

JOHN BRUCE v DAVID FRUEAN

High Court Apia
22, 23, 24, 28 May 1930
Luxford CJ

LAND (Right to possession) - Claim to tenancy for life - Cross-action for compensation for improvements.

This was an action by the plaintiff as owner of certain land occupied by the defendant for an order for possession. The defendant claimed plaintiff had given him permission to use and occupy the land for the remainder of his life, and in a cross-action claimed compensation for improvements to the land over the period of his occupation for some five years. The Court found as a fact that the plaintiff had not agreed to permit the defendant to occupy the land as a tenant for life; that he had permitted him to use and occupy the land until he found new employment following the termination of his employment with a previous employer, and thereafter it had become a tenancy at will pursuant to s 16 of the Property Law Act, 1908; nor had the plaintiff encouraged the defendant to lay out money in improving the land on the supposition that he would not exercise his legal right of re-entry.

Held: The plaintiff was entitled to an order for possession of the land without payment of any compensation to the defendant.

Klinkmueller for plaintiff.
Fitzherbert for defendant.

Cur adv vult

LUXFORD CJ. These two actions were heard together by consent, and arise out of the occupation by Fruean of a small area of land in Magiagi, the legal ownership of which is vested in John Bruce. The land was acquired by Bruce from the Crown about eight years ago. Although the land had been cleared of bush at that time there was a heavy growth of tropical scrub upon it consequent upon a long period of neglect. Bruce did not occupy the land but allowed two Samoan men to use it. They did a certain amount of cleaning and also planted a portion of it in coconuts and bananas.

These men gave up their occupancy of the land and about six months later Bruce entered into arrangements with Fruean to occupy and cultivate the land. They did come to an arrangement and in consequence of it Fruean entered into possession of the land in 1925 and from that time has cultivated it and made his house upon it.

Unfortunately, no written document evidences the arrangement which was made and now that a dispute has arisen between the parties about the terms of that arrangement I have to decide upon the verbal testimony what were those terms. It appears from the evidence that Bruce and Fruean had been close friends for many years and that Bruce was anxious that Fruean should live upon that piece of land.

Fruean had been employed as a butcher on a plantation belonging to the New Zealand Reparation Estates and he and his family lived in a house on that plantation during the course of his employment. Bruce says that Fruean had received notice terminating his employment, and in order to provide a new home for him, told him to occupy the three acres until he found a new position.

Fruean on the other hand says that Bruce had approached him a long while before he received notice terminating his employment with the Reparation Estates; that Bruce frequently tried to persuade him to go to live upon the three acres and to use it for so long as he should live.

It is quite clear that Fruean did lose his employment with the Reparation Estates, but it is not clear whether he went into occupation of the three acres before or after that event. I am satisfied,

however, that he accepted Bruce's offer in consequence of and when he knew there was a likelihood of his services being dispensed with by the Reparation Estates. Fruean built a small Samoan fale on the land, which now serves as a cookhouse. Later he built a more substantial fale but owing to its proximity to the Vaisigano River and the consequent danger from floods he demolished that fale and re-erected it upon an elevated piece of land. That fale still exists and is occupied by Fruean. Fruean has kept the land reasonably clean and has utilised the whole of it to grow a number of tropical plants. At the present time the land is very thickly planted with coconuts and bananas, much too thickly according to the evidence, and odd patches of other tropical plants. During his years of occupation Fruean has had the produce from the land and has not paid nor been asked to pay anything by way of rental.

Fruean was able to and did obtain new employment after he ceased to work for the Reparation Estates, but no steps were taken by Bruce at that time to terminate the tenancy. The first note of discord between the parties was struck in July of last year in consequence of a letter which Bruce sent to Fruean on the 28th June previously.

Bruce at that time had been very ill and contemplating the possibility of his death he sent a letter to Fruean pointing out that possibility and suggesting that Fruean should take a lease of the land because nobody knew how Bruce's children would treat him in the future.

This letter apparently offended Fruean who sent two letters in reply. These letters comprise chiefly a complaint that Bruce had allowed them to go upon the land without fixing the term of the tenancy. Fruean then saw his solicitor who wrote a letter to Bruce on the 8th July in which he claimed that Bruce had made a gift of the freehold of the land to Fruean. He said that Fruean was willing to hand back the land if he was paid the sum of £16.18.4 by way of compensation for the improvements effected on the land by Fruean. Bruce then got in touch with his solicitor, who, after some correspondence with Fruean's solicitor, duly served a notice to quit upon Fruean, which required him to leave the land after the expiration of one month from the 1st day of November, 1929.

Fruean refused to leave the land and proceedings have now been taken by Bruce claiming possession of it and other relief. A cross-action has been filed whereunder Fruean seeks (in the event of Bruce recovering possession of the land) the sum of £726.18.4 by way of compensation for the improvements which he effected on the land. Fruean's claim is based upon the equitable principle, namely, that if a person allows another to enter into occupation of land and encourages that other to lay out money in improving the land on the supposition that he will not exercise his legal right of re-entry, the Court will not permit him to exercise that right except subject to the condition that he will compensate that other for the expenditure which he has laid out. I have considered carefully the evidence adduced by and on behalf of the parties, and I find as a fact that Bruce did not agree to permit Fruean to occupy the land as a tenant for life. The term was fixed to cover any period intervening between the cessation of Fruean's employment with the Reparation Estates and the time when he should obtain new employment. Thereafter, the tenancy became a tenancy at will within the meaning of section 16 of the Property Law Act, 1908, and that tenancy ceased on the 1st day of December, 1929.

From this it follows that the defendant Fruean is now in unlawful occupation of the land and that the plaintiff Bruce is entitled to an order for possession and I order accordingly that Fruean do deliver possession of the land mentioned and described in paragraph 1 of the Statement of Claim on or before the 1st day of July, 1930. He must also pay the plaintiff's costs which I fix at £10.10.0 plus Court fees and witnesses' expenses to be settled by me in Chambers. As the plaintiff has so consented leave is given to Fruean to remove the cookhouse and fale from the land before the 1st day of July, 1930.

I will now consider Fruean's action to recover compensation for the improvements effected by him on the land.

In my opinion, Fruean is not entitled to recover anything by way of compensation. His claim is grossly exaggerated even if the improvements are taken at their present value. The improvements consist of the various plants and trees planted on the land by Fruean. Without making any allowance for what was planted by Bruce and previous occupiers of the land, the present total value does not exceed £100. The basis of compensation in cases where the occupier is entitled to recover is a computation of the actual money expended by him, together with interest thereon, but less any profits he may have derived in consequence of such expenditure.

No evidence has been adduced to enable the Court to find what amount of compensation (if any) would have been payable to Fruean had his claim been maintainable.

Having regard to all the circumstances I would be very surprised if Fruean could prove that he was entitled to anything at all on that basis.

However, that is immaterial as I was of opinion that he has no cause of action to recover compensation.

The evidence does not establish that Bruce encouraged Fruean to lay out money on the supposition that Bruce would not exercise his right of re-entry. It establishes that Fruean has had free use and occupation of the land for five years and that he has been able to enjoy throughout that period the benefit of the labour he has expended.

I order, therefore, that Judgment be entered in the defendant's favour and that the plaintiff pay his costs which I fix at £5.5.0, together with Court fees and witnesses' expenses to be settled by me in Chambers.

The formal Judgments in both cases will not be entered until all questions of costs have been settled.