

In the Grand Court of the Cayman Islands
 Holden at George Town
 On 20 and 21 March, 1978

Before His Lordship, Sir John Summerfield, C.B.E., Q.C., Chief Justice

Cause No. 118 of 1978

BETWEEN	THE ESTATE OF EDWIN WALTON, deceased (by Ariel Tatum)	Appellant
AND	THE ESTATE OF LEONARD M. TIBBETS, deceased (by Chrissie Scott)	Respondent

Mr. John Stafford instructed by Messrs. Hunter & Hunter for the appellant

Mr. Truman Bodden instructed by Mrssrs. Truman Bodden & Co. for the respondent.

JUDGMENT

Although the parties to this cause are the estates of the respective deceased persons whose interests in the land concerned are in dispute it is convenient to refer the deceased persons themselves as the appellant and respondent. Accordingly, references herein to the appellant are references to Edwin Walton, deceased, and references to the respondent are references to Captain Leonard M. Tibbets, deceased.

It is noteworthy that, initially, the claim on behalf of the appellant was based on "long possession" i.e. under section 16 (1) (a) (i) of the Land Adjudication Law and the claim on behalf of the respondent was based on "documentary evidence" i.e. section 16 (1) (a) (ii) of the Law. Both aspects were therefore in issue before the adjudicator although, at this stage, there was a reversal of the bases of the claims.

It is appropriate to consider the documentary evidence first.

The appellant acquired in Little Cayman on separate occasions two parcels of land which feature in this action. He acquired the northerly parcel which is the subject matter of this claim (and delineated on the map at p.5 of the record) by a conveyance dated 25th April, 1923, Ex.A, between Edwin Gordon Scott as vendor and himself as purchaser. The conveyance is at page 14 of the record. There is no dispute about this deed which was properly sealed, with revenue stamps affixed and cancelled on 20th April, 1923. The respondent relies on this deed for his root of title as much as the appellant does.

On the back of the conveyance, beneath the testimonium, there appears an endorsement in manuscript in the following terms:

I hereby transfer the within document to Capt. Leonard Tibbetts [respondent] for all and every of the purposes mentioned therein with all rights and privileges thereto.

[Sgd] Edwin Walton [appellant]

Witness: [Sgd] N. I. Foster J.P.

There is no dispute that this endorsement was under the hand of the appellant.

The endorsement is not under seal. It is undated (although the "transaction" to which it relates is said to have taken place in 1931 or thereabouts, albeit that several dates appear in evidence). There are no revenue stamps affixed relating to the endorsement.

The respondent relies on that document as proof of his title and, indeed, the deed itself was produced on behalf of the respondent at the adjudication, indicating that it had been in his possession up to the time of his death and thereafter in the possession of his personal representative.

The main question in these proceedings in relation to that document is the construction to be placed on that endorsement to determine what, if any, legal effect it had relevant to the issues before the adjudicator.

The southerly parcel of land was acquired by the appellant by a conveyance dated 20th January 1928. That conveyance is at page 21 of the record. That parcel was later conveyed by the appellant to one Oswald Hunter. That conveyance is at page 15 of the record, Ex.B, and is dated the 25th August 1923.

The relevance of the deed Ex.B is that, in describing the parcel conveyed thereby, it recites the northern boundary as: "abutting and bounded as follows:"..... On the North by Capt. Leonard Tibbetts deceased [respondent]

No conveyance exists in favour of the respondent for the northerly parcel of land. The respondent relies on the endorsement on the deed Ex. A coupled with the recital in Ex.B.

It is appropriate at this stage to turn to the adjudicator's decision. It is not for this court to come to any conclusion on the facts, particularly where there are conflicts and discrepancies in the evidence. The finding of fact, in so far as specific findings were made, appear in the decision and it is convenient to set that out in full:

"This was a dispute over the ownership of a parcel of land "Salt Rocks" north of the lighthouse on Little Cayman. There is no doubt that the parcel together with another parcel abutting it to the south was once owned in its entirety by Captain Edwin Walton whose heirs claimed that he had never sold or otherwise disposed of the land and had merely at one stage probably in 1931, offered the land as the security against a loan of £40. Chrissie J. Scott nee Tibbetts on the other hand maintained that her late husband had guaranteed a bank loan for Walton and that Walton unable to honour his debt to her husband Captain Leonard Tibbetts had made over the land to Tibbetts and that the document Exhibit A(1V) confirmed this. The boundaries of the parcel were not in dispute and it was agreed by both parties and made abundantly clear in evidence that the late Captain Edwin Walton J.P. was an honest and a meticulous man. Mr. Ian Boxall, learned counsel for Walton argued convincingly that the document held by Scott was a mortgage and that the fee simple having passed with the document to Tibbetts it was in order for Walton when selling the southern portion of his land to Captain Hunter in 1953 (- this land did not form part of this dispute) to show in the deed he had drawn up that the land to the north i.e. the land now in dispute, was owned by Captain Leonard Tibbetts (see Exhibit "B"). Although the possibility exists I am of the view having heard the evidence as to the character of Captain Walton and his utter disregard for the land after 1931, I do not believe that he considered himself the owner of the land in dispute after 1931 nor that he had merely offered it as security against a loan. The evidence of the first three witnesses for Walton was purely hearsay but if accepted would establish that after 1931 Walton still considered the land known as Salt Rocks his property. 4th Witness Holroy Walton gave evidence to the effect that he had visited Salt Rocks, had been shown the bounds (not in dispute) by his uncle Arris - now deceased and had collected coconuts from the land as late as 1963. Learned counsel for Scott submitted that Leonard Tibbetts - son of the late Captain Tibbetts holding Power of Attorney for his mother had acted consistently as a person who had made a purchase of the land and not accepted a deed for it as a security against a loan. He also maintained that the entry in the exercise book in 1951 Exhibit "C" was inconsistent with the known meticulousness of Captain Walton inasmuch as it referred only to "his land" and not to the "north portion" ^{or "south portion"} - the inference being that the land (in the south) he proposed to sell to Captain Hunter was all that remained to him. Mr. Truman Bodden also stressed the wording of Hunter's deed Exhibit "B". whether the deed was passed from Walton to Tibbetts as security initially is open to doubt - witnesses for both sides give

