

SAINT LUCIA

IN THE COURT OF APPEAL

CIV. APP. NO.8 OF 1995

BETWEEN:

LOUVINIA ALEXANDER-RAYMOND

Appellant

and

1. MARIE ANNE SKELLY
2. MARIE JOSE COMBIE

Respondents

Before:

The Hon. Mr. Justice C.M. Dennis Byron
The Hon. Mr. Justice Satrohan Singh
The Hon. Mr. Justice Albert Redhead

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal[Ag.]

Appearances:

Mr. Evans Calderon for the Appellant
Mr. Dexter Theodore for the Respondents

1997: January 21;
May 12.

Land Law - The law relating to prescription - Petition for declaration of title on the basis of long possession - Identical claim by opposing party - The basis for appellant's continuous occupation of said lands - Whether by permission or at sufferance - Assessment of judge's findings of fact - **Watt v Thomas** [1947] H.L. applied. Appeal allowed.

JUDGMENT

BYRON J.A.

The Proceedings

These proceedings are shrouded in antiquity. They commenced on 26th June, 1978 when the late Mary Hollar (the appellant's predecessor) petitioned the High Court for a declaration of title to approximately 17 acres of land in the Quarter of Dennery on the basis of her long possession which commenced before the turn of the century. Her claim was supported by affidavits as required by the Supreme Court - Prescription by Thirty Years (Declaration of Title) Rules 1970.

On 7th June, 1979 the late Manfred Felix, (the respondent's predecessor), claimed to be entitled to the same land on the basis of his long possession (describing it as approximately 18 acres 2 roods 33.60 perches). His claim included the allegation that from about 1929 (when he had paid off the debts of the Estate of his wife's father St.Romain Faugas, deceased) he had been continuously in possession of the land by means of cultivations made and reaped by him for his own benefit and by means of sundry persons authorised by his sister-in-law Rosalind Cherry acting

with his consent. This statement of claim did not include any rebuttal of the very specific sworn allegations of possession contained in the affidavits supporting the Hollar petition, but merely raised the issue, though rather vaguely, of permissive occupation. The claim was signed by his solicitors. No affidavits in support were filed.

Several years elapsed without any hearing. In the meantime the Registered Land Act 1984 was enacted. The disputed parcel of land was recorded on 6th November, 1986 in the Registration Quarter of Dennerly as Block 1438 B parcel 16. There was a Restriction prohibiting dealings with the land, pending the proceedings in court for the establishment of ownership.

The Parties

The passage of time wrought changes in the parties. On 6th June, 1981 Mary Hollar died and on 20th January, 1988 her Executor Louvinia Alexander-Raymond was substituted as party to the action. Manfred Felix died in 1988 and his daughters Mary Ann Skelly and Mary Josephine Combie were granted letters of Administration and were substituted as parties.

The Judgment

D'Auvergne J. delivered judgment on 22nd May, 1995 in favour of the respondents and ordered that the disputed land, now Block 1438 B parcel 16 in the Registration Quarter of Dennerly, be recorded in the name of Heirs of St.Romain Faugas. (The respondents have not appealed, although they alleged that Manfred Felix had purchased the interest of the Estate of St.Romain Faugas).

The learned Judge found as follows:

"It appears that the piece of land in dispute has been occupied by the predecessors (those through whom they claim) of both the plaintiff and the defendants as they have stated.

I find however, that the predecessors of the plaintiff were allowed to occupy the land, rent free on account of the many years of friendship.

I believe Anne Marie Skelly when she told the Court that her mother "through love" gave permission to her sister Roselyn and her husband Cherris a relative of the plaintiff "to work the land" rent free and that it was through Reginald Cherris, Mary Hollar and later her daughter Marie Charles, her children, her nieces and nephews, came into the land; that they were allowed to use and enjoy the land by the defendants and those through whom they claim peacefully and rent free."

The Appeal

The appellant's grounds of appeal mainly challenged the learned trial Judge's findings of facts.

