

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.482 OF 1993

BETWEEN:

BARBARA CONSTANTINE
Acting herein by her lawful attorney on Record
JIM LOCKHART

Plaintiff

and

ERIC HACKSHAW

Defendant

Appearances:

Mrs Margaret Hughes-Ferrari for the Plaintiff

Othneil R Sylvester QC CMG, Ms Nicole Sylvester with him, for the Defendant

2000: March 27,28,29, May 3,11, 17, 31

JUDGMENT

[1] MITCHELL, J: This is a dispute over the ownership of a parcel of land at Queen's Drive in Cane Hall in St Vincent and the Grenadines (hereinafter "the Land"). The Land measures some 4 acres and 30 poles. The Plaintiff holds a 1970 Deed of Gift to the Land, while the Defendant holds a 1993 possessory title to the same Land.

[2] The Pleadings: By a Statement of Claim filed on 10 November 1993, the Plaintiff claimed that she was the owner in possession the Land at Cane Hall in St Vincent. Her predecessor in title was her father Frank Constantine who had acquired the Land in 1968. He had given it to her by deed of gift in 1970. From about 1972 the

Land had been under the management and control of Jim Lockhart who had planted fruit trees on the Land. In about 1984, Jim Lockhart had permitted the Defendant to cut cedar trees for burning charcoal and growing cash crops on about one acre of the Land on condition that the Defendant gave him 1/3 of the produce from the Land. Sometime in 1985, on the instructions of Jim Lockhart, a small wooden storage shack had been erected on the Land by the Defendant. Jim Lockhart had supplied some of the materials for the construction of the building. Also in 1985, the Defendant had begun to rear sheep on part of the Land for Jim Lockhart. For this purpose, part of the perimeter of the Land had been fenced. In 1990, Jim Lockhart had commenced enquiries to purchase the Land from the Plaintiff. The Plaintiff and Jim Lockhart had come to an agreement in November of that year. Immediately after the agreement of sale was made, Jim Lockhart had told the Defendant of it. The Defendant had requested that he be sold a portion of the Land. This had been agreed by Jim Lockhart. The Defendant had thereupon applied to and obtained a loan from the St Vincent Building and Loan Association with which to purchase the portion. In about August 1991, Jim Lockhart had permitted the Defendant to occupy the shack temporarily until he found other accommodation. In about the month of November 1991, while Jim Lockhart was out of St Vincent on holiday in Canada, the Defendant had constructed a second shack on a part of the Land he had bulldozed without the permission of Jim Lockhart. On his return to St Vincent, Jim Lockhart had demanded that the second shack be dismantled. The Defendant had refused to do so. At the time of the filing of the writ, the Defendant had been using the shack as a retail outlet and for the unlawful selling of alcohol. In about the month of February 1993, Jim Lockhart had had the Land surveyed. The Defendant had assisted in the exercise by locating the boundary markers. Jim Lockhart had been considered by the Defendant and all owners of adjoining lands to be the person in possession of the Land. Until November 1992, the Defendant had given 1/3 of all the produce from his cultivation of the Land to Jim Lockhart. In 1992, the Defendant had fraudulently registered a Solemn Declaration claiming possessory title to the Land. The Declaration was fraudulent because he had admitted the fact that he was

caretaker of the Land to the police at Calliaqua in July and September 1993. The Plaintiff claimed possession of the Land, damages for trespass, an injunction against the Defendant, and cancellation of the Defendant's deed.

