

IN THE COURT OF APPEAL OF BELIZE, A.D. 2007

CIVIL APPEAL NO. 7 OF 2007

BETWEEN

SANTIAGO CASTILLO LIMITED

Appellant

AND

WILLIAM QUINTO
JIMMY QUINTO

Respondents

BETWEEN

SANTIAGO CASTILLO LIMITED

Appellant

AND

THE REGISTRAR OF LANDS

Respondent

—

BEFORE:

The Hon. Mr. Justice Mottley	-	President
The Hon. Mr. Justice Sosa	-	Justice of Appeal
The Hon. Mr. Justice Morrison	-	Justice of Appeal

Mr. Wilfred Elrington SC for the appellant.
Mr. Fred Lumor SC for the respondents William and Jimmy Quinto.
Ms. Nicola Cho for the respondent, the Registrar of Titles.

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12, 19 June, 26 October 2007.

MORRISON JA

The background

1. This is an appeal from the judgment and order of Conteh CJ made on 13 February 2007 in consolidated actions commenced by Originating

Summons in claim number 74 of 2005 (William Quinto and Jimmy Quinto v Ann Williams (Administratrix of the Estate of Herbert Leopold Williams) and Santiago Castillo Ltd.) and claim number 96 of 2005 (In the matter of an application by the Registrar of Lands for an order for the rectification of the register in respect of Parcel 869, Block 16, Caribbean Shores/Belize Registration section). A third action between William and Jimmy Quinto as claimants and Santiago Castillo Ltd. and Medina Construction Ltd. as defendants (claim number 112 of 2005) is a claim for damages for trespass, which was ordered at case management to await the outcome of the first two actions.

2. Immediately prior to the commencement of this litigation, the appellant (“Santiago”) was registered as proprietor with title absolute pursuant to the provisions of the Registered Land Act of Parcel 869, Block 16, Caribbean Shores/Belize Registration Section (“Parcel 869”) having been so registered on 31 December 2004. The respondents William and Jimmy Quinto (“the Quintos”) and the Registrar of Lands (“The Registrar”), sought rectification of the Land Register pursuant to section 143 of the Registered Land Act to cancel the registration of Santiago as proprietor, as well as the previous registration of its immediate predecessor in title on the register. Ann Williams (Administratrix of the Estate of Herbert Leopold Williams) (“Miss Williams”).
3. Section 143 of the Registered Land Act provides as follows:

143.-(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable

consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

4. On 23 November 2005 the parties agreed the issues for trial before the Chief Justice as follows:

- (1) Whether the first registration of Ann Williams and the subsequent registration of Santiago Castillo Ltd. as the proprietor of Parcel 869 in Block 16 Caribbean Shores/Belize Registration Section was obtained at the very least by mistake.
- (2) Whether Santiago Castillo Ltd. was in possession or in receipt of the rents and profits of the disputed land; and whether Santiago Castillo Ltd. acquired title to the said parcel of land innocently for valuable consideration without notice; and whether Santiago Castillo Ltd. had knowledge of the mistake aforementioned and or substantially contributed to the said mistake by its act, omission, neglect or default.
- (3) Whether Santiago Castillo obtained Land Certificate No. 12100/2004 dated 31st December, 2004 in respect of Parcel 869 in Block 16 Caribbean Shores/Belize Registration Section by fraud, mistake or omission.

5. In his judgment, Conteh CJ summarized the issues for decision, perhaps somewhat more pointedly than the parties themselves had done, in the following terms:

“I can say from the outset that the issues agitated by these proceedings relate to the powers of the Court to order rectification of the register of land in the case of title registered under the provisions of the Registered Land Act – Chapter 194 of the Laws of Belize, Revised Edition 2000. Can the Court order a rectification of the land register so as to divest an already registered proprietor of

land? If so, when and in what circumstances can the Court so order?

Both the Registrar of Lands and the Quintos are asking this Court to order a rectification of the Land Register. But Mr. Wilfred Elrington SC, the learned attorney for Santiago Castillo Ltd. has strenuously argued that the Court cannot order a rectification of the register and that title of his client Santiago Castillo Ltd. as the registered proprietor of Parcel 869 is beyond reproach and the Court cannot order any rectification of the land register that may displace it as the registered proprietor of the said Parcel 869.”

6. Having considered the evidence adduced by the parties (all of whom, with the exception of Miss Williams, filed affidavits, in addition to which the Registrar herself was cross-examined on her affidavit), the learned Chief Justice concluded that in the circumstances the case for rectification had been made good and accordingly ordered as follows:
 1. That the Registrar of Lands cancel the First Registration of Ann Williams, as Administratrix of the Estate of Herbert Leopold Williams, as the registered proprietor of Parcel 869, Block 16 Caribbean Shores/Belize Registration Section;
 2. That the Registrar of Lands cancel the registration of Santiago Castillo Ltd. as current registered proprietor of the said Parcel 869, Block 16 Caribbean Shores/Belize Registration Section; and
 3. That the Registrar of Lands cancel the current register in respect of the said Parcel 869, Block 16 Caribbean Shores/Belize Registration Section.
 4. That the costs of these applications are awarded to the Registrar of Lands and Williams and Jimmy Quinto against Santiago Castillo Ltd. The costs to be agreed or taxed.

A chronology of the relevant events

7. Before going, as I must, to a review of the evidence in the matter, I think, in common with the learned Chief Justice, that a brief chronology of the relevant events may be helpful. Indeed, that which follows is based, albeit with some amendment, on the chronology very helpfully provided by Conteh CJ in his judgment:

- i) On 31 December 1973, William Quinto acquired title to land by First Certificate of title recorded in the Land Titles Register maintained pursuant to section 12(1) of the General Registry Act, Vol. 5 at Folio 1431.
- ii) On 12 February 1981, William Quinto transferred title to the land to himself and Jimmy Quinto by Transfer Certificate of title registered in the Land Titles Register Volume 14 at Folio 11.
- iii) On 20 October 1981, the area in which the land held under Transfer Certificate of Title in Volume 14 Folio 11 is located was declared a compulsory registration area under the Registered Land Act and the parcel of land in question became Parcel 869, Block 16 Caribbean Shores/Belize Registration Section.
- iv) On 19 June 1992, a Grant of Administration in the Estate of Herbert Leopold Williams who died on 17 June 1985 was made to Ann Elizabeth Williams. The only item of real property listed in the Inventory of the said Estate was described as an “Empty lot situate on the South side of Haulover Road, Belize City, being a portion of land formerly belonging to Louise Easy.”
- v) In July 1992, Miss Williams as Administratrix of the Estate of Herbert Leopold Williams applied for first registration as proprietor of Parcel 818, Block 16 Caribbean Shores/Belize Registration Section, as the land had become. In support of this application, she provided, among other documents evidencing her interest, an Indenture dated 17 August 1951 between Louise Easy (vendor) and Herbert Leopold Williams (purchaser) conveying a parcel of land described as “all that

piece or parcel of land situate on the Haulover Road measuring on the said Haulover Road one hundred feet or thereabouts and which said parcel of land extends from the Road to the Belize River and having a frontage of 100 feet or thereabouts ...”

