



Defendants pull down and remove a wire fence which they had erected on a part of these lands. The Defendants sought a declaration that they are entitled to a portion of these lands comprising 3 acres, or 1.2141 hectares (“the 3 acre parcel”), a declaration that the Plaintiffs are not entitled to restrain them from entering on the 3 acre parcel, and damages in trespass.

The Plaintiffs claim the 6 acre parcel by virtue of a deed of conveyance registered as No. 1164 of 1993 by which they purchased it from Ban Lyons, otherwise known as Leotaud Lyons or Leotaud Ban Lyons. The 3 acre parcel, at least a part of which is said to fall within the 6 acre parcel, is claimed by the Defendants under a deed of conveyance to them from Fitzgerald Lyons, the Second Defendant’s father, registered as No. 5689 of 1983.

A history of the title to these parcels of land shows that they were both originally part of a 12 acre parcel held by Matthew Lyons, grandfather of the Second Defendant, which is shown on a survey plan of a parcel comprising 11 acres 3 roods 21 perches drawn by W. E. Reece and dated 13<sup>th</sup> December 1913. On that plan the boundaries of this larger parcel (“the 12 acre parcel”) are shown as follows:

*“On the North partly by lands of Cradley, partly by lands of D. Thomas and partly by lands of Cradley; South partly by lands of Cradley, partly by a river and partly by the lands of Margaret E. Gouchard; East by land of Margaret E. Gouchard and partly by lands of Cradley; West by lands of Cradley.”*

This survey plan was admitted in evidence by consent as Exhibit C. Also admitted by consent was Exhibit D which appeared to be a photocopy of a part of a Ward Sheet and which depicts this 12 acre parcel with the same boundaries referred to in the survey by Mr. Reece.

Matthew Lyons died on 15<sup>th</sup> December 1951 leaving a Will dated 2<sup>nd</sup> October 1951. By that Will he devised six acres of this 12 acre parcel, which 6 acres are expressed in the Will to be under cultivation, to his wife Popo Rachel Lyons, (Popo Lyons's 6 acres) and another six acres expressed to be uncultivated to his four sons, Edward Lyons, Eric Lyons, Ban Lyons and Hubert Lyons ("the remaining 6 acre parcel"). It is these specific devises which can be said to constitute the root of the title to all of these lands.

Popo Rachel Lyons obtained a grant of Letters of Administration with Will annexed to the Estate of Matthew Lyons on 10<sup>th</sup> March 1960. By Deed of Assent dated 16<sup>th</sup> May 1968 registered as No. 5286 of 1968 she vested in herself six acres of the 12 acre parcel and by a conveyance of the same date registered as No. 5293 of 1968 she vested the same six acre parcel in her son Fitzgerald Lyons. In the latter deed, Exhibit E, the parcel of land is described as being the "North Western side" of the larger 12 acre parcel and the boundaries are described as follows:

*"North by lands of B. Thomas South by lands of Matthew Lyons East by lands of Matthew Lyons West by land of Cradley Estate."*

There is then a second deed of assent dated 20<sup>th</sup> June 1968 registered as No. 6771 of 1968 by which Popo Rachel Lyons assented, or purported to assent, to herself a second parcel

of land also comprising six acres. It is described as the remaining portion of the parcel of land assessed as No. T-202 in the Warden's Assessment Roll and is accepted as being the remaining portion of the 12 acre parcel. Its boundaries are described as follows:

*“On the North by Fitz Lyons on the South by lands of R. Douglas on the East by a River and on the West by Cradley Estate.”*

This is the remaining 6 acre parcel to which I have referred.

This remaining 6 acre parcel is then the subject of a further Assent dated 29<sup>th</sup> July 1971 registered as No. 9008 of 1971 (Exhibit 'F') from Fitzgerald Lyons to himself in his capacity as the Legal Personal Representative of Popo Rachel Lyons. It is the second parcel of land described in the Schedule to that Deed and the description of its boundaries is the same as in the Deed registered as No. 6771 of 1968.

This assent, however, was the subject of High Court Action No. T5 of 1984 which were determined before McMillan J. on 24<sup>th</sup> May 1985. McMillan J. held that Ban Lyons was entitled to an undivided one-quarter share in six acres of land and ordered that the deed of assent registered as No. 9008 of 1971 was void, of no effect, and set the same aside on the basis that Fitzgerald Lyons was not the Legal Personal Representative of Matthew Lyons.

