A

RUANIARA

v.

ROBERT HAROLD GORDON

B

[COURT OF APPEAL, 1969 (Gould V.P., Hutchison J.A., Marsack J.A.), 20th, 27th June]

Civil Jurisdiction

British Solomon Islands Protectorate—land—title—claim to ownership—whether land native customary land—one parcel subject to 99 year Government lease as "public" land—another parcel made subject of Commission of Inquiry—recommendations of Commission given legal effect—maxim omnia praesumuntur rite et solenniter esse acta donec probetur in contrarium—Solomons Land Regulations 1914—Solomon and Gilbert and Ellice Islands (Commission of Enquiry) Regulations 1914, Reg. 3—Solomon Land Claims Regulations 1923.

C

Injunction—land in British Solomon Islands Protectorate—defendant restrained from planting upon or removing trees from land of plaintiff—possible lacuna in chain of title to plaintiff's land—actual possession sufficient basis for injunction against any who cannot show better right to possession.

D

The respondent brought an action for an injunction to restrain the appellant from planting coconuts and gardens, removing timber from and living on two pieces of land (known respectively as Borasu and Kwa) to which the respondent claimed title. The appellant in a cross action claimed, on behalf of himself and his line, to be the native customary owner.

E

In the High Court the Chief Justice found that the lease under which the respondent held the Borasu land was a lease of "public" land granted by the Government of the Solomon Islands under the authority of the Solomons Land Regulations, 1914, for ninety-nine years from December 1914; that under the regulations, "public" land excluded native land and private land, and in the absence of evidence to the contrary there was a presumption that the law had been complied with and that the appellant had not succeeded in showing that the land was native land.

F

As to the Kwa land the Chief Justice found that it had been the subject of an inquiry under regulation 3 of the Solomon and Gilbert and Ellice Islands (Commission of Enquiry) Regulations 1914, that recommendations of the Commission had been confirmed by the Secretary of State for the Colonies in 1926, and given legal effect by the Solomon Land Claims Regulations 1923. Predecessors in title of the respondent were thereby confirmed in occupation subject to the payment of £130 compensation. The Chief Justice held that (unless the contrary was established) what ought by law to have been done must be presumed to have been done, and there was no evidence that the compensation was not duly paid: the appellant's claim to the land therefore failed.

G

H

The respondent held a registered conveyance of the Kwa land from the Fairymead Sugar Co. Ltd. but there was no evidence of any conveyance

in favour of that company from the Malayta Company Ltd. in whose favour the Commission's recommendations had originally been made.

Held: 1. In the circumstances the Chief Justice was entitled to apply the maxim *omnia praesumuntur rite et solenniter esse acta donec probetur in contrarium.*

2. As the injunction granted by the Chief Justice was limited to lands in the possession of the respondent and the appellant had failed to show a better right to possession than the respondent, the respondent's actual possession was a sufficient basis for granting the injunction.

Case referred to:

Perry v. Clissold [1907] A.C. 73; 95 L.T. 890.

Appeal by the plaintiff in a cross action against a judgment of the High Court of the Western Pacific sitting at Auki, dismissing his claim to ownership of land, and against an injunction made against him at the suit of the defendant.

[Editorial note: As is indicated in the judgment, neither party to this appeal appeared or was represented, and no argument was presented.]

The following passages from the judgment of the Chief Justice in the High Court have been extracted:

"That piece of land (i.e. Borasu) was originally leased on the 1st December, 1914 by the Government for a period of 99 years to a company called the Malayta Company Ltd.

The lease (Exhibit P3) purports to be made under the Solomons Land Regulations 1914 (Kings Regulation No. 3 of 1914) which came into operation on the 20th of March of that year, and is headed "Lease of Public Land". By virtue of Regulation 2 of those Regulations, "public land" is defined as being land which is neither native land nor private land. "Private land" is defined as being land owned by non-natives in freehold; and "native land" is defined as follows —

> 'land owned by natives or subject to the exercise by natives of customary rights of occupation, cultivation or other user.'

It follows therefore that either the Borasu land had already in 1914 been acquired as public land by the Government by purchase from the natives or it was at that time land which was not owned by natives or subject to the exercise by natives of customary rights of occupation, cultivation or other user, and the Government exercised its powers pursuant to the provisions of the 1914 Regulations to lease the land to the Malayta Company Ltd., at annual rentals payable to the Government as specified in the lease.