- vi) On 6 October 2004, Miss Williams applied for First Registration of Parcel 869, Block 16 Caribbean Shores/Belize Registration Section as the administratrix of the Estate of Herbert Leopold Williams, using inter alia, the Grant of Administration in her favour of 1992, and the Indenture dated 17 August 1951 having obtained certified copies of these in 2004, that is, the same instruments she had used in 1992 to obtain First Registration for Parcel 818, Block 16 Caribbean Shores/Belize Registration Section in 1992 – see (v) above.
- vii) On 30 October 2004 and 31 October 2004 respectively, notices of intention to register Parcel 869 in favour of Miss Williams as Administratrix of the Estate of Herbert Leopold Williams, were published in the Belize Government Gazette and the Belize Times newspaper.
- viii) On 28 December 2004, the completion of First Registration of Miss Williams as proprietor of Parcel 869 was completed by the Registrar signing the register for the said parcel.
- ix) On 31 December 2004, the Quintos applied for First Registration of Parcel 869 as proprietors.
- x) On 3 January 2005, a Transfer of Land Instrument from Miss Williams to Santiago in respect of Parcel 869 was lodged at the Land Registry.
- xi) On 6 January 2005, Santiago’s registration as proprietor of Parcel 869 was completed, by the entry of the transfer in and the signing of the register.
- xii) On 14 January 2005, an application dated 31 December 2004, for the First Registration of the Quintos as proprietors of Parcel 869 was brought to the attention of the Registrar.
- xiii) On 24 January 2005, a Restriction was placed on the Register in respect of Parcel 869 by the Registrar.

- xiv) On 3 February 2005, the Quintos took out an Originating Summons against Miss Williams and Santiago seeking rectification of the Register in respect of Parcel 869 – Action No. 74 of 2005.
- xv) On 22 February 2005, the Registrar took out an Originating Summons seeking rectification of the Land Register in respect of Parcel 869 – Action No. 92 of 2005.
- xvi) On 2 March 2005, Action No. 112 of 2005 by Writ of Summons was commenced by the Quintos against Santiago and Medina Construction Ltd. for trespass on Parcel 869.
- xvii) 3 March 2005, an Interim Injunction was granted against Santiago and Medina Construction Ltd. in Action No. 112 of 2005.
- xviii) On 15 June 2005, Actions Nos. 74, 92 and 112 were consolidated.

8. From this chronology, the heart of the Quintos' complaint in this matter can immediately be seen: Parcel 869 in respect of which they held a Transfer Certificate of Title issued pursuant to the provisions of the General Registry Act came by the steps outlined to be registered pursuant to the provisions of the Registered Land Act as the property of Miss Williams and, ultimately, of Santiago. As Conteh CJ observed, "the recital of the chronology of events leading up to the first registration of Ann Williams as the proprietor of Parcel 869 and the subsequent registration of Santiago Castillo Ltd. together with the evidence in this case put the issues involved in some clear relief."

The evidence

9. While there was no evidence in the case from Miss Williams explaining or elucidating her conduct, Conteh CJ regarded as "an important concession" the statement made to the court by counsel on her behalf at the outset of the proceedings that Miss Williams "concedes that a mistake may have

occurred ... That a mistake may have occurred in the first issuance of the first title, however since that title is no longer in existence, our client did not see fit to file an affidavit... and will not contest the claim.” This concession was regarded by the Chief Justice as “grounded in the evidence in this case”, which was supportive of the conclusion “that, at the very least, the first registration of Ann Williams as the proprietor of Parcel 869 was by mistake.”

10. But as the learned Chief Justice fully appreciated, the other evidence in the case remained of significance to the kind of relief that might be available to the Quintos in the circumstances. The Quintos gave evidence that Parcel 869 adjoins the “Save-U” Supermarket, San Cas Plaza, owned by Santiago in Belize City and that they had as at 31 December 2004 been in continuous and uninterrupted possession of the said parcel for over 31 years. They had received no notice from the Registrar pursuant to sections 12(2), 12(3) and 13(2)(b) of the Registered Land Act and had not given their consent or agreement to the Registrar to give first registration of Parcel 869 to Miss Williams and thereafter title to Santiago. Some time in December 2004, they had engaged Mr. James Hyde, a Chartered Land Surveyor, to re-survey Parcel 869 and to apply on their behalf for first registration under the Registered Land Act. However, it was not until 28 January 2005 in a meeting with the Registrar that it was brought to their attention that a notice relating to Miss Williams’ application for first registration in her favour as Administratrix of the Estate of Herbert Leopold Williams had been published in the Belize Gazette dated 30 October 2004.
11. Further, the Quintos deposed, Santiago was well aware from long before 2004 that they were the owners of Parcel 869, as evidenced by the following:

- (i) Some time in 1990, Mrs. Addy Castillo and one of her daughters, acting on behalf of Santiago, had made an offer to Miss Connie Quinto (daughter of William and sister of Jimmy) to purchase Parcel 869 and the offer had been refused.
 - (ii) In 1992, the Quintos had agreed in writing to Santiago's request for permission to locate an electric transformer on Parcel 869, four feet from its boundary with the Save-U Supermarket.
 - (iii) Some 5 or 6 years prior to 2005, a representative of Santiago had approached the Quintos with a request "to rent a piece of Parcel 869 to build a boathouse but that request was declined due to our then plans for the property."
 - (iv) Sometime in June or July 2004, an enquiry had been made of Mr. Winston Smiling, a family friend of the Quintos, on behalf of Santiago, as to whether they were willing to sell Parcel 869 and, if so, at what price. The negotiations, through intermediaries on both sides, which followed this enquiry came to naught because the asking price of the Quintos was not acceptable to Santiago.
12. The Quintos also referred to various matters in support of their contention that "it is common knowledge that we own Parcel 869", among them the fact that they had erected and maintained for several years a billboard on the land advertising "Winston" cigarettes, that they had entered into leases with various tenants, who were still in physical occupation of Parcel 869, and that they had twice been approached on behalf of public utilities with a view to their facilitating development work in the vicinity of the land.

13. Finally, the Quintos maintained that Santiago “for many years knew of our ownership, possession and occupation of the land (also through tenants) since we are immediate neighbours”, that Santiago “obtained the issuance of the Land Certificate to Parcel 869 in its name through deliberate non disclosure of information very material to our title to the Registrar” and that Santiago “is not now and has never been in possession of Parcel 869 or in receipt of the rents and profits from the land.”
14. The only evidence filed on behalf of Santiago was in the form of an affidavit sworn to by Santiago Castillo Jr., its Managing Director. Mr. Castillo’s evidence was that on or about 30 December 2004 he was approached by Miss Williams, who was not known to him before. Miss Williams showed him “what appeared to be the original registered land certificate in respect of Parcel 869”, which he realized from the plan attached to the certificate abutted the land on which San Cas Plaza was constructed on its northern boundary. Mr. Castillo expressed to Miss Williams an interest in purchasing, but told her that he would prefer to conclude the transaction through her legal representative. Mr. Castillo further informed Miss Williams that the company’s lawyer was Mr. Wilfred Elrington of the law firm of Pitts & Elrington and suggested that if she did not have a lawyer she could consult Mr. Ellis Arnold or any other lawyer of her choice. Later that day Mr. Ellis Arnold contacted Mr. Castillo and informed him that he had been instructed to offer to sell the said land to the company, and he informed Mr. Arnold that Santiago was interested in purchasing the said land and that Mr. Elrington would contact him to work out the details.
15. Mr. Castillo thereupon contacted Mr. Elrington, informed him of the offer and of Santiago’s desire to purchase the land. He also informed Mr. Elrington that Santiago had had discussions in the past with an agent and members of the Quinto family regarding the sale and purchase of said

land but that at no time had the Quintos or their agent produced any title to the said land. Mr. Elrington's advice to Mr. Castillo was that before any agreement to purchase the land could be arrived at it was imperative that Mr. Arnold be requested to ascertain whether the Quintos, in fact, possessed any title to the said land. In addition Mr. Elrington advised him that a search had to be conducted at the Land Registry to ascertain whose name was entered on the register for Parcel 869 as the owner of said parcel of land.

