

**IN THE PITCAIRN ISLANDS  
SUPREME COURT**

**CA 1/2006**

**IN THE MATTER OF**                    the Land Courts Ordinance

**BETWEEN**                            **SIMON YOUNG**  
Appellant

**AND**                                    **STEVENS RAYMOND CHRISTIAN**  
First Respondent

**AND**                                    **DOBREY CHRISTIAN**  
Second Respondent

**AND**                                    **JAY CALVIN WARREN**  
Third Respondent

**Hearing:**                            22 and 23 June 2006

**Judgment:**                        23 June 2006

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**JUDGMENT OF BLACKIE CJ**

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[1] I commence this decision by recording that this is the first time that the Court has sat on Pitcairn Island as its Supreme Court to determine a civil issue. In other words, to sit in its civil jurisdiction.

[2] The proceeding before the Court involves an appeal by way of review of a decision of the Pitcairn Islands Lands Court dated 19 January 2006. Although the issue determined by the Lands Court on 19 January 2006 was comparatively narrow, the proceedings before this Court have become somewhat broader. Evidence has

been heard in relation to broader issues. It is the intention of this Court to determine the broader issues so that matters can be regarded as settled once and for all.

[3] I record that present during the course of the appeal hearing, which was conducted over two days, were the following. First of all, the appellant, Mr Young, together with his wife, Shirley. Secondly, the first named respondent, Mr Stevens Christian, together with his mother, Mrs Dobrey Christian. Thirdly, Mr Jay Warren in his capacity as the presiding member of the Pitcairn Islands Lands Court. I should also mention that in attendance before the Court was Mr Jofe Jenkins, a surveyor presently stationed on the Island to conduct survey work on behalf of the Governor and the Pitcairn Administration.

[4] Mr Young gave evidence and outlined his case. He said that in the year 2000 he and his wife Shirley came to Pitcairn Island with a view to becoming permanent residents, in other words to settle on the Island and become part of its permanent population. Initially they stayed with a number of Island residents, either in rental accommodation or as guests of those residents. That was their position for the first two years. However, in August the situation changed somewhat. It is recorded that during the course of a meal, I gather at the Youngs' then residence, Mrs Dobrey Christian indicated that she was prepared to gift a section of land known as Tatinanny to them upon which they could in due course build a permanent home.

[5] This land was to be freely given but was initially subject to any objection that might be made by other members of Mrs Dobrey Christian's family, whether direct members of the family or more distant members of the family. Both Mrs Brenda Christian and Mr Stevens Christian offered no objection to the proposed gifting of this particular piece of land.

[6] At that stage, that is in 2002, the agreement could only be proceeded with when the appellants had become permanent residents. The rules and the law of Pitcairn Island are that ownership of land, or title to land, can only be vested in permanent residents, and obviously that would not be the case as far as the appellant

and his wife were concerned until some time in 2004, that is after they had been resident on the Island for a period of four years.

[7] Acting on what was perceived to be a “gentlemen’s agreement”, and pending the eventual transfer of the land to them, the appellant and Mrs Young sought permission to construct a modest home. Application was made to the Island Council and permission was granted to build on the Tatinanny land. But it was at the appellant’s own risk. The Council pointed out that should the Youngs not succeed in obtaining permanent residence, then any building that they had done on the Island would be at their own risk, as far as its future was concerned.

[8] Acting in the spirit of the agreement, a number of Island people assisted the Youngs in the construction of a modest building and home. Indeed, Mr Stevens Christian was very much involved in this process, as it fell upon him to clear and level the land, as he pointed out to the Court this morning. Without that preliminary work being undertaken, there was no possibility of a building of any sort being constructed. I should add that at the same time as the building was under construction, a 5,000 litre water tank was installed.

[9] Matters progressed to the point that in May 2003 members of the Lands Court visited the site to determine boundary marks. As a result, in July 2003 a note was made in the Lands Court Register, sometimes called the Commission Register, recording “Shirley and Simon’s” as the land that was described, recording it and its measurements in a rough sketch that was drawn on the last page of the Court Minute book. A little later, Mr Stevens Christian attended at the site, together with the appellant, to point out the principal boundary marks.

