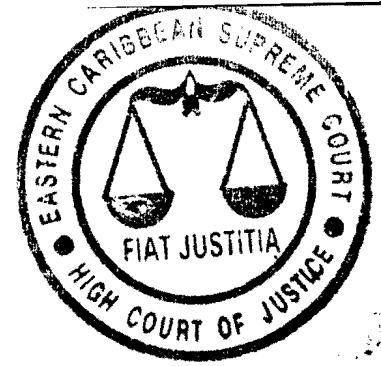




THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 488 OF 2004

BETWEEN:

RENVILLE ANDREWS

Claimant

V

FRANKLYN ANDREWS A.K.A. FRANKLYN WELCOME

First Defendant

ALWYN ABBOTT

Second Defendant

TASHKA ABBOTT

Third Defendant

Appearances:

Mr. J.O.R. Martin for the Claimant

Mr. S.E. Commissiong for the First Defendant

Mr. S. Huggins for the Second and Third Defendants

2007: May 7 and 8;
July 5

JUDGMENT

- [1] **MATTHEW J (Ag.):** At the commencement of these proceedings the Claimant brought an application for injunctive relief against the First Defendant and the Housing and Land Development Corporation and obtained an order on or about November 8, 2004, that "The Respondents by themselves, their servants, agents, licensees or howsoever be restrained from trespassing on the Claimant's property or otherwise interfering with the Claimant's possession thereof until further or other notice."
- [2] When the claim form was filed on November 11, 2004 the Housing and Land Development Corporation was dropped as a defendant and the Second and Third Defendants were

made parties to the action. In fact the Claimant filed a Notice of Discontinuance against the Housing and Land Development Corporation on or about the 21st of October, 2005. [See folio 119 of bundle].

[3] The claim form asked for the following relief:

- "1. A declaration that the Claimant has been in adverse possession of three thousand, six hundred and ten (3,610) square feet of land at Redemption Sharpes described as Lot No. 50 on Plan G 993 for more than 33 years.
2. A declaration that the Claimant is the owner for an estate in fee simple of the aforesaid lands.
3. An injunction to restrain the Defendants by themselves, their servants, agents, licensees or however from trespassing on the said lands or otherwise interfering with the Claimant's possession thereof.
4. Special damages of \$14,784.06 for destruction and wrongful interference with the Claimant's property.
5. General damages for trespass, destruction and wrongful interference with the Claimant's property.
6. Interest as the Court deems fit to award.
7. Costs.
8. Further and other relief as the Court deems necessary and appropriate."

[4] In the attached statement of claim the Claimant stated that at all material times he resided on the parcel of land and that in or about 1971 he and his father, Joshua Andrews, entered into possession of the aforementioned parcel of land at Redemption Sharpes, which was at the time owned by the Government of Saint Vincent and the Grenadines.

[5] He stated that he and his father, with the assistance of other persons in the neighbourhood, constructed a dwelling house and planted a garden on the said land.

[6] The Claimant stated that he and his father occupied and lived in peaceable and undisturbed possession of the land from 1971 until the death of his father on the 12th of September 1996 and thereafter he continued in peaceable and undisturbed possession.

[7] According to the Claimant in or about the year 1990 the Housing and Land Development Corporation made a written offer to sell the land to the Claimant and his father. The offer

was subsequently rejected and they continued in peaceable and undisturbed possession of the land. He did not state in what manner the rejection of the offer was communicated.

- [8] I note that the Claimant does not say by what method of communication the offer was rejected and what he means by "subsequently."
- [9] The Claimant stated that on the 15th day of October 2004 the Defendants or their agents broke and entered his dwelling house while he was at work and they destroyed and damaged his property.
- [10] Again on the 8th day of November 2004 the Defendants or their agents broke and entered his dwelling house and demolished the walls, doors, windows and the roof of the house.
- [11] The Claimant stated that by reason of the Defendants' conduct he has suffered loss and damage. He gave particulars of his loss and damage and particulars of his special damage amounting to \$14,784.06.
- [12] On 4th February 2005 the First Defendant filed a defence in which he stated that Joshua Andrews was his uncle with whom he was close and the Claimant was the stepson of Joshua Andrews who received ill treatment from the Claimant.
- [13] He stated that Joshua Andrews had entered into a contract with the Housing and Land Development Corporation to purchase the land but only made small intermittent installments which on many occasions were paid by the First Defendant.
- [14] He said Joshua Andrews never acquired the status of an adverse occupant in possession for a period of twelve years and the Claimant was never in undisturbed possession of the land for 12 years.

