**A COMMISSION OF INQUIRY**

**INTO HISTORIC LAND LOSS**

**IN BERMUDA**

**CHAIRMAN**

**MR. WAYNE PERINCHIEF**

**COUNSEL**

**MR. DIRK HARRISON**

**COMMISSIONERS**

**MR. QUINTON STOVELL (Recused)**

**MS. LYNDA MILLIGAN-WHYTE**

**MS. FREDERICA FORTH**

**MS. MAXINE BINNS (via Zoom)**

**MR. JONATHAN STARLING**

**TRANSCRIPT OF PROCEEDINGS**

**LOCATION: UNKNOWN**

**THURSDAY, FEBRUARY 4, 2021**

**AFTERNOON SESSION (A)**

**MR. WAYNE PERINCHIEF** 0:00: Good afternoon Counsel we are zooming this matter that we dealt with before and I'll take your lead Counsel. Commissioner Binns is on the line and is following the proceedings. Thank you very much.

**COUNSEL DIRK HARRISON** 0:18: Thank you Chairman and members all persons present Claim #039 Teart Darrell case. I'd like to apologize, first and foremost Chairman a members for the late start we were waiting for two (2) other witnesses did not arrive on time. So with that, I apologize for the late start. Chairman I think you would like to indicate I think there are there are two commissioners who have recused themselves. I don't know if you could, yes, for

**MR. WAYNE PERINCHIEF** 0:31: Yes for the record, there are two (2) Commissioners who have recused themselves. The Chair Hon. Norma Wade-Miller the Chair has recused herself for professional reasons, as has Mr. Quinton Stovell he's a Commissioner, he's recused himself because of professional reasons. That avoids any appearance of conflict of interest in this matter. Thank you very much.

**COUNSEL DIRK HARRISON** 0:57: Thank you very much. I'd ask the witnesses be reminded that they're still under oath and affirmation that was taken previously.

Ladies and gentlemen, when we had paused on the last occasion yesterday, we were at slide #53. I'm going to ask you to continue from there. In terms of your presentation that was being made. Slide is being put in order. Ms. Teart on the last occasion you had given evidence in respect of a number of documents which had been tendered, specifically letters written by Mr. John Darrell, and you had shared with us not just the letters, but certain documents in support thereof. I going to ask you to continue the exercise Madam.

Now, you had shared with us a February 25, 1992 letter from the Bank of Bermuda Ltd. addressed to Mr. John Darrell. I want to show you that document could you kindly identify it if you can? Is that a document that you shared with us which you wish to use in support of your case, specifically documents and correspondence between Mr. John N. Darrell and other persons?

**MS. HALLE TEART** 4:04: Yes, sir.

**COUNSEL DIRK HARRISON** 4:08: Chairman it is dated February 25, 1992. It appears to be the letterhead of the Bank of Bermuda Limited and it is signed a signature appears of one Simon M. Stones. I'd ask that this document is tendered and admitted as Exhibit. HT19.

**MR. WAYNE PERINCHIEF** 4:42: A letter written by John N. Darrell to

**COUNSEL DIRK HARRISON** 4:47: No it is addressed to John N. Darrell

**MR. WAYNE PERINCHIEF** 4:52: A letter addressed to John N. Darrell from the Bank of Butterfield sorry Bank of Bermuda letterhead dated February 25 1992. Exhibited as HT19. Thank you.

**COUNSEL DIRK HARRISON** 5:14: Please read the document madam?

**MS. HALLE TEART** 5:15: The Bank of Bermuda Limited, Head office, 6 Front Street, PO Box HM1020 Hamilton HM DX, Bermuda.

February 25 1992.

Mr. John N. Darrell, 12 Radnor Estate Road, Hamilton Parish, CR 01. Dear Mr. Darrell, As you are aware, you have substantial personal and joint indebtedness to the bank, all of which is in arrears. I have now been instructed to officially demand settlement of these debts, together with all interest fees and charges by 3pm on Thursday, March 26, 1992. A schedule of the amounts owing to February 24, 1992, is attached. Interest fees and service charges, etc., will continue to accrue all these balances to the date of the settlement. Failure to do so will result in initiation of proceedings to realize the security we hold for your indebtedness, namely, the sale of your property at Radnor Estate Hamilton Parish, after receipt of proceeds of sale of the property any balances then remaining will be subject to collection through our lawyers Cox and Wilkinson. You're also reminded of your indirect obligation for the loan of $75,000 granted to your brother James W. Darrell, together with all interest fees and charges etc. As of February 24, 1992, the total owing on this loan stood at $89,416.71.

