JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL No. 25 of 1973

BEFORE: The Hon. Mr. Justice Henriques, P.
The Hon. Mr. Justice Graham-Perkins, J.A.
The Hon. Mr. Justice Swaby, J.A.

Perris Bailey	-	Plaintiff/Respondent
vs.		
Ivan Brown	-	Defendant/Appellant

N. Wright for the appellant.
J. Kirlew, Q.C., for the respondent.

February 5, 1974.

GRAHAM-PERKINS, J.A.

The respondent sought to recover possession of half an acre of land from the appellant in an action tried by Mr. K. Douglas, one of the resident magistrates for Saint James. Her claim to possession arose in the following circumstances. In June 1959 she signed an agreement to purchase an acre of land from one Melbourne for £800. In pursuance of that agreement she paid Melbourne £400 and was thereupon put in possession. Some 8 years later, in or about August, 1967, after she had paid the balance of purchase money to Messrs. Nation & Nation, Melbourne's solicitors she received from them a duplicate certificate of title registered at Vol. 1039 Fol. 341. The respondent made infrequent visits to the land she had bought. On one such visit in 1967 she observed that a "board house" had been erected on her land by the appellant. He told her that he "had some money to pay Melbourne in connection with the land". She told the appellant that she knew of no transaction concerning her land, that she had made no arrangement with anyone to sell it and that she had not given Melbourne any permission to sell any part of her land. Melbourne died in 1970. She had delayed bringing proceedings against the appellant until after Melbourne's death because, as the magistrate found, she was moved by sympathy for his position. She believed that the appellant had been duped by Melbourne and she desired to give him an opportunity to recover whatever monies he had paid to him.

The appellant gave evidence to the effect that he knew that the respondent was the owner of the entire acre but that he

had purchased half of that acre from Melbourne in 1965 and had erected a house thereon. He said that Melbourne was authorised by the respondent to sell half of her land and that he had paid the full purchase price of £213. This was an extremely modest figure for half an acre of land in 1965 compared with £800 for the acre seven years earlier. The appellant said he had a receipt for the purchase money but he did not produce it at the trial. Indeed he produced nothing except his ipse dixit that he had bought part of the respondent's land from someone who it must be assumed from the magistrate's findings had no authority to sell. It was suggested to the respondent in cross-examination that her land had been surveyed, presumably following upon the alleged purchase by the appellant. The respondent denied this suggestion. The appellant led no evidence on this point. Indeed for a man who claimed to have done "a little cooking" by way of earning his living and to have paid £213 for a parcel of land his evidence was otherwise remarkably barren.

At the commencement of the trial of the action the appellant's defence was stated thus:

> " (a) The defendant says that the plaintiff is estopped by her conduct from recovering possession of the lands.
>
> (b) If the court finds that she is entitled to possession by virtue of the Rent Restriction Law she must compensate the defendant for his house."

Significantly the appellant did not allege that he had purchased the land. On the contrary he alleged some indeterminate kind of estoppel - a somewhat astonishing allegation if it were the fact that he had bought part of the respondent's land. In his reasons for judgment the learned resident magistrate said:

> "I found as a fact that the plaintiff was at all material times owner in fee simple of the entire acre of land. That the defendant's claim of having purchased part of the land from a third party is without foundation, such sale not being evidenced in writing."

I do not understand the magistrate to be saying, as Mr. Wright argued, that the appellant's claim was unfounded only because there was no evidence in writing of the sale. This latter finding must, quite clearly, be taken to mean that the claim put forward by the appellant was totally unfounded in fact and in law. This follows necessarily from his earlier finding that the respondent was at all material times the owner of the

entire acre of land. Implicit too in this earlier finding are certain critical conclusions, namely (i) that Melbourne had no authority to sell any part of the respondent's land; (ii) there could not, therefore, be any valid document in existence on which the appellant could rely; and, more importantly, (iii) that there was no evidence before the court to indicate that the respondent's title might be in issue. On these findings the appellant's position would be that of a very daring trespasser.

