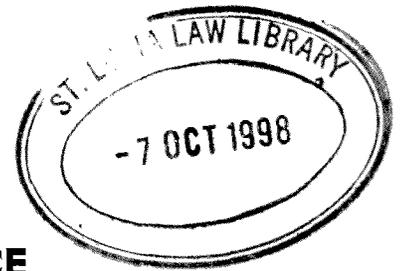


SAINT LUCIA



**IN THE HIGH COURT OF JUSTICE
(Civil)
A.D. 1998**

SUIT NO: 784 of 1993

Between:

- (1) JOSEPH BERNARD**
- (2) JEREMIAS BERNARD CANJOE**

PLAINTIFFS

AND

GEORGE DOUGLAS GUY

DEFENDANT

**1998: June 22, 23, 26, 29, 30
July 2,3,6,7,9,10 and 13**

Appearances:

Fleur Byron-Cox for Plaintiffs
Peter Foster and Claire Malaykhan for Defendant

JUDGMENT

PHILLIPS, J. (In Open Court)

The following oral judgment was delivered.

This case concerns a dispute over an estate known as Mandelie or Pointe Delie situate between Dennery and Mon Repot and an area which is isolated In the words of Sylvester Devaux there are no houses in the vicinity. It is like the wilderness and the area is reported to have a lot of snakes one species of which, namely, the Fer-de-lance is dangerous. In the words of Mr. Ornan Monplaisir who gave evidence

"it is Ti-bom," i.e scrublands and infertile.

Now there is a public road that runs through this estate. Roughly speaking it is divided into two - the lower end which is the near to the sea shore, and the upper end on the hill side. The Statement of Claim alleges that prior to the 20th of October, 1986 the Defendant, George Douglas Guy was the Trustee for the Plaintiffs of the land described in the Particulars A and as in Particulars B, and Particulars A sets out the boundaries of the land and Particular B sets out the root title of the Defendant Guy, to his estate.

It is further alleged, that prior to the 20th of October, 1986 the Plaintiffs were the beneficial owners of the said land, and prescriptive owners of the title thereto as property to Particulars C, and C refers to particulars A and B and to a declaration of succession by Joseph Bernard and the possession of the said land by Antoine Canjoe from 17th July 1924 to 1st March 1940.

It is alleged that on the 20th October 1986 the Defendant was registered as a proprietor of the land. The Plaintiffs continued notwithstanding the registration of the Defendant i.e the proprietor to have overriding interests in the said land under the Land Registration Act 1984, section 28(f).

They further pleaded in the alternative that the Plaintiffs had been in actual occupation of the land at the date of the Defendant registration as proprietor on the 20th October 1986, and that notwithstanding the registration the Defendant holds and continues to hold the said land in trust for the Plaintiffs.

The Defendant denies all these things and denies his own root of title and sets up as a positive defence that in a prior decision in petition number 72 of 89 and appeal No. 18 1979 the matters raised in the Statement of Claim were adjudicated upon and are therefore *rejudicata*. This contention was disposed of in Chambers by Farara J and I say no more about it.

Now perhaps it might be useful from commencement to deal with this question of trusteeship. Trusts were introduced into the laws of St. Lucia by the 1957 Civil Code and in particular section 916A. It was submitted by the counsel for the Defendant that this provision is retroactive and applicable to these proceedings.

On general principles the Court does not construe an Act as being retrospective especially when it affects acquired rights so on general principles I cannot accept that submission. Trusts were introduced by an amendment in 1956 and applies to transaction which take place after its coming into operation. I am fortified in that conclusion by the views of Mr Winston F Cenac QC expressed in the book he wrote on the evolution of the law in St. Lucia. He said at page 45 in relation to article 916A as follows:

"It is submitted that from the date when articles 916A came into force a person can have with respect to property in St. Lucia either a legal right of ownership or an equitable right of ownership or a simple right of enjoyment or a servitude to exercise."

Now the clear implication of that is, that it is his opinion that that particular section affects interests arising after its enactment in 1956.

Prior to 1956 he tells us on pages 10 to 11 what was the law as it relates to trust and he says:

"According to the English concept of ownership there are in fact two owners of a property in a trust relationship namely, the legal owner and equitable owner. Ownership therefore, under a trust is fragmented, as it were, into the legal ownership of the trustee and the equitable ownership of the cestuique trust or beneficiary. The trustee as legal owner of the property under the English system has the right to administer it and to dispose of it, but he does not have a right to use it or to enjoy it. The beneficiary, on the other hand, is also owner of the property. He is the owner of it, but his ownership does not give him the right to administer it or to dispose of it although he has the right to use it, to enjoy income. But by contrast under the French concept of ownership a person in the position of the trustee (under the English trust) will not be seen as the owner of the trust property. It is the beneficiary who will be seen as the real owner in the eyes of the French jurist. It is true that, according to the French system of the law of property, one person may have a right of usufruct over property while another person may have a right to the nuda proprietas, or bare ownership, over the same property. But, it should be noted that in such a case the ownership of the property belongs to the owner of the nuda proprietas. The usufructuary has no right of ownership over it. The usufructuary's right is a right to use and to enjoy the property owned by another, namely, the owner of the nuda proprietas."