[10] The next step in the required process for transferring ownership was for pro forma notification of transfer to be posted on the public notice board. It is unclear whether this process was actually followed. Indications are that it was not. Nevertheless, in May 2004 the Youngs made application to the Island Council for a first home loan in order that they could build a more substantial dwelling. It should be remembered that May 2004 was shortly before June 2004 when they expected to

be granted permanent residence. Normally such an application would only be considered if ownership of the property had been established, or at least a licence to embark upon a more extensive building programme.

[11] The application for the first home loan was approved by the Island Council in May 2004. As I said, it was anticipated that shortly thereafter the Youngs would receive their permanent residency status. Not only was it approved by the Council, but the loan was granted by those responsible for either granting loans or administering the granting of loans on the Island. As a result progress was made towards the establishment of the current buildings, as have been seen by the Court during the course of this hearing today.

[12] At or about the same time, the Youngs caused to be published in the *Miscellany* an item in which they expressed their appreciation to Mrs Dobrey Christian for her generosity in gifting the land. Indeed, the Court recognizes this act of generosity as far as Mrs Dobrey Christian is concerned, because the Youngs were new inhabitants of the Island and were not in any way related to Mrs Dobrey Christian or, for that matter, any other members of her family.

[13] I find on the facts before me that there is no formal record of the Tatinanny land as being owned by the appellant and his wife. Nevertheless, there is an acceptance of their rights in respect of that property by virtue of the following facts:

- [a] The attendance by members of the Lands Court in May 2003 to delineate the boundary.
- [b] The recording by the Lands Court in their Minutes of that boundary, as sketched in the diagram on the last page of the Minute Book.
- [c] The granting by the Island Council of permission to raise a first home loan.
- [d] The community as a whole supporting the construction of the buildings on the site, as they offered their labour to assist the Youngs

in that process. More particularly, as I've already recorded, Mr Stevens Christian's contribution as far as the levelling of the land and the site is concerned.

[e] The publication in the *Miscellany* by the Youngs of the item which I have already referred to, expressing their gratitude to Mrs Dobrey Christian.

[f] Finally, the acknowledgement by Mr Stevens Christian yesterday in the Court on behalf of himself and his mother that there is no issue as far as they are concerned as to the Youngs' right to occupy the property.

[14] Therefore, I find that the appellant and his wife do have an interest in the land that is an ongoing interest and but for the completion of formalities, they would by now have been vested with the legal ownership or the title to that land. There is, however, one impediment to the completion of this process and that is the issue critical to the process, the correct delineation of the boundary.

[15] Mrs Christian can only transfer, by gift or otherwise, property that she already owns, to the Youngs. She cannot transfer property which she does not own. Hence, the settlement of the boundary issue is, as I have said, critical to the Lands Court being able to complete the registration process.

[16] It was in order to determine the issue of the boundary that the Court reconvened at the Tatinanny site on the morning of 23 June 2006. I should mention that present at the site were the following people. First of all, obviously, the parties, Mr Young and his wife, together with Mr Stevens Christian and his mother Dobrey Christian. Also present was the president of the Lands Court, as it is now constituted, Mr Jay Warren. Further, present were members of the Lands Court as it was constituted in May 2003 when the original delineation of the boundaries was undertaken. In attendance were MDPs who undertook the task of cameramen and also recorders at the scene. Finally, and most importantly, in the Court's view, I record the presence of Mr Jofe Jenkins, the surveyor.

[17] During the course of the proceedings at the site I heard conflicting views as to where the boundary, which I will describe as the “inland” boundary as distinct from the “seaward” boundary, should be accurately located. The appellant’s diagram was based on what I perceive he believed to be the measurements that had been originally recorded by the Lands Court. These measurements, according to his calculations, covered a slightly larger area than it was accepted would be within the boundaries of the gift, that is the gift by Mrs Dobrey Christian.