The magistrate found further:

> "That the plaintiff through sympathy allowed the defendant to remain on the land until he recovered his money from the vendor ..."

Mr. Wright urged us to say that . is finding must be taken to mean that the magistrate did in fact find that the appellant had entered into what he believed to be a genuine transaction of sale with Melbourne and had entered upon the land and erected his house in pursuance of that transaction. I do not/so understand the magistrate's finding. All that I understand the magistrate to be saying is that the respondent believed that the appellant had been duped by Melbourne, not that he was so duped in fact. I do not think, that either view is relevant. The point made by Mr. Wright, however, was that once there was evidence before the magistrate that the appellant had paid Melbourne £213 for the land and proceeded to build his house thereon he would have laid the foundation for the magistrate to say that he had no jurisdiction to try the case since (a) a dispute as to title would have arisen within the meaning of s. 96 of the Judicature (Resident Magistrates) Law Cap. 179, and (b) there was no evidence as to the value of the land the subject of that dispute. Mr. Wright argued that a dispute as to title arose so as to exclude the jurisdiction of the Resident Magistrate's Court whenever a defendant, to use the words of Cools-Lartigue, J., when delivering the judgment of the former Court of Appeal in Francis v. Allen 7 J.L.R. 100, "bona fide intended to set up a claim of title in order that it may be considered by the court". Immediately preceding this dictum Cool-Lartigue, J., had said that "the overwhelming number of authorities" supported that proposition. Adopting this proposition as the effective test of jurisdiction Mr. Wright said that the evidence disclosed that the appellant "sincerely intended to set up a claim to half of the respondent's land" however unfounded in fact or in law that claim may be. Once the appellant's sincerity was perceived the magistrate's jurisdiction ipso facto ceased and determined. It may be useful, therefore, for the purpose of dealing with Mr. Wright's submissions, to examine briefly those

authorities on which the court in Francis v. Allen (supra) relied.

Mountnoy v. Collier (1853) 1 E. & B. 630. In this case the plaintiff had demised certain premises to the defendant for a year. The defendant paid rent for half the year and refused to pay the balance because, he claimed, the plaintiff's title had expired as a result of a notice to quit served on him by his landlord. In order to justify his refusal he sought to adduce evidence by way of the declarations of the plaintiff's father-in-law, a former tenant of the premises let by the plaintiff to the defendant, which, it was argued, would have shown the plaintiff's claim to the balance of rent to be untenable. The trial judge held that evidence as to the declarations was inadmissible. In a case stated he posed two questions, inter alia, namely; (1) whether the title to a corporeal hereditament came into question so as to exclude the jurisdiction of the County Court and and (2) whether he ought to have received the declarations in evidence. Quite obviously the answer to the first question depended on the answer to the second. The significance of the first question derived from the provisions of s.58, 9 & 10 Vict. C. 95 which, so far as is material, provided:

> "The Court shall not have cognizance of any action in which the title to any hereditaments shall be in question."

None of the four learned judges who heard the appeal appeared to have the least difficulty in concluding that the trial judge had erred in rejecting the evidence as to the father-in-law's declarations. They each e went on to hold that once that evidence was admitted it was for the trial judge to say whether there arose on that evidence a question as to the plaintiff's title. Their judgments do not in any sense reveal that they intended to convey anything more than that in order to exclude the jurisdiction of the County Court there must be placed before that Court credible evidence which is demonstrably capable of calling into question the title to the subject matter of the action. When once the Court was so persuaded it ceased to have jurisdiction. The use of the words bona fide in these judgments does not, therefore, add anything to the unmistakably clear terms of s.58, C.95, 9 & 10 Vict., which prohibit the County Court from undertaking, or continuing, the trial of any action in which the title to some hereditament shall be in question.

