COURBAN & RAFFER - - - - *Appellants.*

1st December, 1924.

*v.*

GEORGE WASHINGTON TURNER - *Respondent.*

*Trespass on land—Acquisition of rightful possession of land after application therefor granted, but before execution of lease.*

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Case stated by Butler Lloyd, J., in the Circuit Court of the Protectorate of Sierra Leone.

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CASE STATED.

This was a claim for damages for trespass to land situated between the premises formerly occupied by Messrs. Mann & Cook, at Blama, and the Post Office, Blama, and for the delivery of certain goods alleged to have been found by Defendants on the land and detained by them. A further claim in respect of the demolition of certain buildings alleged to have been on the land at the time of the trespass was dropped by Plaintiff's solicitor at the trial.

It appeared from the evidence that Messrs. Mann & Cook, who have now been succeeded by Defendants, held a lease of the land on which their premises stood, but this lease was not produced in evidence. It was proved that Plaintiff, who was at the time employed by Messrs. Mann & Cook, obtained in 1921 a settlers' plot lease of the land in dispute, and he produced receipts relating to that year and 1922. After taking over Messrs. Mann & Cook's business, the Defendants appear to have been anxious to get hold of this land, and some time towards the end of 1922, in the absence of Plaintiff, and without his knowledge, they had a measurement carried out by District Commissioner Shaw, which they alleged showed that the fence which Defendant had erected encroached to some extent on the land held under Messrs. Mann & Cook's lease. It is clear, however, from the evidence, that, on a subsequent measurement being effected by District Commissioner Despicht, District Commissioner Shaw's measurements were found to be inaccurate.

Shortly after the measurement by Mr. Shaw, portions of Plaintiff's fence were pulled down by persons in Defendants' employment, though it is possible that in doing so they acted

under the chief's order rather than Defendants', and cattle belonging to Defendants were subsequently tied on the land in dispute.

On 11th December, 1922, the Defendants, on payment of £10 to the chief, obtained a settler's plot lease of the piece of land situated between their premises and the Post Office, and a receipt for this amount was produced by them. It was not denied that this land was the same, or substantially the same, as that in respect of which Plaintiff had paid the settler's fee for that year, and notice in writing was given to Plaintiff by the chief, at Defendants' request, on the 28th December, 1922, that the land now belonged to Defendants.

No explanation was given for the Defendants paying £10 for a plot of land in respect of which only £1 had been paid previously, and the natural conclusion was that they were acting in collusion with the chief in order to oust the Plaintiff from it.

An attempt was made by the Defence to show that at the time of the trespass Plaintiff had abandoned the land in dispute, but I was unable to find this contention proved.

The evidence on the claim in detinue was not satisfactory, and I was not satisfied that the Plaintiff had made out this part of the case, but I considered the trespass, as constituted by pulling down portions of the fence and tethering cattle on the land, to have been fully established. As to the value of the land, or even its extent, there was little or no evidence, but from the fact that Defendants were willing to pay as much as £10 for it, it would appear that it had, in fact, some appreciable value, and I therefore gave judgment for Plaintiff on the claim of trespass in the sum of £50 and costs.

(Sgd.) W. B. LLOYD,
*Judge.*

*T. Amado Taylor* for the Appellants.

*Ladepon Thomas* for the Respondent.

SAWREY-COOKSON, J.

This is an appeal by the Defendants from a judgment of the learned Circuit Judge awarding the sum of £50 as damages against them for trespass on the Plaintiff's land. It is clear from the case, as stated by the Circuit Judge, that the alleged trespass was constituted by the wrongful pulling down by the Defendants of the Plaintiff's fence and by the tethering of Defendants' cattle on the Plaintiff's land enclosed by such fence.

But Mr. Taylor, for the Defendants, has argued that this trespass was no act of the Defendants for which they can be held responsible, for the reason that they did only what they were entitled to do, as from the moment they applied for and obtained what may be known (for the purposes of this case) as a settler's plot lease of land, which, in the words of the learned Judge, " was the same or substantially the same as that in respect of which the Plaintiff had (also) paid the settler's fee " of £1.

The Defendants, it should be noted, paid £10 as such settler's fee to the same chief.