At the trial before me attorneys for the parties agreed that no Order had been made in relation to the Assent registered as No. 6771 of 1968, but that it had for all intents and purposes been regarded as effectively also having been set aside. I have so treated it.

Thereafter, by deed dated 18<sup>th</sup> July 1990 registered as No. 15076 of 1990 (Exhibit 'G'), Ban Lyons as the Legal Personal Representative of Matthew Lyons, having obtained a grant of Letters of Administration with Will annexed to the unadministered portion of the Estate on 13<sup>th</sup> March 1987, assented a parcel of six acres to himself. The boundaries described in this deed are the same as those as are found in the deeds registered as Nos. 6771 of 1968 and 9008 of 1971 respectively. There is no doubt that it is the same remaining 6 acre parcel.

Thereafter, by deed dated 19<sup>th</sup> January 1993 registered as No. 1164 of 1993, Ban Lyons conveyed the remaining 6 acre parcel to the Plaintiffs in the instant proceedings. The remaining 6 acre parcel is described in this deed as having been found on recent survey to comprise 2.4524 hectares and to have the following boundaries:

*“on the north by lands of David Thomas formerly said to be lands of Fitz Lyons on the South by Sandy River and not by lands of R. Douglas on the East partly by lands of David Thomas and partly by lands of W. Hall and not by a River, and on the West by lands formerly of Cradley Estate but now of Fitzgerald McFarlane Lyons, which said piece or parcel of land is more particularly described and coloured pink on the plan hereto annexed and marked “A”.”*

As shown on this plan, the remaining 6 acre parcel lies very clearly to, and is, the Eastern portion of the 12 acre parcel. The survey plan was prepared by Arnold Ramon-Fortune, Licensed Land Surveyor. It is dated 26<sup>th</sup> May 1987 and is based on a survey carried out in April 1987. Adjoining the Western end of the northwest extremity of the surveyed parcel there is shown a “road reserve” 10 metres wide extending 30 metres in length into the adjoining property which lies to the West. This “road reserve” is shown as leading to/from an “existing access” which is also shown on the survey plan as leading to the Northside road.

There was one other deed in evidence before me. It is that by which the Defendants acquired their 3 acre parcel. This is a conveyance dated 4<sup>th</sup> March 1983 registered as No. 5689 of 1983 by which Fitzgerald Lyons conveyed the 3 acre parcel, said to be a portion of a larger parcel of twelve acres, to the Defendants. Its boundaries are described as follows:

*“On the North by lands of M. Lyons and Cradley Estate on the south by Sandy River on the East by Cradley Estate and Amelia Hall and on the West by Cradley Estate.”*

The principal issue for determination can be described as being whether the 12 acre parcel is to be divided into two parcels of six acres each by a mutual boundary running generally from North to South through the 12 acre parcel, or from East to West through the 12 acre parcel. In this respect it is helpful to look at the survey plans in evidence.

There are essentially four of these plans: there is Reece's plan drawn in 1913, Ramon-Fortune's plan drawn in 1987; and two survey plans by Kenneth Sturge drawn in December of 1993 (Exhibits 'KS1' and 'KS2'.) There was apparently another survey carried out by Otway Prevatt in 1983 to which reference is made in Ramon-Fortune's survey as well as in the viva voce evidence at the trial, but no plan of his was tendered in evidence. Copies of the four plans referred to above are attached to these Reasons as A, B, C and D respectively.

An inspection of these plans shows that the six acres claimed by the Plaintiffs is the Eastern portion of the 12 acre parcel. The Defendants claim three acres which is a part of the six acres conveyed by Popo Rachel Lyons to Fitzgerald Lyons by deed registered as No. 5293 of 1968. This parcel of six acres, it must be recalled, was described in Matthew Lyons' Will as being with cultivation and in the deed registered as No. 5293 of 1968 as the northwestern side of the 12 acre parcel. It is supposedly shown on Sturge's plan KS1 as being 2.2680 hectares, and the three acres conveyed to the Defendants as 1.2141 hectares on Sturge's plan KS2.