There was no real controversy about the applicable legal principles. The learned trial Judge applied articles 2103A, 2057, and 2060 of the Civil Code which prescribe as follows:

2103A "Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of Court."

2057 "For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor."

2060 "Acts which are merely facultative or of sufferance cannot be the foundation either of possession or of prescription."

The issue on which the appeal turns, is whether the learned trial Judge's finding of fact that the Hollars were allowed to remain on the land at sufferance can be sustained.

It has well been settled that where a trial Judge had the advantage of seeing the witnesses, an advantage which this court did not enjoy an appeal court usually is, and should be, slow to reverse any finding of fact which appears to be based on the Judge's assessment of the credibility of the witnesses.

The general principle is explained in the well known and often quoted passage from **Watt v Thomas** (1947) 1 All E.R. 582 in which Lord Thankerton said at 587:

- I. Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.
- II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.
- III. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the

witnesses, and the matter will then become at large for the appellant Court.”

To these points I should add that if there is no evidence to support a particular conclusion, and this is really a question of law, the appellate court should not hesitate to so decide. If the evidence as a whole cannot justify the conclusion reached, or the trial Judge failed to draw conclusions of fact on matters which are material to the decision, or improper inferences are drawn from proved facts, it would be open to an appellate court to correct any resulting irrationality. An appellate court would be more inclined to substitute its own findings in such cases than in those where the trial Judge has decided on the basis of conclusions about the demeanour and veracity of witnesses.

In this case the learned trial Judge did not evaluate the witnesses, or make any close analysis of the evidence. No reasons were advanced for believing the testimony of Anne Marie Skelly on the issue of permission. In my view, it is necessary to embark on a close examination of the evidence in this case.

The Hearing

The matter came on for hearing in May 1994 and January 1995. By that time Mary Hollar, Manfred Felix and Mariah Charles had all passed on to the great beyond. There was both the affidavit evidence filed with the petition in 1978 and oral testimony adduced at the hearing.

The Evidence For The Appellants

The evidence on behalf of the appellants came from several witnesses.

Mary Hollar deposed that she was 89 years old (born 1889), and had been brought up on the land by her mother Amrilia Henry. When she was about 28 years old (1917) her mother left for Cayenne and gave her a cup with papers for the land. Her mother never returned and she lost the papers. She took possession from her mother and cultivated and enjoyed the fruits of the land uninterrupted to the exclusion of all others. She has now put her daughter Maria Charles in charge of the land.

She described the land as a portion of the De La Bousquiere Estate bounded on the North by Benoit Francis, on the South by Burt Faugas (aka St.Romain Faugas), on the East by Guy Lascarius and Edward Toussaint and on the West by Blaziana Combe and Emile Combe. She exhibited Survey Plan D 873 drawn by Earl Cenac licenced Land Surveyor which showed the area to be 17 Acs. 0 Rd. 39 Pcs. This plan bore the endorsement that it was executed between 2nd and

14th February, 1978.

Maria Charles deposed that she was the 69 year old (born 1909) daughter of Mary Hollar, and lived with her until her marriage about 1928. She always lived on a portion of her mother's land and her first child, Greenage Joseph was born there about 1930. When her mother got old she took over the management of the land and now she herself is getting old she has rented part of the land to one Mr. Maxwell and he looks after the rest of the land.

June Albert, a 52 year old neighbour swore that she knew Mary Hollar and her family to be occupying that land for over 40 years (since 1938).

Donald Victor, 77 years old, knew Mary Hollar to own the land since her mother went abroad. He had been going on the land since he was 14 years (1915) and planted a garden there on a share basis with Mary Hollar up to 1978. He knew that Maria Charles had taken over the land and rented part of it to one Maxwell.

Agnes Sealy, 56 years old, knew Mary Hollar to own the land. For the preceding 26 years (since 1952) she worked on the land with Mary Hollar and Maria Charles and for the preceding 12 years (since 1966) she had a garden on a share basis with Maria Charles.

All of these deponents stated that no one else claimed that parcel of land. This affidavit evidence testified to the continuous, uninterrupted, peaceable, public and unequivocal possession of the land as owner for upwards of ninety years, through four generations of the Hollar family.