Accordingly, the position which Mr. Taylor maintained (as I understand him) is that unless it can be shown that any trespass occurred before such lease was obtained from the chief, the Defendants have been wrongly sued; in other words, any cause of action which the Plaintiff may have had was against the chief who conferred rightful possession of the land on the Defendants. It is further maintained for Defendants that the pulling down of a portion of the Plaintiff's fence was done by the chief's orders, given to the Defendants' servants; and I may say at once that the weight of evidence on this point leaves no doubt in my mind that such was the case. And if that be so, Mr. Taylor contends that still less should the Defendants have been found liable in damages. It is of interest to observe how the learned Judge states his view on this point in the following words:—" . . . . it is possible in doing so (*i.e.*, in pulling " down a portion of the Plaintiff's fence) they (the Defendants' " servants) acted under the chief's order rather than the " Defendants' "; and the learned Judge proceeds at once to add to those words " and cattle belonging to Defendants were " *subsequently* tied on the land in dispute." These words are important (more especially the word " subsequently," which I have underlined) as showing that in the learned Judge's view part of what constituted the trespass was not done until after the chief had intervened. It is not perhaps as clearly brought out in the evidence as it might be as to when exactly the Defendants were justified in considering that they acquired rightful possession of the land in dispute from the Chief, but I can find nothing in the evidence at all inconsistent with the view expressed by the Defendant Raffer, on page 9, of the notes of evidence, as follows:—" I considered the land was mine after " the fence was pulled down and used it as mine, as the chief " had given it to me." On the contrary, I find the following part of the evidence of one of Plaintiff's own witnesses (Gannon), on page 4 of the notes, viz., " . . . I have seen cows on Plaintiff's

" land after the chief handed over land and pulled down " Plaintiff's fence . . ." in support of that view. It is possible that an agreement by and between the Defendants and the chief for the lease had been made prior to the payment of the £10, but, however that may be, I think it highly probable that the chief had communicated to the Defendants that their application for the lease had been approved by him before the actual payment was made.

That being so, the Defendants were not precluded from entering upon rightful possession of the land until the actual completion of the lease, which would ordinarily come about upon the payment of the consideration price of £10, on the authority of Glenwood Lumber Company *v.* Phillips (1904, A.C., P.C., per Lord Davey, at p. 411), where I find that " the communication " to the Respondent that his application for a licence had been " granted would give him, as from that date, a good title . . . . " although the licence was not completed until a later date."

Mr. Thomas, for the Plaintiff, referred to a passage in Halsbury's Laws of England, volume 27, at p. 852, on the " nature of possession," when answering Mr. Taylor's argument that the Plaintiff was not in possession of the land at the time of the trespass, but I do not find anything more there by way of authority than that it would only be in the absence of any title in the Defendant that certain kind of evidence would be sufficient for the Plaintiff to maintain an action for trespass.

Mr. Thomas, however, very properly agreed that the real point was whether or not the chief had ordered or authorised the trespass, and he pointed to the chief's evidence, as being against this view, the value of which evidence in my clear view, has to be considerably discounted when it is borne in mind that he must find it very difficult to explain satisfactorily how he came to accept £10 for a settler's lease of the very land in respect of which a similar lease had been granted by him and was still running, the usual consideration price for which was £1.

I am of the opinion, therefore, that the Appellants rightly considered they had possession of the land in dispute from the only authority able to confer that right upon them, and that in doing what they did as constituting the alleged trespass, they did nothing for which an action could be maintained against them, and that this appeal must be allowed with costs.

McDONNELL, Acting C.J.

I concur.

BUTLER LLOYD, J.

I have had the opportunity of reading the judgment which has just been read by my learned brother Sawrey-Cookson, in which the learned President has concurred, and I find myself unable to agree with the conclusions they have come to.

In allowing the appeal, they rely on the principle, with which I agree, that the Defendant in the case could not be sued for anything done by him in pursuance of authority given him by the owner of the land—the chief.

It is in the application of this principle to the facts of the case that we differ.

They hold that such an authority was given by the chief at the time when the fence between Mann and Cook's property and the Plaintiff's land was broken down, after the former property had been measured by District Commissioner Shaw.

I do not think the evidence bears out this view.

In the first place, it is clear from the Defendant's own evidence, on page 7 of the notes of evidence, that District Commissioner Shaw's measurement was carried out at the instance of the Colonial Bank, and not of Defendant himself. The measurement took place some time early in November, 1922 (the chief says one month after the land was measured Defendant paid £10), and we know that the ten pounds was paid on 11th December. The Defendants' own evidence, " if the date on the receipt is 11/12/22, it is correct, it was the date the chief gave me land," is very clear, and this is confirmed in a striking way by the chief's letter to Plaintiff exhibit " E " dated 28th December, which informs the plaintiff that " the balance of the land on which you are building is now belonging to Mr. Raffer since on the 11th of this month."

I think, therefore, there was an interval between the measuring of the land and the consequent pulling down of the fence, and the payment of £10 on the 11th December, when the Defendant had no authority from the chief or anyone else to do more than rectify the boundary between the land comprised in Mann and Cook's lease and the Plaintiff's land; and I think that trespass by the Defendant during that period by tying cows on the land, and by allowing Plaintiff's land to remain unfenced, whereby it became a thoroughfare, to use Plaintiff's expression, was sufficiently shown.

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BUTLER LLOYD, J.

For these reasons I think the judgment should stand and the appeal be dismissed.

I should like to add one thing, and that is, that having seen the land in question since the hearing of the case, I should have been quite prepared to reduce the damages allowed to a much smaller sum. No evidence as to its extent or value was given at the trial, and in arriving at the damages I gave, I had only the Defendants' apparent eagerness to obtain the land to go on.