16. On 31 December 2004 Mr. Elrington informed Mr. Castillo that his search at the Land Registry showed that the said land was registered in the name of Ann Williams (as administratrix of the estate of Herbert Leopold Williams) and that Mr. Arnold had informed him that his inquiries had revealed that the Quintos were out of the country. Mr. Castillo then informed Mr. Elrington that Mr. Howell Longsworth had presented him with a purported lease in respect of a small hamburger stand which is located on the south eastern extremity of said land and had informed him that Mr. Arnold had given him verbal notice to quit and deliver up said land. He also delivered the said document to Mr. Elrington. After reading the document Mr. Elrington advised Mr. Castillo that it did not impair the title of Miss Williams in any way. As a result of that information and advice Mr. Castillo informed Mr. Elrington that Santiago would accept the offer of sale of the land, and on the afternoon of the said 31 December 2004 Santiago purchased the land for \$130,000.00, the transfer instruments were duly completed and executed and the original registered land certificate was delivered to Mr. Elrington.
17. The other evidence in the case came from the Registrar at the material time, Mrs. Enid Welch, who had in fact retired by the time the matter was tried. The material parts of her affidavit merit extensive quotation:

- “2. On the 6th day of October 2004, an application for first registration of Parcel 869, Block 16, Caribbean Shores/Belize Registration Section made by Ann Williams as the administratrix of the estate of Herbert Leopold Williams was lodged in the Land Registry. Copies of three deeds of conveyance along with a copy of a Grant of Administration for the estate of Herbert Leopold Williams, were lodged in support of the said application for first registration of Parcel 869.
3. When an application for first registration is lodged at the Land Registry, if the parcel number is not already identified by the applicant for first registration an identification of the parcel number is made by an officer of the Land Registry. When the applicant has already identified the parcel number, or as the case may be, once the officer has identified the number, it is then ascertained from our parcels list and checking if a parcel or register already exists, whether or not the parcel in question is already registered. If the parcel is not already registered, the application is accepted and a notice of intention to register the parcel is published.
4. A person can make an objection to an application for first registration within one month from the date of publication of a notice of intention to register. After expiration of the one-month period, if no objection is received, preparation for registration of the applicant for first registration is begun. Due to staff constraints and other realities at the Land Registry, reliance is placed on the notice of intention to register and the public’s participation to bring to the attention of the Registrar of Land, any dubious application for first registration.
5. The said Parcel 869, Block 16, Caribbean Shores/Belize Registration Section is bordered on opposite sides of what historically was called the Haulover-Freetown Road now the Northern Highway, and the Haulover River or Creek. On the east, Parcel 869 is bordered by parcels 251, 252 and 253, collectively referred to as the San Cas Plaza. On the west, Parcel 869 is bordered by Parcel 868. Going up the Northern Highway, immediately following the said Parcel 868 are Parcels 818, 1689, 1690, 1691 and 816. The Caribbean Shores/Belize Registration Section was declared a compulsory registration section on 20th October 1981. When the application for first registration of Parcel 869 made by Ann Williams was lodged at the Land Registry, the said

Parcel number had already been identified by the applicant and all the other parcels referred to in this paragraph were already registered.

6. Upon confirming that Parcel 869 had not already been registered, in accordance with section 13(2)(a) of the Registered Land Act a notice of intention to register the said Parcel was published in the 30th October 2004 issue of the Belize Government Gazette and the 31st October issue of the Belize Times newspaper.
7. No objection to the application for first registration of Parcel 869 made by Ann Williams was received by the Land Registry within the one-month period from the date of publication of the notice of intention to register in the Gazette and Belize Times newspaper, and on 9th December 2004 the application was passed to Ms. Sandra Cayetano, Land Registry officer, for preparation for the registration of Ann Williams as the proprietor of Parcel 869.
8. Sometime in early December 2004, after the one-month objection period had expired, Mr. James Hyde, licenced surveyor, of J V Hyde & Co. Ltd. visited the Land Registry to request a copy of one of the deeds of conveyance referred to in paragraph 2 hereof, which I gave to him. Mr. Hyde did not indicate to me why he was interested in obtaining a copy of the conveyance. At the time of Mr. Hyde's visit, Parcel 869 was not yet registered in the name of Ann Williams as administratrix due to the said staff constraints at the Land Registry.
9. A few days after his visit to the Land Registry, Mr. Hyde returned and requested another copy of the deed of conveyance referred to in paragraphs 2 and 8 hereof, which I gave to him. Mr. Hyde explained to me that he misplaced the copy of the conveyance that I had given him previously. Again he did not indicate to me why he was interested in the conveyance but I gathered that he was conducting a research of the land described in the conveyance and suspected that he might be investigating something pertaining to the title to Parcel 869, Block 16, Caribbean Shores/Belize Registration Section. At the time of Mr. Hyde's second visit to the Land Registry, Parcel 869 was still not yet registered in the name of Ann Williams and because of my suspicion I retrieved from Ms. Sandra Cayetano, the parcel file for Parcel 869 with the application for first

registration made by Ann Williams and all other contents of the file.

10. I did not hear again from Mr. Hyde after his second visit to the Land Registry and so I decided to contact him at his place of business on Princess Margaret Drive, as the applicant for first registration of Parcel 869, Ann Williams, was constantly calling the Land Registry enquiring when her registration as proprietor of the Parcel would be completed and her land certificate ready. I called My Hyde's office between 20th and 22nd December 2004 and was greeted by a recorded message, which stated that the office was closed for a period, which I recall as two weeks.
11. After holding up the first registration of Parcel 869 for approximately two weeks from the 13th to the 24th of December 2004, I returned the parcel file for Parcel 869 and all its contents to the Land Registry officer to complete the preparation for registration, and on 28th December 2004 the registration of Ann Williams as proprietor of Parcel 869 was completed when I signed the register for the said Parcel.
12. On 3rd January 2005, Attorney-at-Law, Wilfred Elrington lodged a Transfer of Land instrument for registration. The transfer of land pertained to the same Parcel 869, Block 16, Caribbean Shores/Belize Registration Section and was between Ann Williams and Santiago Castillo Ltd.
13. The said transfer was registered on 6th January 2005, on which date the transfer was actually entered on the register and the register signed. Please see exhibit "EW4" referred to in paragraph 11 above, which contains the register for parcel 869. The said register shows that the date of the entry of the said transfer was 31st December 2004. At the time the transfer was lodged for registration on 3rd January, we had only finished entering in our Application Book, which is the book in which instruments lodged for registration are noted and given an instrument number, documents lodged for registration on or before 31st December 2004. The registration of the transfer of Parcel 869 to Santiago Castillo Limited would have had to wait until all documents lodged for registration prior to the transfer was already entered in the said Application Book. However, both Mr. Elrington and Attorney-at-Law, Ellis Arnold, who acted as Ann Williams' attorney in the transfer, requested that the registration of the transfer instrument be treated as urgent and normally, so

long as no other document pertaining to a parcel is pending for registration, a request that the registration of an instrument pertaining to that Parcel be processed faster than usual is facilitated.