- [3] Eventually, on 5 May 1994, with leave of the court, a Defence and Counterclaim was served and filed. The Defendant denied the various claims of the Plaintiff. He pleaded that he had been in possession of the Land at all material times. From the year 1970, he had begun to treat the Land as his own. He denied that Jim Lockhart had planted fruit trees on the Land or had given him permission to cut cedar trees or to grow crops, or that he had given Jim Lockhart a portion of the produce. He denied that Jim Lockhart had supplied materials for the structures on the Land. He had built the first house on the Land in 1969. By 1985 he had two other houses on the Land, one rented and the other lived in by the Defendant. From the year 1970, he had begun to rear animals on the Land. In the year 1982, he had enclosed a portion of the Land at his own expense and with his own labour for the purpose of rearing his sheep. He denied that the sheep belonged to Jim Lockhart. In 1990, he had bulldozed a portion of the Land and subsequently built a concrete block building on it. In 1989, Jim Lockhart had made enquiries of the Defendant as to the original owner of the Land. In 1991, Jim Lockhart had approached the Defendant and suggested that he would join with the Defendant to develop the Land and sell off portions of the Land for housing and together they could make money from the Land. He had suggested that he, Jim Lockhart, would pay the expense of the survey and development of the Land, and they would share in the profits from the Land. At all material times, he had been operating a refreshment outlet for non-alcoholic beverages. He had only begun to sell alcohol after he obtained a licence. The Defendant had at first permitted Jim Lockhart to carry out the survey. After the survey, Jim Lockhart had informed him that he had purchased the Land from the Plaintiff, and that he would give him an acre of the Land or build a house on it and sell him a portion of the Land cheaply if he would vacate the rest. The Defendant had not pursued the loan, which had been approved for the joint development of the Land, as it was clear then that the

suggestions were not bona fide and were false and intended to entrap the Defendant. The Defendant had stopped Jim Lockhart from carrying out the survey and had requested him not to trespass on the Land. Jim Lockhart had clandestinely brought onto the Land a container which he deposited near to the shop. The Defendant had been in exclusive and uninterrupted possession of the Land since the year 1970. He had made a Statutory Declaration and registered it in 1993. He had written to Colin Alexander requesting him to desist from entering and trespassing on the Lands. Jim Lockhart had persisted in the early part of 1993 in trespassing in the Land. In July 1993, Jim Lockhart had come into the Defendant's shop and abused the Defendant. The Defendant had caused his solicitors to write to Jim Lockhart requesting him to desist from trespassing. The Defendant counterclaimed. He claimed that on 11 March 1994, Jim Lockhart and 4 men had come onto the Land while the Defendant had been away from the Land and had pushed down the Defendant's concrete wall, broken down a shed on the Land, and had destroyed a florescent lamp and a radiator. He claimed the cost of rebuilding the wall, of the shed, the lamp and the radiator, to a total of EC\$3,951.08. He also claimed general damages and an injunction.

- [4] The Defendant requested particulars of the Statement of Claim. From the filed particulars, it appeared the Plaintiff was claiming that she took possession of the Land on the same day that it was conveyed to her. This possession had been exercised through Jim Lockhart who lived nearby and visited the Land regularly. Jim Lockhart had been the agent for the Land since the time of the Plaintiff's father Frank Constantine. The Land had been under the management and control of Jim Lockhart since about Easter Monday 1972. Jim Lockhart had managed and controlled the Land by preventing squatters; arranging for its cleaning and cultivation by the Defendant; receiving parts of the produce from the Defendant; farming the Land; and verifying that the Land taxes were paid. The particulars claimed that Jim Lockhart had planted mango, breadfruit, avocado, and coconut trees. A man called "Sam" and the Defendant under Jim Lockhart's direction planted the trees. Some of these trees had been blown down since. The

permission given by Jim Lockhart to the Defendant to cut cedar trees had been orally made in about May 1984. Eddoes and sweet potatoes had been grown on the Land. The agreement to share had been oral and made on the Land in the presence of the Defendant and Jim Lockhart. The share had been given from 1985 up to November 1992. The amount had varied according to the crops reaped. Jim Lockhart had reaped as and when he needed. The Defendant, who was Jim Lockhart's gardener for a time, had brought produce to Jim Lockhart's house. The storage shack had been built in around 1987. Jim Lockhart had contributed 3 rolls of fence wire, barbed wire, staples and a come-along. Glory cedar posts were used, and a white dragon fence was planted on about 4/5 of the western boundary along the public road. On Jim Lockhart's instructions, one Joel Hall had carried the fence wire and other materials from Jim Lockhart's factory at Campden Park to the Land. The sheep had been bought by the Defendant in about 1987 with money supplied by Jim Lockhart. After about 2 years, the Defendant reported that the sheep had disappeared, and, as a consequence, Jim Lockhart had abandoned his sheep rearing venture. About 1½ acres of the Land had been fenced. The bulldozing of part of the Land had been done by the Defendant on the instructions of Jim Lockhart in about October 1990 while Jim Lockhart was out of the country. Jim Lockhart had agreed to sell the Defendant 14,379 sq ft at \$5.00 per sq ft, and 25,485 sq ft at \$1.00 per sq ft. Among the owners of adjoining lands and other persons in the neighbourhood, who considered Jim Lockhart to have been in possession of the Land, the Plaintiff named Adolph Veira, St Vincent Electricity Services; Brian Glasgow, Ken Lewis, PJ Lewis, Ira Young and Marc Cumberbatch.