From these plans, particularly Ramon-Fortune's 1987 plan and Sturge's plan 'KS2', it is clear that, first, the Plaintiffs and the Defendants lay claim to the same area in the northeast sector of the 12 acre parcel; second, the Plaintiffs' claim is predicated on the 12 acre parcel being divided into two parcels, one being perhaps best described as the western portion and the other being the eastern portion,

while the Defendants regard this division as being into a northern portion and a southern portion.

Having considered the plans and the viva voce evidence, I came to the conclusion that the 12 acre parcel was to be divided into two parcels of six acres each in the manner shown on Ramon-Fortune's plan, i.e. into an eastern portion and a western portion. I did so for the following reasons:

- (1) A division into a northern parcel and a southern parcel as the Defendants' claim would result in the southern parcel having no access to the Northside road. Indeed, from the evidence before me, access to the Northside road would appear to be the only means of going to and coming from the 12 acre parcel.
  
- (2) Matthew Lyons' Will was made in 1951 and he died later that year. His named Executor obtained a Grant but died without administering the Estate. His widow, Popo Rachel Lyons, obtained a Grant of Letters of Administration with Will annexed in March 1960 but the Assent to her of her entitlement was not executed until May of 1968. Popo Rachel Lyons would have obviously had to provide the boundaries of her six acre parcel, the boundaries of the six acres she was to receive, to the Attorney preparing the deed of assent, and it can only be presumed that she gave to this Attorney the correct information.

- (3) The six acre parcel which she assented to herself and then conveyed to her son Fitzgerald by Deed registered as No. 5293 of 1968, is described as being on the North-Western side of the 12 acre parcel. It could not therefore be reasonably expected to extend all the way to the Eastern boundary of the 12 acre parcel, whether the “North-Western side” is interpreted to mean the “North West corner” or the “North and West side.”

Additionally, the plan by Reece in 1913 shows a right of way running through the 12 acre parcel in a direction generally from North-West to South-East, ending on the North, or more accurately the North-West boundary, at a point almost midway along that boundary and in very close, proximity, if not at the same point, as both Ramon-Fortune’s and Sturge’s survey plans show an “existing access” to the Northside road.

It would have been far more likely, more probable, more reasonable, that Popo Rachel Lyons, and Matthew Lyons before her, would make provision for both parcels of six acres to have access to and from the Northside road.

- (4) Although I had no opportunity to see and hear Mr. Ramon-Fortune in the witness box, Mr. Kenneth Sturge did give evidence. I was not impressed. His survey plans were based purely on information given to him by the Defendants as to the location of boundaries, and this information was

given to him after the dispute with the Plaintiffs had arisen. Indeed, his surveys were done after these proceedings had been instituted and, perhaps tellingly, he agreed in cross-examination that the three acres shown on his survey plan KS2 was “far different” to the parcel described in deed registered as No. 5689 of 1983 and that it was completely different to the survey plan done for the Defendants in 1983 which he had seen when preparing to do his own survey. This was the survey plan prepared by Otway Prevatt and referred to by the First Defendant during examination-in-chief, but not tendered into evidence. Quite apart from these survey plans being prepared purely on information given to Mr. Sturge purely by the Defendants, there was no notice given to the Plaintiffs, or anyone else, of the survey and Mr. Sturge’s evidence also suffered from being inconsistent with evidence already given by him at a previous trial of this action which Sealey J. had ordered be re-tried de novo.

Mr. Ramon-Fortune’s plan was drawn based on a survey carried out in 1987. There was said to be disagreement as to certain boundaries but any such disagreement on the part of Fitzgerald Lyons or the Defendants was not taken any further. Indeed, the Second Defendant, Fitzgerald Lyons’ daughter, said that she was not aware of there being any disagreement as to the boundaries between her father and her uncle, Ban Lyons.

- (5) The Eastern boundary of the six acre parcel which was assented by Popo to herself and then conveyed to her son, Fitzgerald Lyons by deed registered as No. 5293 of 1968 is described as being “lands of Matthew Lyons”. Clearly this parcel to the East would have been the remaining 6 acre parcel so that the boundary between the two six acre parcels would have been decided when the first assent which was put into place by deed registered as 5286 of 1968. Given the description in the latter of the Eastern boundary, the two parcels would have been divided by a boundary running from North to South, with Popo Lyons’ parcel lying to the West of this boundary, and the remaining 6 acre parcel to the East of it.