14. On 14th January 2005 one of the officers at the Land Registry brought to me an application for first registration of the same Parcel 869, Block 16, Caribbean Shores/Belize Registration Section, which was lodged by Mr. James Hyde. The said application was made by Mr. Hyde as agent for William and Jimmy Quinto. In support of the application was a Transfer Certificate in the name of William and Jimmy Quinto and a sketch of a parcel of land. The said transfer certificate of title pertained to a piece of land situate on the "Haulover-Freetown Road".
15. While section 12 of the Registered Land Act provides that once a compulsory registration area is declared, the Registrar is to prepare a register in relation to every piece of land situated in the area the title to which is already registered under the General Registry Act and thereafter give notice to the landowner that his title has been converted, the provisions of section 12 is not put into practice due to staff constraints and other realities at the Land Registry. In actuality, the registration of lands previously registered under the General Registry Act depends upon the landowner's initiative to get the title converted.
16. As a result of the application for first registration of Parcel 869 made by Mr. Hyde, I immediately commenced what has turned out to be an extensive investigation. The initial step I took, which led me to believe Ann Williams was erroneously registered as the proprietor of Parcel 869 was a scaling of the Registry Index Map containing parcel 869. Please see exhibit "EW2" referred to in paragraph 5 above, which contains the portion of the Registry Index Map showing Parcel 869. Upon conducting the measurement I discovered that Parcel 869 measures approximately 300 feet on the Northern Highway border and the transfer certificate of the title and sketch mentioned in paragraph 13 above referred also to a road frontage of approximately 300 feet, while the conveyance lodged by Ann Williams in support of her application for first registration of Parcel 869 referred to a road frontage of approximately 100 feet only. Further the plan recorded in Survey Plan Book 5 Folio 33 and referred to

in the transfer certificate of title corresponds with the shape of Parcel 869 on the Registry Index Map. I concluded that Parcel 869 was the same land comprised in the said transfer certificate of title.

18. The Registrar's subsequent investigation brought her into contact with Miss Williams herself, the Quintos, representatives of Santiago and their attorney-at-law Mr. Wilfred Elrington SC. In the light of this extensive investigation, the Registrar decided to commence proceedings to rectify the register, on the basis of her conclusion that the first registration of Miss Williams as proprietor of Parcel 869 and the subsequent registration of Santiago by way of transfer from Miss Williams were obtained "at the very least, by mistake, as Parcel 869 ... actually belongs to" the Quintos. Further, the Registrar concluded, while Santiago may have given valuable consideration for the transfer, they were not in possession of or in receipt of the rents or profits from Parcel 869. And finally, even if they were in possession, Santiago was "aware that Parcel 869 belonged to the Quinto family and therefore had knowledge of the mistake or should have been put on guard as any prudent businessman would have been and investigate [sic] further Ann Williams ownership of Parcel 869, for which she obtained first registration only two months prior to the transfer to Santiago Castillo Ltd."
19. When cross-examined by Mr. Elrington SC, the Registrar confirmed that Miss Williams' registration as proprietor had in fact been cancelled on 31 December 2004 (pursuant to section 16 of the Registered Land Act) and that as at that date the registered proprietor of Parcel 869 was Santiago. The Registrar also confirmed that, in accordance with the "standard practice" of the Land Registry, the certificate issued to Miss Williams was destroyed upon cancellation of her registration as proprietor, in keeping with what counsel put to the Registrar as "my understanding that there should never be more than one title in existence to the same parcel."

The judgment of the Chief Justice

20. I hope I do no injustice to Conteh CJ's robust judgment by summarizing it as follows:

- (i) The power given to the Court to rectify the register by section 143(1) of the Registered Land Act is not to be exercised lightly and "is premised on the Court being satisfied that any registration, including a first registration, was obtained, made or omitted by fraud or mistake."
- (ii) Miss Williams' concession through her counsel at the outset of the hearing that a mistake may have occurred in the issuance of title to Parcel 869 to her in the first place was sufficient, together with the unchallenged evidence in the matter, to support the conclusion that the first registration of Miss Williams as proprietor was obtained at the very least by mistake.
- (iii) That mistake was "substantive and enduring" and "ineluctably coloured the subsequent registration of Santiago Castillo Ltd." as proprietor of Parcel 869, thereby rendering both the first and the subsequent entries in the Land Register subject to rectification by the court under section 143(1) of the Registered Land Act.
- (iv) The mistake in granting Miss Williams' application for first registration does not affect the Transfer Certificate of Title previously registered in favour of the Quintos under the General Registry Act pursuant to section 41 of the Law of Property Act.

- (v) Santiago does not qualify for the protection of section 143(2) of the Registered Land Act, in that it is not a proprietor in possession of or in receipt of rents and profits from Parcel 869, within the contemplation of the sub-section.
- (vi) Santiago on the evidence “had knowledge of the ownership or at least, a claim to ownership of Parcel 869 by the Quintos”, and the disregard of this knowledge by Santiago and its legal advisor facilitated and caused or substantially contributed to the mistake that resulted in the first registration of Miss Williams as proprietor of Parcel 869 and the subsequent registration of Santiago as proprietor thereof. The timing and sequence of the events must have given “a prudent and honest man some pause or concern” about Miss Williams’ first registration “or even her bona fides”.
- (vii) Miss Williams acted fraudulently in procuring her first registration in respect of Parcel 869 and, even if Santiago “did not actually procure the fraud by which Ann Williams got first registration in her favour in respect of Parcel 869, it did actually have knowledge of it.”

21. The evidence in the case described, the learned Chief Justice concluded, “a sorry tale of guile and opportunism“ on the part of Miss Williams and Santiago respectively. He accordingly gave judgment in the consolidated actions for the Quintos and the Registrar and made the orders set out at paragraph 6 above.

The appeal

22. Santiago filed in all thirteen grounds of appeal, attacking the Chief Justice's judgment in several detailed respects and praying that the registration of Santiago as the proprietor of Parcel 869 be restored. In support of the grounds of appeal, several of which were for the purpose of his submissions taken together, Mr. Elrington SC submitted that the Chief Justice fell into error in the following respects:

- 1) In his ruling that the Transfer Certificate of Title in favour of the Quintos continued to have any effect, since by the time Santiago came to be registered as proprietor on 6 January 2005, that certificate had become void and of no effect "by operation of law or statutory magic" since Miss Williams was registered as proprietor of Parcel 869 on 28 December 2004. In support of this submission, Mr. Elrington SC relied on the express provisions of the Registered Land Act demonstrating the intention of the legislature that that Act was intended to override the provisions of the Law of Property Act and the General Registry Act in respect of lands falling within the Registered Land Act.
- 2) In his ruling that the first registration in favour of Miss Williams "ineluctably coloured and affected the subsequent registration" of Santiago, since that subsequent registration was neither made nor coloured by mistake, Miss Williams' title not having been cancelled for mistake at any time before it was transferred to Santiago, a bona fide purchaser for value without notice.

- 3) In his ruling that Santiago had knowledge of the ownership or claim to ownership of Parcel 869 by the Quintos and that Santiago's disregard of this knowledge facilitated and caused or substantially contributed to the mistake that resulted in the first registration of Miss Williams and the subsequent registration of Santiago, since there was no evidence that Santiago had any prior knowledge of the existence of Miss Williams or her application for first registration and in any event section 41 of the Registered Land Act expressly relieved Santiago of an obligation to make any enquiries as to the antecedent circumstances of Parcel 869.
- 4) In his finding that Miss Williams acquired no title in 2004 which she could lawfully pass to Santiago only a short while later, since the uncontroverted evidence was that Miss Williams was registered as proprietor of Parcel 869 on 28 December 2004 and therefore could and indeed did pass good title to Santiago.
- 5) In his finding that this was "a just and equitable case" for rectification of the register, since none of the pre-conditions to rectification in section 143(1) of the Registered Land Act had been established in that there was no evidence whatsoever to show that the registration of Santiago as proprietor of Parcel 869 was obtained either by fraud or mistake.