- [5] On 22 June 1994, the Plaintiff filed her Reply and Defence to Counterclaim. She denied that there had been 3 houses on the Land. There had always only been 2 shacks on the Land. The Defendant had on occasion occupied the older with his common law wife. He had also occupied the newer shack using it as a business place. The Defendant was a recidivist and a disreputable person who has spent part of the time he alleges he has been in possession of the Land in prison. He

had also been laying claim to land in Arnos Vale during the same period. The Plaintiff denied the alleged enquiries made by Jim Lockhart as to the owner of the Land, and claimed that Jim Lockhart had been in constant communication with the owners. The Plaintiff denied the various events claimed by the Defendant. The Defendant had in March 193 built the concrete wall which it was alleged that Jim Lockhart had pushed down. If Jim Lockhart had pushed it down it was in exercise of the rights of ownership in him and the Plaintiff, as the Defendant had no authority to erect the wall on the Land.

- [6] By particulars filed on 29 September 1994, the Defendant gave further details of the matters claimed in the Defence and Counterclaim. The Defendant claimed he had not gone into possession of the Land in 1970. He had been in possession of the Land before 1970, but from 1970 he had begun to treat the Land as his own. The 3 houses were built in 1969, 1983, and 1984. Their sizes were 6' x 8', 12' x 12', and 16' x 20'. The first house was one room, the second consisted of two rooms, and the third was a shop and not divided into rooms. The first and second buildings were wooden houses with galvanize roofs while the third building was a concrete block building with a galvanize roof. The buildings had cost approximately \$300.00, \$3,500.00, and \$5,000.00. The first tenant had been one Lewis and her boyfriend Carlos, and the house had been rented to them from 1983 to 1988. The entire land had been enclosed at a cost of \$1,500.00. A policeman named Alwyn Frederick from Barrouallie had assisted in the fencing in the period 1981 to 1992. The Defendant claimed that he had begun to operate a refreshment outlet on the Land in 1991, and had obtained a liquor licence in 1993. The particulars relating to the survey as alleged by the Defendant were that it was in 1992 that the Defendant had given Jim Lockhart permission to survey the Land; the survey had begun in early 1993; Jim Lockhart had told the Defendant that he had purchased the Land in 1993 after the survey had begun; Jim Lockhart had promised to build the Defendant a house between the then house and the shop; and the area of land that the Defendant had been promised was about one acre. The particulars relating to the loan, that the Defendant had claimed he had

negotiated at the St Vincent Building and Loan Association for the joint development of the Land, were as follows. He had approached the Association in about March 1993; he had requested about \$75,000.00; he had been offering the Land as security for the loan; the officer at the Association he had dealt with was a Mr Lewis; and the nature of the alleged entrapment was the suggestion of joint development, the permission to survey the Land, and generally to be seen coming to the Defendant on the Land. It had been in about December 1993 that Jim Lockhart had clandestinely brought the container onto the Land in dispute and damaged the Defendant's property.