Further, deed registered as No. 5293 of 1968 describes the Western boundary as lands of Cradley Estate. Again, this is a clear indication that Popo Lyons’ 6 acre parcel lay in the Western portion of the 12 acre parcel.

- (6) The 3 acre parcel was the subject matter of the deed registered as No.5689 of 1983. In this deed the North boundary is described as being “lands of Lyons and Cradley Estate”. Clearly this could not be correct, because the 3 acre parcel can only be a portion of Popo Lyons’ 6 acre parcel of which the Southern and Eastern boundaries were “lands of Matthew Lyons” and the Western boundary of which was “Cradley Estate.” The 3 acre parcel could not, therefore, be found in the North East corner of the 12 acre parcel, as Sturge’s plan sets out to show, and as the Defendants claim.

(7) The deeds dealing with the remaining 6 acre parcel which is claimed by the Plaintiffs are, in a sense, of less assistance in resolving the issue until the conveyance to the Plaintiffs is considered. Previously, and presumably based on information given by Popo Rachel Lyons, the Northern boundary is described as lands of Fitz Lyons and is indicative that this remaining 6 acre parcel lay South of the parcel which Popo Lyons had previously assented to herself. But the Southern boundary is then described as being “lands of R. Douglas” which cannot be correct because no mention is to be found anywhere else of such a boundary of the 12 acre parcel, or of any portion of it. The Eastern boundary being described as the river also cannot be correct, at least completely correct, because the Sandy River is in reality the Southern boundary of the 12 acre parcel. The description of the Western boundary as being Cradley Estate is possibly indicative of this remaining 6 acre parcel lying to the West but it is also possible that this is a description of the Eastern boundary, since this is the Eastern boundary of the 12 acre parcel.

The boundaries described in the deed registered as No. 1164 of 1993, the conveyance to the Plaintiffs, would appear to attempt to put matters to rights. All the same, based on the evidence before me, it would seem to reflect only what is shown on Ramon-Fortune’s survey plan.

(8) The fact remains, however, that by the first Assent in 1968 Popo Rachel Lyons “carved out” of the 12 acre parcel a parcel of six acres, the Popo Lyons 6 acres, for herself, thus leaving the remainder to be dealt with in accordance with the terms of the Will by whatever description it might attract. Fitzgerald Lyons’s title, and consequently the Defendants’ title, is to be found in this Popo Lyons 6 acre parcel. What was left after it was “carved out” is where the Plaintiffs find their title, i.e. in what I have referred to as the remaining 6 acre parcel, and what was initially “carved out” is the Western portion of the 12 acre parcel.

Turning to the events in 1993, when the Plaintiffs bought the 6 acre parcel, they did so after Ban Lyons had taken them to the property and the boundaries were pointed out to them as shown on Ramon-Fortune’s survey plan. This was in January 1993, and it was done by Ramon-Fortune in the presence of the First Defendant. The First Defendant was shown the plan of the area the Plaintiffs were buying and he voiced no objection. He was told by Ramon-Fortune that the fence and the gate he had erected would have to be removed. This gate is located in the middle of what is shown on the Ramon-Fortune plan as “road reserve” and the fence runs from this gate, on the Eastern side, up to the Northern boundary of the 12 acre parcel. The First Defendant said to the Plaintiffs that they would have to arrange to have a road made so that they could have access to what they were purchasing. Subsequently, the First Defendant went to the First Plaintiff

with some documents and Ramon-Fortune's plan in an effort to show her that what the Plaintiffs were buying was in fact in a different location.

The Plaintiffs completed the purchase on 19<sup>th</sup> January 1993 and went onto the land on 23<sup>rd</sup> January 1993 to start clearing it. The gate was still there. The Plaintiffs cleared an area of about 1 Lot and returned a week or two later and found a "no trespassing sign" and a barbed wire fence on the land they had purchased. They removed the fence and which was subsequently replaced.

In June 1993 the First Plaintiff noticed an area of the land they had bought had been ploughed, and that the bush which had been cut had been burnt.