This is buttressed by explanation given by Marler on The Law of Real Property Quebec. In Marler at page 495 there appears this statement:

"Until the title divested him of the ownership has been registered, the person who has alienated an immovable remains owner of it as to those third persons who have obtained from or through him, for a valuable consideration, rights in or against it and have registered their rights."

Again at page 538 he states:

"So long as the deed by which an owner has alienated an immovable remains unregistered, the vendor is still the owner as to those who may acquire it from him for a valuable consideration and register their title, and as to those who register real rights against it obtained through him."

At page 36 Mr Cenac quotes with approval an excerpt from Demers comments on Article 2085 of the Quebec Civil Code, which corresponds with 1970 of the 1957 Civil Code as follows:

"Registration is proof or presumption of knowledge acquired of the existence of the rights. In fact, every registered act is held to be known by all the world; that which is not registered when it ought to be registered is held not to exist so far as third persons are concerned even if they have known of its existence otherwise. This is extremely important because it implies that he who buys a property in good faith, and registers his title, will be considered as the true owner and will be able to claim his preferential rights even against those who may have acquired before him for good and valuable consideration, but who have neglected or delayed the registration of their title."

I gathered from all of that that an owner who has entered into a contract of sale, is not divested of the ownership of the land until two things happen. First, he executes a Deed of Sale in the form required by the Code; and secondly that document is registered. It is only then that he is deprived of the ownership of the land. In the meantime, of course, he is not a trustee for anyone with whom he had dealt or agreed to sell the land. But he has an obligation to execute a Deed in the formal manner required by the Code. It is his obligation to execute that but in the meantime he has no obligation of a trustee to the person with whom he had dealt, under a contract of sale.

In view of these things it is my conclusion that Guy was never a trustee for the Plaintiffs and neither was any of his predecessors in title trustees for the Plaintiffs in the sense as one understands the English Law. So the Plaintiffs fail to establish any trust in the Defendant. The documents put in evidence show that Guy's root of title commences in the Deed of Sale.

James Henry Cox is recorded 28th March 1917 Volume 71 No. 38254 as owner of land known as Pointe Delie consisting of 9½ carres of land. It is claimed in the Statement of Claim that by that Deed that trust that was pleaded was constituted. The Deed was given in evidence and it shows that there was a sale by the Sheriff in 1912 to James Henry Cox and the sale was done under a Judgment in the Royal Court of St. Lucia summary jurisdiction in suit No. 3 of 1911 wherein Bernards Sons and Company were the Plaintiff and Richard Clarke was the Defendant clearly indicating that the Land there in sold was the property of the Defendant.

There is no mention here of Sophie Bernard or any body else so that this document and the sale have nothing whatever to do with Sophie or any of the Bernard or the Plaintiffs, but rather is the root title of the Defendant as the other documents in the case which are all set out in the Statement of Claim show that Cox sold to Joseph Philogene otherwise known as Gerald Daniel this same land which he acquired by the Sheriff sale on the 24th April 1954.

The Deed of Sale dated 3rd December 1960 by Gerald Joseph Daniel otherwise known as Joseph Philogene showed that he sold this land to Sylvester Harold Devaux, and another dated the 13th October 1967 shows that Sylvester Devaux and his wife, sold the same land to George Guy. So that I am satisfied that George Guy had a proper root of title and that a title to the land devolved upon him in accordance with the provisions of the Code so that from the 26th April 1954 when Daniel registered his Deed the title in James Henry Cox was transferred.

On the other hand, the pleadings disclose Antoine Bernard had a contract of sale with James Henry Cox and he received a receipt on the 17th July 1924 for the purchase price of 9½ carres of land at Pointe Delie. This receipt although executed before and witnessed by a Notary Royal was never followed up by a registered Deed of Sale so that while Antoine Bernard had a right to possession there was no delivery under the code of this parcel of land.

It was in fact never delivered because the only way under the Code of delivering an immovable is by a Deed of Sale and registration, but he never got delivery. That does not prevent him from acquiring title not by virtue of the receipt but under the provisions relating to

prescription.

The contest between the parties is not one of possession but it is one of ownership. In other words it is an action in revendication under the Code and not an action for disturbance or dispossession. Now this appears clearly from Marler in his work on the Law of Property of Quebec.

Paragraphs 44 and 49

"Under the code the person in possession is given certain rights of actions to protect his possession, and these possessory actions are: the action on disturbance or complainte, the action for repossession or reintegrande; and the action en denonciation de nouvel oeuvre.

The object of the action is either maintaining the possessor in his possession or his reinstatement in such possession; in other words by it the plaintiff seeks the recognition of his possession of the immovable or real right. The fact of possession is the issue between the parties in the possessory action, not the ownership of the immovable or real right. Any controversy as to the ownership can be settled only by means of the petitory action.

Actions Arising from ownership

The two actions which arise from the right of ownership are the action in revendication or petitory action, and the action negatoire.

Action in Revendication:

The action in revendication is an action exercised by one who claims the restitution of a thing, alleging himself to be its proprietor. It is founded on the right of ownership.

The action is directed against the possessor of the immovable, being frequently preceded by a possessory action, with the result that the person adjudged by it to be possessor is given the advantage of defending the action in revendication.

It will be remarked that the action in revendication or petitory claim cannot be joined with the possessory action or be instituted before the termination of the possessory action and the satisfaction and execution of condemnation.

Where the holder of the immovable is the defendant and does not possess for himself, he should ask for his dismissal from the case, disclosing by means of a preliminary exception, the name of the person for whom he hold it, etc.