- [15] He stated that after Joshua Andrews died without ever having paid in full for the said land the Housing and Land Development Corporation sold him the land on the 8th day of March 2001 for \$5,415.00.
- [16] The First Defendant stated that on the 28th day of July 2004 the Magistrate in the Kingstown Magistrate Court ordered that the Claimant be evicted from the said land.
- [17] The First Defendant eventually sold the land to the Second and Third Defendants.
- [18] On the 19th of January 2005 the Second and Third Defendants filed their joint defence and counterclaim stating that they bought the said parcel of land from the First Defendant who covenanted with them that he had good title to the land.
- [19] They deny that the Claimant had been in adverse possession of the land for thirty years or at all.
- [20] They stated that the First Defendant sought and obtained a court order evicting the Claimant from the said land but they did not remove anything from the Claimant's premises.
- [21] They denied that the Claimant had suffered the losses which he claimed or any losses at all.
- [22] In their counterclaim they asked for a declaration that they are the fee simple owners of the said parcel of land contained in their deed registered as number 43 of 2004.
- [23] On the 6th day of April 2005, the Claimant filed a reply and defence to counterclaim. In that reply the Claimant stated that the First Defendant imposed himself on the Claimant's father by introducing himself as a nephew.

- [24] He stated that in 1990 Joshua Andrew's adverse possession of the land was well established and it was about that time the Housing and Land Development Corporation made an offer to the Claimant's father to purchase the land.
- [25] He stated that his father responded to the offer by making some payments to the land but contends that the payments were void in law by the prevailing fact of adverse possession.
- [26] The Claimant stated that his birth certificate discloses that his father is Daniel Andrews who is the same said Joshua Andrews. The Claimant relied on his birth certificate as proof that his father was married to his mother and that when his father died he was legally entitled to his father's estate.
- [27] With reference to Magistrate Court Suit 1511 of 2003 brought by the First Defendant, the suit alleged that one Grenville Gittens was the tenant of the First Defendant. On being served the Claimant attended Court and informed the Magistrate that he was neither Grenville Gittens nor the tenant of the First Defendant and the Magistrate sent him away.
- [28] In his defence to the counterclaim of the Second and Third Defendants he denied that they are the fee simple owners of the land in question and that the deed of conveyance No. 43 of 2004 and the Crown Grant No. 13 of 2001 are of no legal effect and ought to be cancelled.

EVIDENCE

- [29] Renville Andrews and Emily Phillips gave evidence on behalf of the Claimant. Franklyn Welcome and Alwyn Abbott gave evidence for the Defendants.
- [30] Renville Andrews was born on June 7, 1957 in Grenada to Daniel Hezekiah Andrews and Lyra Andrews nee Gittens. Himself and his father entered into occupation of a parcel of land described as Lot No. 50 in Plan G 993 located at Redemption Sharpes.

- [31] Joshua Andrews with assistance of persons in the area constructed a house partially of wood and partially of concrete on the portion of land. He lived there with Astra Martindale and the Claimant until Astra left for Canada in 1973.
- [32] The Claimant and his father continued to live on the land and according to him nobody ever interfered with their occupation.
- [33] The Claimant stated that in or about 1990 the Housing and Land Development Corporation made a written offer to sell the land to his father. His father made some payments towards the purchase of the land but later stopped doing so.
- [34] The Claimant stated that he first met the First Defendant in 1997 when he came to his father having come from a certain place and had no where to go. His father took in the First Defendant who lived at the house for some time.
- [35] The Claimant stated that his father caused the First Defendant to leave the house and then he returned to the house, having been removed earlier by the police as a result of what the First Defendant told the police.
- [36] The Claimant stated that his father died on the 12th day of September 1978. [I believe he meant 1998]. The First Defendant was not present.
- [37] He said sometime in the year 2003 he was served with Magistrate Suit No. 1511 of 2001 in which the First Defendant was alleging to be the owner of a parcel of land and Grenville Gittens was his tenant. He went to Court and told the Magistrate that he was Renville Andrews and not Grenville Gittens and the Magistrate sent him away.
- [38] He said that on the 15th day of October 2005 he received information that his home was broken into and his belongings put out. When he went to his home he met his property in a drain by the side of the road. A lot of items were damaged and missing. He returned to the home with what he could salvage.

