the unfairness of any alleged expropriation is that it appears Mr. North thought the parcel of land was to go to a public amenity as opposed to private ownership, not that he felt any compensation so received from any expropriation was unfair. However, as noted, the COI was unable to conclude whether or not he owned the parcel of land in question in the first place.

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<sup>454</sup> Ibid, p.27. Mr. MacDonald features prominently throughout Dr. Francis's report.

Ultimately, there is insufficient evidence before the COI for it to arrive at any firm conclusions concerning this case. In the COI's view, this case is indicative of the challenge faced by Claimants because of Bermuda's somewhat 'porous' historical documentation on property matters.

### **Adverse Finding**

There is no adverse finding arising from this case.

### **Recommendations**

There are no recommendations arising from this case due to the lack of evidence available to the COI.

Should further evidence concerning the chain of ownership relating to Pink Beach East come to light, there may be the possibility for the Claimant to explore this matter further.

## RECOMMENDATIONS

Pursuant to its Terms of Reference, the COI carefully considered reported instances of historic land losses in Bermuda believed by Claimants to be *”through theft of property, dispossession of property, adverse possession claims and/or such other unlawful means.”* Whilst the historic land losses in Tucker’s Town and St. David’s Island are the most widely known and discussed in Bermuda, the COI heard cases involving historic land losses in other parts of Bermuda also. The COI subsequently agreed a number of recommendations that emerge from the concerns raised by persons who claimed that their ancestors’ lands were unfairly taken from them and who, where unfairness was determined, sought just outcomes where possible.

The recommendations that follow are based on evidence heard by and/or presented to the COI from 8<sup>th</sup> May, 2020 to 19<sup>th</sup> May, 2021.

### **I – Historic Land Losses in Tucker’s Town and St. David’s Island**

Having considered whether the actions that caused the expropriations in Tucker’s Town in the 1920s and in St. David’s Island in the 1940s were lawful or unlawful, regular or irregular, the COI concluded that they were lawful as they were based upon provisions of various statutory instruments that received Parliamentary approval. At the same time, the COI concluded that the procedures adopted in dealing with the expropriations were in many instances irregular because the bodies established to oversee the expropriations process exercised their power in an unfair and inequitable manner.

Consequently, the COI recommends that:

- Government establishes a system to determine whether the level of compensation paid to the dispossessed landowners in Tucker’s Town and St. David’s was fair and equitable and, if such is the finding, establish a regime whereby the descendants of the owners of the expropriated property are appropriately compensated.
- Further research be undertaken to determine the total acreage of expropriated land purchased by Mid-Ocean Club Limited, Rosewood Tucker’s Point and any other purchasers in the Tucker’s Town area as a result of the on-sale of all dispossessed lands by Bermuda Development Company Limited.
- Discovery exercises be undertaken in relation to the land upon which Mid-Ocean Club Limited and Rosewood Tucker’s Point are located as a consequence of Furness Withy/Bermuda Development Company Limited’s expropriation/compulsory acquisition of land at the expense of the original landowners and residents in Tucker’s Town.
- Government explores the reason for the lack of enforcement of statutory restrictions or Company policy for on-selling expropriated land in contravention of any statutory

requirements imposed on BDCL in respect of all land expropriated and sold to both Bermudians and alien purchasers. Acquisitions of land in that area by aliens would have been made subject to the restrictions placed on such acquisitions by those statutory requirements and the relevant Alien Act in place at the time of purchase.

- Government commits resources to locate missing documents in cases of expropriation in Tucker's Town and St. David's Island.
- Government establishes a systematic adjudication process where previous landownership cannot be determined to ensure that the Land Title Register is a reliable resource for obtaining accurate land title details.
- Government finds a practical means whereby the concerns of the community, the people and descendants of those who were uprooted and lost their inheritance in Tucker's Town and St. David's Island might be addressed. The COI suggests that Clearwater Beach, located between both Tucker's Town and St. David's Island, could be designated and renamed to give recognition to the people for the losses they suffered.
- Government ensures that the history of the Tucker's Town and St. David's Island expropriations are memorialized suitably by mandating its inclusion in Bermuda history taught in our schools, its placement in libraries and other repositories and by erection of suitable physical monuments ideally situated in both Tucker's Town and St David's Island.
- Government gives a public apology and acknowledgement of the unjust loss of lands to the descendants of Tucker's Town and St. David's Island families who lost their lands unfairly.
- Government establishes a Heritage Trust specifically for descendants of those Tucker's Town and St. David's Island residents who were unfairly compensated and/or dispossessed of their lands. Funding of such Trust could be done, perhaps in partnership with the Bermuda Economic Corporation, by the creation of another Economic Empowerment Zone using dispossessed land already under the trusteeship of the Bermuda Land Development Company Limited. A detailed rationale for the establishment of the Heritage Trust and how it might function are set out on page 162 of this Report.
- A designated Government body be engaged in a consultative process and authorized to have oversight of the implementation of recommendations set out in the Ombudsman's Reports *A Grave Error* and *Today's Choice, Tomorrow's Cost* and the Ground Penetrating Survey conducted by Dr. John Triggs of the Department of Archaeology and Classical Studies, Wilfred Laurier University, Canada, as may be mutually agreed between all stakeholders.
- With respect to Case 031 -- Estate of Solomon Thaddeus James Fox, St. David's Island,

