SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO.20 OF 2000

BETWEEN:

LORENZE A.D. WILLIAMS
Executor of the Estate of **EGERTON RICHARDS** (deceased)
substituted pursuant to Order of the Court of the Appeal dated 4th December 2001
WILLIAM MITCHELL
RONALD MOWATT

Appellants

and

HESTINA EDWARDS
Administratrix of the Estate of **CLARA EDWARDS** (deceased)
substituted pursuant to Order of the Court of the Appeal dated 4th December 2001

Respondent

Before:

The Hon. Sir Dennis Byron	Chief Justice
The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]

Appearances:

Mr. S. Jairam, QC; Mrs. J.A. Roberts-Antoine with him for Appellant Egerton Richards and Ronald Mowatt
Mr. Emery Robertson for the Appellant William Mitchell
Ms. Nicole Sylvester and Ms. Rochelle Forde for the Respondent

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2001: October 14;
2003: January 28.

JUDGMENT

[1] **BYRON,C.J.**: This appeal arises from the judgment of Adams J delivered on the day of in which he found that the appellants were liable to the respondent for trespass to land in her occupation and made consequential orders. The

proceedings had been consolidated after commencement as separate actions brought by the respondent against Egerton Richards in 1996 and against William Mitchell, Ronald Mowatt, and three employees of Ronald Mowatt in 1997. In brief the judge found that the respondent was in exclusive possession of a parcel of land in Questelles when on the day of the appellant Richards and workmen cut and removed her fence and on the day of the appellants Mitchell, Mowatt and employees of Mowatt entered on the said lands and cut down trees and used abusive language at the respondent. He rejected the contention of the appellants Mowatt and Richards that they had a claim of right to the land in question. The appellant Mitchell pursued an entirely different course and urged that as a lawyer he was immune from liability and was entitled to the defence of necessity.

The Appeal

[2] The grounds of appeal were extensive but in reality they raised arguments under three headings. First they alleged that the respondents pleadings were defective for want of particularity and the action should have been dismissed for failure to disclose a cause of action. Secondly they alleged that the evidence did not support the conclusions drawn by the judge and he believed the wrong witnesses. Thirdly they alleged that William Mitchell was not liable at law and the judgment against him should be set aside.

The Pleading Point

[3] The appellant contended that the pleadings did not disclose a cause of action because although couched as an action in trespass it was in reality, litigation to establish ownership of land derived from adverse possession and the allegations in the statement of claim could not establish ownership. In particular the statutory declaration did not evidence title to the land. The appellant also contended that the statement of claim was vague and did not contain sufficient particulars, for

example it did not describe the land in dispute sufficiently to identify it for the purposes of this litigation.

[4] It is therefore necessary to look closely at the statements of claim. In both cases the statement of claim was simple clear and unambiguous. The allegations followed the same pattern. In both cases Ms. Edwards claimed that she was the owner in possession of two acres and thirty-three poles of land situate at Lower Questelles. In the Richards case, which the first one filed, this was amplified as follows:

> "as shown on Plan prepared by D.W. Frederick and lodged at the surveys Office on 6th April 1994 bearing Survey Number A416 and more particularly described in Statutory Declaration registered at the Registry of Deeds of the State of St. Vincent and the Grenadines as Deed No 1370 of 1994."

[5] In both cases, unlawful entry on a named date was alleged and damage and loss was particularized. In both cases the relief claimed was for a declaration of wrongdoing, injunctive relief prohibiting repetition, damages and costs. In the reply Ms Edwards alleged that her possession had been uninterrupted since 1973.Counsel for the appellant urged that such pleadings needed to describe the land in relation to its bounds on each of the compass points. I reject this proposition completely. The description of the land by reference to the survey plan and the registered declaration in these pleadings could not be more clear, precise and informative. There was no merit in the complaint that the pleading lacked particulars as to the description of the land in dispute.