- [39] Again on the 8th day of November, 2005 while at work he received information that his house was broken down. When he went to his home he found it partially demolished and his property scattered all about the premises.
- [40] He spoke to his neighbours and Emily Phillips and Astra Martindale gave him certain information.
- [41] The Claimant stated that the First Defendant assumed the surname "Andrews" to get his father to accept him as a relative but his birth certificate shows him to be Franklyn Welcome.
- [42] The Claimant stated that the Housing and Land Development Corporation ought not to have passed title to the First Defendant as he was not entitled to receive same and accordingly no valid title was passed to the Second and Third Defendants.
- [43] I want to comment on the statement made in the last paragraph. Is the Claimant putting forward another case based on the wrongful passing of title from the Housing and Land Corporation to the First Defendant? That does not appear to be quite consistent with his claim for adverse possession.
- [44] Upon cross-examination by learned Counsel for the First Defendant the Claimant stated that his parents were already married when he was born. Yet he said his name was added after registration.
- [45] In the file is an extract from the Births Register of Grenada indicating that a male infant was born on the 7th June 1957 to Daniel Andrews and Lyra Andrews nee Gittens. The column "Name (if any)" is blank, but in the column "Name if added after Registration. Date when added" is written "Renville Anthony 3rd July, 1957."

- [46] The Claimant stated that nobody was on the piece of land in question when he and his father occupied it.
- [47] He said he did not know anything about the Manager of the Central Housing Land and Development Corporation, Mr. Basil Cato, offering his father to purchase the land and he did not know at the time that the land belonged to the Government and did not know how his father acquired the land.
- [48] But in his witness statement he spoke of the land being offered to his father for sale by the Corporation.
- [49] He said the First Defendant lived with his father for five weeks and he was never physically put out of the house. This again differs with what he said in his witness statement, to the effect that the First Defendant caused the police to remove him and it was after his father put out the First Defendant that he returned to the home to live. [See paragraphs 1011 of Claimant's witness statement].
- [50] He said that there was a summons to Grenville Gittens and he got to know of a case in the Magistrates' Court. He attended the court but does not remember an order to put him out.
- [51] He was referred to a document at page 117 of the trial bundle and to writing at the back. He said the bailiff and two policemen did not evict him from the house and the same day he returned.
- [52] The Court has to be scrupulous about documents put before it and what people say about them. The document at page 117 is headed: "Form No. 2. Complaint before Justice." It goes on to say it is the complaint of Franklyn Welcome/Andrews who said he let to and he served the document on Grenville Gittens and it was signed by Frankly Welcome Andrews.

- [53] That does not look like an eviction order to me. I must say there are some words in blue ink written at the back, not clearly legible, and I really cannot say what they mean. There is no official stamp or anything of the sort. This is haphazard and most unsatisfactory. It is entitled Andrews/Welcome and Gittens.
- [54] The Claimant went on to say that the Housing and Land Development Corporation offered to sell the land to his father. He said his father was paying rent for the land and he did not know why his father did not buy the land. The Claimant was working at the time.
- [55] He said he left the land issues to his father and does not know why his father stopped paying for the land. He said he did not try to get a deed because of the court order. Is this an admission that there was a Court order against him?
- [56] When he was cross-examined by learned Counsel for the Second and Third Defendants he said one of the neighbours told him persons had removed his things and he saw a carpenter whom he could not identify removing the roof.
- [57] When he was re-examined he said he did not know when his father paid for the land. He said an order was made against Grenville Gittens whom he never knew.
- [58] Emily Phillips aged 55 has been living in Redemption Sharpes all her life. She remembers when the Claimant and his father came to live in the area in 1971 as they first lived with her mother. Later the father and her sister, Astra Martindale, entered into a common law relationship.
- [59] She remembers when they first occupied the portion of land in question.
- [60] She said that on the 15th day of October, 2004 when she was at her home she saw the First Defendant and four other persons at the Claimant's house. She saw the First Defendant and others removing the belongings of the Claimant. When she asked the reason for their actions the First Defendant did not reply.