Re Marsh v. Dewes (1853) 17 Jur.P.1. 558. This case involved an action for trespass. At the outset the defendant's

counsel objected to the court proceeding with the matter since a question of title was in issue and, therefore, the court had no jurisdiction. The plaintiff's counsel denied that any question of title was involved whereupon the trial judge said that he would proceed so far with the case as to ascertain whether there was any bona fide question of title, and if he found that there was he would proceed no further. Evidence led indeed called into question the title to the subject matter but the trial judge ruled that that evidence was "too slight and inconclusive to be left to a jury" and that there was, therefore, "no bona fide question of title to be tried". Here, clearly, was a case in which there was evidence before the court which raised a question of title. In that situation the clear prohibition of 2. s.58 of C.95 came into operation. The trial judge had no authority to proceed. As Parke, B., said, the question of the bona fides or the mala fides of the defendant was irrelevant. Re Marsh v. Dewes did no more than to reiterate the principle enunciated in Mountnoy v. Collier (supra).

Sewell v. Jones (1850) L.J.Q.B. 372. This was a special case. The plaintiff brought a plaint in the County Court alleging that the defendant had cut down trees and destroyed a fence separating a garden occupied by the plaintiff's tenant, from the defendant's garden, and had erected a new fence encroaching on the plaintiff's land. Before the case was set down for . hearing the defendant moved for a prohibition on the ground that the title to the land was in question. He alleged in his affidavit that the fence and trees cut down by him were on his own land and that the new fence had not passed the boundary of his garden. The plaintiff's affidavit supported the charge made in his claim. The defendant was held entitled to a writ since the title to the land "was clearly in question". If this case can be regarded as an authority for any proposition at all it can only be that in the particular circumstances therein described a writ of prohibition may issue where the affidavits filed in connection with the application therefor clearly give rise to an issue of title.

Howarth v. Sutcliffe (1895) 2 Q.B.D. 358. The plaintiff sued in the High Court for damage to his reversion by reason of the defendant's interference with the flow of water through a pipe under the defendant's land to which the plaintiff claimed to be entitled in respect of his premises. The defendant by his defence refused to admit the plaintiff's title to the easement claimed, but pleaded leave and licence from the plaintiff's tenant. On the question whether the plaintiff was entitled to his costs on the High Court scale although he recovered less than £10 in his

action for tort the Court of Appeal held that he was so entitled since the action could not have been tried in the County Court as a question of title arose which that Court had no jurisdiction to try. Here again the principle in Mountnoy's case (supra) was confirmed.

I will now examine three other cases, one of which was cited, but not relied upon, in Francis v. Allen.

The Warrior (1828) 2 Dods. 288. This case concerned the jurisdiction of the High Court of Admiralty on the question of the recovery of possession of a ship. Sir William Scott (as he then was) said, at p.289:

> "It cannot be laid down that the court is to decline its jurisdiction ... on the mere averment of one of the parties that there is a conflicting claim of title. If the mere averment of title, without any examination into its foundation, would be sufficient to arrest the progress of a cause, the jurisdiction of the court would be ousted altogether. It would be idle to say that the court retained its jurisdiction if the moment a warrant was extracted by one party, the other was at liberty to put an end to the suit by asserting a title, resting, perhaps, on no foundation whatever. The nature of the title must be shown before it can be permitted to have the effect of arresting the cause. It must be made to appear that it is not a mere cobweb title that is set up, but that it is such to raise a real and substantial doubt to whom the property belongs; and, in that case, the court would certainly decline to interfere as to the possession until the title should have been determined upon by the courts in which such questions have been more usually agitated in the modern practice of the law."

Emery v. Barnett (1859) 4 C.B.N.S. 423. Here A. was let into possession of premises as tenant of B. and paid him rent. C. claimed title to the premises and A. gave up possession to him. In an action in the County Court by B. against A. to recover arrears of rent and possession of the premises, it was held that whether C's. title could be set up or not depended upon whether A. had been evicted by title aparamount, or had voluntarily yielded up possession. It is important to note that each of the four judgments in this case makes it clear that (i) a mere assertion of title does not oust the jurisdiction of the court, and (ii) that in order to exclude the County Court's jurisdiction the title

of someone must be brought intointo question on an evidentially well-founded claim valid in law.