Case where prescription has been acquired:

The right of ownership is most effectively established by proof that the plaintiff has acquired the ownership of the immovable by prescription, that is to say that he or his auteurs have had a possession of it useful for prescription during the time required to prescribe the ownership.

Case where prescription has not been acquired:

When a title based on prescription cannot be proved, there are three cases to be distinguished. Firstly, when one party alone produces a title. In this case if it be the defendant, he will remain in possession because he has shown a better right to the ownership than the plaintiff. If it be the plaintiff who produces a title the immovable will be restored to him, provided, however, that his title is anterior to the possession of the defendant. Thus where the plaintiff in a petitory action alleged a title passed in 1858, and the defendant established his possession since 1854, it was held that the plaintiff could not recover, as against a person in possession at the date of the conveyance, without it being established that the person granting the conveyance has a right in the property conveyed.

so that where the possession is anterior to the plaintiff's title he must prove the ownership of his author, by producing the latter's title and establishing that it is anterior to possession of the defendant."

The possessory action is only available within one year and a day of the disturbance or dispossession. Now that kind of action is not available to the Plaintiff because it is clear beyond per adventure that since 1954 other people were in possession of this land. People other than the Plaintiffs. So that a year and a day had long expired and those action for disturbance and repossession are not available in this case. What is available to them is a contest of ownership based on prescription and it is

agreed between the counsel of both parties that in this case the prescription must be for thirty years.

Vide paragraphs 52, 54-57 and 134-140. Marler.

Prescription:

Prescription is dealt with paragraph at 403 of Marler:

"In order that a immovable may be acquired by prescription the possession of it must present all of the qualities set forth in the Civil Code 2193; it must be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor."

Interruption para. 405:

"Prescription may be Interrupted either naturally or civilly."

Natural Interruption:

"Natural interruption takes place when the possessor is deprived during more than a year of the enjoyment of the thing, either by the former proprietor or by anyone else."

The task before this Court is to examine the evidence relating to the possession such as that given by the Plaintiff. I want to emphasize that this case is not a case between Sophie Bernard and his heirs and the Defendant. The case is between Joseph Bernard and Jeremias Bernard who claimed to be heirs of

Antoine Bernard and the defendant. Sophie Bernard plays just a secondary role in this story.

What is the evidence for the Plaintiffs?

The witnesses for the Plaintiffs are Joseph Bernard, Edison Julian, Joseph Thomas, Charles Bernard and Lena Regis. Now Joseph Bernard said that his father died in 1940 and at that time he was on the land working it and he continued to do so until 1950 when he went to America. He spent two years and returned to St. Lucia. He stayed until Britain started admitting immigrants and went to Britain. This was in 1959. When he came back from America he returned to the land and cultivated it as before.

He knows Daniel who is his cousin. He said Velina Bernard is Gerald Daniel's grandmother. He had never seen Daniel on Pointe Delie. He did not know about the land Registration. He never had trouble with anybody, but trouble came in 1989 when there was injunction against his two cousins, Edison and Charles.

In cross examination he said that before he went to Britain Julian had started to cultivate bananas on this land. He knows Gerald Daniel, Daniel is family to him. He knows the land and if someone said that Gerald had some goats and a little garden there, that person is speaking the truth. He did not see him himself but he knew about Gerald's activity from Julian. He did not know that Gerald Daniel had bought the land.

Phillip Bernard was his uncle and after the death of his father the uncle took over the duty of controlling the family. He did not know

of the survey but his uncle told him that Monplaisir had asked for his documents and he understood that the survey or required documents to prove ownership. He had the receipt. He was not in St. Lucia at the time and he had travelled with this receipt to England as he thought that this was something he should keep safe all the time.

He said that during the Land Registration and Title Project Julian put in a Claim on his own and he only put in a claim against the man who claimed the land, that is the Defendant. He did not put in any claim at the time of the project because Julian had already done so.

Even before he saw the receipt among his father's papers after his father died, he thought that his father was the owner of the land, and all the documents relating to the transfer of title from James Cox to Daniel and from Daniel to Sylvester Devaux and from Devaux to Guy he saw for the first time when he saw the documents in his solicitor's office.

Edison Julian

Declared that he was a farmer and knew the estate from the time he was five years old in 1943. He used to work planting various type of crops. From the age of 16 he started doing his own cultivation and that was in 1954. There is a land belonging to Antoine Bernard my grand uncle. He is deceased. His wife is also deceased. It is to his knowledge that Pointe Delie belonged to the heirs of Antoine namely, Joseph and Jeremias and that these two had also cultivated the land. Jeremias left for French Guyana and he has not returned and Joseph left for America. They left his grand uncle Phillip Bernard and himself in charge.

In 1989 he wrote to Joseph to tell him of the injunction and asked him to come to St. Lucia to settle this land business. He arrived a few weeks later and they both went to a solicitor and Joseph presented this receipt to the solicitor and this was the first time that he saw the receipt. He says that he does not know the Defendant Guy. He had never seen him. He did not see anyone surveying the land at Pointe Delie but he heard that there was a survey, through members of the family.

Charles Bernard and himself were second cousin. Charles had a house on the land and he planted crops. In cross examination he maintained that the two brothers left Phillip Bernard and himself in charge of maintaining the estate, and that the land belonged to Antoine Bernard and he understood that this was the case from the time he was a boy. He went to his land in 1943.