- [61] On the 8th day of November 2004 about 10:00 a.m. she was again at her home when she saw three men at the Claimant's home. They were knocking off the roof, windows and doors of the house. One of the men she saw was the Second Defendant. Her sister spoke to him and he said he had bought the property.
- [62] When she was cross-examined by learned Counsel for the First Defendant she said she did see Frank and three other guys including Alwyn Abbott. They were putting the Claimant's things out of the house in the gutter.
- [63] She was cross-examined by learned Counsel for the Second and Third Defendants. She said on 15th October 2004 she saw five people near the Claimant's house. She said she saw Abbott there and she knows Abbott as he was living nearby with another lady before his wife. She said she could not remember seeing Abbott there any other time.
- [64] She said it was an old house parts of which were rotting. She insisted that Alwyn was there the first time together with one Mellow. On re-examination she said Frank is the First Defendant.
- [65] Franklyn Welcome otherwise known as Franklyn Andrews stated that Crown Grant 13 of 2001 is the subject matter of the dispute in this case. He said the disputed land originally belonged to the Crown and his uncle, Joshua Andrews, used to squat on it for a very long time.
- [66] He stated that the Claimant treated his father very badly and in 1997-1998 he went to live with his uncle after he had got the police to put out the Claimant.
- [67] He said he eventually purchased the land from the Crown for \$5,415.00. He said this was done before his uncle died. That is probably not correct for his uncle died in 1998 and the date of the transaction with the Crown is March 2001. He said as his uncle could not afford to pay for the land the Housing and Land Development Corporation sold it to him.

- [68] In his witness statement he said it is important to know that Joshua Andrews did not pay a cent of the purchase price for all the time he lived there. Beware of these witness statements! In paragraph 4 of his defence Franklyn Welcome Andrews said, "Joshua Andrews paid intermittent installments on the said land."
- [69] He stated that it must be noted that after his uncle, Joshua Andrews, died, the Kingstown Magisterial Court ordered the Claimant to be evicted from the disputed land. See copy of said Order at F.A. 6. I have already said F.A. 6 is not an eviction order. It is a complaint stating towards the end: "And I desire that a Warrant of Eviction be issued before the said Defendant." It was signed by the Complainant (Landlord) Franklyn Welcome Andrews.
- [70] When he was cross-examined by learned Counsel for the Complainant he was shown his birth certificate at folio 126. A.
- [71] The birth certificate shows his name at birth was "Franklyn Kenneth". No name of father. Name of mother was "Ada Welcome". He said Mr. Campbell changed his name to "Andrews". He said he did not know Joshua Andrews was father of the Claimant.
- [72] He said he did not impose himself on Joshua Andrews claiming to be a relative as he was looking for a place to live. He said he did not tell the Housing and Land Development Corporation he is a relative of Joshua Andrews and is entitled to claim the property.
- [73] He said Joshua Andrews made small amounts towards purchasing the land which is contrary to what he said in his witness statement. He said he knows Renville Gittens and does not know Renville Andrews. He is again reiterating the fact that the so-called ejection made was made against Gittens.
- [74] Renville Andrews appears to have a valid document from the Births Register in Grenada which would indicate his correct name is Renville Andrews and that his parents were

married. The First Defendant has a birth certificate with no father but he said Mr. Campbell changed his name to Andrews.

[75] Alwyn Abbott and his wife Tashka Abbott purchased the said portion of land from the First Defendant. He said the First Defendant sought and obtained a Court order evicting the Claimant from the said land.

[76] He said he and his wife contacted the relevant Court authorities and Police Officers and were advised to proceed to evict the Claimant. He and his wife then lawfully attempted to take possession of the land.

[77] He said Tashka and himself removed nothing from the premises and he denied that the Claimant suffered the losses which he claims or any losses at all. He said his wife was never on the Claimant's premises.

[78] In his witness statement the Second Defendant said the First Defendant told him that he could go on with his building because he did not want the old building and the Second Defendant could remove the building, break it down and the Claimant would clear it.

[79] I never heard the First Defendant cross-examined on this last paragraph. Is it that the Second Defendant was implying the statement was not made or is there some other reason?

