

It follows then that the appeal, in so far as it is against the convictions, must fail, and is accordingly dismissed.

As regards the appeal against the severity of the sentences imposed and the submission made at the hearing by the Crown that, far from being too severe, the sentences were too lenient and should be increased, I can only say, as I have said in the past and will say again in the future until I am shown cause to believe I am wrong, that I am not concerned with what sentence I should have imposed had I been in the learned Magistrate's place. My own view, quite frankly, is that the appellant Company were fortunate in appearing before a merciful Magistrate; but, of course, if a Magistrate is going to err at all it is better he should err in the direction of undue leniency rather than in the contrary direction. However, if the Magistrate has erred in the direction of leniency—and I do not say for a moment that he has—I see no reason to deprive the appellant Company of the benefit they have obtained thereby. There is nothing on the record to show that any wrong principle has been applied to the assessment of the sentences, and nothing, on the face of it, to show that they are in any way inappropriate, and until something of the sort is shown this Court cannot interfere.

The appeal as a whole is dismissed.

CRONIN & OR. v. VISHNU DEO.

[Civil Jurisdiction (Seton, C.J.) February 27, 1946.]

Land (Transfer and Registration) Ordinance—adverse possession—when time starts to run against a registered proprietor.

Defendant became registered proprietor of the land comprised in certificate of title No. 4372 by virtue of registration of a transfer on 19th October, 1943. Previously and up to 1943 the plaintiffs (registered proprietors of an adjoining piece of land) had been in continuous and undisturbed possession of 13.3 perches being part of the land comprised in certificate of title No. 4372 for a period exceeding that laid down by the Statutes of Limitation. In 1943 the then registered proprietors of the land comprised in certificate of title No. 4372 had ejected the plaintiffs from the 13.3 perches. Defendant had purchased the land in certificate of title No. 4372 with notice of the plaintiff's claim to 13.3 perches on the ground of adverse possession. In 1944 the plaintiffs applied for a vesting order in respect of the 13.3 perches but were met by a caveat entered by the defendant. Accordingly the present action was brought claiming a declaration that the plaintiffs have acquired a title to the 13.3 perches by adverse possession.

HELD.—(1) The meaning of "adverse possession" in s. 14 of the Land (Transfer and Registrations) Ordinance is adverse possession subsequent to the date of the last registered transfer.

(2) Notice to a transferee of an outstanding claim founded on adverse possession does not affect the title acquired by the transferee under a registered memorandum of transfer.

Cases referred to :—

- (1) *Caldwell v. Mongston* [1908] 3 Fiji L.R.
- (2) *Siukalia v. Pallard* [1934] 3 Fiji L.R.
- (3) *Taylor v. Pickering* [1936] 3 Fiji L.R.

ACTION for declaration that the plaintiffs had acquired a title by adverse possession. The facts are fully set out in the judgment.

R. L. Munro, for the plaintiffs.

R. Crompton, K.C., with him *R. A. Crompton*, for the defendant.

SETON, C.J.—In this case the defendant contends that even if the facts are as alleged by the plaintiffs, they are nevertheless not entitled to succeed in this action. The facts, as presented by the latter, are that on 12th September, 1921, they were registered as proprietors of a plot of land in Marks Lane, Suva, being all the land comprised in certificate of title No. 5813. Since that time they have in continuous and undisturbed possession of this land and also of a portion of an adjoining piece of land containing 13.3 perches being part of the land comprised in certificate of title No. 4372 which in 1921 was registered in the name of one, Honson.

In 1942 Honson transferred his title to the Khatri brothers who, in the following year, ejected the plaintiffs from the 13.3 perches and took possession of the same. Thereafter, the Khatri brothers transferred all the land comprised in their certificate of title (No. 4372) to the defendant, who had notice of the fact that the plaintiffs were claiming the 13.3 perches on the ground of adverse possession.

In 1944 the plaintiffs applied for a vesting order in respect of the 13.3 perches, but they were opposed by the defendant who entered a caveat in the Land Registry. The plaintiffs then brought this action in which they claim a declaration that they have acquired a title to the said 13.3 perches by adverse possession and request that the Registrar of Titles be directed to issue them with a certificate of title in respect of the same.

The defendant says, firstly, that the issue to him of a certificate of title including the said 13.3 perches is conclusive evidence of his title by reason of the provisions of s. 14 of the Land (Transfer and Registration) Ordinance (Cap. 120) and can only be challenged on the ground of fraud or misrepresentation to which he has been a party, and no fraud or misrepresentation on his part is alleged; and, secondly, that with regard to his having notice of the plaintiff's claim before he acquired the property, he is protected by the terms of s. 29 of Cap. 120.

S. 14 of Cap. 120 is as follows :—

“ The instrument of title of a proprietor issued by the Registrar
 “ upon a genuine dealing shall be taken by all courts of law as
 “ conclusive evidence that the person named therein as proprietor
 “ of the land is the absolute and indefeasible owner thereof, and
 “ the title of such proprietor shall not be subject to challenge except
 “ on the ground of fraud or misrepresentation to which he is
 “ proved to have been a party or on the ground of adverse

“ possession in another for the prescriptive period. A duplicate
 “ or certified copy of any registered instrument signed by the
 “ Registrar and sealed with his seal of office shall be received in
 “ evidence in the same manner as an original ”.