Lilley v. Harvey (1849) 5 D. & L. 648. Upon a claim for use and occupation in the County Court the defendant objected, under s.58, 9 & 10 Vict. C. 95, that the title to land came into question. It was held that the jurisdiction of the County Court was not ousted by the mere oath of the defendant but that the trial judge was bound to enquire into so much of the case as was necessary to satisfy himself that the title was really in question. See the extremely lucid judgment of Wightman, J.; at p. 652 et seq.

In my view the observations of Sir William Scott in The Warriot (supra), far from standing alone, as the Court in Francis v. Allen concluded, accurately described the approach in fact taken by the courts in the several cases in which s. 58 of C. 95 fell to be considered. This approach is very clearly identifiable in all the cases I have so far examined. It is equally clearly identifiable in Thomas v. Ingham (1850) 14 Q.B. 709, Lloyd v. Jones (1850) 6 C.B. and several other cases. Not a single one of t the foregoing authorities can be said to support the conclusion in Francis v. Allen (supra) that in an action for recovery of possession the jurisdiction of a resident magistrate is excluded where a defendant "bona fide intends to set up a claim of title in order that it may be considered by the court". It is, therefore, extremely surprising that the court concluded that "the overwhelming number of authorities" supported that proposition. All the authorities show with unmistakable clarity that the true test is not merely a matter of a bona fide intention, but rather whether the evidence before the court, or the state of the pleadings, is of such a nature as to call in question the title, valid and recognizable in law or in equity, of someone to the subject matter in dispute. If there is no such evidence the bona fides of a defendant's intention is quite irrelevant. As I indicated to Mr. Wright during the hearing it has always been my view that the test as to a magistrate's jurisdiction under s. 96 of C. 179 is precisely what I have demonstrated it to be.

Apart, however, from my view as to the totally unsatisfactory conclusion arrived at in Francis v. Allen, and indeed in Brown v. The Attorney General (Resident Magistrate's Civil Appeal No. 32 of 1967), it is important to notice that in any event those cases are clearly distinguishable from the instant case in which a registered title played a very significant part. Section 67 of the Registration of Titles Law, Cap. 340, so far as is material,

provides:

> "... every certificate of title issued under any of the provisions herein contained shall be received in all Courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in ... the land therein described is seised or possessed of such estate or interest ..."

In view of the very precise terms of this section, of which the resident magistrate must have have been aware, there can be, in my view, not the least doubt that in the circumstances of this case a question of title would have arisen if, but only if, there had been adduced before the magistrate a cerdible narrative of events probably pointing to the existence in the appellant's favour of an equitable interest, albeit not registered. In that situation, and assuming further that the annual value of the land was in excess of $200.00, it is clear that the magistrate would have been obliged to acknowledge the absence of jurisdiction. I formed the clear view, however, that the appellant did not merely fail to show the probability of the existence of an equitable interest in his favour but rather that he demonstrated by his own admissions and conduct the non-existence of any such interest. He does not appear to have taken any of the steps that a reasonable and prudent man in his circumstances would have been expected to take. No question arose as to the respondent's title being barred by the operation of any statute of limitations. In the result the jurisdiction of the resident magistrate fell to be determined, quite simply, by reference to the provisions of s.89 of Cap. 179. The annual value of the land was therefore irrelevant. It may be noted too, that the appellant adduced no evidence to show that the Rent Restriction Law Cap. 341 was in any way applicable to her case.

For the foregoing reasons I agreed that the appeal should be dismissed with costs to the respondent.

The Hon. Mr. Justice Henriques: I agree.

The Hon. Mr. Justice Swaby: I agree.