[18] The competing claims were illustrated, and clearly illustrated, on a survey plan prepared for the purposes of this hearing by Mr Jenkins. At the site, each of the reference points upon which the parties based their plan was visited and discussed. Mr Stevens Christian explained the critical factor that as far as his mother was concerned, as I have already indicated, she could only gift land to which she had ownership. She could not, in other words, gift land, neither could the Youngs expect to obtain land, for which she had no right or power to transfer.

[19] Up until now the boundaries on Pitcairn Island have been relatively loosely defined. Simply indicated by trees or land items from which measurements can be taken. A new survey of the Island is at present being undertaken, and Mr Jenkins is instrumental in this survey. It may well be that historically a simple walk round a property pointing out boundary features would have been sufficient. But the problem with such a process is that it can easily be misunderstood or misidentified. The Court, in making a ruling on the boundary, must consider what it finds to be the best evidence of where the actual boundaries are and how they can be delineated on a survey plan.

[20] I find that the best evidence of the boundary is indeed that as promulgated by the Lands Court back in 2003. That delineation was comparatively informal. But it is now represented on a precisely drawn plan by Mr Jenkins. I find that the “inland boundary” of the property that was formerly owned by Mrs Dobrey Christian but is in the process of being transferred by gift to the Youngs, to be the line drawn between point B on the plan, indicated by a Norfolk Island pine seedling (almost dead) and point F on the plan, indicated by a coconut palm. That line is drawn in red

on the survey plan. For the purposes of settling this dispute, I conclude – and indeed I declare – that line to be the inland boundary of the section or portion of land gifted, or in the process of being gifted, to the Youngs.

[21] I appreciate that this ruling as to the boundary may disappoint, to some extent, the Youngs, but I accept the evidence of Mr Stevens Christian in relation to the coconut palms that would otherwise have been included in the subject property. These palms, as he points out, were not the property of his mother, and never were, but the property of a third party, his uncle Mr Clarence Christian. The appellants will know, as the Court knows, the value Pitcairn Islanders place on particular trees, whether they are trees that they grow on their own property or trees which they are permitted to grow on someone else's property. The Court respects that value.

[22] It will be apparent now to the appellants that the 5,000 litre water tank from which they draw their household supply – or at least I infer they draw their household supply – falls outside the boundary as now defined. However, I think they can take comfort from the fact that no person present during the Court session on the site expressed any concern at the existence of the water tank in that position. Indeed, it was pointed out by a member of the Lands Court that coconut trees take years to grow; water tanks, if circumstances require, can be comparatively easily moved. But there was no indication by anybody present, who I took to be most of the senior Island officials, of any need for the Youngs to move the water tank.

[23] Now that the boundary issue is determined, I could go on and direct the Lands Court to proceed to register the Youngs as the legal owners of the land within the boundary as it is now defined, recording that as a gift by Mrs Dobrey Christian. I am not, however, prepared to take that ultimate step at this stage as it is anticipated that shortly Part III of the Land Tenure Ordinance will come into effect. I do not wish to do anything which might impede the operation of the procedures to be undertaken under that Ordinance.

[24] Short of making that direction, I do however declare the appellant and his wife have the right, use and benefit of that land within the confines of the area now determined as if they were the lawful owners thereof. I leave it to future procedures as to how their ownership, in due course, becomes recorded, bearing in mind, as I have said, the effects that may follow from the implementation of Part III of the Land Tenure Ordinance.

[25] That concludes my formal decision. By way of summary, I have determined the boundaries. Secondly, I have determined, as far as I can at this stage, bearing in mind the new Ordinance, the rights of the Youngs in relation to the ownership of the land within the boundary as determined.

[26] What will happen now is that this ruling will be typed, as I said, and copies will be sent to the parties and others who may be interested in the result of this particular case. Attached to the order which will follow as a result of this ruling will be the plan as presented by Mr Jenkins, the surveyor, and that plan I direct be recorded by the Lands Court as the final, settled and fixed boundaries of this particular piece of land.

[27] I grant leave to the parties to seek further directions from this Court in the unlikely event that further issues should arise as to the formal vesting of this land in the names of Mr and Mrs Young.



C S Blackie  
**CHIEF JUSTICE**