He said the land was occupied by all the family and he was under the impression that the land belonged to Sophie Bernard. He had no claim to the land as owner. Nevertheless he knew the property belonged to the heirs of Antoine Bernard. He had no claim of his own to possession of this land. He is only in occupation.

In Suit No. 480/89 between himself and Vincent Devaux he claimed for the heirs of Antoine Bernard. He claimed for Joseph, Jeremias and the Bernard family. He did not specify himself, and he knew that they were the owners because they have delegated their uncle and himself to look after the estate.

In 1990 when he made the claims in Suit No 408/89 he knew that Joseph was in possession of a receipt which showed that his father

purchased the land in 1924. In the claim he neglected to make any mention of it. He heard of the survey through his uncle Phillip. He heard of the survey in 1970. He had no idea that the other surveyor Modeste was going to survey the land. He said that he passed on the main road which passes through the land everyday and he did not see any stranger on the land in May and June 1970. He made a claim to the Land during the Registration project. That claim was on behalf of the Bernard family. That claim was not processed and he did not know that the land was adjudicated to George Guy.

In the 1970's at time he lived in Castries and on weekends he went to the farm. It was about 1975, and then he said for the first time in cross examination that he was also a fireman and retired five years ago, that is in 1993. At the time of retirement he held the rank of Divisional Officer which is equivalent to the rank of Superintendent of Police and he had joined the force in 1963. So that he spent thirty years in the police force, 1963-93. He went to Barbados for six months in 1963 for training, and he went to England for three months in 1966 for training. He went on holidays sometimes and he denied that he was dishonest by telling the Court that he was farming from early in the morning and that is the reason why he did not see any surveyor on the land in 1970.

He said he used to go to the land in the week except on Sundays and he would sometimes go to the land after work. He is the one who said that Pointe Delie Estate is isolated and has many dangerous snakes. He cultivated about four acres.

His grand uncle phillip had given Martin permission to make garden on a parcel of land. It was opposite his own small plantation. He did not

know that Guy had rented the property to Martin. He did not know Gerald Daniel was owner of the land. He saw him in the little house in the pasture at the point with a few goats. He never questioned him since he was related to the Bernards and was a member of the family. He never saw Sylvester Devaux on the land. He did not know that Devaux had planted coconut trees on the land.

Joseph Thomas

He said that he was a labourer and knew this estate since he was a young man. He and his mother planted garden for Mrs Phillip Bernard. This garden was at Mandelie. He was then about eighteen (18) years old. He is now seventy-seven (77). He stopped working there since Edison Julian got notice. The notice was for them to leave the estate. He says after the death of Madam Phillip Bernard he started working for Edison planting cassava, potatoes, peas and macombo. He said several of the Bernard's family were also working the land. He does not know George Guy, the Defendant. He never saw surveyors on Mandelie. He knew Sylvester Devaux but had never seen Devaux on the land. There are no other families but the Bernards on this land. There are a lot of snakes at Mandelie and he did not know Jeremais.

The family of Joseph Bernard own the land. He knew Gerald Daniel as family to the Bernards and he knew him to be on this land but he did not know that he was the owner. He does not know the boundaries of Mandelie and Phillip Bernard is Joseph's family. He did not know the degree of the relationship. He did not know that Daniel had sold land to Sylvester Devaux.

Charles Bernard

Charles said that Joseph and Jeremias were second cousin. They used to cultivate the land also. Jeremias left the Island between 1948 and 1950 and had not returned. One Ernest Thomas used to work with his grandparent. He was working until 1968. His grandmother died on the 10th September 1968 and then John Thomas switched over and worked with his cousin. He worked with Julian until Edison and himself received the injunction. He did not know that Daniel had sold land to Sylvester Devaux. He received the injunction from then on he had not returned to the land and Ernest Thomas is the same person as Joseph Thomas.

In all he was planting 3/4 of an acre of land at Mandelie. He had a house of wood and concrete floor pretty near to the road about 15 ft. Edison Julian had bananas planted. He started planting in the 70's. He planted a distance away from where he was and on the same side of the road. That is on the beach side, and his grandmother used to plant on the higher side of the road.

His grandmother had given permission to certain persons to plant on the lower side of the road. His grandparents had one garden. Every year they moved to a new spot to clear and cultivate. His great, great grandparents were Sophie Bernard and his wife. So to his knowledge Monplaisir did not survey Mandelie. He never saw him on the land. He used to work on the land six days a week. He would reach between six or seven in the morning and he would leave about 6 p.m.

He said his grandfather died in 1958. He knew Gerald Daniel, but he never knew him to be the owner of the land. Gerald had a shop on

the land. He had a couple head of cows. He did not have pigs. He did not know that Gerald planted coconuts. He understood that Gerald was a cousin of his grand father. He did not know that Daniel had goats and sheep on the land neither chicken. He himself built a house on this land in 1985. Edison Julian told him he had put in a claim into Land Adjudication and Title Project. That the claim was on behalf of the heirs of the Bernards. He did not question Edison as to exactly which Bernard heirs. It was his understanding that if Julian was successful all of the Bernards would benefit. He knew about the heirs of the Bernards. He was not aware that it was Antoine Bernard who was the owner of land.