Oral testimony was also given on behalf of the Hollar claim. Louvinia Alexander-Raymond was the 50 year old grand daughter of Mary Hollar. She knew her grandmother, Mary Hollar and her aunt, Maria Charles were on the land as owners. All her aunt's children were born there. The youngest was 39 year old Anthony Francis (born 1955).

She used to go on the land frequently, and spent vacations with her grandmother and aunt. She herself worked the land and had a garden there. Her evidence included this anecdote:

"There was no trouble between the Faugas and the Hollar Family. I remember in the afternoon time we used to go up to my aunty, the two of us. Antonia Felix as I knew her (then points to lady with the defendant in court). When we reach at the boundary between her father Manfred Felix and Mary Hollar, we used to put a stick there and whoever came before the other would take the stick and go home. The Felix's and the Hollar's were friends for long. Manfred Felix never claimed what I called the Hollar land until we

surveyed the land and that is the time Mary Skelly surveyed the land in 1979 and the trouble started."

She exhibited survey plan D 866 by Leo Alexander licenced Surveyor which indicated that the survey was executed between 23rd January and 3rd February, 1978, at the instance of Manfred Felix for the Heirs of St. Romain Faugas. This plan showed the land in dispute as its Northwest boundary described as "Remainder De La Bousquiere". Some significance was attached to the fact that it did not describe it as belonging to Manfred Felix or the Heirs of St. Romain Faugas. This parcel contained 2 sections marked "A" and "B". "A" containing 9 acres 3 roods 9.6 perches, "B" contained 2 acres 2 roods 17.60 perches, total area 12 acres 1 rood 27.20 perches.

She testified that the plan represented the land that Manfred Felix had always occupied. She also exhibited a Certificate of the Land Register showing that parcel as Block 1438 B parcel 3 recorded in the Heirs of St. Romain Faugas, c/o Manfred Felix, 5.10 hectares, with absolute title.

She referred to the plan D 873 exhibited with Mary Hollar's affidavit, which showed its Southeastern boundary as Burt Faugas. She said that it was only after that survey that the respondents commissioned plan D 874 of the same parcel of land that Mary Hollar had claimed. It was then for the first time that they claimed to own the land.

In cross-examination she explained that she remembered Mrs. Roselyn Cherris, the sister of Mrs. Manfred Felix. She was called Ma Cher, as the wife of Reginald Cherris (known as Cher). When she first knew Ma Cher she was in her late 50's to 60's. At that time Cher was an old man too old to even go up to the country.

She said that Cher and Mary Hollar's brother were brothers but Mary Hollar was not Cher's sister. She never heard that Roselyn Cherris was given permission to make gardens on the land.

Ellie Alexander, the daughter of Mary Hollar, and the mother of Louvinia Alexander-Raymond testified that her mother had three children on the land. She was born in 1910, and lived there until 1940 after she had gotten married. Her mother lived on the disputed land until 1976 when she fell ill and came to live with her in Dennerly. Her sister Maria Charles born 1909 lived on the land all her life until her death in 1981. She said:

"There was never any trouble between Mr. St. Romain Faugas and my family. Mr. St. Romain Faugas never set foot on the land to take even a mango. I never saw him go on the land. Our land is up and his is down."

She also explained:

"I knew Mr. Cher. He never claimed that land Mary Hollar was on. He was friendly. He was friendly to Mary Hollar's husband called Hollar who gave Cher a portion of the land to make a garden but it was not his. Until 1979 no one claimed the land."

At first, they had a bamboo house. It was improved to a wooden house. In her cross-examination, she said:

"I knew St.Romain Faugas had a debt with the Dennery Agricultural Society on his four acres of land not our land. Manfred paid the debt and took over the four acres. His wife was on the land already; they were married. I was told it was four acres it was what ancient people told me."

She also said:

"Roselyn Cherris was older than me I believe, but I knew her in her youth."

