

necessary before the demise would determine. There appears to be no answer to this and the question then arises — has the tribal authority re-entered? For it is under this proviso as to non-payment of rent that the respondent is claiming ejectment.

Now it is clear on the authorities that an action for possession by a lessor is the equivalent of a "re-entry," and Mr. Kempson for the respondent urged that this very action itself is sufficient as a re-entry. Mr. Wright, however, pointed out that these proceedings could not be brought by the respondent until the tenancy had been "duly determined." This is clearly laid down as indicated.

I can see no answer to Mr. Wright's contention from which it follows that the condition precedent to the jurisdiction of the District Commissioner to hear and determine the matter has not been fulfilled. The judgment of the court below is therefore reversed.

As the appeal has succeeded on a point not urged by the appellant in the court below, there will be no order as to costs in this court.

Appeal allowed.

IN THE MATTER OF THE PUBLIC LANDS ORDINANCE (CAP. 174)
and IN THE MATTER OF CERTAIN LANDS AT AND ABOUT THE
GRASSFIELDS, WELLINGTON and JACKSON

Supreme Court (Macquarrie, Ag. C.J.): April 12th, 1933

[1] Administrative Law — public officers — Curator of Intestate Estates — not agent of Crown but only a type of ordinary administrator — payment of commission and fees into general revenue not evidence of agency for Crown: The Curator of Intestate Estates is merely an administrator, whose rights and duties are governed by the laws applicable to administrators of intestate estates, and not a representative of the Government; and the fact that he takes a commission and fees on all money collected by him and pays them into the general revenue of the country is an incidental duty which does not clothe him with the rights and immunities of an agent of the Crown (page 345, lines 4—24).

[2] Civil Procedure — judgments and orders — effect — judgment not binding on person not party to proceedings: A judgment may affect, but does not bind, a person who is not a party to the proceedings (page 346, lines 29—31).

[3] Land Law — adverse possession — claim of Curator not in possession of intestate estate defeated by adverse possession throughout limitation

period: If the Curator of Intestate Estates does not take possession of an estate which vests in him by virtue of the Intestate Estates Ordinance (*cap.* 104), time runs against him in the same way as it does against an ordinary administrator, subject to any provisions in the Ordinance that may refer particularly to him; and any claim of his to possession is barred by the possession of an adverse claimant during the limitation period (page 345, line 31—page 346, line 6).

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- [4] **Land Use Planning — compulsory acquisition — compensation — no delay in payment where valid title shown — title valid if unchallenged:** Under the provisions of the Public Lands Ordinance (*cap.* 174), s. 17 payment of compensation for the compulsory acquisition of land need not be delayed where a valid title can be shown by the claimant, and for the purposes of the section a title to land is considered valid so long as it is not challenged; the fact that the section envisages the possibility of subsequent proceedings against the claimant by persons with a better claim to the title indicates that the section is making a distinction between a “valid” and a “good” title (page 344, lines 10—32).

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- [5] **Limitation of Actions — land — adverse possession — claim of Curator not in possession of intestate estate defeated by adverse possession throughout limitation period:** See [3] above.

- [6] **Limitation of Actions — succession — Curator of Intestate Estates — time runs against Curator as if ordinary administrator — claim defeated by adverse possession throughout limitation period:** See [3] above.

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- [7] **Succession — Curator of Intestate Estates — limitation of actions — time runs against Curator remaining out of possession — claim defeated by adverse possession throughout limitation period:** See [3] above.

- [8] **Succession — Curator of Intestate Estates — statutory powers — rights and duties over estates exercised in capacity of ordinary administrator, not agent of Crown:** See [1] above.

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- [9] **Succession — intestate succession — notification of intestate’s death — next of kin not required to notify Curator of Intestate Estates:** When a man dies intestate, it is not the duty of his next of kin to inform the Curator of Intestate Estates of his death (page 346, lines 22—26).

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The claimant sought the right to have paid to him without postponement compensation for land requisitioned by the Government.

The claimant was in possession of land that had been sold to him freehold by the daughter, now deceased, of the original owner who had died intestate 32 years earlier. This land was compulsorily acquired by the Government under the Public Lands Ordinance (*cap.* 174), its value was assessed and compensation offered to the claimant accordingly; but payment was to be postponed for a year in accordance with s. 17 of the Ordinance.

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5 The claimant brought the present application seeking payment without delay on the ground that the section included an exception to postponement where a "valid title" had been shown and that he had such a valid title. The Curator of Intestate Estates, who had not moved in the matter of the estate of the deceased, was not present at the hearing.