[6] Nowhere in any pleading in the case was there a claim by the plaintiff for a declaration of title nor for any relief of that nature. The issues relating to title were introduced by the appellants because they were relying on a claim of right although they never counterclaimed for any declarations of their entitlement. Counsel for the appellant was particularly scathing in his attack on the legal effect of the statutory declaration. But this was a storm in a teacup. In fact we agree with him. The effect of the statutory declaration is to evidence in a permanent form, the

possession claimed by the declarant. It does not constitute a deed of title or proof of ownership. Counsel for the appellant relied on a passage in **Gordon Charles v Clarie Holas** [Grenada] Civil suit No 151 of 1996 in which Alleyne J said:

> "Both parties appear to have proceeded under the assumption that a statutory declaration has the legal effect of vesting title in land. It has no such effect. A statutory declaration is nothing more that a written document containing allegations of fact solemnly declared in form of law. It may have certain limited evidential value, but it is not an alternative method of conveying title to land."

[7] In this case, however, I considered the evidential value to be high. The Statutory Declaration provided clear evidence that it was the intention of the declarant to be in possession as owner. It also provided notice to the world at large of that fact. It was therefore evidence, which supported the allegation in the statement of claim that Ms Edwards was in possession as owner. In my view this was a classic pleading in trespass. None of the relief applied for required a declaration of title. The issues were clearly identified as whether the appellant was in possession as owner, and whether the respondent had wrongfully entered the land and destroyed the fence causing damage, in the Richards case and cut down trees causing damage in the other case. The issue as to ownership was completely irrelevant. The legal point is trite and Trespass is the interference of one's possession and it does not turn on whether the party bringing the action had a deed in law or was in fact the owner of the land, as stated at 4th edition of Halsburys Volume 45 paragraph 1394. In my judgment, the challenges to the pleadings are rejected.

Credibility of Witnesses

[8] The appellant complained that the judge failed to give sufficient credence to the evidence of Vernie Bowens. The general rule is that the court of appeal does not lightly interfere with findings of fact based on the credibility of witnesses. In **Louvina Alexander-Raymond v Marie Anne Skelly et al** [St. Lucia] Civ. App. No. 8 of 1995, at page 3, the Court of Appeal in applying the principle laid down in **Watt v Thomas** (1947) 1 All E.R. 582 held:

> "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".

[9] In this case the evidence of Bowens put at its highest did not contradict the evidence of the respondent and her witnesses to the effect that she was in possession of the land in dispute and that her fence was removed. He denied that there were trees on the land but the evidence was overwhelming and there could be no justification for overruling the finding of the trial judge on this issue. The appellants also challenged the rectitude of the learned trial Judge's acceptance of the respondent as a truthful witness. For the same reasons we will not uphold the Appellant's challenge to the Respondent's credibility. However the case did not entirely turn on the credibility of the witnesses. I would therefore consider the factual background to the case and the factually mistaken defence on which the appellants relied.

The Factual Background to the Judgment

[10] When this case had come on for hearing, the respondent Clara Edwards was 82 years old. She had grown up in Questelles and had known Anna Bonadie who died in 1966. As far as she was aware, Anna Bonadie was the last member of that family. The learned trial Judge specifically found Clara Edwards to be a truthful witness whom he believed. Around 1973, she decided to enter and claim a portion of what she described as the "Bonadie Lands" by adverse possession. The learned trial Judge found that the evidence was compelling that she was in exclusive possession from then until the trial. She cultivated the land. She paid land taxes in the name of Anna Bonadie and produced the receipts in court. In 1994 she had Mr. David Fredericks a licensed land surveyor, survey the land she was claiming. He produced a survey plan which was lodged in the survey office bearing identification A416 containing 2 acres 22 poles. Later in 1994 she

executed a statutory declaration by which she asserted her claim to the said land in the following terms:

> "..I therefore claim possessory title to the said land to which I know and believe that I am entitled to, all other claims having been barred by the Limitation Act Cap 90."

The declaration was registered as a deed 1370 of 1994.

[11] She then erected a fence around the land. It was made of steel posts and wire fencing material. It cost her $22,284.04 to purchase the materials and pay the labour costs. She gave evidence that on 13th September 1995 the Appellant Richards came onto her land at 2.00 am in an open truck with two men, clipped her wire, rolled it up put in the truck and drove away. Ms. Edwards further testified that she went to them and the appellant Richards said *inter alia* that he would run her over with his jeep and that he was not afraid of any judge or lawyer. They came back the following day and took away the rest of it. She issued proceedings for trespass against Egerton Richards on 26th January 1996. On or about 25th February 1997 Ronald Mowatt his servants and agents entered the said lands and cut down trees and abused and ridiculed Clara Edwards.

