COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2012//CLE/qui/01337

IN THE MATTER of the Quieting Titles Act, 1959

AND

IN THE MATTER of the Petition of Octavius Efford Kemp

IN THE MATTER OF ALL THOSE (4) pieces parcels of land totaling approximately twenty (20) acres being Grant No. C-129 in the Department of Lands and Surveys situated approximately three quarters (3/4) miles North of the Settlement of Black Point in the Island/Cay of Great Exuma Chain of Islands and Cays in the Commonwealth of the Bahamas and bounded as follows:- on the North-East by a thirty (30) feet wide existing unpaved road and running thereon one thousand three hundred and ninety seven and forty one hundredths (1397.41) feet on the East by Crown land and running thereon four hundred and seventy three and forty five hundredths (473.45) feet on the South by Crown Land and running thereon fifty three and nine hundredths (53.09) feet on the West partly by Crown Land and partly on the sea and running thereon two hundred and thirty eight and fifty two hundredths (238.52) feet on the South by the sea and running thereon two thousand and thirty eight and seven hundredths (2038.07) feet and on the North West by a thirty (30) feet wide existing unpaved road and running thereon Nine hundredths and thirty six and twenty nine hundredths (936.29) with such positions marks shape dimensions and descriptions as are shown on the Plan surveyed at the instance of the

February 2012 and exhibited herein and is thereon coloured PINK.

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Sidney Collie and later Ms. Juanianne Dorsette of Collie & Collie for the Petitioner
Mr. Ashley Williams of Alexiou, Knowles & Co for the Adverse Claimant, Vivian Rolle
Ms. Kenria Smith, Senior Counsel of the Attorney General's Chambers for the Adverse Claimant, the Crown

Hearing Dates: 2 August, 22 September, 4 November 2016, 2 February, 17 March, 16 May, 23 June, 21 July 2017, 25 August,18 October, 19 October, 20 October 2017, 8 August 2018, 27 August 2018, 11 September 2018

Quieting Title – Documentary Title – Possessory Title – Late filing of adverse claims – Misdescription of Land – Falsa Demonstratio Non Nocet – Interpretation of written description which references a plan –Quieting Titles Act, ss. 3, 5, 8(2) – Limitation Act, ss. 17(1), 24 – Intention of Crown when making Crown Grants – Extrinsic evidence – Feudal tenures- Real Property Act 1845, Real Property Act Ch. 169 – Transfer of property to minor- Escheat Act

All the parties to this action claim to be owners of a parcel of land on Guana Cay a.k.a. Black Point, Exuma. The Petitioner claims possessory title by seeking to establish his lineage to a Crown Grant C-129 dated 8 March 1858 given to one Phoebe Rolle. The Petitioner alleged that he has been in continuous, exclusive and undisturbed possession of the land, the subject matter of this Petition ("the Land") from 2002 and his predecessors in title have been farming the Land for generations.

There were two Adverse Claimants, one of which is Vivian Rolle and the other, the Crown. The Adverse Claimant, Vivian Rolle claims documentary title to the Land. Like the Petitioner, the Rolle Claimant sought to establish that he is a direct descendant of Phoebe Rolle. The Rolle Claimant asserts that, by Crown Grant dated 8 March 1858, the Crown granted C-129 (Phoebe Rolle Tract) to Phoebe Rolle. The said Tract devolved to the late Rufus Rolle on 2 May 1969 by a Vesting Deed. Rufus Rolle was his father. By the Last Will and Testament of Rufus Rolle, he bequeathed Phoebe Rolle Tract to his four sons which included himself and three brothers. His sisters were granted life interests in the Phoebe Rolle Tract.

The Crown alleges that the Land being claimed by the Petitioner, which is Filed Plan 520EX, is not private property but rather Crown Land and is not representative of Crown Grant C-129 which illustrates what is known and called the Phoebe Rolle Tract. Accordingly, says the Crown, it was not dispossessed as no one was in possession of the Land and it was not granted to anyone. Their case is that there is no better title than the Crown.

HELD: Finding that the Crown has the better title in the Land (Filed Plan 520 EX) which is not representative of Crown Grant C-129 and that Crown Grant C-129 would have been escheated to the Crown as Phoebe Rolle died an unmarried woman and with no children. The Petitioner and the Rolle Claimant will pay the costs of these proceedings to the Crown.

1. There was a misdescription of the Land in the Petition. The law is where the description of land is incorrect, the land is rejected under the maxim *falsa demonstratio non nocet:* Hogan JA in **Farrington and Estate Title Co Ltd v. Harrisville Co Ltd** [1971-6] 1 LRB 400 at pages 407- 408.

2. On the Rolle Claimant's own evidence, "their Phoebe Rolle" was only 8 months old when the Crown granted Crown Grant C-129 to her in March 1858. It is quite improbable that the Crown will grant 20 acres of land to an infant. It is also a trite principle of law that a minor cannot contract except for necessaries and a minor who contracts for necessaries must be able to read and sign his name. In any event, even if the Crown had granted Crown Grant C-129 to "their Phoebe Rolle", the Rolle Claimant has failed to establish a direct genealogical lineage to her. The Rolle Claimant has not accounted for the gap of 111 years between when Phoebe Rolle acquired Crown Grant C-129 in March 1858 and when it devolved to Luke Rolle in 1969 who, it is alleged, was the great grandfather of the Rolle Claimant. The Rolle

Claimant alleged that Luke Rolle was Phoebe Rolle's eldest sibling but produced no documentary evidence to demonstrate a nexus between the two.

3. With respect to Crown Grant C-129, the Rolle Claimant has testified that Phoebe Rolle was unmarried and had no children. On the other hand, the Petitioner alleged that Phoebe Rolle was his great grandmother and that she was married with two children, Mike Kemp and a daughter, Mona Kemp. According to the Petitioner, Michael Kemp was his great grandfather. He relied on what was told to him by his ancestors. While hearsay evidence is permissible in quieting matters, there must be some plausible evidence for the Court to be satisfied.

4. On a preponderance of the evidence, Crown Grant C-129 would have been escheated to the Crown after the death of Phoebe Rolle in 1901: **Anthony Louis Cunningham v The Broadcasting Corporation of The Bahamas** SCCivApp & CAIS No. 168 of 2014.

5. As between the two adverse claimants claiming documentary title, the Crown has a superior title to that of the Rolle Claimant. The Crown also has the better title in the Land (Filed Plan 520 EX) which is not representative of Crown Grant C-129.

6. On the basis of the well-established principles, a party without documentary title, i.e. a party wishing to establish adverse possession, needs to demonstrate actual possession, an occupation exclusive, continuous, open or visible, which must not be equivocal, occasional or for a temporary or special purpose. Further, that party must show that such acts amounted to actual possession with the requisite intention to possess the property in question.

7. For the Petitioner to dispossess the Crown, he will have to demonstrate that he and/or his predecessors were in exclusive, continuous, open or visible occupation of the Land for 60 years (the Land being beach-front with its boundaries being on the foreshore) against the Crown: section 16 of the Limitation Act, 1995, Chapter 83. The Petitioner has failed to do so.

The following cases were referred to in this Judgment

1. True Blue Co. Ltd. v Moss and Others (No. 3/1968)(1965-70) 1 LRB 250
2. In the Petition of Scott E. Findeisen and Brandon S. Findeisen (as Trustees of the Stephen A. Orlando Revocable Trust [2016] CLE/qui/01564 (unreported)
3. Stephen Henry Johnson v Eleuthera Land Company Limited SCCivApp. No. 96 of 2019
4. IN THE MATTER OF the Petition of Eleuthera Land Company Limited 2012/CLE/qui/00579
5. Strachan & others v Camperdown Holdings Limited SCCivApp. No. 224 of 2012
6. Anthony and Cyril Armbrister v Marion E. Lightbourn et al [2012] UKPC 40
7. Anthony Louis Cunningham v The Broadcasting Corporation of The Bahamas SCCivApp & CAIS No. 176 of 2014
8. Farrington and Estate Title Co Ltd v. Harrisville Co Ltd [1971-6] 1 LRB 400
9. J A Pye (Oxford) Ltd and another v Graham and another [2002] UKHL 30
10. Powell v McFarlane (1977) 38 P & CR 452

11. In the Matter of ALL THAT piece parcel or lot of land situate in the Settlement of Hunters on the Island of Grand Bahama [2013] 1 BHS J. No. 6
12. In the matter of the Petition of Ezekiel Stubbs [2014] 2 BHS J. No. 46
13. IN THE MATTER OF the Petition of Eleuthera Land Company Limited [2012/CLE/qui/00579 [unreported]

JUDGMENT

Charles J:
Overview

[1] On 2 October 2012, Mr. Octavius Efford Kemp ("the Petitioner") filed the present Quieting Petition, supported by his affidavit of the same date, claiming to be the owner in fee simple of four pieces, parcels or lots of land totaling approximately 20 acres being Grant No. C-129 and situated approximately three-quarters (3/4) mile North of the Settlement of Black Point on the Island/Cay of Great Guana Cay also known as Black Point Cay in the Exuma Chains of Island and Cays ("the Land") and more particularly described as:

> **"ALL THOSE (4) pieces parcels of land totaling approximately twenty (20) acres being Grant No. C-129 in the Department of Lands and Surveys situated approximately three quarters (3/4) miles North of the Settlement of Black Point in the Island/Cay of Great Exuma Chain of Islands and Cays in the Commonwealth of the Bahamas and bounded as follows:- on the North-East by a thirty (30) feet wide existing unpaved road and running thereon one thousand three hundred and ninety seven and forty one hundredths (1397.41) feet on the East by Crown land and running thereon four hundred and seventy three and forty five hundredths (473.45) feet on the South by Crown Land and running thereon fifty three and nine hundredths (53.09) feet on the West partly by Crown Land and partly on the sea and running thereon two hundred and thirty eight and fifty two hundredths (238.52) feet on the South by the sea and running thereon two thousand and thirty eight and seven hundredths (2038.07) feet and on the North West by a thirty (30) feet wide existing unpaved road and running thereon Nine hundredths and thirty six and twenty nine hundredths (936.29) with such positions marks shape dimensions and descriptions as are shown on the Plan surveyed at the instance of the Petitioner Octavius Efford Kemp, William Hall, Myrtis Gibson and Burkie Wright and dated February 2012 and exhibited herein and is thereon coloured PINK** [Emphasis added]

[2] The Petitioner seeks a Certificate of Title in accordance with section 3 of the Quieting Titles Act, 1959 ("the QTA"). His Petition is also supported by an Abstract of Title filed on 7 May 2014 and a Plan filed on 2 October 2012 prepared by Mr. C.A. Laville, a surveyor registered and licensed in The Bahamas. The said Plan was commissioned at the instance of the Petitioner and three other persons namely William Hall, Myrtle Gibson and Burke Wright.

[3] On 28 July 2014, a judge ordered that (i) notice in the usual form be advertised in two newspapers at ten (10) day intervals and for copies of the Plan to be inspected at the Office of the Administrator in the Settlement of Georgetown on the Island of Exuma and at the Chambers of the Petitioner's Attorney in the City of Nassau; (ii) a copy of the said notice be served upon relevant government departments including the Attorney General and also on adjoining land owners. The Order also mandated that a notice and plan be affixed and maintained at a conspicuous position on the land prior to the date on which the period for filing adverse claims expires.

[4] An Affidavit of Compliance was filed on 17 December 2014 in accordance with the Order of the Court made on 28 July 2014.

[5] The Petition was scheduled for hearing before Milton Evans J (as he then was) on 29 January 2016 but was adjourned because the Court was not satisfied that the notice and plan were affixed and maintained at a conspicuous position on the land prior to the date on which the period for filing adverse claims expires. A Supplemental Affidavit of Compliance exhibiting the Notice and Plan was filed on 18 March 2016.

[6] The Petition came before me for hearing on 2 August 2016. Despite the usual directions which had been fully complied with, no adverse claimants showed up. Of significance, the Attorney General was served on 29 July 2014: Exhibit SS4 of Petitioner's Bundle of Pleadings. He never responded. The only response, dated 7 August 2014, came from Mr. Dexter Williams, Ministry of Works & Urban

Development. Mr. Williams stated "*Please be advised that this Ministry has no objection to your Client's Notice*…." This letter was copied to the Office of the Attorney General & Ministry of Legal Affairs.

