EDMUND ADOLPHUS COLLINGWOOD DAVIES - - - - - - - - *Appellant.*

1st December 1924.

v.

McNEIL SAMUEL BROWN - - - - *Respondent.*

Action for recovery of possession of land.

The facts of this case are sufficiently set out in the judgments.

Appeal from a judgment of Purcell, C.J., in the Supreme Court of the Colony of Sierra Leone.

Barlatt, R. Hebron and *Ladipon Thomas* for Appellant.

A. J. Shorunkeh-Sawyerr and *Nelson Williams* for the Respondent.

Barlatt for the Appellant cites:—

4 and 5 Vict., Ch. 20, sec. 12.

In *re* Williams Davies *v.* Williams, L.R., 34 Ch. D., p. 558.

In *re* Bonsor *v.* Smith's Contract, L.R., 34 Ch. D., p. 560 (Note).

In *re* Scott *v.* Alvarez Contract (1895), 1 Ch. D., p. 596, secs. 12 and 13 of Real Property Limitation Act, 1833.

Solling *v.* Broughton (1893), A.C., p. 556.

Sawyerr for the Respondent cites:—

Evans *v.* Merthyr Tydvil U.D.C. (1899), 1 Ch., p. 241.

Roscoe Nisi Prius, 18th Ed., pp. 45 and 66.

Rules of Supreme Court, Order 22, rule 21.

Lord St. Leonards *v.* Ashburner (1869), 2 L.T.R., p. 595.

Curzon *v.* Lomax, 5 East., p. 60.

Spargo *v.* Brown, 9 B. and C., p. 935.

Nelson Williams for the Respondent cites:—

Odgers on Pleading, 8th Ed., p. 230.

Intestate Estates Ordinance, 1887 (No. 8 of 1887),[1] section 11.

Carson Real Property Statutes, 11th Ed., pp. 167, 226.

Carter *v.* Barnard, 17 L.J. Ch., p. 278.

Barlatt in reply cites:—

Odgers' Common Law, p. 440.

White Book, Order 28, rule 12.

White Book, Order 58, rule 4.

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[1] Now Cap. 104, sec. 11, Vol. I, p. 729.

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BUTLER-LLOYD, J.

In this case I find myself in the unusual position of being compelled to give judgment on grounds which were not argued by either side, though they arise directly and inevitably from the deeds and plans which have been put in evidence.

The whole case was argued on the assumption that Plaintiff's boundary on the Southern side was a line extending from a point on Madonkia Creek on the East, to a point on Waterloo Creek on the West, and the bulk of the evidence related to certain irregularities in that line towards its Western end. The plans of Mr. Betts, Mr. Wilson and others are all based on this assumption, which apparently has for its basis the wording of the parcels and the plan in exhibit " A," the original Crown Grant of 1886, where the Southern boundary is said to be and shown as a proposed road from point " C " on Madonkia Creek to a point " A " on Waterloo Creek for a distance of 1,979 feet. This plan is a mere pen and ink sketch, and does not appear to have been the result of a proper survey, but its general outlines are very closely followed in every subsequent plan in which the whole of old Pah Lokkoh estate is shown.

Turning now to exhibit " B," the deed of partition between Williams and Cole, it will be seen that, both in the body of the deed and in the schedule, the Western boundary of Cole's portion is described as consisting in part only of Waterloo Creek and in part of a piece of land which in the second schedule is called " F " and is so marked in the plan, which is otherwise a copy of the plan in exhibit " A." The existence of such a piece of land to the West of Plaintiff's Western boundary and between it and Waterloo Creek is amply shown by the other plans produced, though in most of them this land is shown as being his property, and in this connection it is important to remember that most, if not all, of these plans were made from information given by persons on the spot and without reference to existing plans. If any further proof be needed it is amply afforded by the measurements in plan " G. 1." which show a total length of boundary between the Central and Western pillars only of no less than 3,483 feet, or very nearly twice the length of Plaintiff's Southern boundary according to both the parcels and the plan in the conveyance by Songo Davies to him (exhibit " D ").

Turning to the next document in Plaintiff's chain of title, the conveyance from the sisters Cole to Mr. Songo Davies, the whole of the old Pah Lokkoh estate is clearly shown, the parcels being the same as in the second schedule to exhibit " B," with

the exception of the reference to the strip of land " F," which is omitted, but that land is clearly shown in the plan as constituting the whole of the Western boundary up to the point " E." Unfortunately the dimensions, with the exception of the Northern boundary, are not shown in the plan, and still more unfortunately the portion to be sold is not coloured as stated in the text of the deed, but no one looking at it can doubt that the land intended to be conveyed by it was the portion marked " Southern portion of Pah Lokkoh, 133 acres," and bounded on the West by the dotted line running somewhat East of South from point " E."