Frankly speaking he said he was under the impression that the title to the lands came down from Sophie Bernard. Only since the injunction did Edison tell him that the property belongs to Joseph and Jeremias. He understood Edison being there on the land as a heir of Sophie Bernard.

He said in suit No. 408 of 89, he stated that he was the owner and occupier of the Mandelie Estate, and the family was in undisturbed possession since 1981. He was entitled to ownership of the land in his own right. He instructed the solicitor that he was one of the heirs. He did not tell the solicitor that he was an owner. He told the solicitor that he was an heir.

He does not know the boundaries of the land. He has only been using the front part of the land i.e the portion of the land near the road which passes through the land. He did not claim long possession. He claimed, he inherited from Sophie Bernard and he was not claiming long possession. He said he had not lived abroad at any time and he

had been on the land since he was five years old. This 3/4 acres of land he was planting he started doing so in 1983.

Lena Regis

Then Lena came and gave evidence and she said she knew Pointe Delie from the time she was a child. She is sister of Edison and she has a plantation there as well and no one had disturbed her and her husband up to now. Joseph Bernard and Charles and the older Ancestors used to work the land and the younger ones learnt from them and she understood the land belonged to the family.

She said in cross examination that Joseph did not stay in England long as he was working on the farm. From the time she was nine years she has known Joseph mostly on the land. She did not know that the land was surveyed by Monplaisir. She did not know that the land was surveyed by Modeste. She does not know Jeremias Bernard. She and her husband were the only ones occupying the land above the road. She knew that Charles had a hut on the land. The amount of land she was occupying was about 3½ acres. She doesn't know the boundary of Mandelie.

Charles had a building on the land in 1960s. Charles always had a house on this land and Julian told her that the ancestors of the Bernard owned the land. There were Justin, Emmanuel, Sophie, Phillip, Antoine, Norville and the great head was Sophie. He never told her that the lands belonged to Antoine Bernard's heirs only. She knew Gerald Bernard. She had seen him on the land raising goats. He had a little house and he used to live there to see about his goats. She had no idea that Daniel had bought the land.

That is the case for the Plaintiffs.

Now, what is the nature of the occupation that gives rise to prescription?

The Characteristics of Possession are Set Out in Marler in paragraph 41 page 20 as follows:-

"When a person not only detains the thing but has besides the intention to subject it to the exercise of a right of ownership when he has the animus sibi habendi this fact constitutes possession in it's proper sense as a source in itself of rights.

We thus eliminate as possessors, the lessee, the pledgee, the depositary, the holder by sufferance of the owner for none of them has this "animus sibi habendi" none of them holds as owner but for the owner. In order then that the possessor may exercise the legal rights attached to the fact of possession, he must not only have a physical detention of the thing but also the intention to keep it as his own. It is in this sense alone that we must regard possession."

At page 21 paragraph (44)

The author says:

"that for the purposes of prescription, and it may be added, in order to be reputed to be possessor and to enjoy the advantages of possession, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor. The absence of one of these qualities constitutes a defect of possession. An interruption is not a

defect of possession, it is the loss of possession. It is the means of arresting the course of prescription, to the acquisition of which a continuance of the possession of the holder, might lead."

Page 22 paragraph 45

"The defect resulting from absence of continuity is absolute, in the sense that it may be invoked by any person interested in contesting the right of the possessor. But continuity of possession is presumed in favour of an actual possessor who proves that he was in possession at a former period. It is supposed, saving proof to the contrary that he has possessed during the intermediate time"

In other words if the plaintiffs were now in possession or were in possession at the time of the institution of the suit there would be the presumption that they were in possession throughout from 1940 onwards until that year. But in this case the plaintiffs are not in possession and they had not been in possession since 1954 as far as the evidence goes. The possession must be a possession for the person claiming prescriptive right. He must be claiming for himself, not for the family or for other people but for himself.

Now I ask the question, up to 1950 when Joseph left to go to the United States or if not in 1959 when he left to go to the United Kingdom, does this evidence which I have read out show that Joseph or Jeremias or both were in possession of Mandelie for themselves, in their own right to the exclusion of other persons? It seems to me that the answer is they were not. All the evidence show up to that

point that the family of Sophie Bernard was in possession. Charles thought that it was family land and so did Lena.

Edison said that it was family land to other people including Family members. Charles spoke of his grandmother Ma Phillip giving permission for other people to occupy the land. Lena said it was family land and she was there on the land on the basis that it was family land. We could leave Jeremias out of contention altogether because he went to French Guyana in 48 - 50 and never returned. So any possession which would benefit Jeremias would have to be through Joseph. So Joseph says that Phillip Bernard took over the family affairs when his father died. Again that doesn't indicate that Phillip remained in possession as agent for Joseph. It was a family affair. I say again and let me repeat it that this action is not by the heirs of Sophie Bernard. This is an action by Joseph and Jeremias. It is my view that up to this point it does not appear to me that the possession shown is that required for prescription by Joseph and Jeremias. They were not in possession of Pointe Delie alone and for themselves nor when they went away, was anyone in possession of the Estate on their behalf.

But if I am wrong in this let us see whether what the rest of the evidence shows. The defendant although he denied even his own title called evidence and the first witness was Gerald Daniel.

Gerald Daniel said that he was an agriculturist. At some stage of his life he went to Aruba and while he was there he wrote to one Anthony Newton whom he knew to be a tenant on the estate but he got no reply.