After the Defendants bought the 3 acre parcel they built a house and went to live there. At that time it was apparently thought by them and the Second Defendant's father, Fitzgerald Lyons, that he owned the entire 12 acre parcel, so the precise location of the 3 acre parcel was obviously not of great concern, although a survey was carried out in 1983 by Otway Prevatt. After the High Court Proceedings T5 of 1984 were determined and it was clear that Fitzgerald Lyons was entitled to only six acres of land, at least one of the Defendants' boundaries had to be changed. The Second Defendant says it was the Southern boundary but no deed of rectification was ever prepared or executed, and no survey of the newly aligned 3 acre parcel was carried out until Mr. Sturge was retained after the Plaintiffs brought these proceedings.

When the Ramon-Fortune survey was carried out in 1987, the Defendants had notice of it. The Second Defendant said that her father was present but she did not know of any dispute between her father and her uncle (Ban) concerning the survey. The First Defendant says he did not see Ramon Fortune's plan until 1993 when he raised objections but that both he and Fitzgerald Lyons raised objections when the survey was being carried out in 1987. No evidence was given as to the nature of these objections and in the event no such objection was pursued, and I found it improbable that any objections were in fact made at that time.

After moving into the house they had built, the Defendants cultivated fruit trees, mango, avocado, vegetables, potatoes, short term crops and flowers, as well as raised pigs, goats and ducks. There is no evidence as to precisely how much land was used for these purposes, nor was there any evidence as to the precise boundaries of the lands so used. Indeed, there is no evidence to demonstrate with any degree of definitiveness the boundaries of the area of land which the Defendants claim to have been in possession of, nor of the three acres which they bought. At best, the lands they used for these purposes were only a relatively small area and as best I could make out from the evidence before me, only a part of that area could have fallen within the six acre parcel which the Plaintiffs had bought, and on which certain of the Defendants' crops were cut down when the Plaintiffs carried out their clearing operation after completing the purchase. Also, there were no special damages pleaded, nor any evidence given as to any

losses which may have been suffered by the Defendants as a consequence of the Plaintiffs' clearing operations.

The Plaintiffs said that the acts of trespass complained of took place by the Defendants on 11<sup>th</sup> May 1993 and the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> June, with ploughing of the land on the 21<sup>st</sup> June. The ploughing of the land is admitted by the First Defendant and I came to the conclusion that the Defendants had erected the barbed wire fence complained of at some time after the Plaintiffs first visited the property in January 1993. While there was no direct evidence that the burning of the trees and grass was carried out by the Defendants or either of them, I found it more probable than not that they were responsible for this. From the evidence there was clearly a negative reaction by the Defendants to the arrival of the Plaintiffs on the scene in January 1993 and, while the First Defendant subsequently visited the First Plaintiff in a more conciliatory frame of mind, his demeanour while giving his evidence showed that he clearly resented and objected to the presence of the Plaintiffs.

As to the Plaintiffs' claim in aggravated damages, there was no evidence that the Plaintiffs' proper feelings of pride and dignity were injured (**see Halsburys Law of England, 4<sup>th</sup> Ed. Vol. 12, pages 472-3**) and I therefore came to the conclusion that this claim failed.

As to the law, the Plaintiffs' claim in this action was founded in the tort of trespass which is essentially a violation of the right of possession and not a right of property. A claim in trespass can be maintained by whomsoever has the right to the immediate possession of land, and a person entering the land in exercise of that right is deemed to have been in possession ever since the accrual of that right of entry. He may therefore sue for any trespass committed since the accrual of that right. Actual entry by the true owner is not necessary for him to sue in trespass because, as against the wrongdoer, the slightest act indicating an intention to obtain or regain possession by the person having title to the land, or his predecessors, will be sufficient. (See **Salmond on Torts, 17<sup>th</sup> Ed., pages 45-47.**)

The Plaintiffs have in my view proved their title to the six acre parcel they claim and the Defendants have not been able to show that the title to this parcel of land is in some third party or that they have a better title. The Plaintiffs took steps to obtain possession of the property they had bought. The question was raised that the Plaintiffs can only own at best a  $\frac{1}{4}$  share in the land they bought, given the terms of the judgment and orders made in proceedings T5 of 1984, but any one tenant in common of land is, prior to partition, entitled to possession of the entire parcel and to take from it the fruits and profits of that user. The Plaintiffs undoubtedly acquired at the very least an undivided  $\frac{1}{4}$  share of and in the parcel of land which was dealt with by the Deed of Conveyance registered as No. 1164

of 1993, and, as one of the co-owners, they were entitled to bring and maintain this action in trespass.