From our recent conversation, it is my understanding that you were making arrangements with your brother, which should result in repayment of this loan. Unfortunately, I have to advise you that payment is expected by the above date and further negotiation of this matter is not possible. Kindly acknowledge receipt by signing the enclosed coffee letter. Yours faithfully signed Simon Stones, Assistant Manager of Credit.

**COUNSEL DIRK HARRISON** 5:47: Now, you have relied on this document for what reason madam?

**MS. HALLE TEART** 7:26: This document has being relied on because it speaks to the amount of debt that Mr. Darrell has accrued and trying to fight this case.

**COUNSEL DIRK HARRISON** 7:37: Thank you.

**MS. HALLE TEART** 7:40: And I also want to note that this is just one bank, he has taken out taken out loans out with multiple banks, and we just want to include this just to speak to a portion of the debt that John Darrell accrued.

**COUNSEL DIRK HARRISON** 7:54: Now the document on the other side of the document there is information also.

**MS. HALLE TEART** 8:00: Yes, sir.

**COUNSEL DIRK HARRISON** 8:01: And that speaks to just the actual layout of the monies own principal interest, administrative fees and late charges, correct?

**MS. HALLE TEART** 8:15: Yes sir.

**COUNSEL DIRK HARRISON** 8:21: The figure there what is the balance

**MS. HALLE TEART** 8:23: The first balance or at the bottom?

**COUNSEL DIRK HARRISON** 8:34: Well, it indicates just as it indicates what appears to be a number of two (2) accounts. Current account balance and also some credit card balances. Is that correct?

**MS. HALLE TEART** 8:54: Yes, that's correct.

**COUNSEL DIRK HARRISON** 9:01: Now what next madam? There are some receipts earlier you had made reference to receipts which evidence payment of taxes, are these said receipts or is this something different?

**MS. HALLE TEART** 9:24 Yes, there are those receipts on the list but also I want to bring your attention to the bottom receipt.

**COUNSEL DIRK HARRISON** 9:32: Let me just bring your attention first so we can make the exhibit before you can speak to it. You have the documents you wish to rely on them?

**MS. HALLE TEART**  9:57: Yes sir.

**COUNSEL DIRK HARRISON** 9:58: How many documents are they?

**MS. HALLE TEART** 10:04: It is six (6) pages.

**COUNSEL DIRK HARRISON** 0:17: The first page has number 473 on the first page madam?

**MS. HALLE TEART** 10:25: Yes, sir.

**COUNSEL DIRK HARRISON** 10:26: And the sixth page. What appears on the sixth page? This bill is payable on demand. Number 474. Is that correct?

**MS. HALLE TEART** 10:46: Yes sir.

**COUNSEL DIRK HARRISON** 10:49: I'd ask that those seven six pages I'm sorry, Chairman, starting with a page which has at the top left hand corner No. 473. And ending on the sixth page with what appears to be a photocopy of a document, which bears No.474. I'd ask that this document be tendered and admitted as Exhibit HT20.

**MR. WAYNE PERINCHIEF** 11:27: I would ask are these all receipts, Counsel or are they specific?

**COUNSEL DIRK HARRISON** 11:36: They are copies of receipts, Chairman.

**MR. WAYNE PERINCHIEF** 11:43: We have before us six (6) page copies of receipts starting from Page #473, ending in page Mark #474. And entered as Exhibit HT20.

**COUNSEL DIRK HARRISON** 12:00: And if the witness wishes to say something Yes,

**MR.DONALD McMAHON** 12:08: These are Parish Vestry Receipts on the property

**MR. WAYNE PERINCHIEF** 12:11: So these are Parish Vestry copies of receipts for the property specifically. Thank you very much.

**MR.DONALD McMAHON** 12:21: Can I say something else?

**COUNSEL DIRK HARRISON** 12:22 Please?

**MR.DONALD McMAHON** 12:23: Yesterday a question was asked to Haley and she wasn't quite sure of the answer on Exhibit HT6.

**COUNSEL DIRK HARRISON** 12:34: You wish to make a correction?

**MR.DONALD McMAHON** 12:35: I wish to just clarify make the correction if it's possible.

**COUNSEL DIRK HARRISON** 12:42: Witnesses indicated that in respect of Exhibit HT6, which is also being projected on the screen. At this time, he wishes to make a correction to some evidence that had been given a question had been asked and the witness wishes now to correct.