Now he said when he came home he made enquires and he got to learn that the land belonged to the Cox's, Bertie Cox, Georgia Cox, Beaubraun and about three or four other sisters. He approached Bertie Cox and he communicated his desire and wish to the others. He purchased the land from them in 1954, and all that is supported by documentary evidence.

After purchase, he immediately started working the land. He erected a fence running along the highroad down to the sea. A portion of the land was above the road and another portion below the road. He had sheep, goats, pigs chicken. He bought two wooden houses. He put one in the area where the animals were and the other He had on top on the side of the road on the land which was above the road.

He engaged an overseer by the name of Taylor Tabiere who occupied the house where the animals were and he occupied the other. He planted sugar cane which he sold to the sugar factory in Dennery. He cultivated maniac, coconut trees, banana trees. He is not related to the Bernards. He knew a Canjoe Bernard, he knew Charles. Charles' father was called Andrew. He knew Charles as "Ici". Charles had an uncle called Antoine. He is not family to any one of the Canjoes. From the time he bought the land to the time he sold none, of the Canjoes claimed the land. He did not see anyone of them on the land cultivating. He did not see anyone else cultivating the land. No one told him that he was on someone else's land. He did not find any potatoes on the land. He had a small platine he bought. He was the only one with Cassava in the area. He lived on the land with his wife and child. He sold to Sylvester Devaux. He knew Phillip Canjoe. He had never known Phillip Canjoe to be on the land. He had seen Charles on this land while he was there.

He did not know if the Daniels are related to the Bernards. He never heard of the name Velina Bernard. He did not know the name Sophie Bernard or Sophie Canjoe.

In cross examination he says he loves Mandelie. He lived there. No body to bother or worry him. Very quiet and healthy. He sold it because he needed money. The animals were not producing fast enough to meet his expenses.

He sold to Devaux on the 3rd December 1960. Workers were hard to find so he sold. Before he sold to Devaux he never saw him on the land. He had seen him at Dennery etc. He took up a small portion of the land. This is what he occupied from 1954 to 1960 when he sold. This is a piece near the road. He took away the houses and animals so Devaux would not have to see him again after he sold. That's his evidence.

Now it would be remembered that all the witnesses except Joseph saw Daniel on this land. Why is that? Joseph said he came back after two years, from America. He left in 1950 for America so he came back some time I imagine in 1952. He didn't leave St. Lucia again until '59, and he said that when he returned from America he went back cultivating the land until he left for England.

How comes he alone never seen Daniel live there? He didn't know Daniel. He only heard of Daniel's activity through Julien. He never saw Monplaisir. Monplaisir went there in '68 so he never saw Monplaisir. Anyway he never saw Daniel he never noticed him on the land. The only reasonable conclusion is that when Joseph came back from America he never went back to his garden. If he had gone back there

cultivating he must have seen Daniel, his goats and his house. He must have seen these things.

The only reasonable explanation at this time is that Joseph did not go back to the land so any possession he might have had came to an end a year and a day after he left for America and certainly his possession was interrupted and he was dispossessed by Daniel. Because those acts which Daniel performed on the land were acts which amount to taking possession of the land. Daniel took possession immediately after he purchased at which time 1951 thirty years had not yet expired.

This is a case such as is cited by Marler at page 61.

"When one party alone produces a title. In this case if it be the defendant, he will remain in possession because he has shown a better right to the ownership than the plaintiff."

This is a case where the defendant George Douglas Guy has a title. The Plaintiffs have no title and they have not shown prescription for thirty years. so Guy is entitled to remain in possession on the basis of his title. That is not all the evidence. Other witnesses were called.

Sylvester Devaux said he knew Daniel and his family. He knew Allen Polius. Polius worked for him. He caused a survey to be made of the land in 1968. Allen Polius started a garden on Mandelie in 1969. He was not sure of the exact year. He was not sure he had any disagreement with Polius about boundary as far as he was concerned Polius had no right to be there.

He gave him notice and he left. He gave Polius notice in George Guy's

name. He did not remember the date. He had no idea of the amount of land he had in 67. Guy did not live on the estate. He planted nothing on the estate. Mandelie is in an isolated area between Dennery and Praslin. There are no houses in the vicinity. It is like a wilderness and the area is reported to have a lot of snakes.

Guy can be described as a real estate developer. Guy and himself had walked down to the beach. As far as he knew Guy never walked the estate. He never heard of Sophie Bernard having any connection with Mandelie estate. The 1970 plan showed the complete land belonging to Mandelie.

In Cross-Examination he said he knew Mandelie Estate. He purchased it in 1960 from Gerald Daniel When he bought the land there was nothing there. Daniel had moved the house. He had sold plantain. There were some wild goats left. Daniel had moved out the animals. He had plans for the future but he did not do anything immediately with the land. He did not do anything really with the land except he was building roads at the time and took stones and boulders from the land to be used in road building. It was mainly forest. He used to cut poles to prop up bananas on Errard. There was latinier on the land and he allowed the odd person coming to cut latinier, which is used for broom making He walked the whole boundary with Daniel and walked several times. He did not see any sign of occupation of the lands.

No one ever even told him that they owned the land. He had no problems with the land. No one claimed it. He heard of the name Canjoe. He did not know any member of that family. He sold the land to George Guy.