* * * * * * * * * * * * * * * * *

Now, the Defendant's contention is that by tradition, which he has endeavoured to establish by evidence, the land of Borasu is native customary land because no one has paid any money to the ancestral members of his line. It is certainly clear that as from 1914 rent has been paid to the Government, and still is, under the public lease. It was not paid to the people. The Government having acted under statutory powers when the land was leased it must be presumed that the provisions of the law under which the Government acted were complied with unless the contrary can be positively established. It must therefore be presumed that the provisions of Regulation 12 of the Solomons Land Regulations, 1914, which require that certain enquiries and

notifications to be made, were complied with at the time. There is certainly no evidence to establish the contrary.

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Prior to the occupation of the Kwa's lands by the Fairymead Sugar Company Ltd. the land was occupied by the Malayta Company Ltd. It is to be presumed that the Malayta Company Ltd. came to the land some time before the 23rd March, 1914, because with effect from that date, being the commencement date for the Solomons Land Regulations 1914, acquisition, except by Government under certain circumstances, of customary land from natives by non-natives was prohibited. During the years which followed a commission of enquiry was appointed . . . . . .

* * * * * * * * * * * * * * * * * *

The Solomon Land Claims Regulations, 1923, were enacted in order to give legal effect to any recommendations of the Commission which might subsequently be confirmed by the Secretary of State for the Colonies, and by Regulation 4 of those Regulations it was provided that any person who failed to comply with the recommendations as confirmed would be guilty of an offence and liable on conviction to a fine of £100 or, in default of payment by way of distress, to imprisonment for six months, and in addition, if the occupier of the land was the defaulter, to cancellation of his right of occupation. Regulation 6 of the Regulations charged the Registrar of the then Land Registry Office with the duty of taking all necessary steps to give effect to the recommendations. By a Gazette Notification dated 24th June, 1926, notice was given that the Secretary of State had confirmed the three recommendations of the Commissioner relating to Kwa'a as set out above, so that with effect from that date those recommendations had the force of law. In other words the title of the Malayta Company Ltd., to the Kwa'a lands was confirmed by the law and the company was condemned in the payment of £50 compensation to Fomolo Boasimbua, £50 to Balilama and £30 to 'Kwa natives', and if they failed to do that then they would be guilty of a criminal offence and liable to penalty. Whether Fomolo Boasimbua or Balilama, or for that matter the 'Kwa natives', whoever they may then have been, are ancestors of the Defendant's line, is a matter of no concern because the Malayta Company was directed by law to pay those people and nobody else.

Against that the Defendant has endeavoured to prove a tradition, it amounts to no more than that, among the people of his line to the effect that no money was paid. Indeed of all his witnesses only one witness was aware of the fact that it was Malayta Company Ltd., and not the Fairymead Sugar Company Ltd., who were on the land at the relevant period, nor were any of his witnesses aware at all that these same lands had been the subject of the Commission's enquiries and recommendations. As already mentioned previously in this judgment in relation to the Borasu lands, what ought by law to have been done must be presumed to have been done, unless the contrary is positively established. There is not a shadow of evidence to show that Fomolo Boasimbua or Balilama or 'natives of Kwa' were not paid by the Malayta Company according to the terms of the recommendations."

Judgment of the Court (read by GOULD V.P.): [27th June 1969]—

This is an appeal from a judgment of the High Court of the Western Pacific sitting at Auki delivered by the Chief Justice of the Western

Pacific on the 3rd December, 1968.

A There were in fact cross actions which were heard together. Mr. R. H. Gordon (the plaintiff) claimed an injunction to restrain Ruaniara (the defendant) from planting coconuts, planting gardens, removing timber and living on the plaintiff's land situate at Kwa and Borasu on the Malaita island. The defendant claimed on behalf of himself and his line to be the owner of the lands in question.

B When the case came on for hearing before the learned Chief Justice the parties appeared in person and at no time have they had legal representation. On the appeal to this Court both parties intimated that they did not wish to be represented and accordingly no argument in any form has been presented. In the Supreme Court the plaintiff gave evidence of the trespass he relied upon, and as to his title to the lands. As to the Borasu land he relied upon a Government lease for 99 years from the C 1st December, 1915, which had been assigned by the original lessee, the Malayta Company Ltd. to the Fairymead Sugar Co. Ltd. and then by the latter to the plaintiff. As to the Kwa land the plaintiff held a conveyance of the freehold from the Fairymead Sugar Co. Ltd. to himself dated the 10th September, 1958, which is also the date of his assignment of the Borasu lease from that Company. No conveyance of the Kwa land from the Malayta Company Ltd. to the Fairymead Sugar Co. Ltd. D was produced. The plaintiff said in evidence that he knew that the Fairymead Sugar Co. Ltd. bought the land from the Malayta Company Ltd. and the learned Chief Justice found that prior to the occupation of the Kwa land by the Fairymead Sugar Co. Ltd. the land was occupied by the Malayta Company Ltd.