**MR. WAYNE PERINCHIEF** 13:06: Yes and what would the correction be sir?

**COUNSEL DIRK HARRISON** 13:08: The name George Wellington Darrell. Darrell George Wellington, that's my grandfather. That was my grandfather's name.

**MR. WAYNE PERINCHIEF** 13:18: So this is Exhibit HT6.

**COUNSEL DIRK HARRISON** 13:25: On the occasion a question I've been asked yesterday, Chairman, Ms. Teart had indicated had spoken to the entry as it relates to Emelius Estate but the witness in now indicating that they are now speaking to the next entry which appears next 23 January it appears 19…?

**MR.DONALD McMAHON** 14:07: 1942.

**COUNSEL DIRK HARRISON** 14:09: Thank you very much. And you wish to speak to that entry

**MR.DONALD McMAHON** 14:28 Name is my grandfather. George Wellington Darrell.

**MR. WAYNE PERINCHIEF** 14:20: What do you wish to do with this Exhibit as far as entering as an Exhibit?

**COUNSEL DIRK HARRISON** 14:28: I would ask that the record to reflect is that the Witness is now is identified in relation to the exhibit is identified on the document which is exhibit recognizing another name, because the purpose of this document as we have been told. It is in proof of the claim.

**MR. WAYNE PERINCHIEF** 14:58: Yes,

**COUNSEL DIRK HARRISON** 15:01: As they wish to indicate, not only in relation to the first entry, some connection with a family lineage where they wish to say that in relation to the second entry, there are also some relationship

**MR. WAYNE PERINCHIEF** 15:24: To the family.

**COUNSEL DIRK HARRISON** 15:26: Yes. And

**MR. WAYNE PERINCHIEF** 15:28: Namely George Wellington Darrell.

**MR.DONALD McMAHON** 15:34: That is Amelia's son.

**MR. WAYNE PERINCHIEF**  15:36: Do you wish to put HTa or it an addition?

**COUNSEL DIRK HARRISON** 16:07: No I just leave it as it is, as it is, but just yesterday is an addition. It is just a further evidence in support of a claim that is being made Chairman.

**MR. WAYNE PERINCHIEF** 16:21: Thank you sir, I will make notation. Thank you very much Mr. McMahon.

**COUNSEL DIRK HARRISON** 16:33: Thank you Chairman. Do you wish to take us through the documents, exhibits? Not that one. HT20 displayed again. Yes, we're on the first page madam.

**MS. HALLE TEART** 17:18: Okay, so the first half of that page shows a receipt from the Emelius Darrell to the Southampton Parish Vestry of 400 pounds in 1950. The second half of the page actually was

**COUNSEL DIRK HARRISON** 17:37: September 10, 1950?

**MS. HALLE TEART** 17:42: Yes, September 10, 1950.

**COUNSEL DIRK HARRISON** 17:44: Thank you, and the second half of the page you are saying?

**MS. HALLE TEART** 17:49: Actually talking about E.T. Richards and the payment from George Wellington Darrell to him for professional services that were not completed related to the conveyance of the property from Emelius to John Darrell.

**COUNSEL DIRK HARRISON** 18:03: There were not?

**MS. HALLE TEART** 18:05: Completed. Earlier in our presentation, we talked about why the estate of Emelius Darrell was still called the Estate Emelius Darrell rather than George or John Darrell; and that's because the Conveyance was never completed by E.T. Richards and this is receipt proof of services that were supposed to be provided.

**COUNSEL DIRK HARRISON** 18:38: This receipt is dated 3rd February, 1940. It's not clear the receipt as to the year. Are you able to assist us?

**MS. HALLE TEART** 18:57: I think it says 1950. You see the number up in the top?

**COUNSEL DIRK HARRISON** 19:08: Thank you I also see a 4 that's why I was asking.

**MR.DONALD McMAHON** 19:11: It looks like it was scribbled out.

**COUNSEL DIRK HARRISON**  19:13: But just to be clear. I am not putting words in your mouth, but this receipt you'd agree with me, it suggests that there are professional services being provided by Mr. E.T. Richards to Mr. George Darrell, Esq.

**MS. HALLE TEART** 19:32: Correct it suggests that George Darrell paid E.T. Richards for professional services to be completed.

**COUNSEL DIRK HARRISON** 19:39: But in respect to your evidence, that it was in relation to a Conveyance that's not displayed here on this receipt.