- [7] The Trial. The Request for Hearing was filed on 11 January 1996. The case came up at a callover of old cases that were awaiting trial. It was set down for trial and the evidence heard on 27, 28, and 29 March. The Court heard evidence from the Plaintiff who attended from the USA where she lives. The Court also heard from her main witness, Jim Lockhart. Mr Lockhart is a Vincentian who has lived in Florida since 1998. In the 1970s, he was a pilot with his own aeroplane and provided a charter service. He also had a small factory manufacturing some undisclosed product from plastic. Other witnesses for the Plaintiff were Joel Hall, an ex-employee of Mr Lockhart, Monica Roberts, a clerk in the chambers of the Plaintiff's solicitor, and Brenton Charles, a prison officer. The Court heard testimony from the Defendant. The Defendant has a long record of various convictions and sentences of imprisonment. His first witness was Arthur Williams Esq, a senior barrister of this jurisdiction, a previous member of the House of Assembly representing the political constituency which included the Land, and who lived close to Mr Lockhart and the Land. Another witness for the Defendant was his brother Dowling Hackshaw who gave evidence of his attending to the Land while his brother was in prison. The last witness was Mr Trelton Morris, a retired Designer/Builder who was a close neighbour of the Defendant, of Mr Lockhart and of the Land. After various adjournments, addresses were supposed to be made on 3 May. At the hearing, both counsel delivered written submissions and copies of the authorities on which they relied, and expressed that they stood

by their written submissions and had nothing further to add. On 11 May Counsel were called back before the Court and requested to further address on the evidence and the law. This took place on 17 May.

[8] **The Facts:** The facts as I find them are as follows. The Land in dispute was originally a part of the Cane Hall Estate owned by the Nanton family. It was a parcel of land measuring 4 acres and 30 poles in area. The Nantons sold it for \$7,375.00 to a US citizen, Frank Hamilton Constantine in 1968. Mr Constantine's registered deed is dated 31 May 1968. Mr Constantine almost immediately gave the Land to his daughter, the Plaintiff. The Plaintiff's registered deed of gift is dated 3 June 1970. Both the Plaintiff and her father resided in the USA. They were occasional visitors to St Vincent. The Land was not cultivated or built on. It was an empty parcel of land. The Land bordered the Queen's Drive main road which formed the western boundary of the Land. The smaller portion of the Land was flat and is suitable for building. The larger portion of the Land to the east was a steep hillside and is of not much use.

[9] After Mr Constantine purchased the Land in 1968, he did not use it for any purpose. He did not live in St Vincent. What his intention was for the Land is not known. After the purchase, he visited St Vincent at most 2 or 3 times up to his death in 1992. After the gift of the Land to her in 1970, the Plaintiff appears to have had no immediate use for the Land. The Plaintiff visited St Vincent in 1974 on her honeymoon. She drove by the Land on the main road. It did not appear cultivated to her. But, she would not have known Vincentian type cultivation from weeds, as she testified. She did not return to St Vincent again until in 1994 after the issue of the writ, and presumably for purposes of the litigation. By that time, there was a concrete structure on the Land close to the main road. By an informal arrangement, Jim Lockhart had been appointed the "caretaker" of the Land for the Constantines. This arrangement was made sometime in the 1970s. Mr Constantine made the informal arrangement for Mr Lockhart to keep an eye on the Land, and Mr Lockhart reported to him alone, even though the Land had been

transferred to the Plaintiff since 1970. What exactly he reported on is unknown, and what care taking he did is uncertain.

[10] At some stage, around the time that Frank Constantine purchased the Land, the Defendant began to cultivate a small plot of the Land. He later cultivated more of the Land. He kept animals on the Land. He fenced in parts of the Land, and eventually enclosed all of it. The Defendant originally built a small one-room shack on the Land. Later he built a small two-bedroom chattel house on the Land. Shortly before the commencement of this litigation, the Defendant built a small one-room concrete structure on the Land. Everything hinges on what facts the court finds about the dates these things happened and the circumstances in which they happened. Was the Defendant on the Land with the permission of Mr Lockhart as a mere licensee from the mid-1980s as testified to by Mr Lockhart? If so, the Defendant has not satisfied the requirements of the Limitation Act so as to vest in him a parliamentary conveyance. The issue of the writ in 1993 will have stopped time running. His possessory title will be invalid. Or was the Defendant in adverse possession from 1970 as he testified? If so, the title of the Plaintiff will have been extinguished since 1982.