Mathias Charles, a son of Maria Charles, testified that he, 57 years old, was born on the land (1938) and he lived there until he was 30 years old (1968) when he went to Laborie to live.

This oral testimony confirmed the affidavit evidence of open and continuous possession of the land. These witnesses gave direct testimony of occupation from 1910 through three generations of the family. They clearly asserted that the late St.Romain Faugas was an adjoining landowner, and that Manfred Felix took over his land and became their neighbour.

The Evidence For The Respondents

Anne Marie Skelly gave evidence on behalf of the Felix claim, she is the daughter of Manfred and Marie Antoinette Felix. She was born in 1930 on her father's land and lived there until she was 23 (1953).

She exhibited a declaration made by her father on 14th November, 1967 which was registered in Vol.120 A No.86573. This evidenced that in 1929 Manfred Felix and his wife Marie paid 15 pounds sterling to settle debts of her late father, St.Romain Faugas, who had died in 1928, on behalf of the Heirs of St.Romain Faugas, and entered into possession of immovable property as owner, which he claimed in accordance with the law relating to prescription.

The land was set out in the schedule. There were two parcels of land. One was situate at Chateau Rosier or Parys Perdue and comprised four carres more or less bounded North by Mde Amiable, South by Samuel Canjoe, East by Heirs of Justin Canjoe and West by Emillien Combe. The other parcel was at Bazil comprising two carres more or less bounded East by Major Grist,

West by Emillien Combe, North by Isaie and South by Major Grist. No evidence was given about the relative locations of these two parcels of land. However it would seem that they were not adjoining each other because they have no boundaries where the adjoining parcel was Faugas or Felix.

She denied that Mary Hollar had any land. She said that Mary Hollar was a washer in Dennery Village, and she never planted anything on the land. She only went on the land with Reginald Cherris. She said:

'My aunty Roselyn married Reginald Cherris and my mother gave her permission to work on the land with her husband Reginald Cherris.'

She said that it was after Reginald Cherris' death that Maria Charles started to come on the land and she used to work where Reginald Cherris and her aunt used to work. She said she got married when she was 23 (1953) and it was only long after that she saw Louvinia Alexander-Raymond on the land. She also said that before she got married she never saw Maria Charles on the land.

She denied that there were any boundaries between the two parcels of land. She said her father claimed the two portions of land at Bazil by the declaration. One parcel was "at Bazil self and the other the remainder of La Bousquier and they are joined together."

She admitted that Leo Alexander surveyed the land in plan D 866 on their behalf, and that after Mary Hollar had done her survey Alexander also made plan D 874.

Mr. Alexander was not a witness, and Anne Marie Skelly did not explain why he made the two plans with no reference to Faugas or Felix as an adjoining owner on plan D 866. One would normally expect that such a plan would reflect the instructions given to the surveyor by the person on whose behalf he was making the survey.

Anne Marie Skelly also said:

"I agree that it is only after they filed the case that trouble started between us. Before that time we were living friendly."

Since then there was a lot of litigation between the two families in the Magistrate Court at Dennery, mostly to do with damage to crops. However, the conduct of the parties after the petition was filed in 1978 is not relevant to the issue of long possession.

Matthew Felix, a son of Manfred Felix also gave evidence. He was born in 1932. He went to U.K. in 1958 and returned in 1971. He said:

"Before I left in 1958 my father and myself were on the land. I do not remember anyone else on that particular land. It is now two pieces of land but before they surveyed it was one. There is a road going through the land. When I came from England, I found Louvinia Alexander's people working on the other side of the road. The land on the other side of the road belonged to my father. Manfred Felix and Reginald Cherris used to work the land with his wife Roselyn Cherris. I knew Reginald Cherris working the land."

He denied that Mary Hollar was on the land working the land. He saw Maria Charles and her children on the land but did not know that they had a house on the land.

He would not consider the Hollar family as trespassers because they were on the land because of Cherris. In his cross-examination he said:

"I said that there were no boundaries between the lands below or what Mary Hollar is claiming above."

