BRIGHT *v.* ROBERTS

COURT OF APPEAL (Ames, P., Bankole Jones, C.J. and Dove-Edwin, J.A.): October 26th, 1964
(Civil App. No. 5/64)

[1] **Documents—statutory declarations—admissibility as evidence—not admissible where oath, affirmation or affidavit required by law:** The effect of the Statutory Declarations Act, 1835 is not that a statutory declaration cannot be adduced in evidence at all, but that it cannot be used where the law, apart from the Act, requires an oath, affirmation or affidavit (page 159, lines 2–16).

[2] **Documents — statutory declarations — registration—not registrable as instrument within meaning of Registration of Instruments Act (cap. 256):** A statutory declaration as to the title to property is not registrable as an instrument within the meaning of the Registration of Instruments Act (*cap.* 256) and it is doubtful if it can be registered at all (page 158, lines 18–28).

[3] **Evidence—statutory declarations—not admissible where oath, affirmation or affidavit required by law:** See [1] above.

[4] **Statutes—interpretation—statutory interpretation provisions—"instrument"—Registration of Instruments Act (cap. 256) does not include statutory declaration:** See [2] above.

The respondent brought an action against the appellant in the Supreme Court.

The appellant sold the respondent a plot of land and a dispute arose over the precise boundaries. The court found in favour of the respondent. On appeal it was contended that the lower court had erred in not admitting as evidence a statutory declaration as to title tendered by the appellant. The respondent contended that it was not admissible as it was not an instrument within the meaning of the Registration of Instruments Act (*cap.* 256). The appellant maintained that the declaration was admissible under the Evidence (Documentary) Act (*cap.* 26).

Case referred to:

(1) *In re Hardwick, Boswell* v. *Hardwick,* [1907] W.N. 180, distinguished.

Statutes construed:

Evidence (Documentary) Act (Laws of Sierra Leone, 1960, *cap.* 26), s.3: "(1) In any civil proceedings where direct oral evidence of a fact would

be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible in evidence of that fact if the following conditions are satisfied, that is to say—

(i) if the maker of the statement either—

(a) had personal knowledge of the matters dealt with by the statement; . . . and

(ii) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit . . . or if he is beyond the limits of Sierra Leone . . . or if all reasonable efforts to find him have been made without success."

General Registration Act (Laws of Sierra Leone, 1960, *cap.* 255), s.15:
The relevant terms of this section are set out at page 158, lines 16–18.

Registration of Instruments Act (Laws of Sierra Leone, 1960, *cap.* 256), s.2:
The relevant terms of this section are set out at page 158, lines 19–20.

s.21: The relevant terms of this section are set out at page 158, lines 22–24.

Statutory Declarations Act, 1835 (5 & 6 Will. IV, c.62), s.7:
The relevant terms of this section are set out at page 159, lines 3–10.

Davies for the appellant;
E. L. Luke for the respondent.

AMES, P.:

Some of the grounds of appeal concerned the weight of evidence and the other ground raised a point of law. We heard the appellant as to the former, and both sides as to the latter. We then adjourned for consideration of the latter, leaving for decision whether we desired to hear the respondent on the grounds about weight of evidence. The question of law has been decided; and the court does not call upon the respondent as to the other grounds.

The point of law questioned the ruling of the learned trial judge that a statutory declaration, which the appellant tendered in evidence, was inadmissible. Argument on the point had been heard and the learned judge gave his reasons in a considered ruling. He mentioned that there were conflicting decisions of the Supreme Court as to the admissibility of statutory declarations in evidence in an action.

This declaration, dated September 3rd, 1960, was made, purportedly under the Statutory Declarations Act, 1835, by the appellant's predecessor in title and two other persons because, presumably, the predecessor had no title deeds to land which she then intended

to sell to the appellant. (She did sell it and conveyed it to him by a conveyance of the same date, September 3rd, 1960.) The three signatures are against seals and a surveyor's plan is attached to it, and it was sworn to before a justice of the peace. So it looks like a deed, and seems to be a mixture of a statutory declaration and an affidavit. Apparently the Registrar General thought it was a deed, and registered it as an instrument "in the books of statutory declarations."