The Mistaken Defence of Egerton Richards and Ronald Mowatt

[12] The appellants' challenged the factual findings of the learned trial judge. However, even before it is necessary to consider whether the findings in favour of the respondent should stand it is clear that the appellant's initial trespass and conduct of the trial through all its various stages was based on a mistake of fact.

[13] Egerton Richards, in his defence pleaded that the land in dispute belonged to the "Bonadie Estate" and the late Neville Mowatt and his heirs were in possession and occupation thereof.

[14] Ronald Mowatt, in his defence alleged a claim of right based on inheritance from the late John Casington Bonadie who died on 26th August 1910 whereupon his estate devolved to the late Anna Bonadie who died on 6th September 1966, leaving a will under which her executor vested a parcel of land, by Deed No. 413 of 1972, in her nephew Neville Mowatt. After Neville's death that parcel was vested in Alma Mowatt Hines by Deed No. 2800 of 1993. Ronald Mowatt claims as the holder of a Power of Attorney from Alma Mowatt Hines.

[15] Although the pleaded defence was quite specific as to the inheritance the evidence given by Ronald Mowatt was rather confused on the extent of the inheritance. He testified "I am in charge of an acre of land in St.Vincent which belonged to Anna Bonadie and that was passed on to my grandfather then to my mother Alma and then to me. The land forms part of the Bonadie estate. … the land was known as the Bonadie estate. The land Clara Edwards occupies is part of the Bonadie estate."

[16] At the trial, the Appellants put in evidence the will of Anna Bonadie made on 24th September 1962. The will named Mr. S.O. Jack as executor and contained devises of property at 12 Rose Place in Kingstown to Carmen St.Agathe, and "to my nephew Neville Mowatt now residing in Brooklyn, N.Y. U.S.A. that portion of land with house situate at Questelles in the Parish of Saint Andrews in Saint Vincent being lot Number fifty-seven (57) about five acres one rood seventeen poles (5 ac. 1rd. 17pls) more or less". The only other specific gift was of all her cash after just debts to her executor. The remaining gift was worded as follows " I direct that all residue of my estate not mentioned in this my will be sold and distributed to my family as the Executor thinks fit". No attempt was made to establish the extent of the residuary estate.

[17] After the death of Anna Bonadie her will was probated and Mr. Jack transferred the said lot 57 to Neville Mowatt by Deed registered as No. 413 of 1972. After the death of Neville Mowatt, Letters of Administration were granted to Edmond Mowatt

and in that capacity, he transferred to Alma Mowatt Hines, as the lawful daughter of Neville Mowatt deceased and the only person entitled to share in his estate, the said parcel of land at Questelles by Deed of Assent registered as No 2800 of 1993. In that deed the land was described as containing 7 acres 1 rood and 20 poles as the same is shown on a plan drawn by Sebastian Alexander in August 1990 and lodged in the Surveys Department as drawing no. A389.

[18] On 2nd August 1995, Alma Mowatt Hines, by Deed No. 94 of 1995 appointed Ronald Mowatt, her son to be her attorney. In the context of this case clause No. 1 is very significant:

> "To receive from any purchaser the price agreed to be paid for the purchase of my property in St.Vincent inherited from the estates of my father Neville Mowatt and my great aunt Anna Bonadie both deceased."

[19] The significance is easily seen because in his evidence in chief Ronald Mowatt testified:

> "In 1995 I entered into an arrangement with Metrocint Insurance Company to sell the whole of Bonadie Estate. This is a copy of the arrangement. Tendered and marked RMT. The land I was arranging to sell to Metrocint included the land that Clara is claiming. I appear to have been partially paid for the land. I have got deposit."

[20] Under cross-examination he said "I do not know if Clara Edwards land is part of lot 57. It is part of the Bonadie estate."

[21] This is one of many indications in the testimony of Ronald Mowatt that demonstrated ignorance of the extent of the land that his mother had inherited. The only parcel devised in the will was parcel 57, yet he testified that he inherited the "Bonadie Estate". This ignorance is surprising because he had proper legal advise on the extent of the inheritance.