[11] The Defendant gave his evidence with practiced ease. He has been regularly in court on one criminal charge or another. His testimony was filled with superfluous detail that was impossible to prove or to disprove. Prison Officer Brenton Charles gave evidence of the Defendant having been spent various periods in prison. Officer Charles had with him in Court the Prison Admissions Register for the period 1970-1979. This related to the period before Brenton Charles had become a prison officer. I allowed him to refer to the Register over the objections of counsel for the Defendant. He gave evidence that the Register indicated that the Defendant had been imprisoned for one day in 1972 for not having paid a fine for the offence of using a motor vehicle without the consent of the owner. He had spent 4 months in gaol from October 1973 to February 1974 on a charge of rape. He had next spent a month in gaol in January and February 1977 for the offence

of wounding. In March 1977 the Defendant went to prison convicted of larceny, and was not released until October 1978. Again on 24 June 1977 the Defendant commenced a further sentence of 2 years. He had been convicted of the further offence of discharging a firearm with intent. There was no indication in the Register in the date of his release from prison. Brenton Charles also knew that the Defendant had served terms of imprisonment in subsequent years when he had personally seen him in the prison. He did not have the register relating to these more recent occasions, and did not give any dates. With all of this background, it was difficult to believe anything that the Defendant said.

- [12] The Plaintiff and her witnesses gave straightforward evidence. If I had to choose only between the Defendant's testimony, and that of his brother who supported him on the one hand, and the Plaintiff and her witnesses on the other hand, I would have no difficulty in preferring the evidence of the Plaintiff and her witnesses. There were some major problems, however, with the evidence for the Plaintiff. The Plaintiff herself knew nothing of the Land and had never personally been on the Land since the time her father gave it to her. The Plaintiff's main witness was Mr Lockhart. Her case rested principally on his testimony. I find that Mr Lockhart is not an impartial witness. He has arranged to purchase the Land from the Plaintiff for US\$50,000.00. If the Plaintiff succeeds in her case, Mr Lockhart will be a principal beneficiary. He has a motive to tailor his evidence, particularly as to dates and conversations with the Defendant, to reap the benefit of any finding of the court. His evidence diverged in several material respects from the facts as pleaded by the Plaintiff. I treat his evidence in much the same way as I treated the evidence of the Defendant and his brother. I discount most of it. I looked for reliable independent witnesses. Monica Roberts gave evidence for the Plaintiff. She is both a relative and friend of Mr Lockhart, and she is a clerk in the chambers of counsel for the Plaintiff. For the above reason, Monica Roberts is not a reliable independent witness. Her evidence was that for a two-year period between 1980 and 1982 she lived in Queen's Drive and knew that Mr Lockhart was cultivating a portion of the Land. She never went on the Land, but observed it

from the main road. She had never seen the Defendant on the Land. While her evidence may be entirely truthful, the weight I gave to it was correspondingly reduced because of the matters described above. None of the persons named in the particulars supplied by the Plaintiff as considering that the Land had always been in the possession of Jim Lockhart, persons who may have been completely independent and trustworthy, came forward to give that evidence.

[13] The only independent witness for the Plaintiff was Joel Hall. He had worked at Mr Lockhart's factory from the mid-1970s until the factory closed several years ago. It was put to him that he had been paid to give his testimony, but this was not seriously pursued. Joel Hall was not very strong on dates. Other than that, I found him a credible witness. For a while in the late-1980s to late-1990s he lived at Queen's Drive and knew the Land. He had visited Mr Lockhart's house and had gone on the disputed land from time to time. I accept his evidence that the Defendant did casual garden work at the residence of Mr Lockhart adjacent to the Land in dispute. I accept his evidence that he had taken charcoal made by the Defendant from the Land to Jim Lockhart. He gave no evidence of the circumstances in which this charcoal came to be supplied to Mr Lockhart. Though the Defendant denied it, I accept his testimony that the Defendant used fencing wire from Mr Lockhart's factory with the permission of Mr Lockhart to fence in part of the Land. But, Mr Hall had no idea when this had occurred. It may well have been in the late 1980s or 1990s.

