

case but as it seems clear to me that the plaintiffs herein cannot be brought within the exceptions (1) and (2) they are not entitled to the injunction. I accordingly refuse to grant the injunction prayed for.

Declaration granted; injunction refused.

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ENGLAND, ENGLAND, SMART and COSIER v. OFFICIAL
ADMINISTRATOR, PRATT and BECKLEY

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SUPREME COURT (Cole, Ag. C.J.): January 5th, 1966
(Civil Case No. 520/59)

- [1] Civil Procedure—judgments and orders—further and better relief—recovery of possession may be ordered as further and better relief claimed in action for declaration of title: Under a claim for further and better relief in an action for a declaration of title to land against a defendant in possession, the court may make an order for the recovery of possession of the land in favour of the successful plaintiff (page 325, lines 32-35). 15 20
- [2] Civil Procedure—pleading—statement of claim—further and better relief—may support order for recovery of possession in action for declaration of title to land: See [1] above.
- [3] Estoppel—record—res judicata—declaration of title to land—trespass judgment in action where ownership not in controversy does not estop: A judgment in favour of the plaintiff in an action of trespass to land, in which the ownership of the land was neither in controversy nor open to controversy, does not support a defence of estoppel *per rem judicatam* to an action against him for a declaration of title to the land (page 325, lines 8-19). 25 30
- [4] Estoppel—record—res judicata—must be conclusive decision of same essential issues by competent court: In order to support a defence of *res judicata* it is necessary to show that the subject-matter in dispute is the same, *i.e.*, that everything that is in controversy in the second action as to the foundation of the claim for relief was also in controversy in the first action; that it came in question before a court of competent jurisdiction; and that the result was conclusive so as to bind every other court (page 324, line 36—page 325, line 7). 35
- [5] Evidence—burden of proof—title to land—plaintiff in declaratory action must prove boundaries: The plaintiff in an action for a declaration of title to land must prove satisfactorily the boundaries of the land claimed (page 322, lines 26-28). 40

[6] Evidence — burden of proof—title to land—plaintiff in declaratory action must succeed on strength of own title: The plaintiff in an action for a declaration of title to land must succeed on the strength of his own title and not on the weakness of the defendant's title (page 322, lines 23–26).

[7] Land Law—boundaries—plaintiff claiming declaration of title must prove boundaries: See [5] above.

[8] Land Law — title—declaratory action—claim for further and better relief—recovery of possession may be ordered: See [1] above.

[9] Land Law—title—declaratory action—evidence—burden of proof—plaintiff must succeed on strength of own title: See [6] above.

[10] Land Law—title—declaratory action—evidence—plaintiff must prove boundaries: See [5] above.

[11] Land Law—title—declaratory action—res judicata—trespass judgment in action where ownership not in controversy does not estop: See [3] above.

The plaintiffs brought an action in the Supreme Court against the defendants for a declaration of title to land and further or better relief.

The first defendant was administering the estate of a deceased intestate under an order of the court. The estate included an area of land in New England, Freetown, and the first defendant conveyed this to the second and third defendants who were entitled, beneficially and as personal representative respectively, to share the intestate's assets in accordance with another court order and in the events which had happened. The plaintiffs were the executors of a deceased testator whose estate included land in New England. They alleged that the first defendant had conveyed part of one piece of land forming part of the testator's estate and the whole of another piece to the second and third defendants and claimed a declaration of title to these pieces of land and further or better relief.

The defendants denied that the testator's estate included the land in question and alleged that the land formed part of the intestate's estate. They raised a defence of *res judicata* and pleaded as an estoppel the judgment in a successful action for trespass to land brought by the intestate in his lifetime against the second plaintiff. The ownership of the land on which the second plaintiff trespassed was neither decided nor in issue in that case. The second and third defendants also pleaded possession.

Doe-Smith for the plaintiffs.

The first defendant did not appear and was not represented.

E. L. Luke for the second and third defendants.

COLE, Ag. C.J.:

The plaintiffs in this action are the executors of the estate of Johannes Fortunatus England, deceased, who died at Freetown on February 2nd, 1950 leaving a will dated August 27th, 1947 of which the plaintiffs took probate out of this court on June 12th, 1950.

The first defendant is the administrator of the estate of J. O'Mope Palmer, deceased. The second and third defendants are respectively beneficiary of the estate of J. O'Mope Palmer, deceased, and executor of the estate of Clementina Cole, deceased.

