

COURT OF APPEAL

CAYMAN ISLANDS APPEAL NO 4/62.

BEFORE: The Hon Justice Lewis-----Presiding
Mr

The Hon Mr Justice Henriques,

The Hon Mr Justice Waddington,

Mr Carl Rattray for the plaintiff-Appellant.

Mr Horace Edwards for the Respondent-Defendant.

December 1.1964.

-ANDREW POWERY Y Aaron Powery.udgment delivered by MR JUSTICE WADDINGTON.

This appeal raises very interesting points, regarding the laws of inheritance of the Cayman Islands. The plaintiff-appellant claimed to recover from the defendants damages for trespass and an injunction to restrain them from committing further acts of trespass in respect of a parcel of land at Barker's Beach, West Bay, in the island of Grand Cayman.

The plaintiff based his rights to the land as being the personal representative or heir-at-law or administrator of the estate of HIS FATHER URIAH POWERY, who died on the 4th day of September 1955. The plaintiff obtained letters of administration in his father's estate on the 4th day of November 1959.

The learned trial Judge found in favour of the defendants, both on the facts and on the law. He held that heir-ship had been abolished in the Cayman Islands by Section 3, of the Intestate Estates and Property Charges Law Cap 166 of Jamaica which applied to the Cayman Islands, and which came into force in 1937, and that as Uriah Powery had died in 1955, the plaintiff could not maintain an action as an heir-at-law.

He also held that the Real Property Representative Law of the Cayman Islands, which came into force in these islands on the 8th of October 1955, and which provided that real property on the death of its owner would devolve on the personal representative, only applied in the Cayman Islands after the commencement of that Law, namely in 1955, after the death of Uriah Powery.

He further referred to the case of Carter Vs Greenall, which was a decision of the Jamaica Court of Appeal on the 12th November 1952, in which it was held that the provisions of the Real Property Representative Law of Jamaican ~~ADMINISTRATIVE~~, now Cap 322, did not apply in the Cayman Islands, and held that the real property of the deceased did not vest in the plaintiff-appellant under the letters of Administration which had been granted to him.

THE FIRST QUESTION which this Court has to decide therefore, is, whether the Appellant was entitled to bring this action as being the person to whom the title was Vested. Prior to 1937, when the Intestates and Property Charges Law Cap. 166 was passed, and which Law was made applicable to the Cayman Islands by Section 5 Of Cap 425, the modes of descent applicable in the

Cayman Islands were based on the English Common Law and Statutory Provisions that is to say

generally speaking, the real estate of a deceased would devolve on his heir-at-law, Cap 166, however, abolished heirship and provided new rules of distribution under which, so far as Jamaica was concerned, by virtue of the REAL PROPERTY REPRESENTATIVE LAW, Cap 332, real Property would first vest in the personal representative who would then be responsible for it's distribution in the manner set out in Cap 166.

As I have mentioned before in referring to the judgement of the learned trial Judge in the case of Carter Vs Greenall, it was held that the Real Property Representative Law, Cap 332 of Jamaica was not applicable to the Cayman Islands. This although heirship was abolished by Cap 166, there was no personal representative in whom the real estate of a deceased would vest. To cure this position the Cayman Islands themselves passed their own Real Property Representative Law, Law 6 of 1955, which for all practical purposes, is similar to the Jamaican Law, Cap 332.

It was submitted by learned Counsel for the appellant, that between 1903 (the date of the passing of the Jamaican Real Property Representative Law) and 1937, there would be virtue of these provisions, and by virtue of the decision in Carter Vs Greenall, be a vacuum. That is to say, although after 1937, in the Cayman Islands there would be a method for the distribution of the property of an intestate, there would be no one in whom the property would vest and who would be entitled to the distribution - it in accordance with Cap 166. The Court drew the attention of counsel however, to the provisions of the Sellited Land Law, Cap 355, (which is applicable to the Cayman Islands), under which it would appear that settlement would be created insofar as the Statutory Trusts referred to in Cap 166 was concerned, and that if there was no one in whom the property would vest because of the non-applicability of the Real Property Representative Law Cap 332 to the Cayman Islands, an application could be made to the Court for the appointment of trustees in whom the property would vest and who would then have the power to distribute it under Cap 166. On this being brought to Mr Rattray's attention, he quite properly conceded, that that was the position and that in the circumstances as the appellant had not pursued that course he would not qualify as being entitled to the land for purpose of bringing this action, and he said that he had nothing further to argue on that question.

In these circumstances, it is clear that the appeal must be dismissed, as the decision of the learned trial Judge of the Grand Court was the correct one.

Before leaving the matter, I should comment on the position which still exists in the Cayman Islands insofar as the estates of persons dying intestate before the commencement of the Caymanian Real Property Representative Law of 1955 are concerned. It would appear that in respect of these estates there is still no power in persons entitled to them to apply for letters of Administration, and that there is still this gap existing, which of course, as was pointed out in the case of Carter V Greenall, is not a matter for the concern of this Court but for the Legislature to deal with, and we express the hope that that gap will be closed by future legislation so as to regularise the position of persons claiming to be entitled on devolution to the estates of persons dying before 1955.

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Mr Henriques I agree,

Mr Lewis I also agree. APPEAL WILL BE DISMISSED WITH COSTS.