**MS. HALLE TEART** 19:47: But we are using this to support John Darrell's claim that their professional services were never completed in terms of that being the Conveyance.

**COUNSEL DIRK HARRISON** 20:01: Okay, all right, thank you. You may go to Page 2, Thank you. On page two the next receipts at the top of the page it says number 55.

**MS. HALLE TEART** 20:14: Yes sir. This is again another received from the Southampton Parish Vestry 1948 for 400 pounds -September 29, 1948.

**COUNSEL DIRK HARRISON** 20:29: Thank you. The next receipt?

**MS. HALLE TEART** 20:32: The next receipt is September 29, 1948 from Mr. George Wellington Darrell to Southampton Paris Vestry for a different amount

**COUNSEL DIRK HARRISON** 20:51: Page 3

**MS. HALLE TEART** 20:57: Page 3 is a bill to George Wellington Darrell from the Southampton Parish Vestry for 200 pounds. This is 1967; and the right hand side of that is another bill payable on demand from the Southampton Parish Vestry to the Estate of Emelius Darrell under George Wellington Darrell for 2000 pounds, in 1967.

**COUNSEL DIRK HARRISON** 21:49: I make a distinction. The document on Page 3, sorry, which has number 55 at the top of the page. We have two sections on that document where we have received payment and a signature and a date. It appears on the first half where it has A C Burrows and the name Estate of Emelius Darrell. On the second receipt it has Mr. George Wellington Darrell for 100 pounds received payment dated 29th of September, 1948.

On the third page you are just referencing, there is no signature of payment received on this or the other document. So this is just a bill payable on demand with no indication that a payment was made. So you Exhibit this just to show however, that there was an existing relationship between the Parish Vestry and the Darrell family in respect of paying dues?

**MS. HALLE TEART** 23:29: Yes, that's correct.

**MR. WAYNE PERINCHIEF** 23:32: Just a query on the document that's displayed in the amount appears to be 200 rather than 2000. Am I correct? Which one is? Are you referring to the one that was just had the green stamp on it, if you roll back that one could you check and see what the sum is? It looks like 200 or 2000.

**COUNSEL DIRK HARRISON** 23:59: The first one that has at the top of the page 122 with the top left hand corner. It can't rotate it at this time apologies.

**MR. WAYNE PERINCHIEF** 24:09: I can see that one has $200. Is that the one you're referring to?

**COUNSEL DIRK HARRISON** 24:16: That's the one and based on your observation they fall in one which has number 121 at the top of the page.

**MR. WAYNE PERINCHIEF** 24:23: Yes. Okay. That's the next one. Then that one has what appears to be 2000. I was looking at the wrong document.

**COUNSEL DIRK HARRISON** 24:33: Yes correct. As far as

**MR. WAYNE PERINCHIEF** 24:35: 200 pounds. All right it has been cleared up now.

**COUNSEL DIRK HARRISON** 24:41: You may proceed to the next slide madam.

**MS. HALLE TEART** 24:49: This next portion of the document references a 1971 receipt on the Estate of Emelius by Mr. George Darrell. This is paid. The other half of it is from 1971 again paid by Mr. George Wellington Darrow specifically for Riviera Estate, Southampton Parish.

**COUNSEL DIRK HARRISON** 25:34: Thank you. And the final page madam?

**MS. HALLE TEART** 25:51: There is one more portion on the bottom of the page we were just looking at. It's a bill for a Mr. Emelius Daniel Darrell

**COUNSEL DIRK HARRISON** 26:31: You may proceed, please keep your voice up.

**MS. HALLE TEART** 26:32: This bill is from Mr. Emelius Daniel Darrell the receipt and is for October 25, 1947. However, George Darrell's name is listed here by received payment.

**COUNSEL DIRK HARRISON** 26:34: Thank you. And the final page what is that madam?

**MS. HALLE TEART** 27:11: The final page is a Bill Payable on Demand to Southampton Parish Vestry the Estate of Emelius Darrell for 400 pounds and this is what appears to be October 1 1954.

**COUNSEL DIRK HARRISON** 27:36: Thank you. Now, the following documents next document that you have shared with us and which you wish to place reliance on is a document which had been filed in the Supreme Court and it speaks to Mr. John Nathaniel Darrell seeing the Minister of Works and Engineering, as he then was Dr. Hon. Clarence Terceira. Is that correct madam?