10 In support of his claim to a valid title the claimant produced a conveyance to him in fee simple of the land in question by the daughter who, it was contended, had acquired title to it by virtue of the period of limitation having long expired. The Attorney-General submitted that a "valid" title was not enough in the circumstances and that a "good" title was required which had not been shown. He contended that the original owner's daughter had been in possession only subject to the rights of the Curator of Intestate Estates in whom the land vested by virtue of the Intestate Estates Ordinance (*cap.* 104), s. 11 and who was thereby the lawful owner of the land: so that she had no right to pass title to the claimant. The Attorney-General further contended that time could not run against the Curator under the statutes of limitation, he being an agent of the Crown; and that, as the daughter had entered into possession of the land under the intestacy of her father, she could not convert that possession into one adverse to the Curator, and could not dispute his title. Lastly, he contended that she had been guilty of concealed fraud in not reporting the death of her father to the Curator and that this also vitiated her title and therefore the claimant's.

25 The court ordered the payment of the compensation assessed, without postponement.

Cases referred to:

- 30 (1) *Dalton v. Fitzgerald*, [1897] 2 Ch. 86; (1897), 76 L.T. 700, distinguished.
- (2) *Davies v. Brown* (1922), Supreme Court, unreported; on appeal (1912-24) L.R.S.L. 139.
- 35 (3) *In re J.T. Pratt (Dcd)*, 1920-36 ALR S.L. 250; (1931), 2 S.L. Law Rec. 9, followed.

Legislation construed:

40 Intestate Estates Ordinance (Laws of Sierra Leone, 1925, *cap.* 104), s. 7:
 "The Curator shall take, retain and receive the fees . . . and also a commission . . . on all sums of money which shall be collected"

The Curator shall . . . pay such fees and commission . . . into the general revenue of the Colony.”

s. 11: The relevant terms of this section are set out at page 343, line 41—page 344, line 5.

Public Lands Ordinance (Laws of Sierra Leone, 1925, *cap.* 174), s. 17:

“ . . . in all cases where compensation has been awarded (except where a valid title has been shown to the satisfaction of the Chief Justice), payment thereof shall be postponed until the said period of one year shall have elapsed from the date of the final decision . . . and such payment shall, as concerns the Colonial Government, operate as a complete discharge and acquittance of such compensation and of all claims in respect of such land or any interest therein, but shall not hinder any subsequent proceedings at the instance of any person having or alleging better right thereto as against the person to whom such payment may have been made.”

Evans, Ag. Sol.-Gen., for the Attorney-General;
Nelson-Williams for the claimant.

MACQUARRIE, Ag. C.J.:

This is in effect an application, which is opposed by the Attorney-General, by the claimant to have paid to him by the Government without postponement a sum representing the amount of compensation to be paid by the Government to the owner of land acquired by it, which has been assessed by me under s. 16(c) of the Public Lands Ordinance (*cap.* 174).

One effect of the provisions of s. 17 of that Ordinance is that payment of the compensation shall be postponed for a year “except where a valid title has been shown to the satisfaction of the Chief Justice,” in the words of the section. Mr. Nelson-Williams contends that a valid title has been shown, and has produced a conveyance to the claimant in fee simple of the land in question dated March 28th, 1930, from the late Mary Kezia Jonah Clarke, who was admittedly in possession of the land from the year 1898, it is contended as owner, and who therefore acquired title by virtue of the period of limitation having long expired. It is admitted that the said Mary Kezia Jonah Clark was a daughter of the previous owner who died intestate in 1898. The Solicitor-General says that she was in possession only subject to the rights of the Curator of Intestate Estates and held under him as administrator of the estate of her father. He refers to s. 11 of the Intestate Estates Ordinance (*cap.* 104) which reads as follows:

“Whenever any person shall hereafter die, being at the

time of his decease seised or possessed of, or otherwise entitled to, any land within the Colony, and shall not by his will have disposed of such land, then such land shall, instead of descending to his heir-at-law as heretofore, pass to, and become vested in, the Curator of Intestate Estates."

He argues that time cannot run against the Curator, that the Curator is in law the owner of the land, and that therefore Mary Clark could not give title to the claimant.

The facts are admitted and also that the Curator has not moved in the matter of the estate of the deceased. Now, has a valid title been shown by the claimant? To answer this question it is first necessary to decide what is the nature of the title which has to be shown.

