JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL No. 64/75

BEFORE: The Hon. Mr. Justice Luckhoo, P. (Ag.)
The Hon. Mr. Justice Robinson, J.A.
The Hon. Mr. Justice Watkins, J.A. (Ag.)

BETWEEN	-	DAVID BENT	-	DEFENDANT/APPELLANT
AND	-	MELVINA WILLIAMS	-	PLAINTIFF/RESPONDENT

J. Kirlew for the appellant.

Horace Edwards, Q.C. for the Respondent.

February 13 and March 2, 1976

Robinson, J.A.:

On the 13th February, this Court allowed the appeal herein and entered judgment for the appellant with costs; we promised to put our reasons for so doing in writing.

This action was brought in the year 1974 to recover possession of one square of land in the parish of St. Thomas. The plaintiff gave evidence to the effect that in 1947, her grandmother gave her the land, that the defendant occupied one square for which he was paying her grandmother six shillings per quarter; in 1948, she obtained title in her name under the Registration of Titles Law (Vol. 516 Folio 20); her grandmother died in 1957. She testified that she had taken the defendant to court for rent owing but recovered none, in deed all attempts by her to collect rent from the defendant failed as each time he refused to pay, "On several occasions he has had fuss with me over the land". In 1972, she went to the land to pick mangoes and they both had a fight, the defendant telling her "Not to come back there" - this matter ended in court when she was bound over.

The defendant has been on the land since about 1947 and he has paid no rent to date since the year 1948.

The plaintiff called a witness who corroborated her, inter alia, as to the alleged disputes with the defendant over the land.

At the end of the plaintiff's case, learned attorney for the defendant rested his case on various submissions, the more material being:

(1) Time runs against the plaintiff from the date when she obtained title i.e. 1948.

(2) "It is the plaintiff's duty to take appropriate action to get the defendant off premises - twelve years have elapsed - barred by section 3 of the Limitation of Actions Law, Chapter 222."

(3) The right to recover started, as far as the plaintiff is concerned, from 1948 because that was the time she obtained the legal estate.

The learned resident magistrate decided in favour of the plaintiff and gave judgment accordingly.

In substance, the same argument as was contended for in the court below was advanced before us on appeal. Learned attorney for the defendant (appellant) puts it this way: "If the defendant was a tenant and ceased to pay rent for 12 years after it was due, then the landlord's right to the land ceases even though she goes on the land, picks things and goes to ask for rent during the time; this is not sufficient, she must do something to effectually gain the land; rent due and unpaid at last quarter, she should have brought an action." Learned attorney referred the Court to sections 10, 12 and 13 of the Limitation of Actions Law which provides:

10. " When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent as tenant, from year to year, or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

12. ' No person shall be deemed to have been in possession of any land merely by reason of having made an entry thereon.

13. ' No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action."

He further submitted that the plaintiff's conduct was not enough to defeat the statute. The Court was referred to the case of Doe d. Baker v. Coombes (1857) 9 Comm. Bench Reports p. 714; for the purposes of the present appeal, it is enough to cite the headnote which reads:

"A., more than twenty years ago, without the permission of the lord, inclosed a small portion of the waste of the manor, on which he built himself a hut. In 1835, the incroachment having been presented at the lord's court, the then lord of the manor, accompanied by his steward, went to the premises, A.'s family being there, and, stating that he took possession, directed that a stone should be taken out of the wall of the hut, and that a portion of the fence should be removed. All this was done in the absence of A. The lord and the steward then retired and nothing more was done:-
Held, that the acts so done by the lord did not amount to a dispossession of A., and a resumption of possession by the lord, so as to entitle the latter to maintain ejectment within twenty years from that time."

Defendant's attorney submitted that the acts of the plaintiff amounted to no more than an entry, that her acts did not amount to a dispossession of the defendant, and a resumption of possession by her; she was denied the right to go on the land or to pick mangoes, took defendant to court for rent and got none, no payment for rent since 1948, no entry to take possession, that in all the circumstances of this case, by virtue of section 10 (above quoted) the plaintiff lost the right to bring proceedings to recover the land.

The plaintiff's attorney was hard-put to find an answer to these submissions. We found his argument irrelevant and had no bearing on the matter. In short, it became obvious that he had no cogent reply; with this, we are all agreed.

It is clear that the evidence does not support the decision arrived at by the learned resident magistrate who seemed to have gone against the facts when there was no evidence to the contrary from any quarter. In the result, we allowed the appeal and the attendant orders made.