Mr. Beccles Davies, for the appellant, relied on some provisions of the General Registration Act (*cap.* 255) and the Registration of Instruments Act (*cap.* 256) as making it admissible.

The former Act, which is supplementary to the latter, established (in s.5) a general registry and depository, not for documents in general, but for "all registers, instruments and records and copies thereof as are directed by any Act" to be registered or deposited there. Section 15 makes them receivable in evidence. But s.15 refers only to the documents mentioned in s.5, which are "directed by any Act," etc. Mr. Davies's "any Act" is *cap.* 256. He argued that the declaration is an instrument within that Act. There an "instrument" means (s.2) a "Crown grant, deed, contract, will or memorial." This declaration is none of those. (It mentions an intention to sell but it is not a contract for the sale of the land.) Section 21 enables a "power of Attorney, partnership deed, marriage settlement, or other legal instrument" to be registered. It is none of the first three. Is it an "other legal instrument"? In my opinion it is not an instrument at all. It effects nothing, and is instrumental to nothing. It is merely evidence of what is alleged in it to be the fact.

In my opinion it is doubtful if it was registrable at all, and if it is admissible in evidence it cannot be because of any provision of *caps.* 255 and/or 256.

Mr. Beccles Davies also relied on *In re Hardwick, Boswell* v. *Hardwick* (1) ([1907] W.N. at 180) which shows that "the practice of judges of the Chancery Division in respect of it [allowing evidence by statutory declaration] was not by any means uniform." That however is not helpful. This is not a Chancery matter and not a matter specifically mentioned in the Act of 1835.

Mr. Livesey Luke for the respondent, as well as relying on his argument that it is not an instrument, relied also on s.7 of the Statutory Declarations Act, 1835, and reliance on this section was the ground for the rejection of a statutory declaration in one of the two conflicting decisions already mentioned.

The marginal note of that section is: "Oaths in Courts of Justice, &c. still to be taken." The section, so far as is material, is:

> "Provided also, that nothing in this Act contained shall extend or apply to any oath, solemn affirmation or affidavit, which now is or hereafter may be made or taken or be required to be made or taken, in any judicial proceeding in any court of justice . . . but all such oaths, affirmations, and affidavits shall continue to be required, and to be administered, taken, and made, as well and in the same manner as if this Act had not been passed."

The act abolished the necessity for oaths in many matters where up to that time they had been required, and most of its sections deal one by one with such matters. I take this s.7 to mean, not that a statutory declaration cannot be used in a court, but that it cannot be used where the law, apart from the Act, requires an oath, etc.

I might here say that s.15 of the same Act, which was also mentioned, seems to me to refer to evidence as to certain matters taken in the jurisdiction of a court and transmitted to another court, and so not to be relevant.

There are occasions when the law allows evidence without an oath, etc. The Evidence (Documentary) Act (*cap.* 26) does so. I see no reason why this statutory declaration should not be able to qualify for admission, as a document within that Act—even though made when no law required it, or perhaps even enabled it, to be made. The relevant section is 3(1) and both counsel referred to it, arguing respectively that it did, and did not, apply.

Section 3(5) enables a court to look at the document tendered, when deciding on its admissibility. We were told that the court below did not do so, but we have. It is three declarations contained in one document.