Mr. Nelson-Williams contends that it is no more than a legal title, one recognized by law or founded on right; and that the title shown by the claimant is such a title. For the following reasons, I agree and do not think that a "good" title is required to be shown, but only one of a valid nature. In this case, no question of "disputed interest or title" has arisen, and all that s. 17 of the Public Lands Ordinance (*cap.* 174) requires is that the claimant in such case shall show a title such as would be held valid if unchallenged. The claimant has shown such a title although it may be open to suspicion. The effect of payment of the compensation without postponement is, as provided in the last seven lines of s. 17, to free the Government from all claims in respect of the acquisition of the land, while not hindering proceedings by any other person having or alleging a better right against the claimant who has received the payment. This last provision itself shows that it is contemplated that there may be other persons — who have not appeared — with a better right than the claimant, and goes to confirm my view that the section does not require the claimant to show a complete "good" title. This is sufficient to dispose of the application in favour of the claimant, it being admitted that payment is not to be postponed if a valid title is shown.

In case, however, it be held that the above opinion is erroneous and that it is necessary that a "good" title be shown, and in view of the very full argument addressed to me by the Solicitor-General to the effect that "good" title has not been shown, I propose to deal with the question whether such a title has or has not been shown. That argument begins with s. 11 of the Intestate Estates Ordinance (*cap.* 104) vesting in the Curator all land, not in terms

of an intestacy but all lands undisposed of in a will. The section, however, has always been construed as including the case of one dying intestate and I consider it here on that footing.

The argument proceeds that time does not run under the statutes of limitation against the Curator, he being an agent of the Crown. Assuming this to be so, is the Curator an "agent of the Crown?" The Ordinance governing the appointment and the relevant powers and duties of the Curator is the Intestate Estates Ordinance (*cap.* 104), s. 7 of which is particularly cited as placing upon the Curator the duty of taking a "commission" and fees on all monies collected by him, and paying them into general revenue. In my opinion, this quite incidental duty cannot clothe him with the rights and immunities of an "agent of the Crown" in his capacity as Curator. The property is not vested in him for the Government nor does he act on behalf of the Government so far as his dealings with estates of deceased persons are concerned; he has not the authority of the Government for his actions. He is no more than one placed by statute in the position of administrator of certain estates in certain circumstances, and in my opinion his rights and duties are governed by the law applicable to administrators of the estates of deceased persons, subject of course to the provisions of any ordinance which may refer particularly to him. In my opinion he is not an agent of the Government, *i.e.*, the Crown.

A judgment of Sir Gilbert Purcell, then Chief Justice of this Colony, in *Davies v. Brown* (2) has been referred to. The learned Chief Justice in that case characterized as a "fantastic theory" the suggestion that a man whilst acting as his father's caretaker obtained a possessory title under the statutes of limitation. I cannot find any opinion in that judgment that time would not run against the Curator. And Sir Maurice Tew, lately Chief Justice, in *In re J.T. Pratt (Dcd.)* (3), held that time did run against the Curator in circumstances similar to those in this case. I hold therefore that time will run against the Curator in the circumstances in which it will run against the administrator, subject always, as above, to any ordinance. And this view commends itself to me also when it is realised that the contrary view would or might well lead to a grievous unsettling of titles, the very evil at which the statutes of limitation are aimed.

What then is the position of the Curator in regard to this land? In my opinion, it is this: By s.11 of the Intestate Estates

Ordinance (*cap.* 104) the legal estate and interest in the land became vested in him in 1898. It was an estate or interest in possession but never taken into possession by him, and any claim which he or anyone claiming through him had to such possession has been long barred by the possession of the claimant's vendor from 1898 and existing through the claimant to the present.

But the Solicitor-General further argues that time cannot run in favour of the late Mary Clarke, as she entered into possession of the land under the intestacy of her father and she could not convert that possession into one adverse to the administrator, the Curator. The case of *Dalton v. Fitzgerald* (1), amongst others, is cited in support. That case decided that when A enters upon land under a deed, he and his privies are estopped, as against a remainderman, from disputing the validity of the deed, even though A acquires a good title by possession against the owner. The Solicitor-General contends that this principle applies here to prevent her and, therefore, the claimant, from disputing the Curator's title. I do not think that it does because, first, there is no evidence that she entered under any title given expressly or impliedly by the Curator; and secondly, that the Curator has made no claim and she has therefore not disputed his claim.

It was also contended that she had been guilty of a concealed fraud in not reporting the death of her father to the Curator and that this vitiated her title and therefore the claimant's. I cannot find that there was any duty upon her to report the death to the Curator; nor has there been any designed concealment of the circumstances, nor does anyone allege that he has been by any such fraud deprived of the land. This argument therefore fails.

I think I should draw attention to the fact that this judgment is given in the absence of the Curator, who is therefore not bound by it.

In my opinion, the title of the Curator or anyone claiming through him has long been barred by the possession of the claimant's vendor since 1898. The claimant has therefore shown a good title and there will be an order for payment of the compensation assessed, without postponement. No order as to costs.

Order accordingly.