**MS. HALLE TEART** 28:45: Yes sir.

**COUNSEL DIRK HARRISON** 29:09: How many pages does it comprise of?

**MS. HALLE TEART** 29:16: Five (5) pages.

**COUNSEL DIRK HARRISON** 29:22: You wish to place reliance on that document?

**MS. HALLE TEART**  29:24: Yes Sir.

**COUNSEL DIRK HARRISON** 29:25: I would ask that this document be tendered and admitted as Exhibit HT21.

**MR. WAYNE PERINCHIEF** 29:36: And for clarification would you repeat the description of that Exhibit please?

**COUNSEL DIRK HARRISON** 29:41: I crave indulgence. It is headed In the Supreme Court of Bermuda Civil Jurisdiction, between John Nathaniel Darrell (Plaintiff) and the Minister of Works and Engineering (Defendant) Dr. the Hon. Clarence Terceira.

**MR. WAYNE PERINCHIEF** 30:45: The Statement of Claim and that's now tendered and admitted as Exhibit HT21. Correct?

**COUNSEL DIRK HARRISON** 30:59: Yes. And you seek reliance to this document for what reason madam?

**MR. WAYNE PERINCHIEF** 31:18: Sorry, one clarification the date please of that Civil matter?

**COUNSEL DIRK HARRISON** 31:30: It doesn't have a date.

**MR. WAYNE PERINCHIEF** 31:35: It appears to be 1992 on the document?

**COUNSEL DIRK HARRISON** 31:38: Well, that would just be a generic number. But the file number is not there. I was just trying to get a number 18 as appears on the top left hand corner but the

**MR. WAYNE PERINCHIEF** 31:52: There appears to be a number at the very top under the heading In the Supreme Court of Bermuda - 1992

**COUNSEL DIRK HARRISON** 32:04: I appreciate that is so Chairman. I just indicated that it does not appear that the Registry wrote it, if that was a practice of the number the file number Chair, this appears to be a copy.

**MR. WAYNE PERINCHIEF** 32:27: And in the top left hand corner seems like a number 18 marked on this sheet and that should be sufficient to identify the document.

**COUNSEL DIRK HARRISON** 32:35: Yes Chairman.

**MR. WAYNE PERINCHIEF** 32:37: Thank you.

**COUNSEL DIRK HARRISON** 32:40: Why do you wish to rely on this document, Madam?

**MS. HALLE TEART** 32:43: This document just shows again, like the many attempts that John Nathaniel Darrell lay claim to the land.

**COUNSEL DIRK HARRISON** 32:54: I would ask you to keep your voice up for me.

**MS. HALLE TEART** 32:56: Sorry.

**COUNSEL DIRK HARRISON** 33:05: I'm just going to ask you to read what had been filed in The statement of claim. You may go ahead on page 3.

**MS. HALLE TEART** 33:20: **Statement of Claim**

**1.** The plaintiff is the son of George Wellington Darrell, who in turn was the son of Emelius Darrell, who in turn was the son of Daniel Davis Darrell.

**2.** The Plaintiffs grandfather Emelius Darrell died on the 8th of August 1947.

**3.** A plan attached to the deed of 1912 describes the land of the 1939 Deed showing Emelius Darrell's ownership of the three (3) parcels of land as one.

**4.** The defendant obtained portions of two (2) parcels of the aforementioned land.

**5.** Further the defendant obtained the entirety of the Foster Mallory Cooper's land.

**6.** The defendant’s acquisition of the aforementioned parcels of land was affected by fraud particulars.

**7.** Deeds of 1922 and 1924 fraudulently show the ownership of the said lands by the defendant.

**8.** The J.H. Dill Plan of 1932 shows that the aforementioned deeds of 1922 and 1924 are fraudulent. It refutes the 1930 plan and defendant acquired lands that were never sold by Emelius Darrell.

**9.** The 1939 conveyance from Ms. Joan O'Flaherty Mr. Gays Powell drawn by Messrs. Conyers, Dill and Pearman refutes the railroad railway ccompany’s ownership, and the defendant subsequent ownership of lands properly belonging to Emelius Darrell.

**10.** The 1963 conveyance from George Arnold Williams to Herman Jarvis drawn by David Tucker. I can't say that word attorney Tucker attorney as well as a 1943 plan by Wycliff Stovell confirms the West boundary to be that of the estate of Emelius Darrell.

**11.** The Southampton Vestry, the highest authority in the land ownership confirmed the estate of Emelius Darrell and the portion of property of George Wellington Darrell, which at this time was still the property of George Wellington Darrell.