23. Mr. Lumor SC for the Quintos submitted that the judgment of the Chief Justice ought not to be disturbed, on the following broad bases:

- 1) Sections 11 and 12 of the Registered Land Act had not been complied with and that the provisions of the General Registry Act and the Law of Property Act had not therefore ceased to have application to Parcel 869. (as to which, see further paragraphs 54 to 58 below).
 - 2) That the challenge to the Chief Justice's findings that the first registration of Miss Williams and the subsequent registration of Santiago were effected by a mistake of which Santiago had knowledge which contributed to the mistaken registration, were findings of fact which should not be disturbed on appeal.
 - 3) The Chief Justice's exercise of his discretion under section 143 to order rectification in appropriate circumstances ought not on well established principles to be interfered with unless it can be shown that the judge's discretion was informed by a wrong principle.
24. And finally, Miss Cho, in a very helpful submission on behalf of the Registrar, sought to support the decision of the Chief Justice, basically for the reasons which he gave. In support of her submissions, Miss Cho referred the Court to an extract from S. Rowton Simpson's "Land Law and Registration" which I found to be of particular value in respect of the rationale for a power of rectification in land registration legislation (see paragraph 39 below).

The statutory framework

25. Section 40(1) of the Law of Property Act, which was enacted in 1954, provides that, except in respect of national land, the legal title to all land or any interest in land shall be created either -
- (a) by registration of the certificate of title thereto under and in accordance with the General Registry Act; or
 - (b) by recording the title deed thereto under and in accordance with Part VI of the General Registry Act.
26. Section 41(1) of the Law of Property Act provides that, save again in respect of national land, the creation or transfer in law of an estate in fee simple absolute, a term of years absolute and any easement, right or privilege in or over any land equivalent to an estate in fee simple absolute, shall be effected -
- (i) in the case of registered land by the issue of a certificate of title under and in accordance with Part III of the General Registry Act; and
 - (ii) in the case of unregistered land by the recording of the title deed thereto under and in accordance with Part VI of the General Registry Act.
27. Section 41(2) sets out in some detail the effect of title to registered land duly issued in accordance with the General Registry Act:
- 41.-(2) The certificate of title to the legal estate, interest or right in or over any land shall confer upon the registered proprietor -

- (a) the right against all the world to peaceable possession of the land for the estate, interest or right conferred by the certificates;
 - (b) subject to the provisions of any statute and to any legal estates and interests, charges and encumbrances noted on the certificate of title, the absolute right to the use and enjoyment of the land against all the world for the estate, interest or right conferred by the certificate; and
 - (c) subject to the provisions of any statute and to any legal estates and interests, charges and encumbrances noted on the certificate of title, the absolute right of disposition of the land against all the world by will or dealing inter vivos.
28. Section 41(3) provides that a registered title to land issued in accordance with the General Registry Act shall, subject to estates, interests, charges and encumbrances noted on it, be “an absolute and indefeasible title”, and section 41(4) protects that title from challenge save on the grounds of fraud or a subsequent certificate of title acquired by long possession.
29. The General Registry Act, which was enacted a couple months after the Law of Property Act in 1954, complements the registration requirements of the latter Act by providing in Part III a detailed regime for Lands Title Registration. Provision is made for the establishment of a Land Registry (section 11), the creation and maintenance of a Land Titles Register (section 12) and the issue of certificates of title in the circumstances provided for in the Law of Property Act (section 13). Section 14 of the General Registry Act provides that a certificate of title “may be a First Certificate of title or a Transfer Certificate of title” (depending on whether it is issued upon a first registration of land under the Act or pursuant to a transfer of land effected under the Act).
30. As Lord Browne-Wilkinson observed in the judgment of the Judicial Committee of the Privy Council in British American Cattle Company v

Caribe Farm Industries Limited and The Belize Bank Limited

(1998) 3 BLR 468, 469, these provisions of the Law of Property Act and the General Registry Act taken together establish in Belize the Torrens system of land title whereby, in the case of registered land, title can only be created by registration of a certificate of title to the land under the General Registry Act (as provided by section 40(1)(a) of the Law of Property Act. I shall return to a consideration in greater detail of the true significance of this later in this judgment (see paragraphs 42 to 49 below), but it is of relevance to note at this point Lord Browne-Wilkinson's further comment (at page 473) that, despite differences in detail from jurisdiction to jurisdiction, "it is the common aim of all systems to ensure that someone dealing with the registered proprietor of title to the land in good faith and for value will obtain an absolute and indefeasible title, whether or not the title of the registered proprietor from whom he acquires was liable to be defeated by title paramount or some other cause." It is for this reason that under the Torrens system "a registered proprietor may obtain absolute title to land or an interest in land by registration even though there was no title in the person who granted him these rights" (page 471).

31. The provisions of the Law of Property Act and the General Registry Act, and their legal impact, provide the backdrop to the Registered Land Act, which was enacted on 10 December 1977. While the Law of Property Act/General Registry Act regime recognizes and provides for the co-existence throughout Belize of registered and unregistered land, the Registered Land Act empowers the responsible Minister of Government by Order made under section 4 to declare any area to be "a compulsory registration area", whereupon, save as otherwise provided by the Registered Land Act (but subject to section 38 of the National Lands Act), "no law, practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act" (section 3).

32. For the purposes of the Registered Land Act, there is established a separate registry (the Land Registry), a separate register (the Land Register) (section 5) and provision is made for the appointment of a Registrar of Lands responsible for administering the Land Registry (section 6(2)). It is expressly provided by section 11 that from the date of any order made by the Minister under section 4, “all dealings relating to any land in the compulsory registration area named in that Order shall be made in accordance with this Act, and no dealing made otherwise than in accordance with this Act shall have any validity or effect.”
33. The Registered Land Act therefore reflects, in my view, the intention of the legislature to further entrench the system of land registration in Belize by requiring adherence to a uniform code for dealings with all lands falling within a compulsory registration area.
34. The most important provision of the Registered Land Act with regard to the effect of registration under the Act is section 26, which provides as follows:
26. Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatever, but subject -
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 31 not to require noting on the register:

Provided that –

- (i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee;
- (ii) the registration of any person as the proprietor under this Act shall not confer on him any right to any minerals or any mineral oils unless the same are expressly referred to in the register.

35. Section 30 makes a proprietor who has acquired land, a lease or a charge by a transfer without valuable consideration “subject to any unregistered rights or interests subject to which the transferor held it”, as well as to the provisions of any bankruptcy laws and the winding up provisions of the Companies Act, “but except as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.” Accordingly, save in the respects specifically mentioned in this section, a transfer without valuable consideration (or, as it is described in the marginal note to the section, a “voluntary transfer”) also vests in the transferee absolute ownership of the parcel of land transferred, as provided for in section 26.

36. Section 31 sets out those over-riding interests to which, “unless the contrary is expressed in the register”, registered land is subject without being specifically noted on the register, as follows -

- (a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Act;
- (b) natural rights of light, air, water and support;
- (c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other law;
- (d) leases or agreements for leases for a term less than two years, and periodic tenancies within the meaning of section 2;

- (e) any unpaid moneys which, without reference to registration under this Act, are expressly declared by any law to be charged upon land;
- (f) rights acquired or in the process of being acquired by virtue of any law relating to limitation or prescription;
- (g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed;
- (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any law.