- Government considers inviting the United Kingdom to review its position with a view to providing financial assistance to delve deeper into and ultimately resolve the matter of St. David's Islanders who were treated unjustly following the expropriation of their lands upon the creation of the US military base at St. David's Island in the 1940s.
- With respect to Case 034 -- Estate of John Samuel Talbot, Tucker's Town,
  - The matter ought properly to be referred to the Office of the Director of Public Prosecution to take any and all legal actions required in addressing this matter. The COI recognizes that a criminal act may have been perpetrated but for the following reasons: (i) the passage of time, (ii) the identification of those actually culpable and (iii) the fairness of a process one hundred (100) years later, implying vicarious liability to any officer of the BDCL or the BDCL as a corporate body for actions of the company in 1921. However, the COI recognizes also that in all the circumstances it may not be in the public interest to pursue the matter and the DPP may decline to initiate a prosecution or compensation for loss suffered in historic circumstances as revealed in this case.

## **II – Marsden Methodist Cemetery**

The COI recommends that:

- Government ensures the immediate commencement of remediation work at Marsden Methodist Cemetery and that the following measures as agreed between the concerned stakeholders are carried out:
  - Improvement and modification of the golf cart and walking access to the site;
  - Establishment of a protocol for family and guests to access the site and work around the adjacent golf operation;
  - Redirecting a part of the driving range to minimize any errant golf balls coming into contact with the graveyard area;
  - Installation of a canopy netting system over the graveyard area to prevent golf balls from entering site;
  - Cleaning and tidying the landscaping and establishment of a regular maintenance programme for the area;
  - Installation of a seating area within the graveyard walls;

- Establishment of permanent access rights to the site;
  - Erection of a “do not enter” sign to prevent golfers’ access to the area;
  - Implementation of a mechanism to review the improvement, modification and maintenance of the Marsden Methodist Cemetery on a periodic basis;
  - Inclusion of the site in the African Diaspora Trail information; and
  - The historical cemetery is bestowed the honour that the Commonwealth War Graves Commission envisaged.
- Government establishes a designated body to monitor a consultative process with a view to considering the timely implementation of the proposed and agreed next steps to address the concerns of the Marsden Church. The process should be subject to review by stakeholders including, but not limited to, Marsden Church, Tucker’s Town Historical Society and Gencom Ltd.

### **III – Historic Land Losses in Other Parts of Bermuda**

*It is to be noted that some of the recommendations made in individual cases have been collapsed into a single recommendation that appears elsewhere in this section of the Final Report.*

- With respect to Case 001 – Matter of James Parris,
  - the ‘private property’ sign reportedly at the property per evidence at the Hearing should be removed by the public authority responsible for signage and replaced with signs clearly indicating that the dock is public property.
- With respect to Case 014 – Estate of Agatha Richardson Burgess, Hamilton Parish,
  - Government ensures that the stated intention of the Attorney-General in 1956 to grant a right-of-way to the land owned by Mrs. Burgess be carried out; and
  - Government changes the name of Francis Patton Primary School to Agatha Richardson Burgess Primary School.
- With respect to Case 015 – Estate of John Augustus Alexander Virgil, Sandys,
  - Government gives due regard to a mechanism being established to consider an award of compensation for loss through theft of property, dispossession of property or such other unlawful or irregular means by which land was lost in

Bermuda. The recommendation is being made acknowledging that this falls outside of the remit of the COI.