The defendant contends that “ adverse possession ” means adverse possession subsequent to the date of his certificate of title, while the plaintiffs argue that no such limitation is to be inferred. They say that they had acquired the 13.3 perches in question by adverse possession for the prescriptive period when the land was still registered in the name of Honson, whereupon his interest in the same was entirely extinguished by the operation of the Limitation Acts, and that in consequence he was unable to, and did not, transmit to the Khatri brothers any interest in the 13.3 perches, nor could the latter transmit any such interest to the defendant.

The defendant relies upon the local case of *Caldwell v. Mongston*, but although s. 14 of the Real Property Ordinance, 1876 (the terms of which to all intents and purposes are identical with those of s. 14 of Cap. 120) was mentioned in that case, it was not necessary to determine its meaning since the principal point at issue there was the validity or otherwise of one or other of two Crown grants.

Two other local cases have been mentioned, viz.:—*Siukalia v. Pallard* (No. 5 of 1934) and *Taylor v. Pickering*, heard in May, 1936, but neither are helpful as in each it was held that adverse possession had not been proved and no interpretation of s. 14 of Cap. 120 was either required or attempted.

Attention has been directed on behalf of the defendant to the provisions of s. 10 of Cap. 120 which provides :—

“ When a grant is cancelled upon registration of a transfer or
 “ other dealing as hereinafter provided, the Registrar shall issue in
 “ duplicate a certificate of title in favour of the new proprietor in
 “ the Form A contained in the first schedule hereto, one duplicate
 “ of which he shall register in the same manner as provided for
 “ Crown grants and the other he shall deliver to the new prop-
 “ rietor ; and in like manner upon the cancellation of each
 “ certificate of title a fresh certificate of title shall be issued, and
 “ the title of the proprietor under each fresh certificate shall be as
 “ valid and effectual in every respect as if he had been the original
 “ grantee of the land contained in the certificate ”.

This section seems to me to be favourable to the defendant's contention and to supply the key to the meaning of s. 14 of Cap. 120. It lays down that the title of the proprietor under each fresh certificate of title is to be as valid and effectual as the original grantee's. The original grantee in this case had his grant from the Crown and it is to be assumed, in the absence of evidence to the contrary, that he received with it a valid and effectual title to the land comprised in the grant, including the 13.3 perches in dispute. Thereafter, the grantee transferred the land and, as it passed from person to person, each transferee, upon registration of his transfer, acquired by virtue of the provisions of s. 10 as valid and effectual a title to the land comprised in his transfer as the original grantee had. So that when the transfer from Honson to the Khatri brothers was registered in 1942, the latter acquired a valid and effectual title to the 13.3 perches which were included in the

transfer, notwithstanding the fact that the plaintiffs had been in possession of the same for a period exceeding that laid down by the Statutes of Limitation ; in other words, the effect of the transfer to the Khatri brothers was to destroy the title by adverse possession which the plaintiffs had acquired but had failed to register.

This, I think, is a satisfactory result. On the one hand, it tends to support the indefeasibility of certificates of title, and on the other, it emphasizes the fact that persons who acquire rights over registered land by adverse possession (as they can do in Fiji, though not in all the jurisdictions in which the Torrens system has been introduced) must take immediate steps to assert their rights by applying for a vesting order as provided by s. 83 of Cap. 120, otherwise, they are liable to lose them, as has happened in this case.

On behalf of the plaintiffs, it has been objected that the provisions of s. 10 of Cap. 120 apply only to the title of a proprietor under a fresh certificate and the defendant has never had a fresh certificate. The latter statement is true because what the defendant received was the original certificate of title issued to Honson's predecessor with a memorial of the transfer to the defendant entered upon it. This is a method of effecting a transfer which is alternative to the issue of a fresh certificate of title as will be seen by reference to ss. 33 and 34 of Cap. 120 ; which of the two methods is adopted is a matter which is left to the discretion of the Registrar. I cannot think that the title of a transferee which is effected by a memorial entered on a previous certificate of title was intended by the Legislature to be in any way inferior as regards its validity to one which is effected by the issue of a fresh certificate of title and, accordingly, I am of opinion that the provisions of s. 10 as to the title of a fresh proprietor were intended to apply, and do apply, to every transfer and it is immaterial which of the two methods of registration has been adopted in the particular case.

To conclude, therefore, I hold the defendant's contention that the meaning of "adverse possession" in s. 14 of Cap. 120 is adverse possession subsequent to the date of the last registered transfer, and I also find that the fact that the defendant had notice of the plaintiff's claim before the date of the transfer to him is of no consequence having regard to the express provision on this subject contained in s. 29 of Cap. 120.

Judgment will be entered for the defendant with costs.