Evaluation of the Evidence

In cases like this where family members have died a court has to make generous relaxations to the rules concerning hearsay. This is of particular relevance to the evidence of Anne Marie Skelly and Matthew Felix. Yet, on the crucial point of the permission, the source of the evidence is suspect. There was no indication when the permission was alleged to have been given. Anne Marie did not even indicate whether she was speaking of an occurrence during or before her lifetime. They did not specify during what period Reginald Cherris and his wife worked the land. The weight and cogency of the direct testimony given by Mary Hollar, Ellie Alexander, Maria Charles, Louvinia Alexander-Raymond, Matthias Charles and the three non-family members who swore supporting affidavits were not challenged by any other witnesses from the area who may have been willing to give evidence on behalf of the Felix family.

When did the Hollar occupation commence

The crucial issue was whether the Hollars were on the land with the permission of the Felix family. There were a number of relevant conflicts of fact on the evidence on which the learned judge did not clearly indicate her findings. The most decisive was to determine when the Hollar family entered into occupation of the land.

There was the sworn direct evidence that four generations of the Hollar family starting with Amrilia Henry prior to 1889, her daughter Mary Hollar, Mary Hollar's children, Maria and Ellie, and Maria's children lived and worked the land continuously up to the time the petition was filed in 1978.

This was contradicted by Anne Marie Skelly and Matthew Felix. The effect of their testimony is that Mary Hollar and Maria Charles did not live on the land nor have children there. According to their testimony, it was only after 1953 that they came on the land to make garden through Reginald Cherris.

The learned trial Judge did not make any analysis of the evidence on this issue, nor indicate any opinion on the credibility or weight of the evidence. In fact the judge did not clearly express a finding on this issue. As the trial judge did not take advantage of having heard and seen the witnesses, the matter of the credibility and weight of the testimony on this issue has been unresolved. In these circumstances we must make an assessment, and a finding of fact.

It is clear that Anne Marie Skelly and Matthew Felix could have no knowledge of what happened prior to their birth in 1930. In that sense there has been no contradiction of the direct evidence that the Hollars were in occupation of the land between 1888 and 1930. There has been no attack by contrary evidence on whose veracity we have to decide. There was no reason advanced on the evidence nor referred to by the judge which could invite the conclusion that the testimony of Mary Hollar, Maria Charles, Ellie Alexander, and Donald Victor was false. In my view their testimony was capable of belief and should be accepted unless there was some reason to doubt them. I have been unable to find anything to support the view that these witnesses were liars or ignorant of the facts to which they attested.

It is my view that the only evidence before the Court supports the conclusion that the Hollar family were in possession between 1888 and 1930. I have concluded that this testimony is most likely to be reliable and truthful and should be accepted. I was uncertain what the judge had accepted on this issue because she had found both parties in occupation "as they have stated" and it is possible that she meant to convey acceptance of the Hollar evidence on that issue.

The Rational Conclusion

Once it is accepted as a fact that the Hollars were in occupation of the land between 1888 and 1930, it becomes logically impossible to conclude that the Hollars went on the land with the

permission of the Felix family. It was only in 1929 that Manfred Felix and his wife paid off the debts for the land. In other words Mrs. Felix had no land to permit her sister to work before 1929.

Mary Hollar was on the land with her mother Amrilia Henry since 1889 or thereabouts, and gave birth to her children between 1908 and 1911 on the land. She would have been on the land for more than forty years before Manfred Felix made any claim to it in 1929. It must, therefore, be pellucidly clear that the only rational conclusion is that her possession could not have been derived from permission given by the Felixes.

The Incredible Finding

All the witnesses agreed that there was no dispute between the Hollar and Felix families prior to 1978. The evidence of Anne Marie Skelly indicated that Reginald Cherris died before her marriage in 1953 and that Maria Charles and her family came on the land after his death and occupied it. It seems incredible that the Felix family's acquiescence in the Hollars occupation of the land, during all those years, could have been based on the rationale that Mrs. Felix had given her sister permission to work the land prior to 1953.