Mention was made during the course of addresses of the Defendants having a possessory title to the disputed area. There was no such plea by the Defendants and I therefore did not determine the issue, but in any event, when these proceedings were commenced in June 1993 the Defendants had not been in possession of any part of the 12 acre parcel prior to 1983, and after the proceedings T5 of 1984 were determined in 1985, the Defendants say they shifted their Southern boundary. From the evidence I was not satisfied that there was cultivation on the parcel of land purchased by the Plaintiffs by Defendants or anyone they claimed to be their predecessor in occupation prior to 1983, or that any such cultivation was without the knowledge or agreement of those having title to or concerning the 12 acre parcel. While this was not an issue for determination before me, I would have come to the conclusion that it would have failed.

In the event I came to the following further conclusions:

- (1) that the 12 acre parcel was divided by a line running approximately or generally from North to South through the 12 acre parcel;
- (2) that the parcel of land purchased by the Plaintiffs was located and bounded as shown on the Ramon-Fortune's survey plan;

- (3) the Defendants had not satisfied me that the parcel out of which they had purchased 3 acres was located and bounded as they claimed;
- (4) the 3 acre parcel of land which the Defendants purchased was not located and bounded as they claimed;
- (5) the Plaintiffs did not trespass on any lands owned by the Defendants;
- (6) the Defendants trespassed on the six acre parcel purchased by the Plaintiffs and vested in them by and conveyance registered as No. 1164 of 1993.

Consequently, I gave judgment for the Plaintiffs on their claim and dismissed the counter-claim. I also:

- (1) ordered the Defendants to pay the Plaintiffs' damages in trespass in the sum of \$12,00.000;
- (2) made a declaration that the Defendants are not entitled to enter upon or use any portion of all and singular that certain piece or parcel of land situate at Cradley in the Parish of St. George in the Island of Tobago formerly said to comprise of six (6) acres but found out by survey in 1987 to comprise of 2.4524 hectares or 6 acres, 0 roods, 10 perches (being the remaining portion of a larger parcel of land said to comprise of 11 acres, 3 roods, 21 perches delineated on the survey plan of W. E. Reece d.d. 13/12/13) and bounded on the North partly by lands now or formerly of Cradley and partly by lands now or formerly of David Thomas, on the South Partly by Sandy River and partly by lands now or formerly of W.

Hall. On the East partly by lands now and formerly of David Thomas, partly by lands now or formerly of W. Hall & partly by the Sandy River and on the West partly by the Sandy River, partly by lands now or formerly of Fitzgerald McFarlane Lyons. And partly by lands now or formerly of Cradley. Partly by a Road Reserve & partly by lands now or formerly of David Thomas, which said piece or parcel of land is more particularly described and shown delineated & coloured pink on the survey plan of Arnold A. J. Ramon Fortune dated the 26/5/87 marked 'A' Attached to deed of Conveyance Registered as # 1164/93 & which said piece or parcel of land is also variously described otherwise previously in deeds registered as No. 1164/93 & 15076/90.

- (3) granted an Injunction restraining the Defendants whether by themselves, their servants and/or agents or howsoever otherwise from entering upon and/or remaining on the said parcel of land.
- (4) ordered the Defendants to pull down and remove all that barbed wire fencing now in place on the north side of the "road reserve" shown on the survey plan referred to in paragraph (2) of the Order.
- (5) ordered the Defendants to pay the Plaintiffs' costs of the claim and the counter-claim.

- (6) Granted a stay of execution as to the payment of damages and costs for 42 days.

I also entered the Plaintiffs' undertaking not to enforce prior to June 26<sup>th</sup> 1998 the prohibitory injunction granted so as to enable the Defendants to reap any crops of tomatoes, broccoli and papaw under cultivation at the date of my judgment, i.e. 12<sup>th</sup> May 1998. It is to be noted that at no time during the trial was I made aware of the fact that the Defendants had been in breach of the terms of the Order originally obtained ex parte before Brooks J. on 25<sup>th</sup> June 1993.

DATED this 20th day of January 2000

C.V.H. STOLLMEYER  
JUDGE