37. Section 40(1) provides that no land registered under the Act is capable of being disposed of otherwise than in accordance with the Act, while section 41 protects persons dealing or proposing to deal with a registered proprietor in the following terms:

41.-(1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required -

- (a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered or the manner in which any such consideration or part thereof was utilised;
- (b) to search any register kept under the General Registry Act.

(2) Where the proprietor of a land, lease or a charge is a trustee he shall, in dealing therewith, be deemed to be absolute proprietor thereof, and no disposition by such trustee to a bona fide purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

38. And then there is section 143 itself (set out in full at paragraph 3 above), which is the section pursuant to which the claims of both the Quintos and the Registrar were brought in this matter, which explicitly limits the jurisdiction of the court to rectify the register to cases in which it is satisfied that “any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.” The proof of either fraud or mistake is an essential pre-condition to the exercise of the jurisdiction conferred on the court by section 143(1), but even where this pre-condition has been satisfied, the position of a proprietor in possession of land acquired for valuable consideration is protected, unless he had knowledge of the fraud or mistake or cause or substantially contributed to it by “his act, neglect or default.”
39. Mr. Rowton Simpson observes that this provision for rectification in exceptional circumstances is a recognition of “the fact that since the register is administered by human beings, it is necessarily subject to human frailty.” It anticipates that in any such system, however perfect, “mistakes will be made; also that fraud will be committed.” (S. Rowton Simpson, *Land Law and Registration*, paragraph 10.3.6). But even this necessary power of rectification must be subject to the vital restriction that the security and certainty held out by proponents of systems of registration as their principal virtue require special protection for the bona fide purchaser for value in possession and without notice, which is what section 143(2) seeks to achieve (see Rowton Simpson, paragraph 10.3.9).
40. Two further points may be noted before leaving the actual text of the Registered Land Act. The first is that although the powers of rectification granted to the Registrar by section 142 and to the Court by section 143 appear under the rubric “Rectification and Indemnity”, there is in fact no provision in the Act for the giving of an indemnity or compensation to any innocent person who suffers loss either as a result of rectification or

because such rectification is not possible in the circumstances of a particular case because of the effect of registration, as is in fact a feature of many Torrens systems (see Simpson, paragraph 10.4.1 – 6). Whether this omission has any practical significance in the present context is considered briefly at paragraph 46 below.

41. The second point is perhaps of greater moment, which is that section 159 of the Registered Land Act, provides as follows:

“Without prejudice to anything done or established thereunder, the General Registry Act and the Law of Property Act shall, upon the first registration of any land under this Act, cease to apply to this land.”

42. These provisions have the effect, in my view, of deepening and strengthening the efficacy of registration in the Land Register as the sole source, subject only to the exceptions stated in the Act, of rights and obligations with respect to lands falling within its ambit. In other words, the several provisions of the Act were clearly designed to further the objective of indefeasibility of registered title which Lord Browne-Wilkinson had described in the context of the earlier Law of Property Act/General Registry Act regime as “the common aim” of all systems of registration. And this is so, in my view, notwithstanding the curious fact that the word “indefeasibility”, which appears in section 41(3) and (4) of the Law of Property Act is not repeated in the Registered Land Act, though the word “defeasible” is used in a related context in section 41(2). In the leading case of Frazer v Walker [1967] 1 All ER 649, the Judicial Committee observed that the expression “indefeasibility of title” did not appear in the comparable New Zealand legislation, although the combined effect of its provisions was held to achieve this result.

The authorities

43. Reference has already been made to the observations of the Privy Council in the **British American Cattle Company** case that under the Torrens system a registered proprietor may obtain absolute title to land by registration even though there was no title in the person who granted him those rights (see paragraph 30 above). In that case, Lord Browne-Wilkinson referred to two earlier decision of the Board in **Gibbs v Messer [1891] A.C. 248** and **Frazer v Walker**, decisions on appeal from the State of Victoria in Australia and New Zealand respectively. In the former case, the basic principle was stated as follows (at page 254):

“The main object of the Act, and the legislative scheme for the attainment of that object, appears to [their Lordships] to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author’s title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, in bona fide and for value, from a registered proprietor, and enters his deed or transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author’s title.”

44. In **Frazer v Walker**, the leading modern case, it was held that registration was effective to vest title in a registered proprietor notwithstanding that he acquired his interest under an instrument that was void. The argument that the instrument in question, which was an admittedly forged mortgage, could not be received for registration or validly registered and consequently that the mortgagee never became entitled to the benefit of registration, was rejected by the Board as being “destructive of the whole system of registration ... registration once effected must attract the

consequences which the Act attaches to registration whether that was regular or otherwise” (per Lord Wilberforce, at page 651).

45. A detailed examination of those sections of the New Zealand Land Transfer Act 1952 said to confer on the registered proprietor indefeasibility of title confirmed their Lordships in the view that “It is in fact the registration and not its antecedents which vests and divests title” (page 651). Indefeasibility was also described as a “conception [which] is central in the system of registration” (page 652).
46. On the question of compensation, provided for in the New Zealand legislature, their Lordships expressly declined to base their conclusions on indefeasibility on any argument relating to “the manner in which the compensation sections might be operated” (page 653), preferring to approach the issue of the effect of registration purely from the standpoint of the language used in the legislation.
47. Before leaving this aspect of the matter, brief reference might also be made to one of the earliest leading authorities, which was cited with approval in **Frazer v Walker**, (**Assets Co. Ltd. v Mere Roihi** [1905] AC 176) and to a very recent decision of the Privy Council delivered just a week after the completion of the argument in the instant case (**Nathalie Creque v Cecil Penn**, Privy Council Appeal No. 36 of 2005, judgment delivered 27 June 2007).
48. In **Assets Co. Ltd v Mere Roihi**, what Lord Wilberforce described in **Frazer v Walker** as “the uncertain ambit” of expressions such as “except in case of fraud” used in the New Zealand legislation as providing the only basis for defeating the title of the registered proprietor, was expressly limited to actual, (as distinct from constructive or equitable) fraud by the registered proprietor or his agent ([1905] AC 176, at page 210).

49. And finally in this very brief survey of the authorities, in the **Nathalie Creque** case, an appeal from the Court of Appeal of the British Virgin Islands, Lord Walker, in addition to re-affirming the authority of **Frazer v Walker**, quoted with obvious approval a subsequent statement of Barwick CJ in the Australian case of **Breskvar v Wall (1971) 126 CLR 376, 385** that the Torrens system was “not a system of registration of title but a system of title by registration.” Sir Garfield Barwick had himself been a member of the Board in **Frazer v Walker**. Lord Walker in the **Nathalie Creque** case also confirmed that the concept of indefeasibility does not between the possibility of a right of action for a remedy in personam against the original parties to the transaction (paragraph 14).

The issues on this appeal

50. The foundation of Conteh CJ’s judgment in this case was the “important concession” made on behalf of Miss Williams at the commencement of the trial that the first registration in her favour as proprietor of Parcel 869 may have been the result of a mistake. Taken together with the unchallenged evidence of the Registrar, in particular, the learned judge therefore concluded that he was satisfied that (“at the very least”), the first registration of Miss Williams was by mistake, a conclusion with which I fully agree. The undisputed evidence is that the very same material which had been supplied to the Registrar in support of Miss Williams’ application for first registration in respect of Parcel 818 was supplied in support of her subsequent application for first registration in respect of Parcel 8769. The Registrar’s detailed investigation of the matter as recounted by her in her affidavit amply demonstrates in my view the correctness of her conclusion that the land in Parcel 869 was the same land comprised in the Quintos’ Transfer Certificate of Title previously registered under the General Registry Act and that the first registration of Miss Williams as proprietor of

that parcel, based solely on material supporting her entitlement to be so registered in respect of Parcel 818, was a mistake.

