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IN THE COURT OF APPEAL

R.N.C.A. No. 19/65

BEFORE: The Hon. Mr. Justice Duffus (P)
 The Hon. Mr. Justice Henriques
 The Hon. Mr. Justice Moody (Ag.)

PERCIVAL DILLON v. REGINALD CREWE

Mr. D. H. McFarlane for the Appellant.
Mr. N. A. H. Henriques for the Respondent.

1st December, 1965.

HOODY, J.A.(Ag.):

In this appeal, the plaintiff sued the defendant for the sum of £30 for damages for trespass, in that the defendant on Friday the 15th of June, 1962, wrongfully and unlawfully entered the plaintiff's close and cut down fence and picked fruits from the plaintiff's land. It was tried on the 17th of April, 1964; and the learned Resident Magistrate gave judgment for the plaintiff for the sum of £30 and costs £17. 3. 6d.

Now, the defendant in his defence denied there was any trespass done and alleged that he was in lawful possession of the land, thereupon the defendant's case started. He called witnesses and his witnesses were designed to give evidence to establish his claim for a long number of years. John Dillon, who was a brother of Susan Dillon, was formerly the owner of the land up to 1904, and there was no dispute on either side about that. Susan Dillon disposed of this land by means of a Will to children of a union between herself and Augustus Crewe, who is an uncle of the defendant, Reginald.

The plaintiff refuted the defendant's allegation of Susan being the owner of the land by calling witnesses to

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trace the possession of this land and the dealings with this land from the time it was owned by John Dillen.

The learned Resident Magistrate, in his finding, reached the conclusion that there was a clear line of descent of this land from the brothers to the youngest lawful surviving brother and through him - that is Thomas Dillen - through him to the present plaintiff. He rejected the evidence given by the defendant as to Susan being in charge of the land although he did not make a specific finding to that point; and he rejected the evidence given by the defendant that he was the agent of the executor and as such was entitled to possession as he alleged.

Learned counsel here before us invited us to consider in support of his argument, the case of Asher and Whitelock 1865 Vol. 1 L.R.Q.B cases I, in which it was decided that possession even for a short a period as a year, is sufficient to entitle a plaintiff to take action successfully against the defendant who has no better title than the plaintiff. Learned counsel also submitted that from the evidence, it would seem to indicate that Susan exercised the power of disposal over this land in that parts of the evidence referred to her giving in 1912, a bit of land to Thomas to build a house when his house elsewhere had been blown down by hurricane; and also a bit of land to Frederick - an acre and a half.

In our view, considering all the evidence in the case, it seems that this family, from 1904 down to Susan's death in 1922, lived together as one happy family each anxious about the welfare of the other. We see no reason to say that the Learned Resident Magistrate was wrong in reaching the conclusion which he reached arising out of a descent of the land from 1904, and nothing has been urged before us to enable us

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to say that he was wrong in reaching the conclusion that he reached. In the circumstances, the appeal is dismissed with costs £12.

DUFFUS, P:

I agree. The evidence supports the finding of the learned Resident Magistrate. Plaintiff/Respondent in this case, Percival Dillon, was in lawful possession of the land subject to this law suit. Up to the 15th of June, 1962, plaintiff alleged trespass by the appellant. The appellant endeavoured to set up title of the land and as found by the learned Resident Magistrate, he failed to do so. It seems to me that the evidence in this case clearly supports that finding. In the circumstances, the plaintiff was entitled to succeed. The appeal, therefore, must fail.

HENRIQUES, J.A.:

I agree. The appeal should be dismissed.

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