**12.** Due to fraud on the part of government and the Southampton Vestry, The Department of Planning was misled by 1953 plan.

**13.** In 1962, the government posed its first resistance to the ownership of the portion of property, which it alleges to have received from the Railway Company.

**14.** The 1959 Deed a Conveyance from Gayes Powell, acknowledges the Government's ownership to the Railway Company portion of property, but goes on to contradict the 1953 plan, and the 1922 Conveyance to Claudia Darrell, and from Claudia Darrell to Percy A Dodwell, it also contradicts the deed of 1924. This same 1959 Deed further contradicts the assertion of the Southampton Vestry that Emelius Darrell owned only 75 feet by 100 feet of lands but rather very much more. The aforementioned instances of fraud show that the government never owned in law, or in equity the railway portion of the property which it alleged to own in 1939. The same property in this conveyance is that of Emelius Darrell by reason of the above incidences of fraud the plaintiff, has suffered loss, particulars of loss of land attorney fees, those remain empty. This is the plaintiffs claim is for damages. Alternatively, restitution of lands the aforementioned interest in pursuant to statute and declare Declaratory Relief. Signed: Philip J. Perinchief, Chief Associates, Attorneys for the Plaintiffs

**MR. WAYNE PERINCHIEF** 37:34: I like to, for clarification indicate that Philip J Perinchief is my brother.

**COUNSEL DIRK HARRISON** 37:50: Thank you Chairman. Now, in respect of the document, HT21 that you just referred to there is a judgment which was given in respect of this matter. You wish to rely on it madam?

**MS. HALLE TEART** 38:14: That document was filed in court, however, there is a Judgement the court issued a ruling in respect of those documents filed.

**COUNSEL DIRK HARRISON** 38:15: No. That was a document filed in court and I'm saying there's a judgment, the court issued a ruling in respect of that those documents?

**MS. HALLE TEART** 38:26: I don't believe we have that attached here.

**COUNSEL DIRK HARRISON** 38:30: But you had given it to us. I was going to just show you the Judgment. You recognize that document. Have you seen that before and how many pages is it?

**MS. HALLE TEART** 39:05: Yes I do and it is four (4) pages.

**COUNSEL DIRK HARRISON** 39:07: Chairman the Judgment of this Supreme Court at the top of the page it has No. 4a. It indicates the Supreme Court of Bermuda Civil jurisdiction 1978. No. 124. The Minister of Public Works (Plaintiff) and John Darrell (Defendant) before the Hon. Mr. Justice Walter Robinson. I would ask that this document be tendered and admitted as Exhibit HT22.

**MR. WAYNE PERINCHIEF** 40:20: Received tendered and evidence as HT22. Judgment in the Supreme Court of Bermuda No. indicated as No. 4a (Plaintiff) the Minister of Public Works and (Defendant) John Darrell before Hon. Justice Walter Robinson be tendered in evidence as HT22.

**COUNSEL DIRK HARRISON** 41:13: Please go ahead madam and read the document?

**MS. HALLE TEART** 41:26: In **the Supreme Court of Bermuda Civil Jurisdiction 1978: No. 124.** The Minister of Public Works (Plaintiff) and John Darrell (Defendant) Mr. Robin McMillan for the plaintiff, Mr. Vaucrosson for the defendant. Before The Hon. Mr. Justice Walter Robinson,

**Judgment:** In this action the Minister of Public Works hereinafter the Plaintiff seeks against the Defendant John Nathaniel Darrell

**1.** A declaration that the plaintiff has absolutely title and complete beneficial interests in and at Southampton Parish In these islands and to an injunction restraining the defendant by himself or his servants or agents, our howsoever otherwise from entering upon the said lands in any way at all.

**2.** The land in question is a portion of a tract of land and still have to perish. After said upon which the Heron Bay School and its playgrounds are cited.  **3**. The Plaintiff alleges that the defendant has on diverse dates entered upon the land asserting title there too, and his father, George Wellington Darrell, and that on 26th of October 1977, the defendant entered the land and damaged fencing, which the plaintiff had erected by tearing it down, and that the defendant persist in trespassing upon the land despite being requested not to do so.

**4.** The plaintiffs case is that the land upon which the defendant persistent trespassing, belongs to the plaintiff in his capacity as Minister of Public Works on behalf of the Bermuda Government and in support of his case, the plaintiff has produced a considerable number of these investing statute, showing the transfers at one time or another have separate parts of the whole tract of land behind her and Bay school and ultimately, demolition to the Bermuda Government, the latest of which exhibit 16, was executed in 1952.

