

J A K A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' COURT CIVIL APPEAL NO. 85/72

Before: The Hon. President
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Robinson (Ag.)

Albert Burton v. Samuel Walters

Mr. Schardsmidt & Mr. Elliott for the Plaintiff/Respondent

Mr. A. McFarlane for the Defendant/Appellant
**ATTORNEY GENERAL
CHAMBERS**

20th July, 1973.

Edun: J.A.

GRAND CAYMAN B.W.I.

The plaintiff/respondent claimed from the defendant/appellant damages for having on June 1, 1972, unlawfully interrupted the survey of land belonging to Hortense Wynter. The respondent it was who with the consent of Hortense Wynter employed a surveyor to carry out the survey. The appellant objected to the survey, and the evidence on behalf of the respondent is that the appellant physically prevented the surveyor carrying out his assignment for which he was duly paid. The basis upon which the appellant claimed the right to object and to prevent the survey was because he was an accredited agent of Hortense Wynter.

Hortense Wynter gave evidence that the appellant was an agent of hers in 1959, but that she had rescinded the authority in 1969. The learned Resident Magistrate accepted the respondent's evidence and that of his witnesses. The onus had shifted upon the appellant to establish on the balance of probabilities that he had a right, legal or equitable to prevent the survey whether on behalf of Hortense Wynter or himself or of someone else having an interest in the survey of the lands. The surveyor had served notices on the adjoining owners and no one but the appellant appeared and prevented the survey. When he was asked by the surveyor

why he objected, he said he was an agent of Hortense Wynter, and produced a document to that effect. The appellant never said he was acting for anyone else.

As I have stated, the Learned Resident Magistrate accepted the respondent's case, and I am of the view that the appellant has failed to discharge the onus that fell upon him. The learned Resident Magistrate in his reasons for judgment concluded "that the survey was stopped by the defendant without lawful or just cause..... that the defendant was not acting as an agent of Hortense Wynter or anyone else having interest."

In my view, there was evidence which supported such conclusions. I can see no reason to interfere with the decision of the learned Resident Magistrate when he found in the circumstances of this case that the defendant/appellant was liable in trespass. I would dismiss the appeal.

President:

I agree.

Robinson: J.

I entirely agree.

President:

The appeal is dismissed; judgment in the court below is affirmed; cost of appeal Forty Dollars to the respondent.