It is manifest that the learned Chief Justice himself did a great deal E of research in relation to the history of the two pieces of land. He found that the Crown Lease of the Borasu land was made under the Solomons Land Regulations 1914 as a lease of public land and that rent thereunder had been paid to the Government throughout its currency. As the Government had acted under statutory powers he found that it must be presumed (in the absence of evidence to the contrary) that the law was complied with and that the land was or had become public F land and not subject to native ownership and customary rights. He found, therefore, that the defendant's claim to be the customary owner failed.

As to the Kwa land, the learned Chief Justice found that it had been the subject of an inquiry under powers conferred by regulation 3 of the Solomon and Gilbert and Ellice Islands (Commission of Enquiry) G Regulations, 1914, and that recommendations in relation to it were made in 1922 to the Secretary of State for the Colonies. Under the Solomon Land Claims Regulations, 1923, these recommendations, if confirmed by the Secretary of State, were given legal effect, and by a Gazette Notification dated the 24th June, 1926, it was notified that the Secretary of State had confirmed the recommendations in relation to Kwa. The effect appears to have been that the Malayta Company Ltd. were confirmed H in their occupation but were to pay a total of £130 compensation. Under the regulations default would render the Malayta Company Ltd. subject to penalties and to cancellation of its right of occupation. The learned Chief Justice held that (unless the contrary is established) what ought by law to have been done must be presumed to have been done, and

that there was no shadow of evidence that the compensation was not paid according to the terms of the recommendations. The claim by the defendant to be the customary owner of the Kwa land was, therefore, also dismissed.

We consider that, in the circumstances, the learned Chief Justice was entitled to apply the maxim *omnia praesumuntur rite et solenniter esse acta donec probetur in contrarium;* the grounds of appeal to this Court signed by the defendant in person do not raise any new matter and the appeal, so far as it relates to the defendant's claim, is dismissed.

The learned Chief Justice granted the plaintiff's claim for an injunction in the following limited terms :—

> "..... an injunction will therefore issue against the Defendant in the usual form to restrain him from planting further coconuts or making further gardens or removing further timber from the Plaintiff's land, but I will not issue an injunction to restrain the Defendant from living on the land, or require him to vacate any garden which he has already in cultivation or any patch of coconuts which he has already planted, for that would be tantamount to an eviction order; and an application for eviction might well raise other issues which are not in issue in this present case. In other words the Defendant may continue to cultivate any gardens or coconuts which he has already planted and he may continue to live where he is now living, unless or until he is ordered by the Plaintiff to vacate the land. If he then fails or refuses to vacate the land, the Plaintiff will be at liberty to test the matter in other proceedings than these. But in the meantime the Defendant must not extend those gardens or plant any more coconut trees or take any more timber from the land until further order."

So far as the Borasu land is concerned the plaintiff appears to have shown a clear leasehold title upon which to base his claim. The position as regards Kwa is not quite so straight forward. The regulations and documents referred to by the learned Chief Justice indicate that the Malayta Company Ltd., in the 1920's, acquired or were confirmed in a right of occupation. Whether this amounted to or became an assignable freehold title is not apparent from the material before this Court. While the conveyance dated the 10th September, 1958, from Fairymead Sugar Co. Ltd. to the plaintiff bears an endorsement indicating that it was registered in a register kept by the Commissioner of Lands and Surveys, the absence of a conveyance from the Malayta Company Ltd. to the Fairymead Sugar Co. Ltd. does not appear to have been commented on. On consideration we think that this matter is not material, as the injunction affects only lands in the possession of the plaintiff and does not touch those in the occupation of the defendant. The plaintiff's actual possession is good as against all except those who can show a better right to possession in themselves — *Perry v. Clissold* [1907] A.C. 73, 79; *Halsbury's Laws of England* (3rd Edn.) Vol. 38 p.744. This the defendant failed to do, and in relation to the Kwa land the injunction can be properly based on this ground.

The appeal in relation to the injunction is, therefore, also dismissed. There will be no order for costs of the appeal.

Appeal dismissed.