The plaintiffs as executors of the estate of the said Johannes Fortunatus England, deceased, claim in this action:

"(i) A declaration of title to the pieces of land and hereditaments described in para. 5 of this statement of claim.

(ii) Any further and better relief."

Paragraph 5 of the amended statement of claim dated February 15th, 1960 states as follows:

"5. The first defendant with knowledge that this action was pending took out letters of administration and claimed as part of the estate of O'Mope Palmer, deceased, and conveyed to the second and third defendants the following:

(i) A strip of the land and hereditaments described in para. 3 of this statement of claim, which strip is bounded on the north by land now or lately in the possession or occupation of Mary Davies and R. M. Davies measuring 115 ft. (one hundred and fifteen feet) on the south by land formerly in the possession or occupation of O'Mope Palmer, deceased, measuring 115 ft. (one hundred and fifteen feet) on the east by a stream measuring 82.5 ft. (eighty-two point five feet) on the west by land formerly in the possession or occupation of O'Mope Palmer measuring 70 ft. (seventy feet) and

(ii) the whole of the piece or parcel of land and hereditaments as described in para. 4 of this statement of claim."

The land referred to in para. 3 of the amended statement of claim is described in these words:

"One parcel of the said lands and hereditaments is bounded

on the north by land now or lately in the occupation or possession of Mary Davies and R. M. Davies measuring 750 ft. (seven hundred and fifty feet) on the south by land formerly in the occupation or possession of O'Mope Palmer, deceased, and by Hillside Crescent measuring 750 ft. (seven hundred and fifty feet) on the east by land formerly in the possession or occupation of J. F. England, deceased, measuring 70 ft. (seventy feet) and on the west by land formerly in the occupation or possession of O'Mope Palmer deceased, measuring 70 ft. (seventy feet)."

Paragraph 4 of the amended statement of claim is as follows:

"Another parcel of the said lands and hereditaments is bounded on or towards the north by Hillside Crescent measuring 550 ft. (five hundred and fifty feet) on or towards the south by land now or formerly belonging to the War Department measuring 590 ft. (five hundred and ninety feet) on or towards the east by a stream measuring 320 ft. (three hundred and twenty feet) and on or towards the west by property now or formerly in the possession of C. S. Harding measuring 60 ft. (sixty feet)."

The first defendant by his defence filed and delivered on March 2nd, 1960 pleads that the land in question forms part of the estate of J. O'Mope Palmer, deceased, which by law became vested in him as administrator of the estate of J. O'Mope Palmer, deceased. He further pleads that by virtue of a judgment of the Supreme Court of Sierra Leone delivered on April 29th, 1954 in an action marked and numbered "C.C.137/52-1952 P. No. 8 between J. O'Mope Palmer as plaintiff and Johannes Fortunatus England (the ancestor of the plaintiff) as defendant," the plaintiffs were estopped by record from denying the title of the said J. O'Mope Palmer, deceased, and that the plaintiffs' claim was *res judicata*. He also denies the allegations in the plaintiffs' amended statement of claim that the said Johannes Fortunatus England, deceased, was at the time of his death seised of the lands described in para. 5 of the said amended statement of claim or that they ever formed part of his estate.

The second and third defendants by their defence filed and delivered on March 9th, 1965 repeat the aforementioned defences and add that "the second and third defendants are in possession of the said lands and hereditaments the subject-matter of this action."

The following facts are not in dispute in this action and I find them proved, namely:

(i) that Johannes Fortunatus England, deceased, died on February 2nd, 1950, seised of certain lands at New England in Freetown described in Exhibits A and B. Exhibit A is a deed of conveyance, dated July 14th, 1916, made between James Jonathan Davies and others of the one part and Johannes Fortunatus England (the deceased) of the other part and registered as No. 300/6879/27 at p. 132 of volume 117 of the Register of Conveyances, whereby the following piece of land was conveyed to the said Johannes Fortunatus England, namely:

"All that one acre of land being a portion of that piece or parcel of country land in the Second Maroon Allotments numbered sixty-five (65) in the Register of Maroon Allotments the same being bounded on the east by land belonging to a Mr. Wright on the west by land belonging to a Mr. Hughes on the north by land belonging to Davies and on the south by land belonging to Mary Thomas"—

which measuring to the measurements shown in the plan attached to this exhibit measured 750 ft. by 70 ft.