[22] In his evidence in chief Egerton Richard said:

> "I am Managing Director of the company known as Metrocint General Insurance Company. That company entered into a sealed agreement with Mr. Ronald Mowatt to purchase lots No. 52 and 57 of the lands of Anna

> Bonadie at Lower Questelles. The lots were pointed out to me in the presence of Mr. Andrew Cummings my lawyer by Mr. Ronald Mowatt and Vernie Bowens. … I would say Clara Edwards is now claiming part of lot 57 of the Bonadie Estate … I am aware now that Clara Edwards is claiming part of the land I agreed to buy".

[23] Under cross-examination, he confirmed his testimony:

> "I know now Plaintiff is claiming part of Anna Bonadie's land. The land that Clara is claiming is part of the land I have contracted to buy, i.e. the Company has contracted to buy."

[24] The written agreement was dated the 11th day of August 1995 between Ronald Mowatt as attorney for Alma Mowatt Hines of the one part and Metrocint General Insurance Company Limited of the other part. The proximity between the dates of the Power of Attorney and the Agreement for sale allows the inference that the purpose of the power was to enable Ronald Mowatt to dispose of the entire inheritance of his mother Alma Mowatt Hines from the Bonadie family. The agreement which was drawn by Hughes and Cummings specified that it was to sell with vacant possession all that parcel of land at Questelles in extent 7 acres 1 rood and 20 poles as the same is shown on the plan drawn by Sebastian Alexander in August 1990 and bearing drawing No. A389 for the price of $300,000.00.

[25] The written agreement did not include any reference to lot 52. The testimony of Egerton Richards that his company had purchased lots 52 and 57 was disproved by the written agreement on which he relied, and this agreement was prepared by Hughes and Cummings, Solicitors in the face of the testimony that Mr. Cummings was present when the land was being shown to Mr. Richards by Mr. Mowatt.

[26] The agreement evidenced a deposit of $10,000.00 and an agreement to pay the balance "when the vendor is in a position to execute a deed of conveyance free of all encumbrances and which guarantees vacant possession to the purchaser". In the evidence both Egerton Richards and Ronald Mowatt testified that Metrocint was Egerton Richard's company. It is of further significance because the

statement of claim alleges that it was on 13th September 1995 that Egerton Richards entered the land in dispute and removed the fence triggering the commencement of these proceedings. The clause requiring vacant possession may explain the reason for the trespass.

[27] Sebastian Alexander who did the survey for the land which Alma Mowatt Hines inherited and which Ronald Mowatt agreed to sell to Metrocint gave evidence for the appellants at the trial. In his testimony he stated on oath that he surveyed lot 57 on the instructions Edmond Mowatt, and that the boundaries were shown to him by Vernie Bowens who assisted him with the survey. His evidence confirmed that the land in the agreement for sale was only lot 57 and did not include lot 52 as stated by Egerton Richards in his testimony. Mr. Alexander specifically testified that the land Clara Edwards is claiming as evidenced by the survey plan exhibited in evidence did not form part of lot 57. It is convenient to mention at this stage that Mr. Fredericks who did the survey for the respondent also gave evidence in this trial and confirmed that the land he surveyed for the respondent was not part of lot 57 but a completely different parcel of land.

[28] The evidence of Ronald Mowatt and Egerton Richards demonstrates that they were labouring under a mistake of fact. It is absolutely astounding that this mistake persisted to the extent it did. Not only are the documents clear, but Sebastian Alexander, gave evidence for the appellants at the trial. The entire basis of their pleaded defence was, therefore, destroyed by their own documents and the evidence of their own surveyor.

[29] At the Court of Appeal the appellant persisted with reliance on the claim of right and in the face of the evidence advanced submissions to the effect that Ronald Mowatt was entitled the residue of the Bonadie Estate as a "potential beneficiary" under the residuary clause of the will of Anna Bonadie which directed that her residue be sold and distributed to her family. This was not pleaded and no evidence was adduced. There was no evidence of who were the persons entitled

