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FULL COURT.
1933DELISSER *v.* KELLY.

December 22.

13 S.C.J.B. 29.

*Registration of Titles Law (Law 21 of 1888)—Sections 2, 5, 17, 55—
Easements unrecorded—Construction.*

An existing easement is not extinguished by the registration under the Registration of Titles Law of a servient tenement which omits to record the easement on the Register.

The proviso to sec. 55 of Law 21 of 1888 is not restricted to easements acquired after the date of registration.

James *vs.* Stevenson (1893) A.C. 162. Applied.

(On the interpretation of clauses in which the grammatical construction creates separate divisions of subjects all separated from each other by the word "and").

Goodison *vs.* Williams. Clark 349. Mentioned.

Where there is no ambiguity in the words of a section and where in the plain meaning they do not lead to any absurd result the preamble ought not to be looked at. (Per Lyall-Grant, C.J.)

FOSTER-SUTTON for the appellant.

MANLEY K.C. for the respondent.

APPEAL from the judgment of Nethersole R.M. for St. Thomas dismissing a trespass action.

The facts sufficiently appear from the Judgment of Brown J.

Judgments of the Full Court (Lyall-Grant, C.J.; Brown and Clark, J.J.) were delivered by the Chief Justice and Brown, J.

LYALL-GRANT,
C.J.,

LYALL GRANT C.J. The question raised in this appeal is a very simple one, viz.: whether an easement of right of way is extinguished by registration of the servient tenement under the Registration of Titles Law 1888. The Magistrate held that the existing easement was not extinguished by the omission to record it on the Register in the entry relating to the servient tenement, since by the proviso to section 55 of the Law easements are not affected by registration.

On appeal it was argued at considerable length that on a true reading of the section and having regard to the scope and intention of the Law as a whole, the reference to easements must be construed as restricted to those easements which are acquired after the date of registration.

Reference was made to the scope and intention of the Law, as disclosed by the preamble, being to do away with doubts as to title. I do not think however that the preamble needs to be looked at or indeed can be looked at where there is no ambiguity in the words of the section to be construed, and where in the plain meaning they do not lead to any absurd result. Section 55 provides that land registered should be deemed to be conveyed free from all incumbrances.

The section contains a proviso that certain incumbrances remain on the land in spite of the fact that they are not mentioned in the

registered title. Most of these are incumbrances arising after the date of registration but the proviso mentions easements generally without so confining its application to them. It was argued that by a little re-arrangement of the punctuation the clause could be read as confining the proviso qua easements to those easements which are acquired subsequently to the registration.

I find it impossible so to construe the section without doing violence to its plain terms. As Mr. Manley pointed out one is not dependent merely on commas but on the repetition of the word "and" used as separating the various classes of incumbrances. There is also the reference to "subsisting" easements. The section if I may presume to say so appears to have been carefully drafted and it is significant that the interpretation contended for by the defendant and upheld by the Resident Magistrate is the interpretation which, as we are informed, has been put upon it by the legal profession ever since the law was passed in 1888.

That is sufficient for the decision of the appeal, which is dismissed with costs fixed at £10.

Brown J. The land of the plaintiff appellant has been brought under the operation of the Registration of Titles Law. It is the servient tenement in this case. The land of the defendant respondent is not registered. The plaintiff claimed damages for trespass alleged to have been committed on her land by the defendant. The defendant removed a fence erected across a way on the plaintiff's land which she (the defendant) claimed that she had a right to use in order to reach the main road from her house land.

The Resident Magistrate upheld the defendant's claim and gave judgment in her favour and from that judgment the plaintiff has appealed. There is ample evidence to justify a finding that the defendant and her predecessors in title used and enjoyed this way across the land now belonging to the plaintiff and that by such user and enjoyment she has now acquired a right.

The contention urged by the learned counsel for the appellant before this Court was that as the right of way does not appear on the plaintiff's certificate of title it must be taken to have been extinguished. This contention was in my opinion correctly disposed of by the Resident Magistrate. He referred to Section 55 of Law 21 of 1888, the Registration of Titles Law. It was however sought in this Court to establish that the interpretation placed on the relevant portion of that section was erroneous and the only question this Court has to decide is whether that contention is sound or not.

Section 17 of Law 21 of 1888 provides that a person who is registered under that Law with an absolute title "shall be entitled to hold such land in fee simple together with all rights, privileges and appurtenances, belonging or appurtenant thereto, subject as follows:

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- (1) To the incumbrances (if any) entered on the certificate of title, and
- (2) To such liabilities, rights and interests as may under the provisions of this Law subsist over land brought under the operation of this Law without being entered on the Certificate of Title as incumbrances, but free from all other estates and interests whatsoever, including estates and interests of His Majesty, his heirs and successors, save only quit rents, land tax or other impost, charged generally on lands in this Island, that have accrued due since the land was brought under the operation of this Law."

"Land" by Section 2 of the Law when used in a certificate of title includes easements appertaining to the land therein described. This does not affect the present matter as the proprietor of the registered land is not claiming an easement.

It is necessary therefore to see what are the "liabilities, rights and interests" as may, under the provisions of this Law, subsist over Land brought under the operation of this Law without being registered as incumbrances."

Those "liabilities, rights and interests" appear in Section 55 of the Law. By the proviso to that Section the land included in the certificate "shall be deemed to be subject to.....any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land."

It was contended that the construction of the section required that such easements should be confined to easements acquired since the land was brought under the operation of the Law on account of the words occurring later in the same section. This construction does not appear to be possible. The grammatical construction creates separate divisions of the liabilities, rights and interests which need not be indorsed on the certificate but which nevertheless continue to exist. They are all separated from each other by the word "and" which makes it plain that the words "that have accrued due since the Land was brought under the operation of this Law" apply to the immediately preceding words (irrespective of punctuation) viz.: "and to any unpaid rates and assessments quit rents or taxes." This construction so far as authority is necessary is supported by the case decided by the Privy Council of *James vs. Stevenson* (1893) A.C. 162 and it may be added that *Goodison vs. Williams* decided by this Court has no application to this case.

The appeal is dismissed with £10 costs.

Appeal dismissed.