Exhibit B is a deed of conveyance dated June 27th, 1939, made between Peter Augustus Turner of the one part and Johannes Fortunatus England (the deceased) of the other part and registered as No. 31/17872/42 at p. 484 of volume 133 of the Register of Conveyances, whereby the following piece of land was conveyed to the said Johannes Fortunatus England, namely:

"All that piece or parcel of land situate at New England aforesaid measuring 4 (four) acres in all the said land being in portion of No. 50 of the Second Maroon Allotments of Freetown in the Register of Maroon Allotments for Freetown aforesaid the said piece or parcel of land being bounded on the north by property of C. S. Harding 60 ft. (sixty feet) on the south by a stream 320 ft. (three hundred and twenty feet) in the east by property of Mrs. Rose Palmer 550 ft. (five hundred and fifty feet) and on the west by War Department lands 590 ft. (five hundred and ninety feet)";

(ii) that these lands formed part of his estate which by virtue of a probate of his will dated August 27th, 1947 granted to the plaintiffs on June 12th, 1950 devolved on and became vested in the plaintiffs;

(iii) that Rose Palmer, the lawful widow and relict of Jonathan Edmeston Palmer, deceased, who died on or about December 26th, 1891, was granted letters of administration of her husband's estate

which included certain lands at New England Ville described in Schedule B to Exhibit L as follows:

“ALL that piece or parcel of land situate and being at New England Ville in Freetown in the Western Area of Sierra Leone a full description of which is as follows:

STARTING from a point K/19/62 on a magnetic bearing of 169 degrees 00 minutes for a distance of 80 ft. to point K/18/62; THENCE on a magnetic bearing of 151 degrees 30 minutes for a distance of 120 ft. to point K/17/62; THENCE on a magnetic bearing of 159 degrees 00 minutes for a distance of 220 ft. to point K/16/62; THENCE on a magnetic bearing of 192 degrees 15 minutes for a distance of 160 ft. to point K/15/62; THENCE on a magnetic bearing of 179 degrees 15 minutes for a distance of 240 ft. to point K/14/62; THENCE on a magnetic bearing of 215 degrees 00 minutes for a distance of 150 ft. to public beacon No. 4606; THENCE on a magnetic bearing of 104 degrees 30 minutes for a distance of 117 ft. to public beacon No. 7039; THENCE on a magnetic bearing of 94 degrees 30 minutes for a distance of 136.9 ft. to public beacon No. 7040; THENCE on a magnetic bearing of 82 degrees 45 minutes for a distance of 141.6 ft. to public beacon No. 6091; THENCE on a magnetic bearing of 94 degrees 45 minutes for a distance of 55.8 ft. to public beacon No. 6093; THENCE on a magnetic bearing of 86 degrees 08 minutes for a distance of 77.7 ft. to public beacon No. 7034; THENCE on a magnetic bearing of 137 degrees 15 minutes for a distance of 135 ft. to point K/124/162; THENCE on a magnetic bearing of 358 degrees 45 minutes for a distance of 300 ft. to point K/33/62; THENCE on the same magnetic bearing for a distance of 300 ft. to point K/22/62; THENCE on the same magnetic bearing for a distance of 365 ft. to point K/21/62; THENCE on a magnetic bearing of 276 degrees 00 minutes for a distance of 287 ft. to point K/20/62; THENCE on the same magnetic bearing for a distance of 345 ft. to point K/19/62 which is the starting point the whole covering an area of 11.394 acres as is delineated in the plan annexed to these presents and numbered LS.190/62 and therein coloured red and marked B1”;

(iv) that Rose Palmer aforesaid died in or about the year 1943 survived by her only son O'Mope Palmer who also died intestate on December 8th, 1957—Exhibit L refers;

(v) that by an order of the Supreme Court dated March 19th, 1960, the first defendant was amongst other things ordered to administer the estate of the said O'Mope Palmer, deceased—Exhibit L refers;

(vi) that by an order of the Supreme Court dated June 3rd, 1961, it was amongst other things ordered that the assets of the said O'Mope Palmer, deceased, were to devolve on the next-of-kin of Rose Palmer, deceased, who were living at the death of the intestate, that is, any brother or sister of the said Rose Palmer and any child or issue of any such brother or sister who were living at the death of O'Mope Palmer, deceased—Exhibit L refers;

(vii) that the next-of-kin aforesaid were the second defendant and Clementina Cole—Exhibit L refers;

(viii) that Clementina Cole died in 1961 testate and probate of her estate was granted to the third defendant;