[7] After hearing the evidence of the Petitioner and his younger sister, Leah Kemp-Moncur, the Court adjourned to 19 September 2016 for continuation but had to further adjourn to 4 November 2016 because learned Counsel Mr. Collie, who appeared for the Petitioner, was unavailable to proceed. In the intervening period, on 22 September 2016, the Court with the Petitioner and some of his witnesses visited the *locus in quo* at Black Point.

[8] Shortly after that site visit, what was hitherto a straightforward Quieting Petition, turned into an aggressively contested land dispute.

[9] On 27 October 2016, the First Adverse Claimant, Vivian Rolle ("the Rolle Claimant") filed a Summons supported by an Affidavit of Cindy Rolle of even date together with a Bundle of Documents (Exhibits "CR-1 to CR-7") seeking to enter these proceedings as an adverse claimant pursuant to section 7 of the QTA on the ground that they were unaware of this Petition and that Mr. Rolle has documentary title to the Land. In paragraphs 10 and 11 of her Affidavit, she averred:

> **"10. That in or around the last part of September 2016, Vivian Rolle was advised that a delegation of court officials travelled to Black Point, Exuma for the purpose of inspecting the Phoebe Tract. Upon inquiry of the Island's Administrator, he was informed that the visitation concerned a Quieting of Titles Action.**
>
> **11. That prior to the said visitation Vivian Rolle was unaware of the said Action."**

[10] Just prior to the hearing on 4 November 2016, the Second Adverse Claimant, the Attorney General, acting on behalf of the Prime Minister in his capacity as Minister of Crown Lands, ("the Crown") filed a Summons and an Affidavit of the Surveyor-General (Ag), Thomas Ferguson ("Mr. Ferguson"), also seeking to be an adverse claimant in these proceedings. The Crown alleges that they are claiming the Land on the basis of documentary and possessory title.

[11] After much discussion and even though the Court is very aware of the Bahamian Court of Appeal case of **True Blue Co. Ltd. v Moss and others** (No 3/1968) (1965-70) 1 LRB 250; this Court permitted both parties to participate in these proceedings because there appeared to be a misdescription to the Land which I shall revert to later in this Judgment. Additionally, in **In the Petition of Scott E. Findeisen and Brandon S. Findeisen (as Trustees of the Stephen A. Orlando Revocable Trust** [2016] CLE/qui/01564 at para 24, I said:

> **"In my opinion, <u>since quieting petitions are investigative in nature, strict procedural rules that obtain in adversarial trials, should not apply.</u> To apply strict rules seem draconian especially if the adverse claim is not inordinately late and does not affect the hearing of the petition. Furthermore, if a prospective adverse claimant is shut out, the proceedings may result in a judgment in rem. I therefore did not follow the Court of Appeal decision in True Blue Co. Ltd which was decided over fifty years ago.** [Emphasis added]

[12] The Court gave directions for the continuation of the hearing of the Quieting Petition. On 2 February 2017, as a result of Mr. Ferguson's report and the three plans which he produced, learned Counsel Mr. Collie sought leave to cross-examine him and for the Petitioner to file and serve a Supplementary Affidavit. The matter continued on 16 May 2017 when Mr. Ferguson was cross-examined. Edgar Kemp, a witness for the Petitioner, also testified on that day.

[13] On 23 June 2017, the Court visited the *locus in quo* once again, this time accompanied by all three parties and Mr. Ferguson. The matter was scheduled to resume on 21 July 2017.

[14] In the intervening period and, on 19 June 2017, another adverse claimant sought to be joined as the Third Adverse Claimant. On 21 July 2017, Henry Levi Rolle was joined as the Third Adverse Claimant to these proceedings.

[15] The Quieting Petition resumed on 25 August 2017. On this day, the Third Adverse Claimant sought and was granted leave to withdraw from these proceedings. The Court heard from the other witnesses.

Brief summary of each party's claim

[16] The Petitioner claims possessory title. He also sought to establish his lineage to Phoebe Rolle as well as "the Kemp" family's unbroken occupation and possession of the Land beginning with the Crown Grant (Grant C-129) of 1858 to Phoebe Rolle." He also alleged that he has been in continuous, exclusive and undisturbed possession of the Land from 2002.

[17] The Rolle Claimant claims documentary title to the Land. Like the Petitioner, the Rolle Claimant sought to establish that he is a direct descendant of Phoebe Rolle. He asserts that by Crown Grant dated 8 March 1858, the Crown granted Phoebe Tract C-129 to Phoebe Rolle. The said tract devolved to the late Rufus Rolle on 2 May 1969 by a Vesting Deed. Rufus Rolle was his father. By the Last Will and Testament of Rufus Rolle, he bequeathed Phoebe Rolle Tract to his four sons which included himself and three brothers. His sisters were granted life interests in the said Tract.

[18] The Crown alleges that the Land being claimed by the Petitioner which is Filed Plan 520EX is not private property but rather Crown Land and is not representative of Crown Grant C-129 which illustrates what is known and called the Phoebe Rolle Tract. Accordingly, says the Crown, it was not dispossessed as no one was in possession of the Land and it was not granted to anyone. Their case is that there is no better title than the Crown.

[19] Against this very concise background, I shall proceed to consider each claim bearing in mind that my task is simply to determine and declare who has the better or superior title.

The legal framework
Investigative role of the court

[20] In **Stephen Henry Johnson v Eleuthera Land Company Limited** SCCIvApp. No. 96 of 2019, Judgment delivered on 18 March 2020, our Court of Appeal upheld my decision in **IN THE MATTER OF the Petition of Eleuthera Land Company Limited** 2012/CLE/qui/00579. In that Judgment, I likened the role of the court to

that of an investigator quoting extensively from a previous judgment of a differently constituted Court of Appeal in **Strachan & others v Camperdown Holdings Limited** SCCivApp. No. 224 of 2012. For present purposes, I shall restate what I stated at paras. 10 to 14 of **Eleuthera Land Company Limited** [supra] namely:

> **"[10] The Petition is brought pursuant to section 3 of the Act which provides as follows:**
>
> > **"Any person who claims to have any estate or interest in land may apply to the court to have his title to such land investigated and the nature and extent thereof determined and declared in a certificate of title to be granted in accordance with the provisions of the Act."**
>
> **[11] It is plain from section 3 that the role of the court is that of an investigator. In Strachan & others v Camperdown Holdings Limited SCCivApp. No. 224 of 2012, our Court of Appeal gave some guidance on the court's role. In delivering the judgment of the Court, Crane-Scott JA, put it this way at paras [13] to [22]:**
>
> > **"13 In a recent decision of this Court (differently constituted) in the consolidated appeals of Bannerman Town, Millars and John Millars Eleuthera Association et al v. Eleuthera Properties Ltd SCCivApp Nos: 175,164 and 151 of 2014, it was held that the overriding principle which should guide a judge in quieting actions is: *"simply to determine and declare which of the claimants has the better title".***
> >
> > **14 At paragraph 29 of its decision in Bannerman, the Court considered the Privy Council appeal from this jurisdiction in Ocean Estates Limited v. Norman Pinder [1969] 2 AC 19 in which, Lord Diplock explained:**
> >
> > > **"At common law as applied in The Bahamas which have not adopted the English Land Registration Act, 1925, there is no such concept as an "absolute title". Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants."**
> >
> > **15 It should also be said that while the court in quieting proceedings is tasked with determining and declaring which of the competing claimants to land has the better title, the court's role in the quieting process to be conducted under the Act is quite unique in that the court also functions as an investigator. Section 3 states:**

> **"3. Any person who claims to have any estate or interest in land may apply to the court to have his title to such land investigated and the nature and extent thereof determined and declared in a certificate of title to be granted in accordance with the provisions of the Act."**

16 The investigatory role which the court is required to perform in the quieting process is buttressed by other provisions of the Act designed to publicize the proceedings with the aim of inviting the filing within such time as the court may specify of adverse claims (if any) for investigation by the court during the proceedings. Section 6 for example, mandates the court to direct notice of the proceedings to be published in the newspapers. Additionally, the court is required by section 7 of the Act to direct that notice of the proceedings be served on any person (known or unknown) who appears to have, *inter alia,* an adverse claim in respect of the whole or any part of the land to be quieted.

17 The relative informality of the investigatory exercise to be conducted under the Act *vis-à-vis* other proceedings is most acutely seen in section 8 which permits strict rules of evidence to be dispensed with if the court is satisfied that the admission of evidence will assist the court in its task of investigating, determining and ultimately, declaring the true facts in relation to the question of title.

18 Section 8 provides:

> **"8. (1)The court in investigating the title may receive and act on any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.**
>
> **(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or...., or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.**
>
> **(3)The evidence may be by affidavit or orally or in any other manner or form satisfactory to the court." *[emphasis added]***

19 When investigating the strength of a documentary title under the Act, the court will (in a manner not unlike a conveyancer) examine the abstract of title, *inter alia,* to check that there is an unbroken chain of ownership on paper beginning with the owner in the root document and ending with the most recent owner. The investigation will also involve verification of the abstract by physical inspection of the original deeds and checks to discover whether there is evidence of occupiers who may adversely affect the documentary title claimed. See Halsbury's Laws of England, Volume 23 --Conveyancing: paragraph 139 - Investigation of Title: Unregistered Land.

20 However, unlike the conveyancer, section 8 of the Act permits the Court in investigating title to land which is to be quieted, to receive and act on any evidence on a question of title whether or not admissible in law, if the evidence satisfies the Court of the truth of the facts intended to be established.

21 In short, while the Court must necessarily have regard to the documents or other evidence which is presented in support of a claim to a documentary title, section 8 allows for flexibility in the investigation process and expressly permits the Court to receive and to act upon any evidence on a question of title (whether or not ordinarily admissible in law) provided the Court is satisfied of the truth of the facts intended to be established.

22 The objective of the Act is to provide a statutory mechanism for title to land in The Bahamas to be quieted through the Supreme Court. To this end, the court's role under the Act is to fully investigate the claim (or claims), receive evidence with respect thereto, determine the truth of the facts intended to be established by the evidence and ultimately, act on and declare the ownership of the land on the basis of the evidence before it. The process is completed with the grant of a certificate of title to the person who, in the view of the court, has established title thereto. Where there are rival claims to the land to be quieted, the judge's primary function, following the investigation, as stated in Bannerman and Ocean Estates *(above),* is simply to determine and declare which of the claimants has the better title." [Emphasis added]

[12] Further judicial reinforcement for the investigative role of the Court under section 3 of the Act is the case of Armbrister and others v Lightbourn and another [2012] UKPC 40; Privy Council Appeal No. 0034 of 2010. At para [7], Lord Walker stated:

"[7] The purpose of the [Quieting Titles] 1959 Act is to provide a judicial process for the determination of disputes as to title

to land in the Bahamas. The process is initiated by a petition presented by a claimant. The petition is advertised, and adverse claims may be made by rival claimants. The procedure is in the nature of a judicial inquiry and it ends in a judgment in rem which, subject to appeal, finally settles entitlement to the land, not merely as between the parties, but for all purposes. This judicial procedure meets an economic and social need in the Bahamas, where many of the outlying islands were, for much of the Commonwealth's history, sparsely populated and only sporadically cultivated. Much of the land belonged to landlords who were not permanently resident, and travel was slow. Parcels of land often had no clearly-defined boundaries based on comprehensive surveys…."

[13] The Court must also be scrupulously vigilant against abuse of the statutory procedure. At para [7], Lord Walker summed it up this way:

> **"…But while the 1959 Act meets an economic and social need, there has also been a warning from a lecturer, familiar with the 1959 Act both as a legislator and as a practising member of the bar, that bench and bar must be vigilant to prevent the statutory procedure being abused by "land thieves" (the Hon Paul L. Adderley in an address to the National Land Symposium on 17 March 2001). It is no accident that the Judicial Committee has over the years heard many appeals raising questions of title to land in the Bahamas, including *Paradise Beach and Transportation Co Ltd v Price-Robinson* [1968] AC 1072, *Ocean Estates Ltd v Pinder* [1969] 2 AC 19, *Higgs v Nassauvian Ltd* [1975] AC 464, and *Higgs v Leshel Maryas Investment Co Ltd* [2009] UK PC 47."**

[14] Where a petition concerns a claim to title in fee simple, the Court must, on the completion of the investigation, declare one of the parties to the proceedings as having a better title. In Ocean Estates Ltd v Norman Pinder [1969] 2 A.C. 19, Lord Diplock said, at page 25:

> **"At common law as applied in the Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an "absolute" title. Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation**

> **Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser."** [Emphasis added]

Procedure under the Act

[21] The procedure under the Act is relatively informal. Section 4 requires the petition to be in the form set out in the Schedule and supported by the documents identified in the section. Section 8 permits strict rules of evidence to be dispensed with. It states as follows:

> **"(1)The court in investigating the title may receive and act on any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.**
>
> **(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or..., or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.**
>
> **(3)The evidence may be by affidavit or orally or in any other manner or form satisfactory to the court."** [Emphasis added]

[22] Section 3(3) and (4) of the Conveyancing and Law of Property Act is also important to the operation of section 8(2) of the Act. It provides as follows:

> **"(3) Recitals, statements and description of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of truth of such facts, matters and descriptions.**
>
> **(4) A purchaser of land shall not be entitled to require a title to be deduced for a period of more than thirty years, or for a period extending further back than a grant or lease by the Crown or a certificate of title granted by the court in accordance with the provisions of the Quieting Titles Act, whichever period shall be the shorter."**

Evidence of the parties

[23] The evidence in chief in support of the respective claim of each party was by affidavits. The Petitioner testified on two occasions and presented the evidence of the following witnesses namely:

1. Affidavit of Octavious Efford Kemp filed on 2 October 2012;
2. Affidavit of Alice Florence Kemp-Gibson filed on 10 August 2016;
3. Affidavit of Clarence Roosevelt Kemp filed on 10 August 2016;
4. Affidavit of Edgar Kemp filed on 17 March 2017;
5. Affidavit of Clement Laville, registered land surveyor filed on 21 September 2017;
6. Affidavit of Leah Esther Kemp-Moncur filed on 22 January 2016 and;
7. Affidavit of William Ernest Hall filed on 22 January 2016.

[24] The Rolle Claimant filed the evidence of the following witnesses namely:

1. Affidavit of Vivian Rolle filed on 3 February 2017;
2. Supplemental Affidavit of Vivian Rolle filed on 6 March 2017;
3. Affidavit of Cindy Rolle filed on 16 January 2017;
4. Affidavit in support of Adverse Claim by Cindy Rolle filed on 24 July 2017;
5. Affidavit of Cindy Rolle filed on 27 October 2017;
6. Affidavit of Barwick Warren, registered land surveyor filed on 16 October 2017;

[25] On 30 January 2017, the Crown filed an affidavit of Thomas Ferguson, the present Surveyor-General (Ag.) of the Commonwealth of The Bahamas (“Mr. Ferguson”). A Supplemental Affidavit of Mr. Ferguson was filed on 01 September 2017.

[26] Mr. Ralph Brennen, a former Surveyor-General of the Commonwealth of The Bahamas and now a Consultant in the Office of the Prime Minister (“Mr. Brennen”) had expressed a desire to be subpoenaed as an “expert” “independent” witness because he opined that he had invaluable information to share with the Court by reason of his qualifications and expertise in quieting matters. Counsel for the Petitioner, Mr. Collie made an oral application to the Court and there was no

objection by the other parties. Thereafter, Mr. Brennen was subpoenaed. He testified on 18 October 2017.

[27] The Petitioner was cross-examined and re-examined. So also were his witnesses namely Leah Kemp-Moncur, Edgar Kemp and Mr. Clement Laville. The other affiants were present but did not testify. The witnesses for the Rolle Claimant and the Crown were also cross-examined and re-examined.

The issues

[28] There are several issues which fall to be determined namely:

1. Is there a misdescription of Crown Grant C-129 which is claimed by the Petitioner?
2. Is the Phoebe Rolle Grant of 20 acres (C-129) and the four parcels of land totaling 20 acres claimed by the Petitioner one and the same parcel?
3. Can the Rolle Claimant establish a genealogical lineage to Phoebe Rolle to prove documentary title to Crown Grant C-129?
4. Can an 8-months old infant be granted crown land?
5. Is there another Phoebe Rolle?
6. Can the claim by the Crown be maintained in the face of Crown Grant C-129 to Phoebe Rolle in 1858?
7. Has the Petitioner established possessory title to the Land?
8. Has the Petitioner dispossessed the “paper title” owner, whether it is the Rolle Claimant or the Crown?

Issues 1 & 2

Is there a misdescription of Crown Grant C-129? And is the Phoebe Rolle Grant of 20 acres in C-129 and the four parcels of land totaling 20 acres claimed by the Petitioner one and the same parcel?

[29] During the inquiry conducted by the Court, four expert witnesses, all licensed and registered surveyors in this jurisdiction, testified. The critical issue which arose is whether Phoebe Rolle Crown Grant (C-129) and the four parcels of land totaling 20 acres (which is claimed by the Petitioner) is one and the same parcel.

[30] The Petitioner insists that the Land in his Petition is clearly and unmistakably identified. The Rolle Claimant asserts that based on the evidence adduced by Mr. Warren Barwick and Mr. Ralph Brennen, there is a misdescription in the documents emanating from Crown Grant C-129, which mistakenly enumerates the amount of acreage contained therein as twenty (20) acres when the maps and other illustrations used by the Crown during that period clearly illustrate that Crown Grant C-129 includes the entire peninsula, starting from a shared boundary with Tobias Rolle in the South and extending all the way North to the Sea. The Crown asserts that the Land claimed by the Petitioner is Crown Land. In his Report dated 30 January 2017, Mr. Ferguson stated:

> **"The area defined in recorded plan 520 EX is Crown Land. The land identified in the recorded survey plans of 521 EX and 519 EX overlap. The property illustrated in plan 519 EX (three acres) is consumed in the property identified in 521 EX (20 acres). These both appear to lay within the 20 acres Crown Grant C-129 to Phoebe Rolle."**

[31] The expert witnesses were as follows:

1. Ralph Brennen – subpoenaed by the Court because he said that he had critical information;
2. Clement Laville – on behalf of the Petitioner;
3. Barwick Warren – on behalf of the Rolle Claimant; and
4. Thomas Ferguson – for the Crown in his capacity as Acting Surveyor General of the Commonwealth of the Bahamas.

Expert evidence
Evidence of Ralph Brennen

[32] Mr. Brennen prepared a Minute Paper dated 2 August 2017 which can be summarized as follows:

(1) Filed Plans 520EX and 521EX only delineate a portion of the Phoebe Rolle Tract; the entirety of which is in excess of the twenty (20) acres as stated in Crown Grant C-129;

(2) Filed Plan 520EX and 521EX should have never been recorded in the Department of Lands and Surveys as they do not delineate the entirety of the Phoebe Rolle Tract. The fact that they were recorded and were lodged for recording at essentially the same time is erroneous.

(3) The Phoebe Rolle Tract is a contiguous area of land with no other Grants or Crown Land contained therein, if it does contain Crown Land the Crown will have to show how the land was commuted to it.

[33] In furtherance of his opinions stated above, Mr. Brennen concluded his Minute Paper by opining the following:

(1) The Surveyor General erred in judgment in the signing of the three (3) survey plans with conflicting information all of which were recorded within the same month, April 2012.

(2) The scenario produced by the Acting Surveyor General further exacerbated the problems and raised more questions than bringing clear and concise viable solutions.

(3) Each of the parties named above should be required to give evidence under oath with the full knowledge that any untruth if found could possibly be punishable by law.

(4) **That having examined the preponderance of information available, I opine that there is no Crown Land within the precincts of the Phoebe Rolle Crown Grant C-129 and by extension the Crown has no Adverse Claim to the Petition of Octavius Efford Kemp.** [Emphasis added]

[34] Apart from his conclusions as listed above, Mr. Brennen offered further insight as to why the Phoebe Rolle Tract was more than twenty (20) acres. in this regard he stated as follows:

> **"Alternatively, to follow the description of the Original Crown Grant and accepting that it was only twenty (20) acres there**

> **would be no access to the remainder of the land other than by boat or traversing the high water mark and thus everyone would be in occupation of Crown Land. This scenario needs no further explanation as it would certainly be untenable."**

[35] On this point, the Petitioner stated that before the road was constructed about 10 years ago, access to the Land was by boat or walking along the sea shore.

[36] During cross-examination Mr. Brennen further elaborated on the points discussed in his Minute Paper. These points are summarized as follows:

(1) Both Filed Plans 520EX and 521EX do not delineate the entirety of the Phoebe Rolle Tract. Only 521 EX contained an actual boundary marker as described in the Grant which is sharing a boundary with Tobias Rolle.

(2) The diagram of the original Crown Grant does not look like either Filed Plan 520EX or 521EX.

(3) The Phoebe Rolle Grant contains more than 20 acres. There were 18 grants at the time and all were contiguous with no other portion of crown land conflicting with it.

(4) If he were the Surveyor General at the time that plans 520 EX and 521EX were lodged in the Department of Lands and Survey, he would not have signed off on them as none of the plans contain the boundary markers as indicated in the Grant.

(5) There is no Crown Land in the Phoebe Rolle Tract.

Evidence of Clement Laville

[37] Mr. Laville was the expert witness who testified on behalf of the Petitioner. He swore an affidavit on 20 September 2017 in these proceedings. He is the owner/manager of L.T.D. Surveying & Engineering Ltd which was founded by his late father in 1964. He became a fully licensed surveyor in 2011 but he has practiced land surveying for over 40 years. During these years, he had conducted

surveys of small plots of land, large acreage of land including hundreds of acres throughout the entire Bahamas. He said that in respect of this survey for the Petitioner, it was carried out by Mr. Clifton Charles ("Mr. Charles"), a licensed Land Surveyor in Dominica but not in The Bahamas. Mr. Charles made two visits to the Land.

[38] He has been shown the Affidavit of Mr. Ferguson filed on 30 January 2017 in which he exhibited plans 519EX, 520EX and 521EX. He was also shown and he examined a survey plan showing an overlay of the survey boundaries of plans 519EX, 520EX and 521EX onto imagery of a portion of Great Guana Cay.

[39] After careful examination, he is satisfied that his plan in support of the Petition is indeed delineated in the area outlined in blue as Plan 520EX. Mr. Laville is also satisfied that from the description of the Phoebe Rolle Grant extracted from book C-129 that grant is within the area designated as 520EX. [Emphasis added]

[40] Under cross-examination by Ms. Smith for the Crown, Mr. Laville asserted that he did not do the actual survey. It was done by Mr. Charles but under his supervision.

[41] Under cross-examination by Mr. Williams for the Rolle Claimant, he said that he has seen C-129 (the Phoebe Rolle Grant). He saw a pond on the actual grant.

Evidence of Barwick Warren

[42] Mr. Warren was the expert witness called by the Rolle Claimant to testify on his behalf. He has been a licensed land surveyor in Guyana and The Bahamas. He has practiced his profession in The Bahamas for the past 26 years.

[43] Mr. Warren filed an Affidavit on 16 October 2017. His affidavit evidence could be summarized as follows:

1. That both Filed Plans 520 EX and 521 EX delineate portions of the Phoebe Rolle Tract but do not illustrate it in its entirety.

2. That the Phoebe Rolle Tract contains more than twenty (20) acres and based on calculations performed on Google Earth after conducting reconnaissance of the Phoebe Rolle Tract the precise number of acres is more likely in the area of Two Hundred (200) acres.

[44] By a report exhibited to his Affidavit filed on 16 October 2017, Mr. Warren provided the intent of the boundary lines as it relates to the Phoebe Rolle Tract. The purpose of this was to correspond with the legal description as contained in the Crown Grant with the actual physical structures on the land itself. Having performed this plotting exercise both on Google Earth and by physically conducting reconnaissance on the land, Mr. Warren concluded that the land contained approximately Two Hundred and One and Five Hundredths (201.5) acres and not twenty (20) acres.

[45] Mr. Warren concluded that this oversight was due to an administrative error and not a surveying one as all of the plans from the Grant Book for Black Point, Exuma also correctly plot the legal description as provided on Crown Grant C-129 and illustrates the same through the usage of various maps.

[46] In cross-examination, Mr. Warren defended his position that the Phoebe Rolle Tract contained in excess of twenty (20) acres. His oral testimony can be summarized as follows:

1. The Phoebe Rolle Grant is the entire peninsula northward of the boundary of Tobias Rolle.

2. The Filed Plans of both the Petitioner and the Crown are incorrect in their representation of the extent of the Phoebe Rolle Tract. Both Filed Plans contain land that is part of the Phoebe Rolle Tract.

3. Crown Grant C-129 and the land contained therein is all private land and not crown land.

4. **The trend for that period of time was to grant seamless portions of land with no crown land contained therein**. As such crown land does not exist within any of the grants.

5. The chains which are scribbled on Crown Grant C-129 are inaccurate as they do not have a complete set of chains. In fact, the chains which appear to be on the copy of the grant (original grant not produced by the Crown) when utilized to obtain the physical area of the land do not match any of the physical features of the land nor do their lengths correspond with the actual lengths on the ground.

6. It is standard in surveying on a re-survey for a plan to contain more or less land.

7. The actual map and written description as contained in the grant take priority in establishing a boundary. Having been on the land and utilizing Google Earth, it was found that those geographical boundary features still exist and, once applied, the Phoebe Rolle Tract has more than 20 acres.

Thomas Ferguson

[47] Mr. Ferguson filed three affidavits in this matter. The first was filed on 4 November 2016. The second was filed on 30 January 2017 with seven exhibits. He also filed a Supplemental Affidavit on 1 September 2017. Reduced to their bare essentials, his affidavit evidence could be summarized as follows:

1. The Phoebe Rolle Crown Grant is located at the southeastern end of the inspection area and is bounded by the Tobias Rolle Crown Grant C-123.

2. The correct location of the Crown Grant C-129 (Phoebe Rolle Grant) is in the position of Filed Plan No. 521EX which conflicts with Filed Plan 519EX.

3. The Petitioner's Filed Plan No. 520EX is on Crown Land.

[48] Mr. Ferguson also stated that the land identified in Filed Plan 520EX shows a building under construction. According to him, this area is believed to be Crown Land. The land immediately to the east of this, also believed to be Crown Land shows a few buildings which are under construction. He also stated that the land in Filed Plans 521EX and 519EX overlaps. The property illustrated in Plan 519EX (3 acres) is consumed in the property identified in 521EX (20 acres). These both illustrate some encroachment onto Crown Land which goes beyond the boundary of the 20 acre tract. The buildings on this 20 acre tract were being actively worked on during his inspection and some of them were completed and occupied.

[49] In his oral testimony, Mr. Ferguson noted that two of the surveyors namely Mr. Brennen and Mr. Laville did not physically visit the Land and it is critical to the evidence because you have to conduct surveys. He stated that the boundary starts at the Tobias Rolle boundary. Both Mr. Brennen and Mr. Warren acknowledged this. He maintained his position as it relates to the Crown's Filed Plan being the correct position of Crown Grant C-129. He also maintained that the Grant itself did not contain more than twenty (20) acres.

Discussion and analysis

[50] Learned Counsel Mr. Williams submitted that amongst the expert witnesses, both Mr. Brennen and Mr. Warren opined that the Phoebe Rolle Tract contained than the twenty (20) acres indicated on the grant itself. He further submitted that, interestingly, the testimony of both experts coincided with the evidence presented by Edgar Kemp and Vivian Rolle who both indicated that the Phoebe Rolle Grant contained more than twenty (20) acres based on initial surveys performed by them respectively. According to Counsel, the reason why these two experts took this position was because in surveying the physical boundary markers as indicated in the actual Grant if they can be ascertained with certainty takes priority over everything else.

[51] Mr. Williams stated that there are many inconsistencies with Mr. Ferguson's testimony in relation to establishing the boundary of Crown Grant C-129 namely:

1. As it relates to boundary matters priority is given to physical locations first.

2. That the tide at the time of the taking of a Google Earth image could make the land look bigger or smaller depending on the tide.

3. There is only a slight geometrical difference between Crown Grant C-129 and Filed Plan No. 521EX.

4. There could be an error in the index plan but the Crown Grant would serve as the authority as oppose to the index plan.

5. The metes and bounds takes priority over the plan as contained in the Crown Grant.

6. The metes and bounds takes priority despite there not being enough chains.

7. He agrees with everything performed by Mr. Warren as part of his surveying process. However, he disagrees with his results.

[52] Mr. Williams further submitted that Mr. Ferguson made a number of contradictions in relation to determining the physical boundaries of the Phoebe Rolle Tract. He submitted that, based on Mr. Ferguson's evidence, it is clear that the Phoebe Rolle Tract or Crown Grant C-129 contains more than twenty (20) acres of land.

[53] Mr. Williams argued that, under cross-examination, Mr. Ferguson's contradictions could be summarized as follows:

1. He agreed that the Plan as contained in Crown Grant C-129, the Index Plan, and the Plan as obtained from the Crown Grant's Book all refer to the Phoebe Rolle Tract and that the plans are identical but for a few aberrations.

2. That all of the Crown Grants given for Great Guana Cay or Black Point, Exuma were for contiguous pieces of land with no crown land within the same.

3. The Crown Grant, Index Plan and Plan from the Crown Grant Book as it relates to Crown Grant C-129 refer to an additional body of water other than the pond which is not indicated in either Filed Plan 520 EX or Filed Plan 521 EX;

4. Filed Plan 521EX is bounded to the North by land and not by the sea as described in the Crown Grant C-129;

5. Plan 521EX does not match the description in the Crown Grant but for sharing the southern boundary with Tobias Rolle;

6. The pond in Filed Plan 521EX does not match the location of the pond described in Crown Grant C-129;

7. That only two calls are mentioned in Crown Grant C-129 and a complete set of calls are needed to adequately delineate a boundary utilizing this method;

8. If there is an incomplete set of calls the next step is to look at the written description and then the plan attached and to recreate the same utilizing the physical boundaries;

9. Acknowledged the fact that other surveyors (other than Mr. Brennen and Mr. Warren) have suggested that there is no crown land in the Phoebe Rolle Tract and that the same is more than twenty (20) acres;

10. That there is no disagreement between Crown Grant C-129 and Filed Plan 521 EX as to what is located on the ground (but he agreed that the only portion of the Filed Plan 521EX which meets the description in the Crown

Grant adequately is its southern boundary which it shares with the Tobias Rolle Tract or Crown Grant C-123).

[54] Mr. Williams next argued that, based on all of these inconsistencies, Mr. Ferguson's evidence should not be preferred to that of Mr. Warren and Mr. Brennen. Mr. Ferguson opined that although he was in agreement with Mr. Warren's methodology, he was not in agreement with his outcome which yielded aggregate acreage in excess of twenty (20) acres.

[55] Under cross-examination by Mr. Collie, Mr. Ferguson maintained that Filed Plan 521EX is the Phoebe Rolle Grant.

[56] Under cross-examination by Mr. Williams, Mr. Ferguson was asked: (see Page 36 of the Transcript of Proceedings of 20 October 2017) at lines 20-29:

> "Q: Okay, Mr. Ferguson, I put it to you that the Plan as depicted in the Crown Grant, in the Index Plan and in the Crown Book recorded that is affixed at annex 5, that all of those documents illustrate that Phoebe Rolle Tract as being one contiguous piece of land running from the Tobias Rolle tract all the way to the sea.
>
> A: I agree with you that its one contiguous tract. The point that I disagree with you is that its not 200 acres. I agree that its 20 acres and that's based on evidence…."

[57] Then at page 13, lines 7 -12 of the same Transcript of Proceedings, Mr. Ferguson said:

> **"Remember, as I said before the actual diagram would indicate the location of features, but what takes precedence would be the actual dimensions and the bearing when they actually surveyed it to get the proper acreage, but its going to definitely refer to those features. But the main feature of the actual description or the dimension will be the location of Tobias Rolle Grant."**

[58] In my judgment, although Mr. Warren made use of Google Earth and modern technology after conducting reconnaissance of the Phoebe Rolle Tract based on

the description of Crown Grant C-129 (which is 20 acres), to suggest that the land as described by the Crown Grant contained approximately Two Hundred and One and a Five Hundredths (201.5) acres and not twenty (20) acres is wholly at odds with Mr. Laville and Mr. Ferguson. While Mr. Brennen, who did not conduct any survey of the Land, stated that Crown Grant C-129 contains more than twenty acres, he never suggested that the Land contained 200 acres.

[59] Mr. Warren ascribed the difference as an administrative error. It seems unlikely that Crown Grant C-129 had such a significant clerical error. As Mr. Ferguson opined, the trend in those days was to grant crown grants between 17 to 44 acres. Most of the grantees were granted 20 acres. In fact, when one looks at Crown Grant C-129, if it were indeed 200 plus acres, it would have been almost the entire peninsula. Of the 18 grants which were granted by the Crown (including Phoebe Rolle Grant), 12 of the grantees (including Phoebe Rolle) were granted 20 acres of Crown Land. The only four persons who were granted more than one parcel and more than 20 acres were: (i) Tobias Rolle (2 parcels totaling 50 acres); (ii) George Delancy (2 parcels totaling 55 acres); (iii) Clarence Farrington (4 parcels totaling 75 acres) and (iv) Thomas Moss (2 parcels totaling 67 acres). With certainty, no grantee was given 200 acres of land. That also did not appear to be the trend at that time. In short, I did not find the evidence and opinions of Mr. Warren to be plausible.

[60] I prefer the evidence adduced by Mr. Ferguson that:

1. The correct location of Crown Grant C-129 is in the position of Filed Plan 521EX which conflicts with Filed Plan 519EX.

2. Filed Plan 520EX (which is claimed by the Petitioner) is positioned on Crown Land and is not representative of Crown Grant C-129.

3. The Land identified in Filed Plan 521EX and Filed Plan 519 EX overlap.

[61] Consequently, there is a misdescription in the Petitioner's Plan.

[62] The law is, where the description of land is incorrect, the land is rejected under the maxim *falsa demonstratio non nocet*. Hogan JA in **Farrington and Estate Title Co Ltd v. Harrisville Co Ltd** [1971-6] 1 LRB 400 at pages 407-408 stated:

> **"The general rules applicable to conflicting descriptions have, I think, some bearing on this controversy. Emmet on Title had this to say about plans (15th edn, p. 441):**
>
> > **'It may be said generally that, if the contents in linear admeasurement are stated, or if clear and sufficient independent description of the property in the body of or schedule of the deed is given, a plan will operate as an explanation of this description and would not be allowed to contradict such description. This is particularly the case if the plan was stated to be for purposes of "identification only"….**
>
> **A little later authors state:**
>
> > **<u>But if the plan is clear, and the description in the body of the deed not clear, and more particularly where the reference to the plan is in such words as "all which premises are more particularly described in the plan and endorsed on etc., the description in the plan will prevail</u> (Eastwood v. Ashton [1915] AC 900, Wallington v. Townsend (1939) (1939) Ch.588)."**

[63] Hogan LJ then went on to state that where the description of the land does not properly define the said land, then that portion which is inconsistent will be rejected. He went even further to state that in applying the maxim it is immaterial in what part of the description the lack of precision or correctness occurs.

[64] In the present case, the Plan attached to the Petitioner's Affidavit at Tab 2 of his Bundle of Pleadings says specifically "*reference made to plan attached to Grant recorded as C-129*". Therefore, as the Crown properly submitted, the Plan is not a proper plan attached to the said Grant.

[65] The position of the Crown as it concerns the Rolle Claimant's claim to the entire peninsula is that the land representative of the Phoebe Rolle Tract is correctly described in the Grant as being twenty (20) acres and is also correctly illustrated in the Rolle Claimant's Filed Plan No. 521 EX. The Crown says that the Rolle

Claimant can only lay claim to the land contained in Filed Plan No. 521 EX and nothing else. I agree.

[66] The Crown also submitted that, since the Petitioner has misdescribed the land for which he seeks possession, his claim must fail and be dismissed with costs. It seems logical that if the land is misdescribed the claim must fail. In the event that I am wrong, I shall carry on with the Petitioner's claim for possessory title.

Issues 3, 4, 5 and 6:

Documentary Title of the Rolle Claimant and the Phoebe Rolle Tract.

[67] Since the Petitioner is claiming possessory title to the Land, it means that he must have dispossessed a "paper title" holder.

[68] Therefore, a good starting point is to determine whether the Rolle Claimant or the Crown is the documentary title owner of the Land (C-129).

[69] In his Adverse Claim filed on filed 16 January 2017, the Rolle Claimant claims documentary title to

> **"ALL THAT piece parcel or lot of land totaling approximately (20) acres and being Grant C-129 in the Department of Lands and Surveys which is now being claimed by the Petitioner in the above matter and which is the subject of the Petition filed herein.**
>
> **The claim to such ownership as aforesaid arises by virtue of documentary title and by virtue of such prior possession as under the Limitation Act would extinguish the claim of any other person in or to such lands."**

[70] According to the Rolle Claimant, his root of title has its genesis in Crown Grant C-129 dated 8 March 1858. By its terms, the Crown granted to the late Phoebe Rolle:

> **"ALL THAT tract lot of land on Great Guana Bay one of the Exuma Range bounded Northeasterly by a Vacant Land Ridge and a Pond and Southwestwardly by land of George Delancy and Northwestwardly and Southeastwardly by land belonging to Tobias Rolle.**

This Crown Grant is recorded in the Registry of Records of the Commonwealth of the Bahamas in Book S1 at page 13."

[71] Then, in 1969, about 111 years later, the Rolle Claimant asserts that by Letter of Administration on 30 January 1969, "*all of the singular and the real and personal estate and effects of Luke Rolle, Deceased were granted by the Supreme Court on its Probate Side unto the Administrator and Heir-At-Law of the said Deceased*". The Grant of Probate is recorded in Probate File No. 314 of 1968.

[72] The Rolle Claimant further asserts in his Abstract of Title that the Phoebe Rolle Tract devolved to the late Rufus Rolle on 2 May 1969 by a Vesting Deed recorded in the Registry of Records in Volume 1457 at pages 54 to 58. The Vesting Deed vested unto Rufus Rolle:

> **"ALL THAT tract of land situate on Great Guana Cay one of the Exuma Range and containing Twenty (20) acres being bounded: Northeastwardly by a Vacant Land Ridge and a Pond; Southwestwardly by land of George Delancy and Northwestwardly and Southeastwardly by land belonging to Tobias Rolle together with the appurtenances thereunto belonging TO HOLD the same unto and to the use of the Heir-At-Law in Fee Simple."**

[73] Subsequently, on 24 March 1972, Rufus Rolle bequeathed unto his four sons, Vivian Rolle, Maurice Rolle, Leroy Rolle and Walter Rolle *"ALL THAT tract of land containing twenty (20) acres*." He also granted life interests to his two daughters, Thelma Rolle and Edith Mae Rolle. The Last Will and Testament is recorded in the Registry.

[74] Next, the Rolle Claimant asserts that, by Deed of Assent dated 20 August 2008 and recorded in the Registry of Records in Volume 10589 at pages 305 to 309, Vivian Rolle and his siblings became seised of "*the entirety of the hereditaments which comprises the Phoebe Rolle Tract*". The Schedule of the Deed of Assent listed the following properties:

> **A. A one-half (1/2) interest in a Cay (or Peninsula) situate at the South end of Leeward Stocking Island in the Exuma Range of Cays, called "Williams" cay, containing One Hundred and Thirty-Eight**

Acres, bounded: Northwardly by Leeward Stocking Island and on other sides by the Sea.

B. Land situate at Great Guana Cay, Exuma formerly granted by the Crown to Tobias Rolle and recorded as C-133 bounded: Northwesterly by land the property of Luke Rolle and Northeasterly by a land ridge and sea, Southeasterly by vacant land and Southwesterly by land the property of Adam Rolle, comprising approximately Twenty (20) acres.

C. Land situate at Great Guana Cay, Exuma formerly granted by the Crown to the said Tobias Rolle and recorded as C-123 bounded: Northwesterly partly by the Sea and partly by land formerly belonging to Phoebe, Easterly by the Sea, Southerly by land formerly owned by George Delancey and Westerly by land now and formerly owned by Alan Forbes comprising approximately Forty (40) acres.

D. Land situate at Great Guana Cay, Exuma formerly granted by the Crown to the said Phoebe Rolle and recorded as C-129 bounded Northerly by Crown land, Easterly by land formerly the property of Tobias Rolle and Southerly and Westerly by the Sea comprising approximately Twenty (20) acres."[Emphasis added]

[75] The Rolle Claimant says that, further and on 9 January 2012, Maurice Rolle, Leroy Rolle and Walter Rolle (the Donors) appointed Vivian Rolle to act as their lawful attorney to prevent some instances of trespass which were committed upon "the Phoebe Rolle Tract."

[76] The Rolle Claimant filed two affidavits which stood as his evidence in chief. In his Affidavit filed on 3 February 2017 ("Vivian Rolle No. 1") he provided the Court with his family's root of title to the Phoebe Rolle Tract as contained in the Abstract of Title.

[77] The Rolle Claimant alleges that he and his siblings have documentary title to the Phoebe Rolle Tract and that the Petitioner has not performed sufficient acts nor has the necessary animus to dispossess them. In his Supplemental Affidavit filed on 6 March 2017 ("Vivian Rolle No. 2"), he deposed as follows:

a. By an Affidavit of Thomas Ferguson filed herein on the 30th January 2017 ('the Ferguson Affidavit'), Mr. Thomas Ferguson ('Mr. Ferguson'), the Acting

Surveyor General at the Department of Lands and Surveys produced to the Court a Survey Report delineating ALL THAT tract of land called and known as the Phoebe Rolle Tract.

b. That according to the Survey Report produced by Mr. Ferguson, three different areas were identified and reviewed for the purpose of providing the Court with a master plan or accurate description of the land called and known as the Phoebe Rolle Tract. The said Survey Report determined that Plan 521EX, which was filed in the Department of Lands and Survey on my behalf, correctly delineates Crown Grant C-129 and not Plan 520EX which was lodged in the Department of Lands and Survey at the instance of the Petitioner.

c. That according to the said Survey Report, Plan 520EX which represents the subject-matter of the Petition is in fact crown land.

d. That I have resided on Black Point, Exuma in the aforesaid Commonwealth for my entire life and can say that the Petitioner has not dispossessed me nor my siblings of the Phoebe Rolle Tract.

e. That I have reviewed the Abstract of Title filed herein on the 7th May 2014, on behalf of the Petitioner. By the said Abstract of Title, the Petitioner claims to be a direct descendant of the late Phoebe Rolle.

f. … the birth and death certificates of the late Phoebe Rolle do not indicate that she was married nor did she have children… which, coincides with information, which has been passed down in the Rolle family for generations".

[78] Mr. Williams submitted that the evidence of the Rolle Claimant was corroborated by the evidence of Leroy Rolle and Cindy Rolle both of whom attested to affidavits before the Court.

[79] The evidence of the Rolle Claimant was taken on 25 August 2017. He testified that he is 77 years old and a Justice of the Peace. Under cross-examination by Mrs. Rolle-Carey who represented the Third Adverse Claimant, Levi Henry Rolle, he stated that the description in the Vesting Deed in 1969 was not the Phoebe Rolle Tract. He explained that in 1969 when his father (Rufus Rolle) did the Vesting Deed, he was the person in charge of the Rolle's property which was handed down by Phoebe (Rolle), Luke, Tobias and Nembrick Rolle (son of Luke Rolle) and Rufus and down to him. Luke Rolle was his great grandfather.

[80] He further stated, under cross-examination, that Phoebe Rolle was the sister of Luke Rolle and Tobias Rolle. Luke Rolle was the eldest of them all. Phoebe Rolle died at the age of 45. She was not married and she had no children. Her oldest brother was Luke Rolle so her property devolved to Luke Rolle. Luke Rolle had a son called Nembrick and Nembrick had a son called Isaac. Isaac had a son called Rufus (his father).

[81] Under intense cross-examination, the Rolle Claimant was directed to paragraph 4 of Vivian Rolle No. 1. In that paragraph, he stated that "the Phoebe Tract devolved to the late Rufus Rolle on 2 May 1969 by a Vesting Deed…."

[82] The Rolle Claimant admitted that Levi Henry Rolle is his nephew.

[83] In paragraphs 7 and 8 of Vivian Rolle No. 1, the Rolle Claimant stated that there have been numerous instances of trespass onto the Phoebe Rolle Tract and, in 2008, he instructed his attorney to send out letters to trespassers to cease and desist their trespass upon the Phoebe Rolle Tract. He was asked whether any such letter was sent to Levi Henry Rolle who owns villas on the Phoebe Rolle Tract. He said that he had no reason to because he was his nephew. He said that he did not advise his nephew that he is the owner of the Phoebe Rolle Tract because he (Levi Henry Rolle) knows that.

[84] He was further cross-examined as to whether the entire 20 acres of land referred to in paragraph 3 of Mr. Ferguson affidavit is what he is claiming and he answered in the affirmative.

[85] The Rolle Claimant agreed that Phoebe Rolle only owned 20 acres of land. But he said that he later learnt, in 2008, that the Phoebe Rolle Grant was 108 acres. He disagreed that other portions of the land could also be called Phoebe Rolle Tract. He stated that he does not want 108 because the document is showing 20 acres: Transcript of Proceedings of 25 August 2017 at page 60, lines 8-15.

[86] In summary, the evidence of the Rolle Claimant can be summarized as follows:

1. The late Phoebe Rolle was the sister of Luke and Tobias Rolle. She died at 45 years of age without issue. As such, upon her death her real and personal property devolved to Luke Rolle who was her oldest surviving sibling. Luke Rolle is Vivian Rolle's great-grandfather. The title for the land which he is claiming is based on documentary title devolving in a similar fashion based on the lineage being claimed. Starting, with a Vesting Deed dated 2 May 1969, and recorded in the Registry of Records in Volume 1457 at pages 54 to 58 to the late Rufus Rolle, the father of Mr. V. Rolle and concluding with a Deed of Assent dated 20th August 2008 and recorded in the Registry of Records in Volume 10589 at pages 305 to 309 by which Mr. V. Rolle and his siblings namely, Maurice Rolle, Leroy Rolle, Walter Rolle, Edith Mae Rolle and Thelma Rolle became respectively seised with the entirety of the hereditaments which comprises the Phoebe Rolle Tract: Transcript pf Proceedings dated 25 August 2017 at page 41, lines 12 -32.

2. That an initial survey report was conducted on his behalf in 2008 which determined that the land described as the Phoebe Rolle Tract encompassed more land than the twenty (20) acres stated on the Grant. The first survey conducted which wasn't filed indicated that the Phoebe Rolle Tract contained 108 acres.

3. Under cross-examination by Mrs. Rolle-Carey, the Rolle Claimant asserts that he is only claiming 20 acres because the document shows that.

Eight-months old Phoebe Rolle and Crown Grant (C-129) of 20 acres

[87] The Rolle Claimant asserts that he is a direct descendant of Phoebe Rolle who was born on 15 August 1857 to Mary Anne Rolle and Isaac Rolle: Exhibit VR1, page 1. Phoebe Rolle died on 2 January 1901 at age 45: see Exhibit VR1, page 2. According to the Rolle Claimant, she was unmarried and she did not have children.

[88] Crown Grant C-129 was granted to Phoebe Rolle on 8 March 1858. If Phoebe Rolle is the Rolle Claimant's direct descendant, she would have been less than 8 months old when she was granted 20 acres of crown land (C-129) which is recorded in the Registry of Records in Book S1 at page 113.

[89] The question now is whether the Crown granted 20 acres of crown land to an 8-months old infant who, it is alleged, is the direct descendant of the Rolle Claimant or was there another Phoebe Rolle?

[90] Learned Counsel for the Rolle Claimant fought hard to answer this question. In Supplemental Closing Submissions filed on 27 August 2018, Counsel contended that the governing law at the time that the Crown made its grant to Phoebe Rolle was The Real Property Act, Chapter 169 ("the RPA") which commenced on 4 August 1845 and which remained in force until the passing of the Law of Property Act, 1925 in the United Kingdom. Section 3 of the RPA provides as follows:

> **"A feoffment made after the said first day of October one thousand eight hundred and forty-five, other than a feoffment made under a custom by an infant, shall be void at law, unless evidenced by deed; and a partition and an exchange of any tenements or hereditaments, not being copyhold, and a lease, required by law to be in writing, of any tenements or hereditaments, and an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, made after the said first day of October one thousand eight hundred and**

> **forty-five, shall also be void at law, unless made by deed…"**[Emphasis added]

[91] Says Counsel, according to the learned Editors of Black's Law Dictionary, a feoffment is defined as "*the gift of any corporeal hereditament to another, operating by transmutation of possession, and requiring, as essential to its completion, that the seisin be passed*…."

[92] Mr. Williams next submitted that it is the submission of the Rolle Claimant that Crown Grant C-129 was a feoffment evidenced by Deed. Therefore, it was a valid disposition of land by the Crown even though the same was made to a minor. The Rolle Claimant also relied on section 3(3) of the Conveyancing Law of Property Act, Ch. 138.

[93] Mr. Williams further submitted that the law in 1858 was the RPA which provides that a feoffment made to a minor is only void if it is not evidenced by Deed. Counsel argued that the facts speak for themselves as there are numerous crown documents other than the Crown Grant itself which indicate that the land illustrated in Crown Grant C-129 was in fact granted to Phoebe Rolle.

[94] Learned Counsel relied on the Privy Council case of **Anthony and Cyril Armbrister v Marion E. Lightbourn et al** [2012] UKPC 40 where it was held by the Privy Council that the court is empowered to utilize extrinsic evidence to resolve any doubt or inconsistency as to the description of land in a conveyance or to satisfy itself as to any issues which may arise under a quieting titles application. He urged this Court to act likewise.

[95] In this regard, Counsel retrieved the death certificate of Tobias Rolle who died on 12 February 1905 at the age of 54. Crown Grant C-123 was granted to him on 12 December 1857. According to Counsel, Tobias Rolle was therefore born in 1851 which means that he was six (6) years old when the Crown granted him C-123.

[96] Learned Counsel intimated that the death certificate of Tobias Rolle and Crown Grant C-123 provided sufficient extrinsic evidence for the Court to conclude that at

the time the Crown made these dispositions, it was in accordance with the RPA which provides that a feoffment can be made to a minor once the same is evidenced by Deed and therefore, there is nothing illegal, improper or irrational for the Crown to make dispositions to minors.

[97] Both the Petitioner and the Crown challenged the submissions advanced by the Rolle Claimant. The Petitioner says that Cindy Rolle purported to be knowledgeable about the alleged documentary title of the Rolle Claimant. She filed an Affidavit on 27 October 2016, an Affidavit in Support of the Adverse Claim on 16 January 2017 and a Supplemental Affidavit on 6 March 2017.

[98] In her Affidavit filed on 27 October 2016, she stated that she is the daughter of the Rolle Claimant and one of the rightful owners of the property called and known as Phoebe Rolle Tract. She recited the Abstract of Title in paragraphs 4 to 9 of her Affidavit. In paragraph 14 of her Affidavit, she seeks the assistance of the Court to ascertain whose root of title is derived from the late Phoebe Rolle and the exact location of the Phoebe Rolle Tract.

[99] In her Supplemental Affidavit filed on 6 March 2017, she reiterated that searches conducted by Messrs. Alexiou, Knowles & Co. ("AKC") did not reveal any information that the late Phoebe Rolle was married to a Kemp or that she had children.

[100] In paragraph 12, she also believed that the Land described in the Petitioner's Petition is Crown Land and not the Phoebe Rolle Tract. In her opinion, the Petitioner's root of title cannot be anchored in Crown Grant C-129 nor can it be said that the Rolle Claimant has been dispossessed of the same.

[101] Cindy Rolle implored the Court to grant to the Rolle Claimant a Certificate of Title for ALL THAT tract of land situate on Great Guana Cay one of the Exuma Range and containing twenty (20) acres being bounded Northeastwardly by a Vacant Land Ridge and a Pond, Southwestwardly by land of George Delancey and

Northwestwardly and Southeastwardly by land of Tobias Rolle as shown in the Rolle Claimant's Filed Plan dated 1 February 2017 [Emphasis added].

[102] Under cross-examination by learned Counsel Mr. Collie, she asserted that Rufus Rolle was her grandfather and Vivian Rolle (the Rolle Claimant) is her father. She acknowledged that the Will and Last Testament of Rufus Rolle dated 24 March 1972 did not make mention of Phoebe Rolle or Luke Rolle. She said that Luke Rolle is Rufus Rolle's great-great grandfather. She said that Rufus Rolle had a connection with Luke Rolle because his name is mentioned in the Vesting Deed of 1969 done by Rufus Rolle. She was asked if she has any birth records or death records of Rufus Rolle and she answered in the affirmative. She however stated that no record is exhibited.

[103] Under further cross-examination, Cindy Rolle stated that the Rolle Claimant does not have any documentary evidence to assist with the genealogy from Phoebe Rolle to Rufus Rolle but Phoebe Rolle was her great-great-great grand aunt. While she has no documentation to demonstrate that connection, she got that information from her grandfather, Rufus Rolle. She also has no evidence that Phoebe Rolle was not married and had no children except for a birth certificate and a death certificate.

[104] Learned Counsel Mr. Collie submitted that based of the documents and the evidence adduced by Vivian Rolle and Cindy Rolle, the Rolle Claimant has not proved any documentary title to the Phoebe Rolle Grant (C-129) of 20 acres of land in 1858. In addition, the Rolle Claimant has failed to show a direct nexus, connection or lineage to Phoebe Rolle. According to him, the Rolle Claimant has produced a lineage to Luke Rolle and it stops there. He further submitted that what is more bizarre is the confusion between the Phoebe Rolle who was granted a Crown Grant: C-129 in 1958 and another apparent or purported Phoebe Rolle.

[105] Learned Senior Counsel for the Crown, Ms. Smith argued that the Rolle Claimant is mistaken in his conclusion at paragraph 9 of his Supplemental Closing

Submissions dated 27 August 2018, that the deed referred to in section 3 of the RPA is in respect of a feoffment which is, as stated at paragraph 8 of the said submissions "the gift of any corporeal hereditament to another …" According to Ms. Smith, "in other words, a Deed of Gift. A crown grant is not a gift."

[106] Further, according to Ms. Smith, crown grants are contracts for consideration. A minor cannot contract except for necessaries and a minor who contracts for necessaries must be able to read and sign his name. In my opinion, this represents trite principles of contract law.

[107] Ms. Smith also correctly submitted that a minor of 8 months would definitely be unable to enter into a contract for land. According to her, that minor cannot read nor does he/she have the capacity to contract. She submitted that the attempt by the Rolle Claimant to convince this Court that Tobias Rolle was 6 years old when he was granted crown land is devoid of substance as contracts for land must be in writing and signed by the parties pursuant to the Statute of Frauds Ch. 155. I agree. I will go a step further. For the sake of argument, let us say that the Crown granted 8 months old Phoebe Rolle the land contained in Crown Grant C-129, the Rolle Claimant still has the onus of establishing an ancestral connection with Phoebe Rolle.

[108] Ms. Smith argued that the birth and death certificates furnished by the Rolle Claimant prove that the person who was granted Crown Grant C-129 in 1858, named Phoebe Rolle, is not the Rolle Claimant's ancestors. They have not been able to establish a direct lineage with Phoebe Rolle.

[109] Ms. Smith also submitted that, by the Escheat Act 1871, Ch. 141, the Crown Grant C-129 to Phoebe Rolle would have escheated to the Crown because the Rolle Claimant's evidence is that Phoebe Rolle was unmarried and had no children: Transcript of Proceedings dated 19 October 2017 at page 50, lines 23-24. The Petitioner attempted to assert that Phoebe Rolle was married and had children but, except for oral testimony, he also produced no documentary evidence to

substantiate that claim. In any event, the Petitioner's claim is grounded in possessory title.

[110] In **Anthony and Cyril Armbrister** [supra], at paragraph 29, Lord Walker stated:

> **"…Until the Statute of Wills of 1540 real property could not be disposed of by will. Before then, if an individual owner of real property held in fee simple died without an heir (ascertained according to fixed legal rules) the deceased's land reverted to the Crown and this process was called escheat "propter defectum sanguinis" (that is, because of failure of the blood line). This continued to occur after the Statute of Wills if the owner died without an heir and without disposing of the land by will…."**[Emphasis added]

[111] As I see it, based on the documentary evidence as well as the evidence adduced by Vivian Rolle and Cindy Rolle, they clearly disclose:

1. The Rolle Claimant has failed to show a direct nexus, connection or lineage to the Phoebe Rolle who was granted Crown Grant C-129 in March 1858;

2. It is highly unlikely, in fact, quite improbable that the Crown would grant 20 acres of land to an 8-months old infant;

3. The Crown Grant to a Tobias Rolle (who was alleged to be 6 years old) is insufficient for this Court to conclude that it relates to the same Tobias Rolle since all contracts for the sale of land must be in writing and signed by the parties;

4. Upon a preponderance of the evidence, the Phoebe Rolle who was granted Crown Grant C-129 of 20 acres was NOT the 8 months old Phoebe Rolle who was born in August 1857.

[112] In my judgment, the Rolle Claimant has not established documentary title to the Land or indeed the 20 acres which was granted to one Phoebe Rolle in 1858 (wherever that land might be located). As learned Senior Counsel for Crown submitted, there was a 111 year gap between when the Rolle Claimant alleged

that the Phoebe Rolle Grant devolved to Luke Rolle. No explanation was proffered by the Rolle Claimant for the interrupted link in the chain.

[113] Learned Counsel Mr. Collie submitted that the Crown has also to give an explanation with respect to its Crown Grant to Phoebe Rolle. I think this explanation appears in the paragraph below.

[114] On the other hand, on a preponderance of evidence, the Crown has satisfied me that, based on the Rolle Claimant's own evidence, Phoebe Rolle was unmarried and had no children. Therefore, Crown Grant C-129 which was granted to Phoebe Rolle would have escheated to the Crown. The issue of escheat was discussed at length in the **case of Anthony Louis Cunningham v The Broadcasting Corporation of The Bahamas** SCCIvApp & CAIS No. 168 of 2014.

[115] In my judgment, the Crown has the superior title to the Rolle Claimant to the Land (Filed Plan 520EX) which is not representative of Crown Grant C-129.

Issues 7 and 8:

Possessory Title by the Petitioner

[116] The Court, having found that the Crown has a better title to the Land than the Rolle Claimant, the next issue is whether the Petitioner who claims a possessory title to the Land has dispossessed the Crown.

[117] The Petitioner's claim to possessory title to the Land is set out in his Abstract of Title filed on 7 May 2014 which states that, in 1858, His Excellency Sir Alexander Bannerman KCMG Royal Governor of the Bahama Islands granted to Phoebe Rolle 20 acres of land situate in Great Guana Cay a.k.a. Black Point, in the Exuma Cays, recorded in Book 129 Crown Land Office.

[118] In 1899, Michael Kemp, the eldest son of Phoebe Rolle, became seized in possession of the Land. In 1929, Michael Kemp the son of Phoebe Rolle became seized in possession of the Land after the death of his mother. Also, in 1929,

Michael Kemp died intestate. Then, the son of Michael Kemp, Clarence Kemp became seized of the Land following the death of his father.

[119] On 28 July 1948, Clarence Kemp married Freda Wright and they together continued to be in possession of the Land until the death of Clarence Kemp. In 1997, Clarence Kemp died intestate leaving Freda Wright-Kemp his lawful widow seized in possession of the Land.

[120] In 2002, Freda Wright-Kemp, the widow of Clarence Kemp and the mother of the Petitioner died leaving the Petitioner in possession of the Land. From 2002, the Petitioner has been in continuous, exclusive and undisturbed possession of the Land.

The law

The Limitation Act, 1995

[121] The Petitioner asserts that he has been in continuous, exclusive, open and undisturbed possession of the Land since 2002. The applicable statute is the Limitation Act, 1995 Chapter 83 ("the LA"). Section 16 of the LA provides:

> **"16 (1)Subject to subsection (2), no action shall be brought by the Crown to recover any land after the expiry of thirty years from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person:**
>
> **Provided that the time for bringing an action to which the provisions of this section apply in respect of a cause of action which has accrued before the commencement of this Act, shall, if it has not then already expired, expire at the time when it would have expired apart from those provisions:**
>
> **Provided further that the time when the cause of action would have expired as aforesaid shall not exceed thirty years from the date of commencement of this Act.**
>
> **(2) <u>An action to recover foreshore may be brought by the Crown at any time before the expiry of sixty years from the date of the accrual of the right of action, or of thirty years from the date when the land ceased to be foreshore, whichever period first expires</u>.**

> **(3) No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person:**
>
> **Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires".**

[122] Since the Court has found the Crown to be the owner of the land with documentary title, the burden shifts to the Petitioner to prove that he has dispossessed the Crown through continuous, undisturbed and exclusive possession of the Land for a period of 60 years since the Land is beach front. The affidavit of Mr. Ferguson filed on 30 January 2017 asserts that the Land is beach front with its boundaries being on the foreshore. In addition, on the site visits, the fact that the Land is beach front was very conspicuous.

The law on possession

[123] It is an elementary principle of law that a person's title to land including the person who has the documentary title ("the paper owner") is only good in so far as there is no other person who can show a better title. However, in order to do so, a trespasser/squatter must establish both (a) factual possession and (b) the requisite intention to possess. This basic proposition was re-stated by Lord Browne-Wilkinson in **J A Pye (Oxford) Ltd and another v Graham and another** [2002] UKHL 30 quoting Slade J. in **Powell v McFarlane** (1977) 38 P & CR 452, 470 stated at paragraph 40:

> **"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.**

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").”

[124] Later on, in the same paragraph, Lord Browne-Wilkinson simplified the two elements necessary for legal possession in this manner:

“1. a sufficient degree of physical custody and control (“factual possession”);

2. An intention to exercise such custody and control on one’s own behalf and for one’s own benefit (“intention to possess”).”

Factual possession

[125] In **Pye**, Lord Browne-Wilkinson, in adopting the definition of factual possession by Slade J in **Powell**, said at para. 41:

“(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed….Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”

Intention to possess

[126] **Slade J.** in **Powell** defines the “*animus possidendi*” in this way:

(5) **The *animus possidendi,* which is also necessary to constitute possession, was defined by Lindley M.R., in Littledale v. Liverpool College (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one, because in the ordinary case, the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that, the *animus possidendi* involves the intention, in one's own name and on one's**

> **own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."** [Emphasis added]

[127] With respect to the burden of proof, **In the Matter of ALL THAT piece parcel or lot of land situate in the Settlement of Hunters on the Island of Grand Bahama** [2013] 1 BHS J. No. 6, Sir Michael Barnett CJ stated at paras [85] – [87]:

> **"85 As opined by Adams, J. in the case of Re Roman Catholic Apostolic of the Bahamas [1984] BHS J. No. 34 at paragraph 52:**
>
> > **"As regards the burden and nature of proof and the desired quality of possession, the adverse claimant by himself and his predecessors had to meet the criteria indicated in Sherren v. Pearson 14 Can S.C.R. 581 where Ritchie C.J. said at p. 585:**
> >
> > > **'To enable the trespasser to recover he must show an actual possession, an occupation exclusive, continuous, open or visible, and notorious for the twenty years. It must not be equivocal, occasional or for a temporary or special purpose.'"**
>
> **86 It used to be that in order for a trespasser to establish a squatter's title he had to prove that he or his predecessors took active control over every portion of the land he was claiming (see Scarr J in The Grand Bahama Port Authority Limited v Smith, No. 170 of 1961).**
>
> **87 However, in Higgs v Nassauvian Ltd [1975] A.C. 464, the Privy Council held that "there was no general principle that to establish possession of an area of land a claimant had to show that he had made physical use of the whole of it and that acts done on part of the land could establish possession of the whole land". The court decided that whether those acts did establish possession was a question of fact and degree and depended on a consideration of all the circumstances."**

[128] Further, in order to succeed in a claim for adverse possession, the [adverse] claimant must show positively that the true owner has gone out of possession of the land, that he has left it vacant with the intention of abandoning it. The mere fact that the title owner is shown to have made no use of the land during the period does not necessarily amount to discontinuance of possession. See: Winder J in **In the matter of the Petition of Ezekiel Stubbs** [2014] 2 BHS J. No. 46 at para [36]. At paragraph 37 of the Judgment, Winder J cited a passage from the learned

author, Samson Owusu in the treatise "**Commonwealth Caribbean Land Law**, p. 280, in discussing adverse possession, in stating:

> **"These should be acts, which are inconsistent with the enjoyment of the soil by the person entitled to the land. The land should have been used in a way, which altered or interfered in a permanent or semi permanent way with the land. A classic case is where the disputed land is fenced and substantial structures are constructed on it by the squatter, leaving in its trail substantial traces of use."**

[129] In addition, the quality of the possession by an adverse claimant must be considered. In **Ezekiel** Stubbs, at paras [39]-[43], Winder J stated:

> **"39 As to the quality of the possession, the principles to be considered were discussed by Bain J in *CLE/qui/00289/2009*. According to Bain J., the relevant guide is the rule in *Leigh v Jack* which was restated by the Court of Appeal in *Wallis's Cayton Bay Holiday Camp Ltd. v Shell Mex and BP Ltd. 1975 QB 94*. In that case a strip of land was intended by the owner to be the site of a garage, which would front upon a projected road, which in fact never materialized, and meanwhile was occupied successively as part of a farm and part of a holiday camp. The Court of Appeal held that the owner had not been dispossessed. Lord Denning M.R. stated the principle in the following terms, at p. 103:**
>
> > "**There is a fundamental error in that argument. Possession by itself is not enough to give a title. It must be adverse possession. The true owner must have discontinued possession or have been dispossessed and another must have taken it adversely to him. There must be something in the nature of an ouster of the true owner by the wrongful possessor. That is shown by a series of cases in this court which, on their very facts, show this proposition to be true. When the true owner of land intends to use it for a particular purpose in the future, but meanwhile has no immediate use for it, and so leaves it unoccupied, he does not lose his title to it simply because some other person enters on it and uses it for some temporary purpose, like stacking materials; or for some seasonal purpose, like growing vegetables. Not even if this temporary or seasonal purpose continues year after year for 12 years, or more: see Leigh v. Jack (1879) 5 Ex.D. 264; Williams Brothers Direct Supply Ltd. v. Raftery [1958] 1 Q.B. 159; and Tecbild Ltd. v Chamberlain (1969) 20 P. & C.R. 633. The reason is not because the user does not amount to**

actual possession. The line between acts of user and acts of possession is too fine for words."

40 It was found that "[t]he use of the property by the Petitioner farming, was not inconsistent with the intended use of the documentary title holder. And the documentary tile (sic) holder had instructed the caretaker of the property to plant fruit trees and set up a plant nursery." Further, "[t]he Petitioner has not proved to the satisfaction of the court that he was in adverse possession of the property for twenty years and that he dispossessed the title of the documentary title holder". The court is not satisfied that the Petitioner was in possession of the property as alleged. The alleged possession by the Petitioner was too sporadic and ill-defined to confer any interest on the Petitioner.

41 The Privy Council has discussed abandonment and lack of continuity in the possession by the person claiming adverse possession in case of *The Trustees, Executors and Agency Company Ltd and Templeton v Short (1888) 13 App Cas 793* which concerned the application of the New South Wales equivalent of our Real Property Limitation Act (No. 2), Ch. 71. *Hall J* in the case of *Nottage v. Finlayson [1994] BHS J. No. 35* adopted the reasoning of the Privy Council in this case. At page 798 Lord MacNaghten, giving the judgment of the Board said:

> **"Their Lordships are ... of opinion that if a person enters upon the land of another and holds possession for a time, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the intrusion took place. There is no one against whom he can bring an action. He cannot make an entry upon himself. There is no positive enactment, nor is there any principle of law, which requires him to do any act, to issue any notice, or to perform any ceremony in order to rehabilitate himself. No new departure is necessary. The possession of the intruder, ineffectual for the purpose of transferring title, ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful owner, or any secret process at work for the possible benefit in time to come of some casual interloper or lucky vagrant ...**
>
> **It is sufficient to refer to *McDonnell v. McKinty 10 Ir. L. R. 514*, Lord St. Leonards' Real Property Statutes, p.31, and *Smith v. Lloyd 9 Exch. (Welsby, H. & Gor.) 562*. In the latter case, which was decided in 1854, Parke, B., giving the judgment of the Court, says:- We are clearly of opinion that the statute applies, not to want of actual possession by the plaintiff, but to cases where he has**

been out of, and another in, possession for the prescribed time. There must be both absence of possession by the person who has the right, and actual possession by another, whether adverse or not, to be protected, to bring the case within the statute. We entirely concur in the judgment of Blackburne, C.J., in McDonnell. v. McKinty, and the principle on which it is founded."

42 Finally, in the case of *Farrington v. Bush (1974) 12 JLR 1492*, Graham Perkins JA of the Jamaican Court of Appeal summarized the law as it related to acts of possession as follows:

> **Adverse possession of land is, and always has been, a complex concept. It involves the co-existence of two essential elements, namely, the assumption of actual physical possession by, and the presence of a particular mental element directed towards the true owner in, the adverse possessor. It is, in our view, a mistake to think that mere entry upon, and user of, the land of another can, without more, be equated with an assumption of possession. It must be possession of such a nature as to amount to an ouster of the original owner over of the land. See, e.g. *William Bros. v. Raftery [1958] 1 Q.B. 159*. To support a finding of adverse possession there must be positive and affirmative evidence of acts of possession, unequivocal by their very nature and which are demonstrably consistent with an attempt, and an intention, to exclude the possession of the true owner. Where alleged acts of possession are intrinsically equivocal they will almost always be found to be mere acts of trespass. In this context, an equivocal act means an act of such a nature as to provide an equal balance between an intention to exclude a true owner from possession and an intention merely -to derive some enjoyment or benefit from the land wholly consistent with such use as the true owner might wish to make of it. See *Ticbild Ltd. v. Chamberlain (1969) 2 P. & C. Report 633*. In order to determine the precise nature of an alleged act of possession, the geography and nature of the land are to be regarded as critical considerations. Equally important, from the point of view of the true owner, is the nature of the user of which his land is shown to be capable and his intention in relation thereto.**

43 In *Farrington* the acts of possession being advanced were monthly visits to the land, clearing the land, putting up a no trespassing sign, setting out boundary markers and registering the land under an "invalid conveyance". The Jamaican Court of Appeal rejected this as it found that the acts were equivocal an insufficient. The Claimant was

> **under the mistaken belief that the land was conveyed to him and the acts were as consistent with that belief as with an intention to establish title by adverse possession."**[Emphasis added]

[130] These very principles were also restated and applied in **IN THE MATTER OF the Petition of Eleuthera Land Company Limited** [2012/CLE/qui/00579] [unreported].

Evidence of possessory evidence by the Petitioner

[131] In his oral testimony, the Petitioner alleged that his great grandmother was Phoebe Rolle and that the Land has been in his family for four generations. He said that Phoebe Rolle had a son, Mike Kemp and a daughter, Mona Kemp. He alleged that Phoebe Rolle used to farm the land and cultivate crops such as peas, corn and bananas. According to him, a banana tree is still there. He said that his grandmother was Drucilla Kemp whose husband was Mike Kemp. Both his grandparents used to live on the Land. They had a rock house built with limestone rock and a thatched roof. They used to farm the Land. He said that his father was Clarence Kemp who was born in the rock house and he lived there with his parents until he got married. The rock house is no longer there. Neither is the foundation there as his brother built a modern house on the spot. Subsequently, his father built a limestone house on the other side of the Land where he was born and raised. He alleged that his sisters presently live in the house.

[132] The Petitioner stated that his parents farmed the land until they died and, after their death, nobody has farmed it. Nonetheless, he worked on the Land. He used to have a field planting peas and corn. His father had some coconut trees on the Land. He also said that there are some banana trees in a deep hole. He admitted that right now, he does not do anything on the Land.

[133] Under cross-examination by learned Counsel Mr. Williams, the Petitioner testified that the Land which he is claiming is Crown Grant C-129. He also stated that he is related to the Rolle Claimant and that he is a direct descendant of Phoebe Rolle who was his great grandmother. According to him, Michael Kemp was his great grandfather. He did not know Phoebe Rolle because she died before he was born.