conflicting evidence but such evidence can only be opinion. What cannot be denied is that from 1957 onwards Leonard Tibbetts had the bounds of the land trailed regularly, had concrete markers made and, apart from wholly enclosing the property with a fence, performed all the acts of possession one could reasonably expect from an absentee landlord on land of the nature of Salt Rocks. Exhibit "G" confirms his actions.

On the balance of evidence I accept that Captain Edwin Walton parted with his land to Captain Leonard Tibbetts for the sum of £40 and that the widow of the latter Mrs. Chrissie L. Tibbetts nee Scott is the owner of the land she claims under claim 569 and that her title hereto is absolute.

P.G.Owen
Adjudicator.

West End, Cayman Brac, Wednesday 16th April, 1975."

It is clear from the last sentence that the adjudicator found that the fee simple passed by way of a sale of the land from the appellant to the respondent. The basis for his finding is not apparent from the decision, but to award an absolute title it must rest on either subparagraph (i) or subparagraph (ii) of paragraph (a) of section 16 (1). As there is no indication that the adjudicator applied his mind to the question of "open and peaceful possession" under subparagraph (i) read with subsection (2) (a) one must assume that he took the view that the respondent had a "good documentary title to the land" under subparagraph (ii) read with subsection (2) (b).

The adjudicator must, therefore, have accepted that the endorsement on Ex. A amounted to a good documentary title. And in reaching that conclusion he no doubt took account of the recital in Ex. B and other evidence from which it could be inferred that the appellant relinquished possession of the land in 1931 or sometime thereafter.

Section 16 (2) (b) provides :-

" "good documentary title" means a title evidenced by documents which establish that a person is entitled to land in fee simple and commencing with a grant, conveyance, assignment, mortgage or other good root of title which is more than 12 years old."

Section 3 of the Property (Transfer) Law provides:-

"No partition, or exchange, or assignment of any freehold or leasehold land shall be valid at law, unless the same shall be made by deed, except in such cases where partition is authorized to be made under the Law now in force."

To pass an estate in fee simple in law the instrument of transfer or conveyance must employ words recognised as having the effect of vesting such an estate in the land transferred. By virtue of section 53 of the Conveyancing Law it is no longer obligatory to employ the words "and his heirs" but the accepted words of limitation are still necessary as provided by that provision if the fee simple is to be conveyed.

It is not necessary to determine what, if any, estate or interest in the land passed by virtue of the endorsement on Ex.A, e.g. whether it constituted an equitable mortgage, created a life interest, or amounted to a licence of some kind. It is sufficient that it did not convey the fee simple so as to satisfy the conditions for the award of an absolute title pursuant to section 16 (1) (a) (ii) read with subsection (2) (b) of that section. It did not constitute a "good documentary title" because :

- (a) it was not a deed - it was not under seal; and
- (b) the words of limitation employed were not adequate to vest an estate in fee simple in the respondent and did not do so.

Nor is it profitable to dwell on the various rights or remedies open to the respondent or his personal representative in consequence of that endorsement e.g. if it constituted an equitable mortgage or if it constituted a memorandum for the purposes of the Statute of Frauds or if there had been part performance of any contract of sale (if it amounted to that). Whatever equitable or other remedies there may have been, if there were any, could not be enforced through the adjudication procedure. That process was not designed for enforcing any such rights or remedies nor is it the proper forum for that purpose. Its functions are limited to those set out in the Land Adjudication Law.

Any such equitable or other rights or remedies can only be pursued by due process through this court. In any event, it is probable that, if there were any such remedies, they are now time barred.

With regard to the recital in Ex. B it is suggested that this operates as ^{an}estoppel. The short answer is that the respondent is not a party to that document or in any way connected with the transaction it relates to. No estoppel can, therefore, arise.

It is pointed out that the recital amounts to a declaration against

interest. That is true and it may well be relevant in certain proceedings connected with the enforcement of rights in or over the land. But neither an estoppel nor a declaration against interest is a good documentary title, as defined, for the purpose of section 16 (1) (a) (ii). Section 16 (2) (b) is specific about what constitutes a good documentary title.

Furthermore, the fact that the appellant may have relinquished ownership over the land in 1931 or thereabouts is insufficient to confer any right to absolute title in the respondent under section 16 (1) (a) (ii).

It follows that the adjudicator erred in law in holding that the respondent had a good documentary title, which he did by implication if not specifically. He therefore had no right to award absolute title to the respondent under section 16 (1) (a) (ii).

As to a possessory title under section 16 (1) (a) (i), by virtue of what amounts to adverse possession, it has been noted earlier that the adjudicator did not in his decision advert to this aspect. He ought to have done so as it was in issue. There was evidence on the record relating to this issue on which the adjudicator could have reached a conclusion one way or the other. Even if one of the parties could found a claim on a good documentary title it was open to the other to set up a claim under section 16 (1) (a) (i) by virtue of open and peaceful possession.

Accordingly the appeal is allowed. The case is remitted back for adjudication before another adjudicator according to law. The parties are to be at liberty to adduce such evidence or further evidence in support of their respective claims as they see fit.

SIR JOHN SUMMERFIELD.

8th May, 1978.