- the Office of the Commissioner of Police is being invited to give due consideration to locating the 'Investigation original and copy files' touching and concerning the complaint of Mrs. Barbara Lucille Brown relating to the Estate of John Augustus Virgil and having this investigation file reviewed with a view to considering next administrative steps in light of the fresh and compelling evidence from the Document Examiner. Further consideration should be given by the Commissioner of Police in the interests of justice and with a view to rewriting the unsavoury history of the matter. But more so, the role of the Office of the Commissioner of Police in 1975, that is, must be revisited to correct that Office's glaring omission, forty-five years ago, by failing to obtain the requisite expertise from a Document Examiner at that time rather than closing the file. The COI acknowledges that the likelihood of reconstructing this file is only remotely possible.
  - Government considers making an award for compensation through the appropriate mechanism of the state machinery to the beneficiaries of the Estate of John Augustus Alexander Virgil, in light of the fact that an agent of the state, the Central Planning Authority, played an integral role, tantamount to a corruption enabling mechanism facilitating the theft of land. The Government ought to consider this matter seriously, one which the COI recognizes is outside its remit.
- With respect to Case 017 – Estate of Herman Montgomery Bascome Smith, Pembroke West,
    - the Department of Planning be invited to investigate the matter of subdivision and encroachment of Lot 33.3, 2 Plaice's Point, Pembroke West with a view to restoring the property to the beneficiaries of the Estate of Herman Montgomery Bascome Smith.
  - With respect to Case 037 -- Estate of Fred Hendrickson, Sr., Smith's Parish,
    - the Registry General, following consultation with the Attorney-General's Department and the Department of Immigration, further examines the legitimacy of the various Power-of-Attorney documents that it has within its possession with respect to the sale and purchase of properties within the Estate of Fred Hendrickson, Sr.



- With respect to Case 039 -- Estate of Emelius Daniel Darrell, Southampton,
  - Government instructs that a Civil and Planning assessment be carried out by the relevant Government Departments to assess and correct, where necessary, the survey, planning and land registration issues raised by the Claimants and, contingent upon any discovery of unjust loss of land and or revenue by the Darrell family, consider that suitable, equitable restitution be made to surviving members of the Darrell family.
  - Government considers changing the name of Riviera Estate Road to Wellington Drive in keeping with the land owned by George Wellington Darrell and known as Wellington Lands in 1964.
  - Government considers changing the name of Sunnyside Park Road to Emelius Drive East and Emelius Drive West.

## **IV – Administration**

The COI recommends that:

- Government considers establishing a permanent mechanism to review claims concerning the historic loss of properties. The mechanism should be fully resourced with human and financial resources to address all claims and concerns post this COI, ultimately with a view of having a legal framework in place to facilitate remedies and/or an award of compensation. Furthermore, more research is required, especially of the outcome of relevant Court proceedings initiated to address concerns and disputes. To that end, the COI recommends that the Government provide, at a minimum, assistance to the Claimants sufficient for them to conduct further research. The importance of this recommendation is highlighted by the fact that in many instances, Claimants were restricted from completing their research due to COVID-19 protocols rendering them unable to fully access documents upon which they sought to rely.
- Government ensures the availability of legal aid to qualified persons engaged in property disputes, matters involving expropriation in particular.
- Government gives due regard to the establishment of a mechanism to consider any award of compensation for loss through theft of property, dispossession of property or such other unlawful or irregular means by which land was lost in Bermuda and to consider devising a formula to calculate the compensation as may be determined to the Claimants, considering prevailing rates.

- Government ensures that the Land Title and Registration Department and the Registry General are adequately resourced to carry out due diligence checks of land title registration documents.
- The electronic and other safeguards put in place by the Land Title and Registration Department to detect and prevent acts of fraud must keep pace of emerging trends. The continuous engagement of the Bermuda Bar Association at a consultative level must be a priority, as the Registry General does not have the capacity to detect or prevent fraudulent conveyancing practices
- The role of the Registry General, the Land Title and Registration Department and all stakeholders is amplified through a continuing consultative process to provide through the Government an avenue for landowners who retain original deeds to come forward and seek redress, even in cases where they have been time-barred. These cases include but are not limited to landowners who have been dispossessed in circumstances other than by adverse possession such as land theft. f emerging trends. The continuous engagement of the Bermuda Bar Association at a consultative level must be a priority.
- Government prioritizes a review the storage and preservation of Government records in keeping with international best practice.
- Government ensures that all pre-1971 Vestry land registration processes and systems are easily accessible to anyone seeking registration records which would establish ownership of property by their ancestors.
- Government conducts an inventory of all public properties (buildings, land, docks, etc.) and identify any cases where public property has been appropriated by private owners. Any incidences of similar encroachment of public property should be addressed and property subsequently returned to public ownership.
- Further, research will also need to be conducted into the Vestry system in place in Bermuda pre-1971 and any other subsequent systems used for the registration of land transfers. This research is necessary to understand fully the impact of an incorrectly recorded transfer or fraudulent transfers on future landownership.
- Government establishes a Truth and Reconciliation Commission with the remit of exploring segregation and race in Bermuda to avoid unfair practices being implemented to the disadvantage of any group.