[80] The Second Defendant stated that when he came from Mustique he went to the house and it was opened. He pulled the door and it looked like nobody lived there and he began to take off the side of the building which was made of rotting wood.

[81] When he was cross-examined by learned Counsel for the Claimant he admitted to going to the place on two occasions. He said he could not remember the dates. He said he did not know Emily Phillips.

- [82] He said he went to clear the property. He said he removed the door and one of the windows. In answer to learned Counsel for the First Defendant he reiterated that he went to the place twice and policemen were not present on either occasion nor did the bailiff go with him.
- [83] He said he was a carpenter and the building was rotten, having been built with breadfruit board; and it looked like a rat house.

LEGAL SUBMISSIONS:

- [84] Learned Counsel for the Complainant submitted that he lived on the land with his father Joshua Andrews from about 1971 until his father's death in 1998 and that he is in adverse possession of the land.
- [85] He also submitted that the Defendants committed a trespass to his goods and claims damages, interest and costs.
- [86] The Claimant contends that by 1990 the fact of adverse possession had been established against the Housing and Land Development Corporation and although some payments were made to the Corporation for the purchase of the land, that is of no moment and could not undo the adverse possession of the Claimant and his father.
- [87] The Claimant stated that in any event the matter was not defended by the Housing and Land Corporation which did not grant vacant possession to the First Defendant. I shall have something to say about that below.
- [88] The Claimant submitted that there was no lawful eviction of himself for there was no ejection order issued against him and none was, and cannot be, produced.
- [89] Learned Counsel for the First Defendant submitted that the Claimant does not allege that he and his father entered into possession with the requisite animus possidendi to exclude

all others including the true owner and what is said in evidence cannot help a defective pleading.

[90] Let me say straight away that I reject that submission that if a person does not plead that he has animus possidendi he cannot succeed in an action for adverse possession. If that were true it would mean that forms of action would have resurrected to rule us as in the past. I have found no authority for that submission and none was proffered. See the House of Lords case, Pye v Graham 2002, 3 All E.R. 865.

[91] Counsel also submitted that there is the missing link of paternity between the Claimant and his alleged father and the Claimant's birth certificate does not show that he is the son of Joshua Andrews. I do not agree.

[92] The birth certificate clearly shows that he is the legitimate son of Daniel Andrews and his wife was Lyra Andrews nee Gittens. I accept the evidence of the Claimant that Daniel is the same person as Joshua. True, under the column "Name (if any)" there is no name of the child. The birth of the male infant is stated to be 7th June 1957 and less than a month later on 3rd July 1957 the names "Renville Anthony" were inserted.

[93] Those versed in matters of registration of the birth of children will know that often, especially if the child is born in a hospital or other public institution, that the birth and sex are first registered and the names inserted later. This is what occurred in this case. And "Grenville" is not the name of Joshua Andrews as learned Counsel for the First Defendant submitted. Grenville is a place in Grenada. The column reads, "Name and surname and dwelling place of father." Joshua Andrews lived in Grenville as distinct from Guave, Sauteurs, Victoria or St. George's.

[94] Counsel is on more solid ground when he submits that the Claimant's case is defective in that he fails to provide evidence to show with what animus the Claimant and his father entered into occupation of the disputed land.

- [95] Counsel submitted that the First Defendant was able to secure an eviction order by Senior Magistrate Carl Joseph (Exhibit F.A. 8 on page 44 of the Trial Bundle) to get the Claimant off the disputed land. I have already expressed my view of the document F.A. 6, and this means I upheld the submission of learned Counsel for the Complainant that there was no lawful eviction of the Claimant.
- [96] Learned Counsel for the Second and Third Defendants also submitted that the Claimant's action for adverse possession is flawed owing to his credibility and his intermittent tenure on the land. Counsel submitted that in a statement fatal to his case the Claimant admitted that his father paid rent during the time he occupied the land.
- [97] Counsel urged the Court that the claim for adverse possession should fail, and he submitted that if the adverse possession claim fails, then the Claimant's entire case falls including his claim for compensation for lost items and damage to property. I do not agree.
- [98] Counsel submitted that his clients checked with the bailiffs and police and were told that they could proceed to occupy that which they had legally paid for. If they took legal advice from bailiffs and policemen as to their proprietary rights over the land then they did so at their peril.
- [99] Counsel also made the surprising submission that if the Claimant was a trespasser, not having a good title, the Second and Third Defendants had a right to remove him and his possessions. Really?