51. The next step in the learned Chief Justice's reasoning was to ask whether this mistake "was carried over to and coloured the subsequent registration in favour of Santiago Castillo ..." (paragraph 14 of his judgment). It is in his finding that this mistake "ineluctably coloured and affected the subsequent registration of Santiago Castillo Ltd." (paragraph 31) that, in my respectful view, the Chief Justice plainly fell into error. In the first place, by virtue of section 41 of the Registered Land Act, Santiago was expressly relieved of any obligation either to enquire into the circumstances under which Miss Williams came to be registered as proprietor or "to search any register under the General Registry Act." As Lord Wilberforce pointed out in **Frazer v Walker** (at page 653) "In all systems of registered land it is usual and necessary to modify and indeed largely to negate the normal rules as to notice, constructive notice, or inquiry as to matters possibly affecting the title to the owner of the land."

52. But more fundamentally, as Mr. Elrington SC submitted, the effect of section 26 of the Registered Land Act was that the subsequent registration of Santiago as proprietor vested in it the absolute ownership of Parcel 869, irrespective of what had gone before it. As Lord Wilberforce observed in **Frazer v Walker** (at page 651) it is "the registration and not its antecedents which vests and divests title." There is, in my view, ample and compelling support for this conclusion in the language of section 26 itself, as well as in the various authorities referred to in paragraphs 43 to 49 above (in particular, the comment of Lord Browne-Wilkinson in the **British American Cattle Company** case that under the Torrens system "a registered proprietor may obtain absolute title to land or an interest in land by registration even though there was no title in the person who granted him these rights").

53. The concept of an “enduring mistake” embraced by the Chief Justice so as to render Santiago’s title vulnerable to attack on the basis of issues surrounding the title of Miss Williams would, in my view, if permitted to flourish, “be destructive of the whole system of registration” (to adopt, yet again, the words of Lord Wilberforce in **Frazer v Walker**, at page 651). Its practical effect would be to oblige a person proposing to deal with a registered proprietor to do precisely what section 41 provides that he is not required to do, that is, to seek to satisfy himself that that proprietor’s title is not tainted with some past mistake or other imperfection (and begs the question through how many stages would such a mistake “endure”? Would its life be limited to the immediate transferee from that proprietor – as Mr. Lumor SC somewhat diffidently suggested in argument – or would it survive so as to render vulnerable to challenge on the basis of it subsequent dealings beyond that?) The objectives of certainty and security of title which the Torrens system is explicitly designed to promote would plainly be subverted.
54. I have not lost sight of Mr. Lumor SC’s argument, to which a lot of time was devoted at the hearing of this appeal, based on the Land Registry’s admitted non-compliance with the provisions of section 12 of the Registered Land Act.
55. Section 12 of the Registered Land Act mandates the Registrar, on the declaration of a compulsory registration area under section 4, to compile a register of all lands already registered under the General Registry Act (section 12(1)), and thereafter to give notice to persons having an interest in any parcel of land registered under the General Registry Act that the particulars of the said registration have been transferred to the Land Register compiled under the Registered Land Act and thereupon the General Registry Act “shall cease to apply to such parcel of land and this Act shall apply thereto” (section 12(2)).

56. The Registrar's evidence was that the provisions of section 12 were "not put into practice due to staff constraints and other realities at the Land Registry. In actuality, the registration of lands previously registered under the General Registry Act depends upon the landowner's initiative to get the title converted" (paragraph 15 of the Registrar's affidavit – see paragraph 17 above).
57. Mr. Lumor SC accordingly argued that the provisions of section 12 not having been complied with, the first registration of Parcel 869 was not done in accordance with the provisions of section 12 of the Registered Land Act and therefore the purported first registration under that Act was invalid. It is only when the provisions of section 12 are complied with, he submitted, that the "statutory magic" of section 26 can have effect and the provisions of the General Registry Act cease to apply to Parcel 869, pursuant to section 159 of the Registered Land Act. This argument is fortified, Mr. Lumor further submitted, by section 11 of that Act, which prohibits "dealings" otherwise than in accordance with the Registered Land Act.
58. But even if the granting of the application by Miss Williams for first registration could be described as a "dealing" (which I tend to doubt, though the definition of "dealing", in section 2 of the Registered Land Act is somewhat unhelpful: "dealing includes disposition and transmission"), the non-compliance with the provisions of section 11 and 12 would still form a part only of the antecedents to registration and would not on the authorities, in my view, limit the effect of actual registration in any way. As a practical matter, it is not surprising that the Registrar, who had for many years granted applications for first registration in these circumstances, did not feel able to associate herself with Mr. Lumor's submissions on this point.

59. Which brings me to the actual application under section 143, which is what was in point of fact before the court. Conteh CJ was of the view that if Mr. Elrington SC's position as to the indefeasibility of Santiago's title was tenable, then section 143 would be redundant: "for as long as a person is registered as the proprietor of registered land, that would be the end of the story." In the Chief Justice's view, this "would clearly set to naught the powers of rectification expressly granted to the Court by section 143, and in this case, even the admitted mistake attendant on the first registration of Ann Williams as proprietor of Parcel 869 in 2004" (paragraph 21 of the judgment).
60. I respectfully disagree. There is in my view no inconsistency between the concept of indefeasibility in the sense contended for by Mr. Elrington SC, and sanctioned by the highest authority, and the power of rectification given to the court by section 143. Indeed, it is precisely because the primary objective of registration under the Registered Land Act is to secure the conclusiveness of the register that the power of rectification is so "carefully circumscribed" (to borrow again a phrase from Lord Wilberforce in **Frazer v Walker**, at page 652) and limited to cases in which "any registration, including a first registration, has been obtained, made or omitted by fraud or mistake." To this end, the words "any registration" must in my respectful view be given a restricted interpretation so as to limit their application to the actual entry in the register that it is sought to impugn, since to do otherwise would be to confer on the court a wide ranging power to rectify the register to correct a mistake, whenever made, in any case which it found to be "a proper, just and equitable case" to do so, as the Chief Justice found this case to be (paragraph 46 of his judgment). Such an extension of the court's powers under section 143 would, in my view, be equally destructive of the entire system of land registration. It is of interest to observe in this regard that Conteh CJ himself stated (at paragraph 27 of his judgment) that "an application for

rectification must satisfy the court that the registration in respect of which it is made was obtained, made or omitted by fraud or mistake” (emphasis supplied).

61. Against this background, I come then to the question whether the claims for rectification were in fact made good in this case. I have already expressed the view that the mistake, if mistake it was, which led to Miss Williams’ first registration as proprietor of Parcel 869 cannot, in the face of the provisions of section 26 and the entire scheme of the Registered Land Act, be regarded as having “endured” so as to “colour” the subsequent registration in favour of Santiago. While the learned Chief Justice in fact found that on the evidence “the registration in respect of Ann Williams and the subsequent registration of Santiago Castillo Ltd. was at least by mistake” (paragraph 29), it is clear that in his view his finding in respect of Miss Williams’ first registration flowed naturally (“ineluctably”) into Santiago’s registration and that he made no separate finding of mistake in respect of the latter. Indeed, no such finding could have in any event been made, since there was, as Mr. Elrington SC correctly submitted in my view, absolutely no evidence of any separate or independent mistake in respect of the registration of Santiago as proprietor. It follows in my view that this ground of rectification has not been made out.