## **V – Public Legislation**

The COI recommends that:

- An amendment to existing legislation be made to include a “first right of refusal” option for dispossessed owners if the original purpose for which the land (or any part thereof) was dispossessed fails, for whatever reason.
- Government considers restricting the exercise of governmental expropriation powers and oversight of expropriations to statutory authorities or bodies in lieu of their delegation to a private entity or body.
- Government considers the passage of legislative changes and/or the introduction of Regulations that would ensure that the expropriations process is transparent, fair and equitable in all respects for those being impacted by compulsory purchases.
- In order to promote social and economic growth, Government reviews and revises the laws and Regulations that govern the compulsory acquisition of land in Bermuda, mindful of the fact that legislation should protect land rights, facilitate an equitable compensation regime, reduce tenure security and conflicts of interest and guarantee the protection of the more vulnerable members of the community.
- Government amends or modernizes all Bermuda laws to restrict the number of years a corporate entity is able to hold Bermuda lands.

## **VI – Private Legislation/Other Statutory Mechanisms**

The COI recommends that:

- A statutory mechanism be introduced specifically to:
  - identify the location of all land expropriated that will fall under the ambit of a proposed new Act or Declaration as may be determined for the purposes of establishing a remediation process to address such historic losses of land;
  - facilitate the issuance of a formal apology from the Bermuda Government and others, holding a series of public hearings on the destruction of the communities of both Tucker’s Town and St David’s Island and the establishment of a development fund to go towards historical preservation of those lands and social development in benefit of former residents and their descendants; and
  - create a Heritage Trust (Land and/or Accumulation) for the purpose of holding land or any other assets in order to make reparations or monetary distributions

to the descendants of dispossessed landowners or any other eligible beneficiaries of the Trust, as may be determined. One of the objectives of the Trust might be to design a museum and build replicas of the community landmarks that were demolished during the expropriation process, the funds for the purposes of the Trust to be paid out of moneys appropriated for those purposes by the Legislature or in public/private initiatives for the generation of income for the Trust in order to carry out its purposes. Alternatively, funding of such Trust could be done, perhaps in partnership with the Bermuda Economic Development Corporation, by the creation of another Economic Empowerment Zone using dispossessed land already under the trusteeship of the Bermuda Land Development Company Limited.

- An independent Land Tribunal be established to deal with all outstanding legacy issues involving historic losses of land in Bermuda and to make recommendations based on the findings of the COI and any others that may emerge as a result of the findings of the newly established Tribunal.

## Acknowledgements

*The work of the Commission of Inquiry (COI) has been greatly facilitated by information and comments of several persons. The COI gratefully acknowledges the assistance received, both solicited and unsolicited, which has enabled it to produce this Report.*

Special mention must be made of the contribution of the officers and support staff of several Government Departments, in particular Archives, Land Title and Registration, Libraries, the Legislature and the Registry General, all of whom did considerable work in searching their archives to identify and make available to the COI investigators and historians material relating to the events in Tucker's Town and St David's Island, as well as elsewhere in the community. The COI recognizes that considerable effort and time were spent in locating the material and notes that without this support, it would have been unable to complete its task satisfactorily.

The COI was well served by the evidence of a number of other individuals, including the Right Reverend Nicholas Dill, Bishop of Bermuda; the Venerable Dr. Arnold Hollis, Archdeacon Emeritus (Retired), Church of England, Bermuda; Mr. Wentworth Christopher, former Clerk, Pembroke Parish Vestry; Dr. Michael Bradshaw, President of the Friendly Societies; Attorney Mr. Christopher Swan; Mrs. Alicia Lister; Dr. Jeffrey Sammons, Professor of History New York University and Professor Emeritus and University Historian Dr. Duncan McDowall, Queen's University, Canada. The COI was also the beneficiary of invaluable research and evidence from local historians Dr. Theodore Francis, Assistant Professor of History at Huston-Tillotson University, Austin Texas, and Dr. Quito Swan, Professor of African Studies, University of Massachusetts, Boston.