[14] An important question for the court was when these acts of possession by Mr Lockhart on behalf of the Plaintiff had occurred? Arthur Williams and Trelton Morris, who gave evidence for the Defendant, were particularly helpful here. Arthur Williams had been the parliamentary representative for political constituency that included the Queen's Drive area between 1973 and 1984. As such, he would have made it his business to know the residents of the area and to solicit their support for his election campaigns. Previous to that, from the time he returned from the UK to start his practice in 1969 he had been looking for property

in the Queen's Drive district to purchase to build his home on. He built his home and went to live in the Queen's Drive area in 1973. This was about 200 yards from the Land in dispute. I accept his evidence that the Defendant had been occupying the Land from the early 1970s, living on it, cultivating parts of it and keeping animals on it. Like every good politician, he played dominoes with the habitués of the Defendant's shop on the Land. Some time in the mid-1980s, Mr Williams had also acted as the Defendant's lawyer in bringing a case in the Magistrate's Court to evict a tenant on the Land. I accept his evidence as a long-time resident of Queen's Drive that he had never been aware of Jim Lockhart having had any interest in the Land during the 1970s and 1980s. He always considered the Land to be in the possession of the Defendant.

- [15] Trelton Morris was a very credible witness. He had built his house about 400 yards from the Land in dispute in 1983. But, he had bought his parcel of land from the Cane Hall Development company since 1970. In the year 1971 he had brought water to his parcel and built a retaining wall. He needed the water because he had someone cultivating his parcel for him. He used to visit his parcel from time to time before he built his house. He passed by the Land in dispute during this time about 4 or 5 times per month. In that same year 1971 he had met the Defendant on his parcel using his water. He had spoken to the Defendant about it. In the following years, he saw the Defendant on the Land growing his crops and living there. I accept his testimony that from that time at least, the year 1971, the Defendant had cultivation on the Land in dispute. The Defendant was living on the Land. He had sheep and goats on the Land. The Defendant had people living in one of the 2 small chattel houses on the Land. Since about 1990 the Defendant has built a concrete wall on and been living in a concrete structure on the Land. The Defendant had hired a bulldozer and excavated a spot to build his concrete structure on the Land. I accept Trelton Morris' testimony that he had never seen Mr Lockhart on the Land. He had always considered the Land to belong to the Defendant. As a long-time resident of Queen's Drive he had never

considered the Land in dispute to have anything to do with Mr Lockhart. And this in spite of the claim to the contrary made by the Plaintiff in her statement of claim.

[16] The Law: Prior to 16 May 1988, the governing statute of limitations was the Real Property Limitation Ordinance, Cap 86 of the Revised Laws of St Vincent and the Grenadines 1926. Since that date in 1988, the relevant statute is the Limitation Act, now Cap 90 of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines. The application of the statute is explained by the case law.

[17] The Plaintiff relied on the cases of:

Hughes v Griffin [1969] 1 All ER 460

Wallis's Cayton Bay Holiday Camp Ltd v Shell-Mex and BP Ltd [1974]
3 All ER 575

Powell v McFarlane and Another (1977) 38 P&CR 452

Buckinghamshire County Council v Moran [1989] 2 All ER 225

Colchester Borough Council v Smith and others [1991] 2 All ER 29

The Defendant relied on the cases of:

Treloar v Nute [1977] 1 All ER 230

Frett v Cobham (ECSC Court of Appeal, 9/1995 Tortola) [unreported]

[18] Jim Lockhart gave evidence that he first noticed the Defendant on the Land in about the year 1986. If it is true that Jim Lockhart was put in charge of the Land by Frank Constantine from as early as 1970, as he testified, then he was particularly unobservant, as I find that the Defendant had been openly on the Land using as his own and not accounting to anyone since at least 1971. The law has been neatly expressed in *Perry v Cussold* (1906) AC as follows:

It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the Statute of Limitations applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.

- [19] **Conclusion:** The above quotation is a fair and accurate description of the relationship of the Defendant with the Land in dispute since about 1971. In the circumstances, I find that the Plaintiff has not proved her case. Her claim has been extinguished since at least 1983 by the Real Property Limitation Act. I give judgment for the Defendant on his counterclaim. The Defendant is entitled to the Injunction he claims restraining Jim Lockhart whether by himself his agents or servants or otherwise howsoever from trespassing on the Defendant's land at Queen's Drive by entering or crossing the same. The Defendant's evidence concerning his special damages was unsatisfactory, and no award is made in relation to it. The Defendant will have his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge