IN THE COURT OF APPEAL

SAINT CHRISTOPHER NEVIS AND ANGUILLA:

CIVIL APPEAL NO. 2 of 1977

BETWEEN: SAMUEL HUNKINS - Plaintiff/ Respondent

and

DORA ARCHIBALD and WILLIS ARCHIBALD Administrators of the Estate of Benson Middleton Archibald, deceased - Defendants/ Appellants

Before: The Hon. Mr. Justice St. Bernard Ag. Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Renwick - Acting

Appearances: F. Kelsick for Appellant,
E. Walwyn with him.

F. Henville for Respondent,
S. Daniel with him.

1977, March 31st, April 1st

J U D G M E N T

PETERKIN, J.A.:

This is an appeal under Section 163 of the Title by Registration Act brought by way of claim by Dora Archibald and Willis Archibald, Administrators of the Estate of Benson Middleton Archibald, deceased, against the judgment of Glasgow J. allowing a summons in chambers and granting an order that the caveat presented in this matter on 3rd July, 1975, by the Appellants be removed.

Briefly, the circumstances are that the late Benson Middleton Archibald was the registered proprietor of approximately

/40 acres.....

40 acres of land situate at Stoney Grove Estate, Nevis, and registered in the Register Book 4 Folio 60 in the Registry of Titles for the Nevis Circuit. On 15/12/61 it is alleged that he executed a memorandum of transfer of this land in favour of the Respondent Samuel Hunkins. It is stated in the memorandum of transfer that the land was transferred in consideration of the sum of $15,000 paid to Benson Middleton Archibald by Samuel Hunkins. On 26th June, 1972, Benson Middleton Archibald died at Basseterre, St. Kitts, and letters of administration of his Estate were granted on 27th June, 1974, to the appellants, who on 3rd July, 1974, presented to the Registrar of Titles a caveat forbidding the registration of any dealings with the land in question. Previous to this, the Respondent had on 24th July, 1973, presented the memorandum of transfer of the said land to the Registrar of Titles for the island of Nevis for registration. No certificate of title had however been issued by him.

On 12th November, 1975, a summons was taken out on behalf of the Respondent for an order that the caveat presented on the 3rd July, 1974, by the Appellants be removed. The summons was supported by the affidavit of Samuel Hunkins. Five affidavits were filed on behalf of the Appellants in opposition.

The ground of appeal is that the trial judge, without hearing any facts from Samuel Hunkins or Dora Archibald and/or Willis Archibald or the former Registrar of the Court in July, 1973, or any witness or witnesses, delivered a written judgment in the matter ordering that the caveat be removed.

/Clearly,.....

Clearly, there was evidence in collision on which the judge was required to make a finding. No leave however was sought by either side to cross-examine on the affidavits which is usually granted as a matter of course, and, after listening to submissions from both sides, the matter was concluded and judgment reserved. It was then left to the trial judge to arrive at his finding on the evidence sworn to in the affidavits. This he has done. It was contended on behalf of the Appellants, both here and in the court below, that the memorandum of transfer of 15th December, 1961, is not in order. This he rejected. In dealing with the matter at p.4 of his judgment, page 21 of the record, he stated;

> "In my judgment that contention is entirely without merit."

In my opinion there was evidence on which he could have arrived at such a finding. There has been no suggestion that it is unreasonable or against the weight of the evidence. The burden of the Appellants' complaint is that he has not tried the case because the witnesses should testify before him and be cross-examined. Such a complaint is in my view entirely without justification. In any event, that the witnesses were not cross-examined is certainly not the fault of the judge.

There is one other aspect of the matter which calls for consideration. There has been mention by the trial judge in his judgment that the caveat was presented too late, and there has been some argument on it. In my view, on the law as it

/now.....

now stands until the memorandum is actually registered it is never too late to put in a caveat, and I can see nothing to prevent it. This, however, in no way affects the earlier finding made by the trial judge in his written judgment, and I regard it as being mere surplusage. The moment the judge found that the memorandum of transfer of 15th December, 1961, was in order, then the caveat would have to be removed.

Accordingly, for the reasons stated I would dismiss this appeal.

(N.A. Peterkin)
JUSTICE OF APPEAL

(J.B. Renwick)
AG. JUSTICE OF APPEAL

(E.L. St. Bernard)
AG. CHIEF JUSTICE