The COI could not have completed its work without the commitment of its professional staff. Special mention is made of the COI's Lead Counsel, Mr. Dirk Harrison. It is impossible to describe adequately his dedication to the mission and work of the COI, his grasp of the material and his continuing contributions.. He consistently extended himself beyond the call of the requirements of his remit. The COI also acknowledges the contribution of Lead Counsel Mr. Ivan Whitehall, QC who served during the early part of the Inquiry, Ms. Susan Mulligan who served as Interim Counsel following Mr. Whitehall's departure and Mr. Bruce Swan who served as Local Counsel.

Thanks are extended to the COI Secretariat, headed by Ms. Marva O'Brien, for its assistance throughout the Inquiry. In particular, thanks are extended to Secretariat members Mrs. Alberta Dyer-Tucker and Mr. Stephen Symons who went well beyond the call of duty in providing support for the COI.

The COI was well served by its Investigators, some of whom volunteered their service.

During the Hearings, the COI made extensive use of electronic technology and acknowledges the professional service provided by Mr. Tony Best and the staff of Electronic Services and by

Mr. John Lee and Associates. Additionally, the Department of Communication and Information, including CITV, was of great assistance in promoting public awareness of the COI.

The COI thanks the following for providing meeting space and facilities for the conduct of its Hearings: Grotto Bay Beach Resort and Spa, Royal Bermuda Regiment (Warwick Camp) and Willowbank Resort & Conference Centre. The COI must also thank Mrs. Coral Wells of CONNECTECH for providing the COI with office space.

The COI is grateful to retired Permanent Secretary Mr. Robert Horton who provided assistance with respect to the organization and editing of the Final Report.

The Chairman and her fellow Commissioners express gratitude to the Premier and Government of Bermuda for their confidence in the work of the COI. There is the hope that the Report is confirmation that the mission was a valid one.

Above all, the Chairman and her fellow Commissioners express gratitude to those members of the public who came forward to tell their stories in their quest for resolution of issues relating to historic land losses in Bermuda.

## EPILOGUE

One Complainant described the process by which his ancestors had been unjustly dispossessed of their land as “*the use of muscle, money and power*”. Another described the process as “*official misconduct and greed, aided and abetted by a cast of characters eager to exploit those least able to defend against economic bullying*”.

Bermudian academic Dr. Theodore Francis, an expert presenter to the COI, opined that the expropriations of land in Tucker’s Town in the 1920s and St. David’s Island in the 1940s were executed by “*a matrix of international power brokers*”. Unfortunately, very little about these two events has been recorded in the written history of Bermuda. They have become a historical vacuum, a black hole in the Bermuda story, a cultural void in the developmental narrative of Bermuda and its people. The poignancy of the emotional trauma wrought on the psyche of those who lost property through unjust and/or irregular means in Tucker’s Town and St. David’s Island still reverberates through the descendants of the dispossessed landowners. Similar outcomes are experienced by the descendants of landowners who lost their property through unjust and/or irregular means in other parts of the Island also.

The little that has been written about the expropriations in Tucker’s Town and St. David’s Island has focused in the main upon how the expropriated land was used, ostensibly for the betterment of Bermuda. In the case of Tucker’s Town, few authors have cared or dared to explore the effect that the loss of land and domicile, the destruction of habitat and comfort, the loss of industry and economic security, the destruction of family and social life, the disruption of religious practice and the dismantlement of schools and graveyards had upon the dispossessed landowners and their descendants.

In 1940, the Base Lands Act dispossessed St. David’s Islanders, some of whom had moved to St. David’s from Tucker’s Town following the expropriation of land there two decades earlier. They too were now removed from their homes and property by expropriation. Many of the descendants of those Tucker’s Town and St. David’s Island residents who lost their lands unjustly suffer the post-traumatic stress syndrome of the past. For them there has been no closure, no acknowledgement of negative psychological impact on the dispossessed inhabitants and their descendants. There has been no official acknowledgement or apology from either the Bermuda Government or the U.K. Government for the unfair treatment meted out to the original Tucker’s Town and St. David’s Island landowners, Bermudians who sacrificed so much in the interest of the ‘public good’.