(ix) that the first defendant by Exhibit L, *inter alia*, conveyed the piece of land in (iii) above to the second and third defendants "to hold the same unto and to the use of the said beneficiaries in fee simple";

(x) that Exhibit L is dated May 2nd, 1962 and was made after this action was instituted, the writ of summons being dated November 18th, 1959;

(xi) that on April 2nd, 1952 an action No. C.C.137/52 1952 P. No. 8 was instituted by J. O'Mope Palmer (now deceased) against Johannes England claiming damages for trespass, an injunction and special damages;

(xii) that the Johannes England referred to in (xi) above is in fact the second plaintiff;

(xiii) that the land the subject matter of that action is described as follows:—

"On the north by Valley Road 595 ft. on the south by country land 645 ft. on the west by country land 965 ft. and on the east by a stream 1,000 ft. more or less";

(xiv) that the court found that the second plaintiff trespassed on that land;

(xv) that in 1940 Government acquired certain lands at New England portions of which both Johannes Fortunatus England, deceased, and Rose Palmer, deceased, laid claims to;

(xvi) that for the purposes of this action the relevant portions were plot 32, an acreage of 0.18, claimed by Johannes Fortunatus England for which he received compensation from Government and

plot 29, an acreage of 0.63, claimed by Rose Palmer for which she received compensation from Government—Exhibits F and J refer;

(xvii) that Johannes Fortunatus England made no counter-claim to plot 29.

At this stage it is but proper for me to say that I find on the evidence that plot 29 falls on the eastern side of the stream shown on the plans Exhibits E and J and plot 32 falls on the western side of that stream.

(xviii) That there is only one stream in the area in question.

The main questions I have to decide are:

(1) Whether the plaintiffs have satisfactorily proved their title to the piece of land described in para. 3 of the amended statement of claim.

(2) If so, whether the whole or any part of that piece of land is comprised in the land described in and conveyed by Exhibit L.

(3) Whether the plaintiffs have satisfactorily proved their title to the piece of land described in para. 4 of the amended statement of claim.

(4) If so, whether the whole or any portion of that piece of land is comprised in the land described in and conveyed by Exhibit L.

(5) Whether the defence of *res judicata* relied upon by the defendants applies.

In dealing with the first and third questions I have to bear in mind, and I do so bear, that it is an essential principle of law that in a case of this nature the plaintiffs must succeed on the strength of their title and not on the weakness of the defendants' title. I also bear in mind that it is the duty of the plaintiffs to prove satisfactorily the boundaries of the respective lands claimed.

As to the first question, namely, whether the plaintiffs have satisfactorily proved their title to the piece of land described in para. 3 of the amended statement of claim, I am satisfied on the evidence that they have done so. It is true that the descriptions of the neighbours do not on the whole tally with those set out in the body of Exhibit A. This in my view is not of any great importance. I am satisfied that in extent and otherwise the land set out in para. 3 of the amended statement of claim is the land bought by Johannes Fortunatus England and conveyed to him by Exhibit A, which piece of land the said Johannes Fortunatus England died seised of and which devolved on the plaintiffs as part of his estate. Learned counsel for the second and third defendants in his final address pointed out that in the course of the action for trespass of which

Exhibit O is the record of proceedings it was clearly shown that the second plaintiff was entitled to lands only on the western side of the stream and not on the eastern side. It should not be overlooked that the area of trespass in that action was an island on the said stream just outside the southern boundary of the piece of land described in Exhibit A. 5

As regards the second question, I am not only satisfied on the evidence that the area described in para. 5(i) of the amended statement of claim is part of the land described in para. 3 of the amended statement of claim but I am also satisfied that it forms part of the area conveyed by the first defendant to the second and third defendants in Exhibit L. 10

I now come to the third question, namely, whether the plaintiffs have satisfactorily proved their title to the piece of land described in para. 4 of their amended statement of claim. The plaintiffs rely for their title to this piece of land on the probate they took out and also on Exhibit B, the deed of conveyance between Peter Augustus Turner and Johannes Fortunatus England dated June 27th, 1939. The piece of land conveyed by Exhibit B is therein described as follows: 15

“All that piece or parcel of land situate at New England aforesaid measuring 4 (four) acres in all the said land being in portion of No. 50 of the Second Maroon Allotments of Freetown in the Register of Maroon Allotments for Freetown aforesaid the said piece or parcel of land being bounded on the north by property of C. S. Harding 60 ft. (sixty feet) on the south by a stream 320 ft. (three hundred and twenty feet) on the east by property of Mrs. Rose Palmer 550 ft. (five hundred and fifty feet) and on the west by War Department lands 590 ft. (five hundred and ninety feet).” 20 25 30

The plan signed by a surveyor attached to Exhibit B supports this layout and measurements.