The plaintiff has also put in evidence certified copies of orders of this court dated respectively, the 16th of May 1974, and the 22nd of July 1978, showing that the defendants father, George Darrell has been restrained by this court from entering upon the Government of Bermuda land south of the Heron Bay School as shown on plan for 963. Attached to one of the orders, which comprises all the land shown on Exhibit 2a edged in various colors. Since the above mentioned orders are operative against George Darrell, and the defendant is the lawful attorney of George Darrell, his father, as appears from a power of attorney, a Deed Poll dated 22nd of February 1977, which is a defendant has exhibited those orders are sufficient in themselves to dispose of the defendants allegations of title and his father, and the defense he has pleaded for as an attorney of his father, he can be no better or different position with respect to the title to any land, then or from his father, under the agency arising by virtue of this said Deed Poll.

The plaintiff presumably has been obliged to take this action because while the orders cover the position where the defendant proposes to act as right of his father, George Darrell. They do not affect the defendant where he prefers to act and write up his own right and asserting any entitlement to enter upon going in question, and that being so some difficulty may arise in the enforcing of those orders and deciding when the defendant might be acting in his own right, as distinct from acting and right of his father. By his defense, the defendant has alleged that the plaintiff is not the owner and occupier of the land in question, which he claims as belonging to his father, and says that the plaintiff was not entitled to Spence the second land, he admits, pulling down the fences, saying he did so under the authority of his father's title to the land. No documents have been produced by the defendant to substantiate his claim, either showing title in his father or grandfather through whom the defendant seeks to assert a right to be on the land. In fact, the defendant says neither his father nor himself can show any title deeds for the property whose title is not in this. In this case, the defending has produced three **(3)** certificates of birth, birth of himself, his father and his grandfather; but those certificates are not proof of the title and any of them or any land or use and are useless for any such purpose. Any information which the defendant has had at all as to the whereabouts of any deeds, without what establish title in himself, or in his father, is shown to be secondhand and unreliable said the defendant. I have no deeds because they were placed in an office and we never got them back. I was not there I was told about it. However, the defendant also gave evidence that over a period of some years, his family lived in a house nearby, which is still owned by his father, and that only portion of the land nor for what was the boundary line of the property formerly of the Bermuda Railway Company Limited. His father and his grandfather had cultivated a garden The cultivated area being between the Railway Company's property, and the Southernmost cliff face of the cutting made by the Department of Public Works for the purposes of providing additional playground for the infants at the Heron Bay School, which cutting is shown as the more Southerly on the plans Exhibit 2A. From the evidence as to such cultivation given by the defendant, it is not certain for how long or what time the same took place know whether it was continuous, with or without permission of anybody. The defendant testified that his family had done many things on the land that there had been during the 1940s in American camp on the land, and that he had grazed goats and cows in the land until about 1957, when he was married. From these acts uncertain as to time and duration, and as to the terms upon which they’re enable the defendant propose to set up the title and his father or himself. There may be in some circumstances a presumption of cosine from evidence of actual possession of the house, or a field or farm as in this case, a cultivated garden or grazing lands. But I have not been able to find an authority for extending the application of such presumption to the larger tract of land reaching up to the hilltop, next north of Sunnyside Park area of the land of the government, which defendant also claims, particularly in the absence of any evidence of a sufficiently continuous occupation, as with justifiability, that there was sufficient possession to displace the plaintiffs right to win, which is the subject of this action. To my mind, in order for the defendant to successfully defend this action, he must show such open notorious continuous, exclusive possession or occupation of such parts of the land, as would constructively applied to all or any parts of such land as acclaimed by him and operate to extinguish the title of the plaintiff or the true owner, and give the defendant a statutory title under and by virtue of the relevant status, statute of limitation, in this case, the crown claims limitation Act 1872, we're in the limitation period of 60 years.

The onus of proving such continuous possession and occupation lies squarely on the defendant who alleges it and in my judgment, the quality of whatever use there may have been to part of the land in question by or on behalf of the defendants father, or himself has not been proven in this case so as to establish any claim of right on the part of the defendant sufficient to justify holding, that the plaintiff's entitlement to the land in question has been displaced. There is no substance in the defense nor in the claims made by the defendant, and therefore judgment will be entered for the Plaintiff to both cause. I also ordered a declaration in terms of sub-paragraph 1 of paragraph 6 in the amended statement of claim and injunction restraining the defendant by himself, or servants or agents on howsoever otherwise from entering upon the government land shown in Exhibit 2a in any way at all. Signed: Walter N.H. Robinson, Puisne Judge.