Section 3(1) has certain conditions which must exist before a document can be admitted. They are in paras. (i)(a) and (ii) of the sub-section. Paragraph (i)(b) does not apply here. Paragraph (i)(a) requires the maker of the statement to have personal knowledge of the matters dealt with. The declarations show this to be so, and this condition is fulfilled. Condition (ii), which requires the maker of a statement to be called as a witness, was not complied with. None of the three were called. But this condition has a proviso setting out circumstances, in any one of which the maker of a statement need not be called. No evidence was called to prove

the existence of any one of them, perhaps because it was assumed that the statement must be admitted as an instrument from the general registry. Section 3(2) enables a court at any stage of the proceedings to make any order for the admission of a statement without calling a witness in certain circumstances. There was no attempt to show that any of the circumstances existed, and no order asked for, again perhaps because it was thought to be admissible as an instrument. This Act (*cap.* 26) was mentioned in the argument before the learned judge, but he did not say anything about it in his ruling.

So what should be done now? Should we send the case back to the court below? Should we admit the document here in this appeal which is by way of rehearing? In my opinion neither course would serve any useful purpose, because to my mind the document is of no probative value at all, and does not carry the case of the appellant forward at all.

The respondent's and appellant's lands adjoin and the dispute is over a narrow strip four feet wide along their adjoining sides which each claims to be his. It was not disputed that the appellant's predecessor, Mrs. Sawyerr, one of the three declarants, was in possession before him. The declaration says that she had been in possession many years (since 1888 as Mrs. Sawyerr said, and the other two declarants knew her to be there for 40 years). The dispute was as to the precise limit on the respondent's side of what she possessed and what she sold to the appellant. Mrs. Sawyerr's declaration described the limits of her land in surveyors' terms, with beacon numbers, bearings and distances, and by reference to the plan attached. The other two, a carpenter and a tailor, state her land to be as in the plan.

The declaration and conveyance to the appellant are both of the same date. Both were prepared by the same man, the appellant. The plan in the declaration is a sun print of the plan in the conveyance, drawn by V. G. T. Bickersteth, a licensed surveyor. So Mrs. Sawyerr's declaration is a statement of no more than what was contained in her conveyance. Those of the other two declarants did not point out the boundaries to the surveyor. It appears that the appellant did so (it is not categorically so stated). Mr. Sawyerr's niece was a witness, who said the same as the declarants. The surveyor, Bickersteth, was also a witness for the appellant. The respondent also had a surveyor, and also the Assistant Director of Lands and Surveys was a witness. The surveyors disagreed. There

were witnesses about the planting of trees along the boundary, about the putting in and pulling out of beacons and also other evidence as well. The learned judge visited the land with the parties and surveyors and measurements were taken, and at the end of everything he gave judgment for the respondent. I see no reason to disagree and I would dismiss this appeal.

Appeal dismissed

TIPSON *v.* TIPSON

COURT OF APPEAL (Ames, P., Dove-Edwin, J.A. and Marke, J.): October 30th, 1964
(Civil App. No. 11/64)

[1] **Family Law—divorce—adultery—evidence—discretion statement does not support decree in favour of opponent not alleging adultery:** Where a petition is not grounded on adultery and no case has been made out in support of it or of the respondent's cross-petition, the petition will not be granted on the respondent's admission of adultery in a discretion statement (page 163, lines 18–21).

[2] **Family Law—divorce—petition—adultery not alleged—petition not granted on admission in cross-petitioner's discretion statement:** See [1] above.

[3] **Family Law — divorce—petitioner's adultery—discretion of court—to be exercised only when case for divorce made out:** The court's discretion as regards adultery admitted by a party to divorce proceedings may only properly be exercised when the court is satisfied that the party has made out a case entitling him to a divorce (page 163, lines 21–25).

The respondent petitioned the Supreme Court for a decree of divorce from the appellant on grounds of cruelty and desertion. The appellant cross-petitioned on grounds of adultery and desertion and asked the court to exercise its discretion as to his own adultery.

The Supreme Court dismissed the allegations of cruelty and adultery; the question of desertion was not considered as counsel for each party conceded that the statutory period had not run. The respondent was granted a decree, however, upon the appellant's admission of adultery in his discretion statement.

On appeal the appellant contended that the Supreme Court was