The Unsupported Conclusion

The conclusion that it was through Reginald Cherris that Mary Hollar came on the land was speculative. There was no evidence to support it. The learned trial Judge did not make any finding of the nature of the relationship between the Hollars and Reginald Cherris, nor explain how the Hollar family could have been affected by permission given to the Cherris family. The evidence was that Reginald Cherris was not a blood relative of Mary Hollar.

No evidence was adduced that Reginald or Roselyn Cherris made any arrangement with or granted any permission to any member of the Hollar family to enter on, occupy, use and enjoy the land in any way.

In my view, the statements given in the evidence of Anne Marie Skelly and Matthew Felix that Mary Hollar went on to the land with Reginald Cherris, and that after his death Maria Charles worked the same land that he worked do not justify the conclusion that he permitted the Hollar family to occupy the land.

No evidence was adduced that any member of the Hollar family received permission to occupy the land from anyone at all. In my view, the assumption that the user about which evidence

was given was based on permission was speculative and unjustified.

Most importantly, there was no allegation that any member of the Felix family gave any member of the Hollar family permission to occupy and use the land.

In my judgment the conclusion that "it was through Reginald Cherris, Mary Hollar...came unto the land" is completely untenable.

The Late Claim

The admitted fact is that there was no dispute between the families before 1978. The most likely reason for that state of relationship is that one of them was not claiming the land. I have come to the conclusion from the totality of the evidence that there were instances where the proven conduct of Manfred Felix has been entirely consistent with the evidence of the Hollar family, and is capable of indicating that he never asserted a right to the disputed land prior to 1978.

Manfred Felix made the Declaration of ownership in 1967. The lack of a common boundary suggests that the land at Chateau Rosier is not adjoining the land at Bazil, and that the entirety of the holding he was claiming at Bazil at that time was only two carres. One can take judicial notice that a carre of land is approximately 3.2 acres. This circumstance lends credence to the evidence of Ellie Alexander that it had been reported at large that Manfred Felix had obtained four acres of land from St.Romain Faugas at Bazil. The Felix family made no attempt to define in evidence the land to which the Declaration referred. Even if their assertion that both parcels of land in the Declaration were adjoining each other was accurate, the total area which Manfred Felix claimed in his Declaration was six carres and that amounts to approximately 19.2 acres. This is vastly different to ownership of the more than 30 acres represented by the survey plans D 866 (12 acres plus) and D 874 (18 acres plus).

More than ten years after making that Declaration, Manfred Felix employed Leo Alexander to do survey work, which was executed in January and February, 1978 and produced plan D 866. This survey resulted in the demarcation of the 12 acre plot (Block 1438 B parcel 3).

That survey seems to indicate that parcel to be the extent of the land Manfred Felix was claiming at the time the instruction to survey was given. Even if there was another reason for having a separate survey of that parcel, it would seem incredible that he could be claiming the disputed land and not have his name inscribed as the owner of the land on the Northwestern

boundary. It is only after the Mary Hollar survey that the land she claimed was resurveyed by Leo Alexander on behalf of the Heirs of St.Romain Faugas.

I would therefore conclude that it is highly probable that, as Louvinia Alexander-Raymond suggested, it was only after Mary Hollar's survey that Anne Marie Skelly decided to claim the disputed land.

Order

It seems to me that the evidence clearly shows that the appellants were in continuous possession of Block 1438 B parcel 16 as owners from before the turn of the century up to the issue of these proceedings, and it should be so declared. The whole purpose of the law relating to prescription would be defeated if the Court did not give effect to the proven occupation by the Hollar family for more than 100 years.

I would therefore allow the appeal, set aside the judgment of the court below and order that the Estate of Mary Hollar be recorded as owner of Block1438 B parcel 16 in the Registration Quarter of Dennery with absolute title.

I order costs to the appellant, in this court and the court below.

C.M. DENNIS BYRON
Chief Justice [Ag.]

I Concur.

SATROHAN SINGH
Justice of Appeal

I Concur.

ALBERT REDHEAD
Justice of Appeal [Ag.]