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INSTITUTE OF ADVANCED
LEGAL STUDIES

No. 8 of 1954.

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In the Privy Council.

ON APPEAL FROM THE WEST INDIAN
COURT OF APPEAL

BETWEEN

GEORGE HANOMAN (Defendant) Appellant

AND

ARCHIBALD ROSE (Plaintiff) Respondent.

CASE FOR THE RESPONDENT

1.—This is an Appeal from a judgment of the West Indian Court of Appeal (Mathieu-Perez, C.J., Trinidad and Tobago; Jackson, C.J., Windward Islands and Leeward Islands; and Bell, C.J., British Guiana) p. 120 setting aside the judgment of the Supreme Court of British Guiana (Boland, Ag. C.J.) in favour of the now Appellant, and directing that the action and counterclaim be dismissed. p. 112

2.—The now Respondent was the Plaintiff in the action and Appellant in the West Indian Court of Appeal, and the now Appellant was—correspondingly—Defendant and Respondent. To avoid confusion, the parties are often called herein Defendant and Plaintiff respectively.

3.—The action was in form an action by the Plaintiff, claiming damages for trespass consisting in the seizing and impounding by the Defendant of certain cattle of the Plaintiff, with a counterclaim by the Defendant for alleged trespass by the Plaintiff's cattle on the Defendant's land. In substance the issue between the parties was whether the Plaintiff had a praedial servitude, by grant or prescription, over certain lands occupied by the Defendant, entitling him to depasture his cattle on the last-mentioned lands. (The law relating to immovable property in British Guiana is Roman-Dutch law.)

20 4.—The lands in question are parts of what is called "Plantation Susannah," being lands in the County of Berbice, British Guiana, lying between the Atlantic Ocean and the Grand Canal. The lands have not in

RECORD fact been a "plantation" for a century or more, but are cattle rearing and
 — grazing lands. Since 1862, they have been divided into an Eastern Half
 and Western Half; and the Western Half in turn has since been divided
 into a West Half and an East Half.

5.—The Plaintiff has for very many years owned the West Half of the
 Western Half, and the East Half of the Western Half has been owned by
 a number of people, called the "multiple proprietors," the Plaintiff himself
 owning a small part thereof.

p. 82, 6.—The Defendant, on the 25th June, 1947, agreed with the proprietors
 ll. 35-7 of the Eastern Half, Messrs. Bookers Demerara Sugar Estates, Ltd. (herein- 10
 after called the proprietors) to purchase the said Eastern Half from them.
 He paid the purchase price and was let into possession, but no "transport"
 (conveyance) of the property was ever made to him, the legal title to the
 land remaining, in consequence, in the vendors, the proprietors.

pp. 116-9 7.—The primary question arising on the appeal, it may be stated at
 once, is whether the West Indian Court of Appeal was right in deciding that
 the action and counterclaim could not be entertained by the Supreme Court
 of British Guiana in the absence of the proprietors.

pp. 1-2 8.—The action was begun by Writ of Summons dated the
 19th December, 1947, and was tried in 1951. The Plaintiff claimed in 20
 substance a declaration that he had a servitude to depasture his cattle on
 the Eastern Half of the Plantation, an injunction restraining the Defendant
 from impounding his cattle whilst grazing thereon, and damages. The
 Defendant, denying the Plaintiff's claim to any such servitude, claimed
 damages for trespass by the Plaintiff consisting in letting his cattle graze
 on the Eastern Half. He also in his turn claimed an injunction and
 "further relief."

9.—The Plaintiff-Respondent accepts that the action and counterclaim
 were misconceived, in the absence of the proprietors of the Eastern Half,
 since—according to the Roman-Dutch law—any judgment in favour of the 30
 Plaintiff determining the existence of the praedial servitude he claims
 would be valueless as not binding on the proprietors, and any relief on the
 counterclaim, declaring the Eastern Half to be free of servitudes, could not
 properly be given to the Defendant since he was not the proprietor.

p. 79, 10.—On the trial, counsel for the Plaintiff objected that the counter-
 ll. 21-29 claim could not be maintained as the Defendant was not the proprietor of
 the Eastern Half; but this objection was withdrawn on the assertion of
 pp. 147, 8 counsel for the Defendant that certain correspondence which had passed
 between the parties amounted to an agreement that that objection should
 not be taken.

The Plaintiff-Respondent submits that the correspondence has not the effect suggested ; but in any case such an agreement could not vest the Court with jurisdiction to give relief to which the presence of the proprietors as a party was essential.

11.—The learned trial judge, Boland, Ag. C.J., dealt with the case on the footing that, the objection being thus withdrawn, he was competent to give judgment on the merits.