The next document in Plaintiff's title is the conveyance of Songo Davies to himself (exhibit " D "), which it should be noted was executed within a few days of exhibit " C." It contains identical parcels and a plan which is obviously merely a copy of the central portion of the plan attached to exhibit " C," but with this difference that the words " Southern portion of Pah Lokkoh, 133 acres " are omitted, the dimensions are inserted and the whole area on both sides of the line running from point " E " in a South-Easterly direction is coloured. Mr. Songo Davies explains the existence of this line in exhibit " C " as being a trace of the old right of way, but, as I have already stated, it appears to have been in fact the Western boundary of the land conveyed to him by exhibit " C," and therefore also of the land conveyed by him to Plaintiff by exhibit " D." If confirmation of this were required I would point out the obvious disparity in size between the two halves of old Pah Lokkoh, if this line be not the boundary (see plan in exhibit " C "), and also that the Southern boundary stated to be 1,979 feet is enormously longer than the Northern one, stated to be 2,800 feet; and the impossibility of a boundary only 1,979 feet in length, reaching from Madonkia Creek to Waterloo Creek, has already been shown by reference to plan " G. 1 " above.

It therefore is abundantly clear from these documents, all of which, except exhibit " G. 1," were produced by Plaintiff himself, that he is not the owner of the portion of the land coloured red on exhibit " D " to the West of the internal dotted line and adjoining the site of the alleged encroachment and trespasses, and that therefore this action fails. I am fortunately not called upon to decide to whom that piece of land does belong, but from the wording of the Crown Grant to Brigars Williams of the 400 acres in 1889 " land . . . . . being on the South and West of and adjoining to " the land disposed of by the Crown Grant of 1886, it would certainly seem to me that this land may well come within the " 400 acres more or less " granted to Williams, and

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I have an idea that the reason that little attention has been paid to this part of the land may be found in the word " mangrove " alongside the Western boundary of old Pah Lokkoh in the plan attached to the first Crown Grant (exhibit "A"). If much of this land is in fact mangrove swamp it would account for neither party having taken much interest in it until it became valuable by reason of some kola trees having been planted on it.

Further, I am not called upon to decide the validity or otherwise of the title conveyed by the Misses Cole to Songo Davies by the Conveyance of 1914 (exhibit " C ").

Lastly, I feel bound to point out how regrettable it is that the parties have been led into this expensive litigation as a result of inadequate surveying and planning, for if either the Crown Grant of 1886 or that of 1889 had been properly surveyed it seems to me almost certain that this dispute would never have arisen. No less than four surveyors have been on the land since, but always with inadequate information, though even so it is hard to understand how they failed to discover the inconsistency of the claim put forward by the Plaintiff in this action with the documents of title he held, particularly as to the length of his Southern boundary. I will go further and say that I think it still more extraordinary that the parties themselves and their respective lawyers, who must have had ample opportunity of examining the documents on both sides, did not discover it in time to save the trouble and expense of two long hearings before the Supreme Court and this Court.

For the reasons given this appeal will be dismissed, and in the circumstances no order will be made as to costs.

McDONNELL, Acting C.J.

I concur, and I wish only to add that it is inexplicable to me how, not only the various surveyors, but also counsel on either side, have failed to see, or to draw attention to, what became apparent to my learned brothers and myself as soon as we studied the various plans.

The parcels, and the plan in exhibit " B," the partition deed, show clearly that at the West of the Western and Southern boundary of the land which is 1,979 feet in length, there is a plot marked " F," the curving Eastern boundary of which appears in most of the succeeding plans.

Yet the matter in dispute clearly refers to plot " F," and this, too, in spite of the fact that the assumption leads, as exhibit

"G. 1" (Betts' plan of 25th June, 1915) clearly shows, to the flagrant absurdity that a portion of the Southern boundary has been expanded from 1,979 to nearly 3,500 feet.

For these reasons I agree that each party must bear its own costs, both in this Court and the Court below.

SAWREY-COOKSON, J.

I entirely agree and have nothing to add but to express my somewhat indignant surprise that so much useless time and money should have been spent owing to the presumed failure to discover what should have been perfectly obvious to anyone—let alone surveyors and lawyers—taking the trouble to study the plans put in evidence.

The learned Chief Justice as trial Judge, and we of this Court, were entitled to assume that such a mistake as has been made could not have been made; and I have to regret that such assumption was not justified.

This is a very proper case in which the Court should make no order as to costs.