Up to 1980 he had no problems with Mandelie. He went over to Mandelie many times by himself. He went round the estate to make sure there were no squatters on the land. This was after he bought from Daniel. He never saw any one with any garden on that land. He still went there to see that there were no squatters after he sold to Guy. He never saw any house on that land during the whole of the time he had visited. Then he gives an explanation of the acreage because you must recall that the description of the land $9\frac{1}{2}$ carres was equivalent to $30\frac{1}{4}$ acres of land.

He states that according to the Deed in the Land registry Mandelie comprises $29\frac{1}{2}$ acres. According to the boundary he bought, it came out as 88 acres. One of the reasons why this survey was ordered is because he realised there was more land but no one knew how much more.

There was added to Mandelie a parcel of Land purchased from Henry Delmar the owner of Anse Canot Estate. This added parcel was part of the Anse Canot Estate. He negotiated purchase for Guy, that brought it up to 88 hectares. When the extra land was added, He walked round the entire boundary of Mandelie with the addition. The extra land was a purchase from Delmar. He did not take care of the Deed of Sale but there must had been one as Guy was a very meticulous man. There was an agreement for Sale. The agreement was to fix the northern boundary of Mandelie that is with the Anse Canot Estate. It was in 1968 that he knew the extent of Mandelie Estate.

Delmar at his request gave an extra hill, which was part of Anse Canot adding to Mandelie Estate. Guy paid for it but he did not know how

much. There is in evidence the record of the adjudication officer which shows that Guy paid \$5000 to Delmar for this extra land. So I accept this evidence as explaining how it is that there is so much land in Mandelie eventually.

Well up to that point Sylvester Devaux himself saw no activity but that becomes almost irrelevant because by that time any possession of the Plaintiffs had already been lost. When Daniel took possession of the land the possession was lost so if there is any possession in the Plaintiffs it would be a fresh possession which after a year and a day would begin a new prescriptive period. There is no such evidence.

Ornan Monplaisir is a surveyor. He said that he made a survey in 1968 and the purpose of this survey was to determine the western boundary. He did another survey in 1969 and that was done to delineate the northern boundary of the estate. Before doing a survey his first procedure is to do a reconnaissance of the area. In this particular case he sought to find out who were the adjoining owners and to find out if there were any parties in occupation of the land. He did not find anyone in occupation. While his survey was going on Mrs Philip Canjoe claimed ownership. He noticed no cultivation or habitation or dwelling of any sort. He did see any huts. Mrs Canjoe said the estate belonged to her family.

He told her that he can examine her claim if she gave him documentation to support the claim. She said she would seek it out and let him have it. She never brought any documentation. He examined the registry to confirm whether such document existed. He never found such a document. He found nothing for that family in relation to the estate. He observed on the ground that the land was

full of bush. It was an unfertile estate without any cultivation except on the south west corner across the road where there were a few coconut trees. And then he was shown a topographical survey of the government of St. Lucia in 1983, and he said, this is a topographical survey designed to show road, ravine, coastlines plantations and structures. A survey of this kind is able to identify cultivation and this survey does not show cultivated areas on this land. No structure is shown on Mandelie Estate. The map shows scrub and scattered trees and mangrove. In local parlance it shows a Ti-bom meaning scrubland. The nearest structure shown on this map is at Pascal far from Mandelie.

Mr. Monplaisir has no interest in this land and his role is that of an expert interpreting the maps and so on, and it shows clearly, and I accept that when he went there to do his surveys in 68 and 69 there was nothing there by way of cultivation or occupation of any person called Bernards.

Joseph Fosche Modeste

He went there in 1970 and he said the whole area was covered with trees and scrubs except around the south western corner where there was a small plantation of banana and coconut trees. It appeared more or less abandoned. It was not very deep. It was about 150 ft. along the road and 200 ft. deep. There were no shed, or houses. When he was surveying no one came to him. He did not notice any sign of Nomadic cultivation.

Robert Devaux

He himself claims no ownership or any interest in this land. He says he is interested in the cultural and archaeological heritage of the country. He said he went there around 79 to look for old evidence of settlement by the ancient owners of the land such as the Caribs and Arawaks. He said he did not believe that he found any evidence of cultivation except by the Anse Galet River between the road and the river, there was an abandoned plantation. Mandelie is virtually abandoned, that is, by 79 by which time Daniel had gone and Devaux had sold in 67. The area is extremely isolated and there are no houses in the vicinity.

Osborne Regis

He said he was the Assistant Commissioner of Police. He said Vincent Devaux has had problems with many persons over the years with Mandelie. In 1970 he caused the police to arrest some persons for cutting wood. This is an act of possession. There was just one portion as long as he could remember which was cultivated with coconuts and mangoes. That was in the area between Dennery and Praslin. There were quite a few mangoes and coconut trees. There were bananas in that area. He saw bananas there sometimes in the 80's. He could not recall the owner. He did not know Joseph Bernard. He did not know to whom Mandelie belongs. He had heard of the "terre famille Canjoe." It involves land at Mandelie all the way to Fond D'or. During the land adjudication he recalled the talk of claims being put forward by the Canjoe family to lands at Dennery. He heard of the name Sophie Bernard in connection with land in this entire area of Dennery village which is also an Administrative Parish.

That is of no help whatever to the Plaintiffs.