According to para. 4 of the amended statement of claim the relevant piece of land is described as follows: 35

“Another parcel of the said lands and hereditaments is bounded on or towards the north by Hillside Crescent measuring 550 ft. (five hundred and fifty feet) on or towards the south by land now or formerly belonging to the War Department measuring 590 ft. (five hundred and ninety feet) on or towards the east by a stream measuring 320 ft. (three hundred and twenty feet) 40

and on or towards the west by property now or formerly in the possession of C. S. Harding 60 ft. (sixty feet)."

Exhibit C, a plan showing the two pieces of land described in paras. 3 and 4 of the plaintiffs' amended statement of claim, was produced by one of plaintiffs' witnesses. The piece of land described in para. 4 of the amended statement of claim is shown as falling on the eastern side of the stream with the stream as its western boundary. That being the case, it falls within the land conveyed by the first defendant to the second and third defendants. Can it be said, however, that this piece of land described in para. 4 of the amended statement of claim is the same piece of land which was bought by and conveyed to Johannes Fortunatus England by Exhibit B, the document on which the plaintiffs rest their title? My answer is in the negative. The layout of this piece of land, as set out in Exhibit C, Exhibit H and also in para. 4 of the amended statement of claim, clearly contradicts the layout in Exhibit B and the plan attached thereto. No other title has been set up by the plaintiffs to this piece of land. Furthermore, although this piece of land was acquired by Johannes Fortunatus England in June 1939, yet when land on the site now shown on Exhibit C as Hillside Crescent was acquired by Government in 1940, during the lifetime of Johannes Fortunatus England, he made no claim for any compensation for that portion acquired on the eastern side of the stream and known as plot 29 nor did he counterclaim against the claim of Rose Palmer for compensation for that plot. In the circumstances I find on the evidence that the plaintiffs have not proved their title to the land described in para. 4 of the amended statement of claim and located in Exhibits C and H. This part of the plaintiffs' claim therefore fails.

In view of this finding the fourth question does not arise for consideration.

As regards the fifth question, this has to be considered in view of my answers to the first and second questions. On this point I would rest for support on 15 *Halsbury's Laws of England*, 3rd ed., para. 355 at 181 which states as follows:

"The most usual manner in which questions of estoppel have arisen on judgments *inter partes* has been where the defendant in an action raised a defence of *res judicata*, which he could do where former proceedings for the same cause of action by the same plaintiff had resulted in the defendant's favour, by pleading the former judgment by way of estoppel. In order

to support that defence it was necessary to show that the subject matter in dispute was the same (that is to say, that everything that was in controversy in the second suit as the foundation of the claim for relief was also in controversy in the first suit), that it came in question before a court of competent jurisdiction, and that the result was conclusive so as to bind every other court."

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An action for declaration of title, unlike one for trespass, raises the question of ownership of the land in question. I have carefully read the judgment of Marke, J. relied on by the defendants in support of the defence of *res judicata*. Suffice it to say that apart from other considerations the learned judge made it quite clear in more than one passage that from the nature of the pleadings in that case he was not being called upon to consider the question of ownership of the lands involved nor did he decide any such question. It cannot therefore be said that ownership now raised in this action as a point of controversy was also in controversy or open to controversy in the former suit. In the circumstances I hold that the defence of *res judicata* is inapplicable and therefore fails.

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In the result I hold that the plaintiffs are entitled to the strip of land described in para. 5(i) of the amended statement of claim, namely, that strip—

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"bounded on the north by land now or lately in the possession or occupation of Mary Davies and R. M. Davies measuring 115 ft. (one hundred and fifteen feet) on the south by land formerly in the possession or occupation of O'Mope Palmer, deceased, measuring 115 ft. (one hundred and fifteen feet) on the east by a stream measuring 82.5 ft. (eighty two point five feet) on the west by land formerly in the possession or occupation of O'Mope Palmer measuring 70 ft. (seventy feet)," and I so declare.

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Under the second claim of the plaintiffs, namely "any further and better relief," I order that the plaintiffs do recover from the defendants the said strip of land which I have declared the plaintiffs are entitled to.

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Declaration and order accordingly.

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