Historically, land loss in Bermuda by way of adverse appropriation by individuals or land loss by way of Government expropriation have been responsible for the transfer and change of ownership of hundreds of acres of land. With the transfer and loss of land, the result has been the transfer or loss of potential wealth as well as loss of political and economic power by one group of people and their shift to another. In the analysis of the demographic makeup of the two groups, those who experienced land loss and those who had land transferred into their possession, there is a systemic pattern which shows that those individuals and institutions with money, influence and power took land from those persons who were poor and did not have either economic, legal or political power to resist successfully.

The COI has been on a journey through the annals of Bermuda history, through its pre-abolition past, post slavery and through the ethos of colonial governance. We have been provided with an opportunity to hear from Claimants the stories that were told to them, to witness firsthand and in their own words the anguish and pain, the inner turmoil and sense of loss, the unfairness, powerlessness, frustration and despair, anger and hopelessness that are the inevitable consequences of having no voice, feeling rejection and worthlessness, anger and hopelessness.

The historical range of systemic land losses covered by the COI spanned from 1828 to 2021. We heard stories of systemic land loss by adverse possession assisted by lawyers, real estate agents, surveyors, powerful businessmen, bankers and politicians. We heard stories of family members who aided and abetted the theft of the inheritance of siblings. When the COI asked Claimants what they hoped to gain from the Inquiry, they frequently responded with the following words, or words to this effect, *“Truth and closure. Truth and closure. At least we’re now being heard.”* The Claimants wanted answers. The mission of the COI was to find answers to questions long unanswered. However, in efforts of discovery, there were, perhaps unsurprisingly, sometimes more questions than answers.

This COI has been given insight into the development of the Bermudian culture and economy through the ‘lens’ and ‘perspective’ of landownership and land loss, especially by black Bermudians. The COI was reminded that even prior to Emancipation in 1834, freed blacks owned land throughout the Island, with Claimants identifying Bulla Wood and James Darrell, for example, as pre-Emancipation landowners. In this regard, the COI has recorded testimony of black Bermudian ownership of substantial holdings of land in not only Tucker’s Town and St. David’s Island, but also in Pembroke, Paget, Warwick, Southampton and Sandys. In several instances, the landowners were dispossessed of their land either by expropriation or by adverse possession whilst holding the title deeds to their property. The COI has documented evidence to support this fact.

Noted Bermudian archaeologist and historian Dr. Edward Harris informed the COI that approximately 15% of land once held by Bermudians has been lost through expropriation. The following questions then beg: “What effect has this dispossession and dislocation had on the inhabitants of Bermuda? If stability and a sense of wellbeing and security are products of living in a stable domicile, what is the net effect of trauma associated with the forced removal from one’s domicile such as occurred in Tucker’s town between 1920 and 1923 and during the 1940s in St. David’s Island?”

The trauma experienced by some descendants of dispossessed Tucker’s Town and St. David’s Island landowners and by some descendants of dispossessed landowners in other parts of the Island is palpable even today, as evidenced by the tears shed by some Claimants as they recounted their families’ history. The U.S. Base Lands Agreement remains especially egregious to the St. David’s Islanders because there are elements of that Agreement that have not yet been resolved to their satisfaction.

The Land Development Act 1920 which enabled the expropriation of Tucker’s Town lands cited tourism development as its stated goal. The Act was exceptional because Furness Withy, a private foreign company, was given permission to take land forcibly by expropriation from the lawful



Bermudian owners. Consequent to passage of the Land Development Act, approximately 6% of Bermuda's total land mass was given over to foreign control and ownership. The former owners were removed, some, like Ms. Dinah Smith in 1923, forcibly and were then barred from returning to Tucker's Town even as visitors unless they were given permission to enter.

Tourism development was the mantra by which the Tucker's Town expropriation was justified. It was also touted as a windfall event and by-product of the U.S. Base Lands Agreement which offset the displacement and dispossession of St. David's Islanders. In the case of Tucker's Town, the developers' first option was the Riddell's Bay area; however, the wealthy Riddell's Bay landowners were influential enough to redirect the expropriation and development effort to locations where less influential people resided.

The power matrix of influential wealthy Bermudians, local, US and British corporate banking interests prevailed to overpower the Tucker's Town landowners and, two decades later, the St. David's Island landowners. The result was to benefit the vested interest groups primarily with benefit in the public interest, if at all, only a secondary consideration.

The importance of this COI was expressed by Claimants who expressed gratitude to the COI in the following terms, inter alia:

*"Thanks to the COI for giving voice to those who have no podium."*

*"Thank you for giving me the opportunity to be heard."*

*"No one would listen. I needed to tell a story. Thank you."*

The COI thanks the Claimants themselves for coming forward and telling their stories.

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