

notes of cases

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"TENANCY BY ESTOPPEL"

In the case of *Cotterell v Whit*¹. One Joseph Cotterell had claimed to be the owner of some 200 acres of land called "Jack Wisdom Mountain" in the parish of Trelawny. Joseph went to reside in Cuba and by a document dated February 15, 1939, purported to appoint the Plaintiff his cousin as Agent, General Manager and Landlord Bailiff over the said property.

The Plaintiff entered into possession and rented portions of the land to various persons; subsequently Joseph died. On September 1, 1964, as is evidenced by a document signed by the Defendant as tenant and the Plaintiff as Landlord, the Plaintiff agreed to rent 2 acres to the Defendant on a monthly tenancy for the sole purpose of depasturing cows with the right reserved to the Plaintiff to recover possession of the portion of land upon three months' notice to quit. The sum of 2/- per month was agreed as rental.

The Defendant was put into possession of the 2 acres and made payment of the rent for the first three (3) months.

In 1965, Bernard Scharschmidt who had been residing in England for several years returned to Jamaica and claimed to be the owner of the lands including the portion rented by the Defendant from the Plaintiff. The Plaintiff sued the Defendant for arrears of rent in the sum of £3.0.0. In answer to this claim the Defendant asserted that he had paid the rent to Bernard Scharschmidt.

For the Defendant it was submitted, inter alia, that even if Joseph had owned the land, the agency in the Plaintiff came to an end at Joseph's death and the land would have devolved upon Joseph's personal representatives upon the statutory trusts by virtue of the Real Property Representation Law, Chap. 332 S. 3 (1) if these were persons in whose favour such trusts could operate in accordance with the provisions of S. 4 (1) of the Intestates Estates and Property Charges Law. There being no such persons, it was submitted that the deceased's estate escheated to the Crown, and it was therefore incompetent for the Plaintiff after the deceased's death to rent any portion of that estate to the Defendant.

The case of *Mountnoy vs Collier*² did

not help the Defendant because it decided that a tenant is not estopped from showing that his lessor's title has determined and that if he has a new arrangement with the person who really has the title, to hold under him, it is not necessary that he should actually go out of possession; otherwise he must surrender possession before he disputes his lessor's title or have been evicted actually or constructively by a person having title paramount.

Accordingly, the Court rejected, the Defendant's submissions and held that even assuming that the plaintiff had no estate in the land and conceding that in such a case the grant of a tenancy of land can pass no actual estate, the Defendant is estopped from denying that the grant was effective to create the tenancy that it purported to create there having been brought into being a tenancy by estoppel with the right of the Plaintiff as Landlord to destrain for rent.

Further, the payment of rent to the Plaintiff as Landlord and the fact that it was the Plaintiff who had put him into possession of the land operated to estop the Defendant from disputing the title of the Plaintiff there being no suggestion that the payment of rent was made through a mistake or in consequence of any misrepresentation by the Plaintiff.

The Court was, therefore, applying an old Common Law principle whereby a tenancy by estoppel can be created. Of course, it is important to point out that estoppels do not bind strangers, so that a Landlord by estoppel cannot exercise his normal right to destrain goods not owned by the tenant. There is a very interesting discussion regarding the problem and relevance of Tenancy by Estoppel in the Law Quarterly Review by A. Prichard.³ The absence in Jamaica of a great deal of the English legislation which has affected the reported cases on Tenancy by Estoppel makes a large number of these English cases irrelevant in Jamaica, but nevertheless, a serious problem could exist for mortgagees when faced with a Tenancy by Estoppel. Indeed, can a mortgagee obtain vacant possession of the mortgaged premises in accordance with the terms of the mortgage in preference to one to whom the mortgagor had before the date of the mortgage purported to grant a lease? Without going into details which would require much discussion, it would appear that if a "Landlord" without legal title to land

uses the correct forms prescribed by Law to create a legal lease, then so long as the lease is accompanied by the going into possession by the tenant, any mortgagee of that Landlord is estopped as against the tenant. Thus, a careful mortgagee should be concerned with the terms on which a tenant is let into possession. This could be very onerous and cause undue hardship and might require the constant vigilance of the mortgagee. Fortunately, the problem apparently has not yet arisen in Jamaica, but there is a distinct possibility that it could with unfortunate consequences for the mortgagee.

E.G.

"AN UNSATISFACTORY SITUATION"

The case of *Forsythe v Thomas*¹ is of some interest to practising lawyers. The facts are that in 1940, Eliphas Thomas purchased 3 acres of land in the Sunning Hill Land Settlement, St. Thomas. At that time, Eliphas was living with Adella Delprat as man and wife. The Plaintiff said that Eliphas asked her husband, Robert Forsythe, to join in the purchase because he Eliphas, could not pay for all the land. Robert accepted the offer and the land was divided equally between them.

They occupied their respective portions of land without any disagreement between them for over 20 years. Eliphas' tailor shop and dwelling house were on the land. In 1942, Adella left him and in 1948 he married the Defendant. Eliphas died in 1960 and Robert died in 1967. A dispute as to the ownership of the portion formerly occupied by Robert arose between the Plaintiff and the Defendant.

The Defendant alleged that Robert's occupation of the land had been as Agent for Eliphas and contended that she was therefore entitled to possession of it.

In his reasons for Judgment, the Magistrate found that Eliphas appointed Robert to act as his agent in cultivating and letting the land and that all the activities of Robert on the land were done in connection with his duties as an Agent of Eliphas Thomas.

Admissible as well as inadmissible evidence had been let in by the Resident Magistrate and it was impossible for the Court of Appeal to know whether his findings were based on the admissible or inadmissible evidence.

1. R.M. Civil Appeal No. 61 of 1969

2. (1853) 1 E & B 630

3. Volume 80, at page 370.

1. R.M. Civil Appeal No. 101 of 1969