**COUNSEL DIRK HARRISON** 50:09: Thank you. This Judgment was not in favor of John Darrell, and from yesterday we're aware that letters were read into evidence where Mr. John N. Darrell had been critical of the role of Judge Robinson at the time of the period as also the role that he played prior to the court case. Do you have any comments with regards to this especially this document, which now supports the view of John Darrell that Justice Robinson had made decisions in circumstances where he may have been conflicted?

**MR.DONALD McMAHON** 51:33: Yes, I will comment on that. Okay. Before he was a Judge, he was an attorney, and he did work for the Sunnyside Park which is on top of the hill, and he also worked with and for the Darrell family. He worked for us from the 15th April 1963 when he was investigating the boundaries. And he had another letter dated the 17th of June 1963, when he stated that he was continuing to search for relatives, search related to the boundaries. Then, in 1964, he signed a forged document in favor of W.G. Brown and John Nathaniel Darrell. So basically, he worked for us as an as an attorney, for my grandfather searching the boundaries out. And then he filed a judgment, just the case, which, to me is, he shouldn't have done that, because its conflict of interest I think, but he was, you know, he worked for us finding the boundaries then he turned around and Ron put judgment on us on a case where he knew all about the property. Thank you.

**COUNSEL DIRK HARRISON** 53:07: Thank you very much. State your name please

**MS CYNTHIA B. FISHINGTON** 53:10: Cynthia fishing ton. Continue with what Donald has just said. That case, before it even went into court, it was lost. In other words, he should have stepped aside.

**COUNSEL DIRK HARRISON** 53:39: He who?

**MS CYNTHIA B. FISHINGTON** 53:41: The Judge Robinson. He should have stepped aside and let someone else judge it. It was conflict of interest, but he judged it, and it was the second case as well, where the person was a prosecutor in the case prior to that, and he became a judge. And so he also sort of stepped aside and let someone else judge it. Those two cases before my brother had even stepped into court, they were lost. He didn't get a ruling on that. So that's one of the things I would like to point out.

Thank you. So the next document you wish to rely on is a photograph is that correct madam?

**MS. HALLE TEART** 54:59: Yes Sir.

**COUNSEL DIRK HARRISON** 54:59: And what does it depict?

**MS. HALLE TEART** 55:02: This is just an image of John Nathaniel and a couple of other people blocking the perimeter estate road. And this is 1987.

**COUNSEL DIRK HARRISON** 55:21: And how do you know this? That's what it depicts.

**MR. NATHAN DARRELL** 55:29: Nathan Darrell. I knew this photo because I was actually there.

**COUNSEL DIRK HARRISON** 55:35: How old where you then? or what year was it?

**MR. NATHAN DARRELL** 55:45: 13 years old.

**COUNSEL DIRK HARRISON** 55:49: I would ask that the copy of the picture which the witnesses indicate is a blocking of a roadway and the roadway.

**MR. NATHAN DARRELL** 56:26: Is Riviera Estate Road. The portion of Riviera Estate that is right outside the house of the homestead of my grandfather.

**COUNSEL DIRK HARRISON** 56:36: Please speak into the microphone?

**MR.DONALD McMAHON** 56:37: It is the part of the road right outside of the homestead which is on Riviera Estate Road, No. 29.

**COUNSEL DIRK HARRISON** 56:48 : Thank you. I just ask that the image, which is a copy of a picture that it could be tendered and admitted as Exhibit HT 23.

**MR. WAYNE PERINCHIEF** 57:09: That photo of J N. Darrell blocking the Riviera Estate Road, a copy of it as witnessed by Nathan Darrell. Witnessed at 13 years of age and a designated Exhibit HT23

**COUNSEL DIRK HARRISON** 57:32: Could you tell me who the persons are in the picture?

**MR. NATHAN DARRELL** 57:36: The person that's standing up on the hill that is my brother John Byron Darrell. The next person to him is a reporter, I can’t remember who he was. Next to him is my father, and the other person is the camera man.

**COUNSEL DIRK HARRISON** 57:56: Thank you.

**MR. WAYNE PERINCHIEF** 58:01: And the exact year would have been if you count back from 13 years

**MR. NATHAN DARRELL** 58:09: 1987

**END OF TRANSCRIPTION FEBRUARY 4, 2021 (AFTERNOON SESSION A) AT 58:26**