10 He gave judgment dismissing the Plaintiff's claim, and on the counter-claim he awarded the Defendant \$200.00 as damages for trespass by the Plaintiff's cattle on the Eastern Half. He also gave to the Defendant a declaration that the Plaintiff had no servitude over the Eastern Half, and an injunction restraining the Plaintiff from causing or permitting his cattle to trespass thereon. p. 112

12.—In his reasons for judgment, the learned trial judge dealt elaborately with a number of difficult questions which arose on the arguments of the parties. It is not necessary in the present circumstances for the Plaintiff-Respondent to make submissions upon these questions. pp. 82-101

13.—The Plaintiff appealed from this judgment to the West Indian Court of Appeal on a number of grounds. pp. 113-5

20 14.—The West Indian Court of Appeal held that, in the absence of the proprietors, the proper parties were not before the Court, and that the action and counterclaim must accordingly be dismissed. pp. 116-9 ; p. 120

15.—In their reasons for judgment, the Court said :—

30 “ According to the law of this Colony, the term proprietor
“ connotes legal owner and does not include beneficial owner. A
“ transport of immovable property vests in the transferee full
“ and absolute title therein and it is not lawful for any person
“ in whom title of such property vests to transfer it except by
“ passing and executing a transport . . . The action in this case
“ proceeded by the consent of Counsel on both sides on the basis
“ that the transfer from Bookers Demerara Sugar Estates, Ltd.,
“ to the Defendant had been implemented by transport, and as if
“ the Defendant was, in fact and in law, the proprietor. The
“ action was based upon a complete misconception of the legal
“ position of the Defendant. The proceedings were started and
“ were continued upon that basis, from which the trial Judge was
“ led by both parties to arrive at an erroneous conclusion as to
“ their position. p. 118,
ll. 13-35

40 “ It is manifest therefore that if judgment had been given
“ on the claim for the Plaintiff it would have been of no value,
“ as the owner, i.e. the proprietor of the alleged servient tene-
“ ment, was not before the Court, and the judgment given in

RECORD

“favour of the Defendant on the Counter-Claim, in so far as it related to the Declaration and Injunction, is of no value as the Defendant was not at the time, and is not now, the owner of the servient tenement.

“This Court is bound to take notice of the fact that the proper party was not before the Court.”

16.—It was the fact, of course, that the causes of action for trespass of both the Plaintiff and the Defendant could be supported in English law, which governs torts in British Guiana, on mere possessory title, but the West Indian Court of Appeal—rightly, as the Plaintiff-Respondent submits 10—took the view that, the essence of both the action and the counterclaim being the question of servitude or no servitude, and the relief asked by both parties being related thereto and not appropriate to an action of trespass based on a possessory title, the action could still not be maintained in the absence of the proprietors.

p. 119,
ll. 16-23

On this point the West Indian Court of Appeal said :—

“We are not unmindful of the fact that the original cause of the action was the alleged trespass of the Plaintiff’s cattle on the tenement of the Defendant; that question was never pursued at the trial. Whether the entry of the cattle was or was 20 not a trespass is so inextricably interwoven, in the case as presented, with the existence or non-existence of the servitude claimed that we are of the opinion that until the question of servitude be considered with the proper parties before the court the judge should have declined to decide the question of trespass or no trespass.”

p. 120.

17.—The formal Order of the West Indian Court of Appeal ran :—

“It is ordered that this Appeal be dismissed and that (the Action) be adjudged dismissed and that the judgment of (Boland Ag. C.J.) on the counterclaim in the said action be 30 set aside.”

The Plaintiff-Respondent submits that the direction that the Appeal be dismissed is erroneous, and that the Appeal should have been directed to be—as it in reality was in substance—allowed.

18.—The Plaintiff-Respondent submits that the judgment of the West Indian Court of Appeal (subject, if necessary, to the correction of the error mentioned in paragraph 17, above) is correct, and ought to be affirmed. If, however, their Lordships should advise that the said judgment be reversed, the Plaintiff-Respondent submits that the matter should be remitted to the West Indian Court of Appeal to be decided upon the merits 40 by that Court.

If, however, their Lordships should think right themselves to hear argument upon the merits the Plaintiff-Respondent will submit that, for

various reasons, the judgment of Boland, Ag. C.J., was wrong, and that the Plaintiff-Respondent is entitled to the relief which he claimed in his Amended Statement of Claim.

19.—The Respondent therefore respectfully submits that the judgment of the West Indian Court of Appeal should be affirmed, and the appeal should be dismissed with costs, for the following amongst other

REASONS

1. BECAUSE the action and Counterclaim were not properly constituted, and fell to be dismissed.
- 10 2. BECAUSE, according to the Roman-Dutch law, the reasons given by the West Indian Court of Appeal were correct.
3. BECAUSE, alternatively, the Respondent was entitled to judgment in the action for the relief claimed.

D. N. PRITT.

S. N. BERNSTEIN.

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CASE FOR THE RESPONDENT

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