CONCLUSIONS:

- [100] One submission which I expected to hear and which I did not hear was that concerning the absence of the Housing and Land Development Corporation as a party in this case. Indeed only the Claimant made reference to the Corporation when he said, "In any event the matter was not defended by the Housing and Land Corporation;" and later, "The Housing Corporation has not defended or appeared in the matter."

[101] But how could the Corporation appear when on October 24, 2005 the Claimant filed a notice of discontinuance against it. (See Folio 119 of Trial Bundle). Note that the case began with the First Defendant and the Housing and Land Development Corporation as Respondents to an application for an injunction and the injunction was duly granted on or about the 8th day of November 2004.

[102] In my judgment the case for the Claimant founders or cracks here. He has not sued the person against whom he can claim adverse possession. But that is not the only thing wrong with the claim. The Claimant relies on bare possession to maintain his claim and that is not the law of adverse possession. He must have the necessary animus possidendi and there is not a shred of evidence to that effect. In the Privy Council case, Ramnarace v Lutchman 2001, 1 WLR 2001 at page 1654 Lord Millet said:

“Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the true owner.”

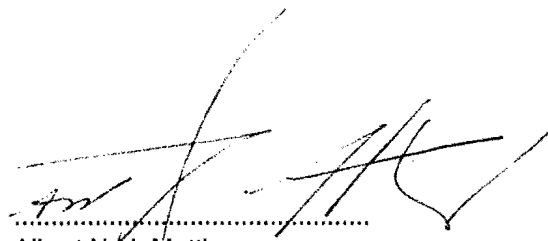
[103] The evidence of the Claimant is hopelessly inadequate for the purpose. I am not even relying on whether he lived at the house intermittently or not. He knows nothing about the land issue. He himself says he left them to his father. Even his Counsel says he is confused as regards the rent or purchase money. And you want to come to Court on that quality of evidence to obtain adverse possession of a paper owner?

[104] He said his father paid rent and he also paid installments for the purchase of the land. He gives no idea of the dates. He said his father paid installments but “subsequently” he stopped. So if a case was being made that adverse possession began to run after the offer for sale was rejected the period of 12 years could not be deciphered.

[105] When the Corporation offered the land to his father for sale he would have been 33 years old. One would have thought he would be young and strong and would take the responsibility to purchase the land. But that was not on his mind. He merely survived. He was never in such close relationship with his father.

- [106] An issue of paternity was made in this case. I have already said the Claimant was the lawful child of Joshua Andrews. In my judgment Joshua Andrews was not the nephew of the First Defendant. I think he was an imposter who imposed himself on the true Andrews. And it is my judgment that his correct and only name is Franklyn Welcome. Mr. Campbell cannot change his name to Andrews.
- [107] However, I do not think that there is any evidence that the Corporation sold the land to the First Defendant because the latter claimed to be a relative. I believe the sale from the Corporation to the First Defendant was valid as was the sale from the First Defendant to the Second and Third Defendants.
- [108] I have come to the conclusion that the Claimant cannot succeed in his claim for adverse possession of Lot 50 containing by admeasurement 3,610 square feet.
- [109] However, I think he has a clear case of trespass to his goods because it has not been established that there was any proper order of the Court evicting him. None has been produced in evidence. And even if there was an eviction order it would be for the bailiff of the Court to evict him and give possession to the Defendants.
- [110] Learned Counsel for the First Defendant in cross-examination of the Second Defendant received the replies: "I went there twice. Policemen were not present on either occasion. The bailiff did not go with me."
- [111] Emily Phillips saw the First and Second Defendants at the Claimant's premises. I believe her that she knows Alwyn Abbott because of his earlier association with a lady before his marriage in the area. He never denied it. He admitted to interfering with a door and window of the Claimant's house. Emily saw the First Defendant removing the Claimant's things from the house.
- [112] The Claimant did not give cogent and reliable evidence as regards the value of his damaged articles and so I shall award him general damages of \$2,000 against each of the

First and Second Defendants. The Third Defendant was never on the premises and I do not think she can be made liable vicariously. There will be no order as to costs.



Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)