under the residuary clause. There was no evidence as to the extent of the residue of the estate. There was evidence on the record that the executor of the estate prior to his death had sold land. In particular a deed made in November 1970 and registered as No. 1888of 1970 was exhibited to evidence a sale of land from the Bonadie estate by the executor Mr. S.O. Jack to Hestina Edwards the daughter of the plaintiff. These submissions had to be regarded as arguments of convenience without any merit. I do not think that I need do more than state that in my view there was no factual or legal basis for them and I reject them. **Re William Mitchell.** On appeal Mitchell was separately represented. Counsel criticized the judge's findings of fact and submitted that William Mitchell was entitled to the defence of necessity because he was acting under professional duties as a lawyer. Counsel also argued that it was wrong to find joint liability because this made Mitchell liable for the wrong committed by Egerton Richards, for which he was not sued. The responses to each of these contentions were purely factual. The evidence adduced by the appellants showed that they had a common interest in asserting a right to the land based on the deed of Alma Mowatt Hines. Mitchell was lawyer to Ronald Mowatt and also to Egerton Richards who claimed to have purchased from Ronald Mowatt. The Respondent Edwards testified that she saw Mitchell on her land. The witness Mars testified that he saw Mitchell on the land with appellant Mowatt and Mitchell not only used language urging Mowatt to get the respondent "to hell off the land" he also handed Mowatt a cutlass. Mowatt gave evidence that on the occasion Mitchell handed him the cutlass it was to defend himself against Mars. In his evidence Mowatt said that he saw the respondent on that occasion and she came and led Mars away. Although the respondent's evidence did not specify any date in relation to Mitchell it was open to the judge to link this testimony with the other evidence in the case and conclude as he did that Mitchell was part of the Mowatt team that entered the land and cut the trees. I was not moved by counsel's impassioned plea that Mitchell's status as a lawyer should have conferred some immunity from suit. In this case his presence was clearly more than a professional observer as was pointed out by his inciting behaviour and language. His counsel argued that the trespass could be justified by

necessity, citing Clerk & Lindsell on Torts 17th edition at page 870. This submission could be summarily rejected because necessity was not pleaded in the defence and Mitchell did not give any evidence at the trial to rebut the testimony of Mars.

[30] Counsel for Mitchell contended that the order for joint and several liability was unjust to Mitchell because it could make him liable for the trespass committed by Richards. This challenge now needs to be examined. The order of the learned trial Judge was as follows:

> " I find all the defendants jointly and severally liable for trespass. I order the following remedies, which in summary are:
> [a] Declaration that the defendants are not entitled to enter or cross the plaintiff's land
> [b] Injunction not to do so
> [c] Special damages of $22,284.04 against the defendant Egerton Richards being the cost of the wire removed by him from the plaintiffs land
> [d] Special damages of $1650 for trees destroyed
> [e] General damages of $10,000.00
> [f] Costs to be taxed if not agreed."

[32] I think that the matter is really a matter of construction. In my view the learned trial judge was joining all the trespassers in the declaratory and injunctive orders. He then sought to make specific orders for the special damages claimed against those responsible. In my view the order made by the judge removed any possibility that Mitchell or anybody other than Richards could be liable for the special loss that resulted from his removal of the fence. The award for the cutting of the trees was also quite specific. I cannot see any reason why William Mitchell should not have the same general liability as the others as his culpability was no less and probably greater because he knew or ought to have known that the position taken was wrong yet he actively participated in the trespass. In my view the learned trial judge was entitled to make an order for joint liability for trespass and for the general damages arising there from.

[33] On costs counsel argued that the order was defective because as the actions were consolidated Mitchell was made liable for the costs incurred by Richards. He argued that CPR 2000 part 64.6 gives the court a discretion in the award of costs. He urged that the court should use its discretion in favour of Mitchell. In view of the way in which the appeal was conducted I would accede to the application for the costs to be severed. I would also cause the order for costs to be taxed if not agreed to be varied in order to provide a quantified order. II would order that the order for costs in the court below be awarded in the sum of $14,000.00 against Mowatt and Richards, and in the sum of $7000 against Mitchell. And on appeal in the sum of $9333.33,against Mowatt and Richards and in the sum of $4666.66 against Mitchell.

Order

[34] The appeal is dismissed. The order of the trial Judge is varied to the extent that the costs be quantified in the sum of $14,000.00 against Mowatt and Richards and in the sum of $7,000.00 against Mitchell. The costs of this appeal against Mowatt and Richards $9,333.33 and against Mitchell $4666.66.

Sir Dennis Byron
Chief Justice

I concur

Albert Redhead
Justice of Appeal

I concur

Ephraim Georges
Justice of Appeal [Ag.]