[134] Under cross-examination, Mr. Williams suggested to the Petitioner that (i) he was not a direct descendant of Phoebe Rolle and (ii) the Land he is claiming is not Crown Grant C-129 (which was granted to Phoebe Rolle) but instead Crown Land. The Petitioner maintained that he is a direct descendant of Phoebe Rolle.

[135] Under cross-examination by learned Senior Counsel for the Crown, Ms. Smith, the Petitioner stated that the limestone house which he spoke about is no longer there as his brother built on it.

[136] Under re-examination by learned Counsel Mr. Collie, the Petitioner stated that the Land which he is claiming starts from his brother's house because his parents had a limestone house there. Dale Patton lives next to his brother. He found out that he is a direct descendant of Phoebe Rolle through his parents and grandmother. He never lived in that limestone house. He said that the banana trees and coconut trees are on the land that he is claiming. The actual pit which he showed to the Court is on his land. According to him, his grandmother used to farm that land. There is a road separating the Land from the land where the banana pit is on but he said that his grandmother also farmed there.

[137] Mr. Collie later asked him: "Do you realise the description the banana tree is not in that piece? He answered "yeah". See: Transcript of Proceedings dated 25 August 2017 at page 34 lines 28 to 30.

[138] By the Court, the Petitioner was asked whether he was claiming where the banana pit is and he answered in the negative but insisted that his grandmother also farmed there.

[139] Essentially, the Petitioner claims all the land to the east of the first building (from his brother's house) all the way to the quarry pit on the south side of the road. The Court was able to appreciate his claim based on two site visits.

[140] The Petitioner's evidence was supported by that of his younger sister, Leah Kemp-Moncur. She now lives in New Providence. She swore an affidavit on 19 January 2016. She said that she used to go to the Land to chop bush and burn it to create a fresh ground. Sometimes, she assisted with the harvesting of produce to take home. She recalled growing cassava, pumpkin, peas, bananas, sweet potatoes and corn. Her father's job was primarily to take care of the coconut trees on the Land and also to assist with the farming. After her parents died, her brother, the Petitioner, assumed responsibility of the Land and continued to look after the banana groves and cut bananas. She admitted that there is no active farming being conducted on the Land but the banana trees are still there and they continue to bear. She alleged that she never lived on the Land but her younger brother, Ralph Kemp has a house on it.

[141] Edgar Kemp, Inspector of Police and assigned to the Prime Minister's Office, was the next witness to testify on behalf of the Petitioner. He swore an affidavit on 17 March 2017. He had personally conducted extensive research into the lineage of the Kemp family and the Rolle family of Black Point, Exuma. He also conducted research of how the Land devolved from the date of the first Crown Grant up to how it came to his father, the Petitioner. He produced six exhibits: "EK -1" to "EK -6".

[142] Under cross-examination by Mr. Williams, it was suggested to him that Michael Kemp is not a direct descendant of Phoebe Rolle and he stated that he is. It was also suggested to him that the land described in Filed Plan 520EX as well as in the Petition does not represent the Phoebe Rolle track but instead, is Crown Land. Edgar Kemp responded that it is a part of the whole Phoebe Rolle Tract.

[143] Under cross-examination by Ms. Smith, Edgar Kemp stated that the whole Phoebe Rolle Tract is actually 400 acres. He acknowledged that he could not claim 400 acres since his father's claim is derived from the Phoebe Rolle Grant which is 20 acres.

[144] When cross-examined by Ms. Smith on Exhibit “EK-2”, he conceded that Phoebe Rolle owns 20 acres of land. He also acknowledged that the Petitioner is claiming through the Phoebe Rolle grant. Counsel suggested to Edgar Kemp that the 20 acres that the Petitioner is claiming delineates itself by a pond and, as a result, it is not the land that his family is entitled to. Edgar Rolle said that maybe a surveyor can answer that but his family lived all of their lives on the Land.

[145] Under re-examination, Edgar Kemp acknowledged that the Petitioner has no documentary evidence to prove their direct lineage to Phoebe Rolle other than what he was told.

[146] In a nutshell, having extrapolated the evidence, the Petitioner’s claim is that he is a direct descendant of Phoebe Rolle and he has been in possession of the property since 2002 although he has no documentary evidence to prove his direct lineage to Phoebe Rolle other than what he was told. This was confirmed by his son, Edgar Kemp who, according to him, had done extensive research.

[147] Not having been able to establish any direct lineage, the single remaining issue is whether the Petitioner and/or his predecessors have been in continuous, exclusive, open and undisturbed possession of the Land for 60 years to dispossess the Crown.

[148] On the basis of well-established principles, a party without documentary title, i.e. a party wishing to establish adverse possession, needs to demonstrate actual possession, an occupation exclusive, continuous, open or visible, and notorious which must not be equivocal, occasional or for a temporary or special purpose. Further, that party must show that such acts amounted to actual possession with the requisite intention to possess the property in question.

[149] Learned Counsel Mr. Collie submitted that the Petitioner and his witnesses have adduced consistent evidence with respect to their occupation of the Land which has been in their possession for generations. He next submitted that not only did the Petitioner testify in clear unambiguous terms that his great grandmother

Drucilla, his mother Mary and all eleven siblings farmed the Land growing such crops as pigeon peas, corn, sweet potatoes, beans, bananas and okras, but also that his brother built an incomplete house on the same site where his parents had a house which was destroyed by a hurricane. Further, the Petitioner physically pointed out the exact location to the Court on its second site visit.

[150] On the Petitioner's own evidence, he has been in possession since 2002. The Quieting Petition was filed in 2012 so that means that he had been "in possession" for ten years. So, were the Petitioner and/or his predecessors in exclusive and continuous possession of the Land for four generations as he stated. No specific date was given as to when his predecessors were in possession of the Land. There is a building on the Land which the Petitioner alleged belong to his family. In his Affidavit filed on 1 September 2017, Mr. Ferguson opined that the age of the building is estimated at less than 15 years and this is evidenced by the current materials used for the construction.

[151] Other than the building and the evidence adduced by the Petitioner and his witnesses that their predecessors farmed the Land, there was no sign of any occupation/possession of the Land. There were one or two banana trees in the near vicinity on lands which the Petitioner identified as belonging to the Crown (which he is not claiming).

[152] The law on adverse possession is well-established. In the present case, for the Petitioner to succeed, he has to establish both (a) the factual possession and (b) the requisite intention to possess. The factual possession required depends upon the land in question. In **Treloar v Nute** [1976] 1 WLR 1295 (CA) a piece of agricultural land was regarded by the court as factually possessed when animals were grazed on it, spoil dumped in a gully, timber and stone stored on it, and squatters rode motorcycles on it but even that was 'on the borderline'.

[153] Next, the Petitioner must demonstrate the requisite intention to possess. It is the intention to do so in his own name and to exclude the world at large (and the

Crown). For example, the placing of a notice on land warning intruders to keep out, coupled with the actual enforcement of such notice, is an example of an act demonstrating an intention to possess although the erection of a sign and a fence intended to keep sheep in a field and not the paper owner out, was insufficient in **Inglewood Investment Co Ltd v Baker** [2002] EWCA Civ 1733*,* [2003] 2 P & CR 319*;* **Batt v Adams** [2001] EGLR 92*.*

[154] The enclosure of land by a newly constructed fence is another. As Cockburn CJ said in **Seddon v Smith** (1877) 36 LTR 168, 'Enclosure is the strongest possible evidence of adverse possession', though he went on to add that it is not indispensable. Another example of an intention to possess is the locking or blocking of the only means of access (Slade J in **Powell** at pp.477- 478). Blocking the only access by padlocking an existing gate was enough in ***Buckinghamshire CC v Moran*** [1989] 2 All ER 225*.* Where, however, the only access was padlocked but the occupier allowed the paper owner's tenants access and provided keys for that purpose, the occupier acknowledged the paper owner's tenants' right to be on the land. Such an action was wholly inconsistent with an intention to possess the land in a way sufficient to defeat the paper owner's title see **Battersea Freehold and Leasehold Property Company Limited v Wandsworth LBC** (2001) EGCS 36*.*

[155] In the present case, there is no fencing or placing of a notice on land warning intruders to keep out. Nor the blocking of any access to the Land. However, there was a conspicuous notice with respect to this Quieting Petition. As to when and how long it was placed there was not brought out in evidence but my own observation is that it appears fairly new. Except for the evidence of the Petitioner and his witnesses that their ancestors farmed the Land and that he was in possession of the Land since 2002, there is no other evidence to demonstrate an intention to possess the Land in a way to dispossess the Crown.

[156] I am afraid that the Petitioner has not established that he and his predecessors had been in exclusive, continuous, open or visible possession of the Land for 60 years to dispossess the Crown, the documentary title holder.

Conclusion

[157] In the present quieting petition, there are rival claims to the land to be quieted. I am therefore reminded of my primary function which is simply to determine and declare which of the claimants has a better title.

[158] With respect to the documentary title claimed by the Rolle Claimant, he has failed to establish a direct genealogical lineage to the Phoebe Rolle who was granted Crown Grant C-129 in March 1858. In his Abstract of Title, there is a gap of 111 years from 1858 to 1969. The Rolle Claimant has not proffered any explanation for this interruption in the chain. In my considered opinion, the Rolle Claimant has not established documentary title to the Land (the subject of this Petition) or indeed the 20 acres which was granted to one Phoebe Rolle in 1858. Furthermore, there is not a scintilla of evidence that Phoebe Rolle was granted 201.5 acres of Crown Land in 1858 or at all.

[159] The Crown has demonstrated that when a crown grantee dies and was not married and had no children, the land is escheated to the Crown: See **Anthony Louis Cunningham v The Broadcasting Corporation of The Bahamas SCCivApp &CAIS No. 168 of 2014.** In my opinion, Crown Grant C-129 is crown land. Thus, the Crown has a better title to the Rolle Claimant.

[160] In establishing a possessory title to the Land under the Limitation Act, the Petitioner had to demonstrate that he and/or his predecessors had been in exclusive, continuous, open or visible and undisturbed possession of the Land for 60 years against the Crown, the Land being beach front with its boundaries being on the foreshore. In my considered opinion, the Petitioner has not fulfilled the legal requirements necessary to dispossess the Crown.

[161] In the circumstances, I will dismiss the claims of the Petitioner and the Rolle Claimant. There has been a misdescription of the Land by the Petitioner which has caused much confusion and delay. But, on a preponderance of evidence, I prefer the expert evidence given by Mr. Ferguson which respect to the Land. Mr. Laville also agrees with it. Mr. Brennen does not but he has not even visited the Land nor done any surveys to conclude that there is no crown land within the precincts of the Phoebe Rolle Crown Grant C-129. The conclusion by Mr. Warren, after conducting reconnaissance of the Phoebe Rolle Tract, based on the description of Crown Grant C-129, that the Phoebe Rolle Crown Grant contained approximately 201.5 acres and not 20 acres as described in Crown Grant C-129 is in conflict with the Crown Grant itself, the Plan and all other documentary as well as scientific evidence. Also, it is at odds with the general trend at this time with respect to the granting of crown grants. In any event, the fact that the Crown will grant 201.5 acres of land to an 8-months old infant also seems to defy all logic and common sense. As such, I reject Mr. Warren's evidence which I find to be whimsical and unreliable.

[162] Accordingly, I will make the Order that the Subject Land in this Petition (Filed Plan 520EX) is Crown Land.

[163] In addition, the Phoebe Rolle Crown Grant C-129 consisting of 20 acres (Filed Plan 521EX) became a central feature of this Inquiry. It is therefore important that I deal with it so as to avoid further protracted and expensive litigation. I find that Phoebe Rolle (whom the Rolle Claimant alleged that he derived his documentary title from) died without being married and with no children. Accordingly, her Crown Grant C-129 of 20 acres contained in File Plan 521EX would have been escheated to the Crown and therefore, it is Crown Land. The principle of modern land law does not permit an estate in land to be without an owner.

[164] The successful party in this Quieting Petition is the Crown. They are entitled to their costs from the Petitioner and the Rolle Claimant to be taxed if not agreed.

[165] Last but not least, I thank all Counsel for their industry.

Dated this 13th day of October, A.D. 2020

Indra H. Charles
Justice