62. Insofar as the question of fraud is concerned, it is the case that the Quintos (though not the Registrar), did ask in the Originating Summons dated 3 February 2005 for a specific declaration that Santiago had “obtained Land Certificate No. 12100/2004 dated the 31st day of December 2004” by fraud. However, the Chief Justice’s actual finding was that even if Santiago did not actually procure the fraud by which Miss Williams achieved the first registration in her favour, “Santiago Castillo Ltd. had knowledge of the fraud or, at the very least, the mistake by which the first registration of Ann Williams was procured, and certainly of the subsequent

registration in its favour in respect of Parcel 869” (paragraph 49). So that what Conteh CJ did was to make a finding that Miss Williams acted fraudulently in respect of her application for first registration (although no relief had been sought against her by the Quintos on this basis) and to find that Santiago had actual knowledge of it (paragraph 48).

63. I agree with Mr. Elrington SC’s submission that there was absolutely no evidence before the court that either Santiago or its legal advisors knew beforehand of the existence of Miss Williams or at any stage of the circumstances of her application for first registration as proprietor of Parcel 869.
64. However, the Quintos also relied on the unchallenged evidence in the case that Santiago had been aware for several years that they regarded and held out themselves to be owners of Parcel 869. Indeed, Santiago had itself on at least two occasions, the evidence disclosed, made unsuccessful overtures to the Quintos with a view to purchasing Parcel 869 from them. In the light of this evidence, Conteh CJ’s comment was that when Santiago was approached by Miss Williams on 30 December 2004 with an offer to sell parcel 869, “A more prudent and honest person would have ascertained the true position, especially in the light of the recent but inconclusive negotiations between its agent and that of the Quintos” (paragraph 48).
65. I have found this to be a troubling feature of the case, as the learned Chief Justice clearly did as well, given the long history of Santiago and others clearly having regarded Parcel 869 as the Quintos’ land. However, as the evidence of Mr. Castillo clearly demonstrates (see paragraphs 14 to 16 above), it cannot be said that no steps were taken to, as the Chief Justice put it, ascertain the true position. Having expressed an interest in purchasing in response to Miss Williams’ approach, Mr. Castillo’s

immediate reaction was to insist that the matter be dealt with through the parties' legal representatives (although it is another mildly unsatisfactory feature of the case that the name of Mr. Ellis Arnold, who in the end represented Miss Williams in the transaction, was first suggested to her by Mr. Castillo). Mr. Castillo specifically told his own attorney-at-law, Mr. Elrington SC, of the offer and told him that Santiago had in the past had discussions "with an agent and members of the Quinto family regarding the sale and purchaser of said land but that at no time had the Quintos or their agent produced any title to the said land." Mr. Elrington was clearly concerned to ascertain the position of the Quintos, which he sought to do by making a specific inquiry of Mr. Arnold and conducting a search of the Land Registry "to ascertain whose name was entered on the register for Parcel 869 as the owner of the said parcel of land." It is only after the results of this search and Mr. Elrington's advice were received by him, according to Mr. Castillo, that he felt able to instruct Mr. Elrington to accept Miss Williams' offer to sell Parcel 869.

66. In the light of this evidence, which was also unchallenged, I have found it impossible to conclude that Santiago was guilty of fraud. It is of some significance that Conteh CJ himself, despite his obviously critical comment on what a "more prudent and honest person" might have done in the circumstances, did not find it possible to make any finding of fraud against Santiago on this basis. On this aspect of the matter, I also bear in mind, as I must, that section 41(1) of the Registered Land Act expressly relieves a person in the position of Santiago in these circumstances from any obligation to make enquires into the state of the registered proprietor's title. Although the Chief Justice found that the entire transaction was pushed to completion with "an indecent haste", the Registrar does not appear to have found this unusual and in fact made the comment that "normally, so long as no other document pertaining to a Parcel is pending

for registration, a request that the registration of an instrument pertaining to that parcel be processed faster than usual is facilitated.”

67. One of the difficulties faced by the Chief Justice in the case was of course the fact that in a matter in which fraud was being alleged there were no particulars formulated or any cross examination that might have been of some assistance in arriving at a determination of where the truth of the matter lay. It might, for instance, have been useful to know in assessing the state of mind of Mr. Castillo when he agreed to purchase Parcel 869 from Miss Williams for \$130,000.00 what had been the asking price of the Quintos during the unsuccessful negotiations in mid July 2004. It might also have been of interest to know whether there was any particular reason other than coincidence for the Quintos to have decided to take steps to secure first registration in their favour to Parcel 869 in late 2004 and what report, if any, had been made to them by Mr. Hyde as to the result of his research at the Registry in December 2004 (unfortunately, by the date of the trial, Mr. Hyde himself was no longer alive). But the Chief Justice was left to do the best that he could do in the circumstances and I am satisfied that on the basis of the material that was before him the allegation of fraud against Santiago was not made out. Because of the way in which these proceedings were conducted, it is clear that the Chief Justice had no particular advantage over this court by having seen and heard witnesses, so I do not think that this court is in any event constrained in the way that Mr. Lumor SC submits on the basis of cases such as **Industrial Chemicals Co. (Jamaica) Ltd. v Ellis (1982) 35 WIR 303** and **Watt (or Thomas) v Thomas [1947] AC 484**.

Conclusion

68. In my view therefore, the case for rectification has not been made out, either on the ground of mistake or fraud, the pre-conditions to rectification

under section 143(1). Although this conclusion suffices to dispose of the matter, I am of the opinion that, even if I am wrong in this conclusion, rectification in this case would still not be available by virtue of the provisions of section 143(2) of the Registered Land Act. The again unchallenged evidence of Santiago is that between 2 January and 20 February 2005 it commenced clearing the land, erected a fence along its eastern boundary and installed an office and a warehouse on the land. In addition, between 20 February and 4 March 2005, its workers stockpiled on the land “tons of heavy duty rebars and reinforced concrete and steel pilons as well as tons of stones, sand and gravel and land fill to fill in the eroded western portion of the land.” In the light of this evidence, I would have found, if it were necessary, that Santiago had in fact entered into actual occupation of Parcel 869, as it asserted, and would by virtue of that fact be a proprietor who had acquired the land for valuable consideration and in possession of the land within the meaning of section 143(2). In the light of what I have already said in this judgment, I would not regard Santiago as a proprietor with knowledge of or who had caused or substantially contributed to the fraud or mistake in respect of which rectification was sought.

69. The absence from the Registered Land Act of any provision for compensation, despite what appears to have been an intention on the part of drafters of the Act, so to provide, has already been noted. Whether this omission was in the end deliberate or inadvertent, I would suggest that it is a matter that needs to be revisited as a matter of urgency. The facts of this case speak eloquently in my view to the importance of a scheme of compensation to persons in the position of the Quintos in circumstances such as these.

70. I would therefore allow the appeal, set aside the judgment and Orders of the Chief Justice and enter judgment for Santiago, with costs in this and in the court below, to be taxed if not agreed.

MORRISON JA

MOTTLEY P

71. I have read the draft judgment of Morrison JA with which I agree and have nothing further to add.

MOTTLEY P

SOSA JA

72. I have had the advantage of reading, in draft, the judgment of Morrison JA. For the reasons stated in it, I, too, would allow this appeal with costs to the appellant, here and in the court below, to be taxed, if not agreed.

SOSA JA