Francis Devaux said he is representing Guy. Guy last came to St. Lucia and visited estate in 1992, and he spoke of the sub-division and the payment of taxes by Guy. He said he went to an area where it was alleged that Lena Regis had a garden on June 27th this year accompanied by Modeste. He did not ask Lena to accompany him. He found no cultivation and this place was not at Mandelie.

Harold Charles

He said Charles Bernard went to England when he was about 18 years. He returned to St. Lucia about 1980. He knows Lena and she is a farmer like him. He knows she has a farm at Bordelay. He knows Mandelie Lands. He did not know that Lena had a garden on Mandelie. He had never seen her cultivating land at Mandelie. He knows Vincent Devaux and Bernard Martin. Vincent put Martin on the land. He knows Phillip Canjoe who was grand father to Charles. His mother and father used to work for Phillip Canjoe and his wife. He had never seen Phillip Canjoe or his wife planting Mandelie land. He knows the land from the time he was a boy. It is a Ti-bom. it is scrubland. Gerald was living on Mandelie when he was 10 years. He is 58 years old. Gerald lived at Mandelie a long time.

He was living in Dennery Village. His mother worked the land from Ma Phillip who paid them. Ma Phillip owned Bazil or St. Joseph Pillet he used to go and look for Cashew nuts, mangoes and meet his mother in Bazil. Bazil is about 2 miles from Mandelie. Bazil is very close to Dennery. He knew Gerald Daniel as he knew his father. Gerald came to church in Dennery. Gerald lived on the lower side of the road near the sea. Gerald had goats and pigs but not garden. He had a wooden

house. He lived there with his wife and children. He went on that part of Mandelie where Gerald lived.

When he returned from St. Croix, he said he had gone to St. Croix for two years and was deported and when he came back he went into banana planting from 1970 to 1990. He was renting from Charles Bernard's father. There was not money in bananas in 1990, so he stopped planting bananas. He was paying \$500 per annum to Andrew Bernard. No strangers came on land on Mandelie since 1990. He knows Sylvester Devaux he had never seen him on the land. He has seen Robert Devaux on this land below the road. He had never seen Francis Devaux on this land.

But here again this fellow Harold Charles is saying that this land Mandelie Andrew Bernard was claiming an interest in it, and Andrew purported to rent land to him and collected rent, not for Joseph or Jeremias but for himself. Another thing interesting in Harold Charles' evidence is that he identified where Ms. Phillip Canjoe's people had land. And there is in evidence documents put in by the Plaintiffs. There is a conveyance dated 18th January 1887 in evidence which witnesses the sale by settin Clauzel to Bernard Sophie and Christian his wife the legal property and the usufruct to their children, Belvee, Charles Bernadine, Tony Bernard and Lena Bernard. Now that Deed of Sale is of a portion of land dismembered from La Basquierre estate situated in the quarter of Dennery. There was a surveyor sent out by the French government sometime in the latter half of the 18th century by the name of Le Foret de la Tour and all land titles in St. Lucia from that time to this day start off with the location and Boundary from the survey done by this man. A copy of this survey of this area where Mandelie is located shows that there is an estate called

La Basquiere and adjoining it a parcel of land called Dalong de Bazil and that is approximately 2 miles away from Mandelie. Mandelie from the description of the surveyors was a part of the Estate which is noted on the map of the LeForet de La Tour as the land of Fil so that this man Charles seems to have gotten the description right.

Harold Charles knows the location of this land that was owned at one time by the Bernard family as evidenced by this Deed of Sale dated the 18th January 1887. I accept his evidence. He also disclosed that contrary to Charles Bernard's protestation, Charles had lived in England for 18 years.

Peter Ernest

He said that he visited Mandelie for the first time in 1978 or there about. He did not see any evidence of cultivation. The perception was that it was government land. People went there to cut Latinier to make broom. He knew Bernard Martin who used to go down to Mandelie. He used to burn Charcoal and later on he did some subsistence agriculture which is cassava, banana, Macomboo and coconut. This was sometime during the 1970's. He use to accompany Mr. Martin's son and did not notice any structures on the land.

That is the case for the defendant.

Harold said that he knows Edison Julian, Charles Bernard or Ici. Charles and he went to School together. He went to England when he was 18 years. He returned to St. Lucia in 1980. So you see I find that's a fact that when Charles Bernard told the Court "I have not live abroad at anytime," he was deliberately misleading the court. Both he and

Edison tailored and designed, their evidence to show some kind of interest of the Bernards' family in Mandelie. With this mass of evidence given mostly by disinterested persons, it seems me that any possession which Joseph or Jeremias might have had of a nature capable of leading to prescription was completely at an end by the latest when Daniel bought in 1954 and took possession. On that basis prescription had not yet taken place. It is my finding also that whatever possession the plaintiffs had came to an end sometime in 1951, and that came by natural interruption. It came to an end by the absence of continuity in possession sometime in 1951.

An interruption is not a defect in possession. It is a loss of possession as possession must be continuous in order to prescribe.

I have quoted liberally from the law of Quebec as the relevant provisions are the same as that of our Code.

The defect resulting from absence of continuity brings prescription to an end. In the premises I must find for the defendant with costs to be taxed less the cost of proving the title which the defendant denied in his defence. So I enter judgment for the defendant. Plaintiffs to pay the cost of action less the cost of proving the defendant's title such costs to be taxed.

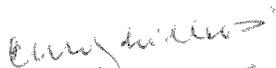
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