

Privy Council Appeal No. 15 of 1956

James Clinton Chisholm - - - - - *Appellant*

v.

James Hall - - - - - *Respondent*

FROM

THE SUPREME COURT OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 8TH JULY, 1959

Present at the Hearing :

LORD RADCLIFFE

LORD JENKINS

MR. L. M. D. DE SILVA

[*Delivered by* LORD JENKINS]

The parties to this litigation (namely the plaintiff (now respondent) Mr. James Hall, and the defendant (now appellant) Mr. James Clinton Chisholm) own contiguous plots of land fronting the west side of King Street, Kingston, Jamaica, which runs approximately north and south.

The defendant's plot is known as No. 105 King Street, and the contiguous plot belonging to the plaintiff and known as No. 103 King Street lies immediately to the south of the defendant's plot. The plaintiff also owns the plot known as No. 101 King Street which lies immediately to the south of No. 103, these two plots having for many years been held together.

The dispute concerns the proper position of the boundary between No. 105 to the north and No. 103 to the south. At the time of action brought there was and had for many years past been in existence a physical boundary running from west to east and dividing the combined area of Nos. 105 and 103 into two parts. The defendant's contention was and is that the physical boundary existing upon the land was rightly placed, and showed the true dividing line between Nos. 103 and 105. The plaintiffs contention was and is that the physical boundary was placed a matter of 7 feet too far south and that there had to this extent been an unwarranted encroachment on No. 103. The area in dispute is thus a strip of land immediately north of the physical boundary, and some 7 feet in width from north to south, and coextensive with the length of the two properties from east to west.

The plaintiff and the defendant are the registered proprietors of their respective properties under the Registration of Titles Law (Chap. 353 of the Revised Laws of Jamaica). The first Certificate of Title in respect of Nos. 103 and 101 was granted to Mr. Morris Aria Bonitto as the proprietor thereof in fee simple on the 21st January, 1901. The first Certificate of

Title in respect of No. 105 was granted to Mrs. Eugenia Blanche Bonitto (the second wife and then the widow of Mr. Morris Bonitto) as the proprietor thereof in fee simple on the 12th March, 1928. The defendant bought No. 105 from Mrs. Eugenia Bonitto under a transfer dated the 12th April, 1928, and was duly registered as proprietor thereof on the 16th April, 1928. The plaintiff bought Nos. 103 and 101 under a transfer dated the 24th October, 1941, from the Administrator General for Jamaica as the legal personal representative of Mr. Morris Bonitto, who had died on the 20th November, 1918; and the plaintiff was duly registered as the proprietor of these two plots on the 30th October, 1941.

For reasons which will hereafter appear, it is important to note:

(i) that the Administrator General as legal personal representative of Mr. Morris Bonitto had applied for and obtained the registration of himself as proprietor of Nos. 101 and 103 by transmission under section 124 of the Registration of Titles Law, and had on that occasion procured the issue to himself of a new Certificate of Title in his own name dated the 7th May, 1919, the Certificate originally issued in the name of Mr. Morris Bonitto on the 21st January, 1901, being cancelled accordingly; and

(ii) that the Administrator General had subsequently lost the Certificate issued to him on the 7th May, 1919, and had under section 81 of the Law applied for and obtained the issue to himself of a new Certificate dated the 16th October, 1941, in place of the lost Certificate, which was accordingly cancelled.

On the 18th November, 1942, the plaintiff commenced an action against the defendant in the Supreme Court of Jamaica for a declaration that the disputed strip of land was comprised in his Certificate of Title, possession and mesne profits. That action was however wholly discontinued by Order dated the 21st June, 1944.

On the 31st January, 1951, the plaintiff commenced a further action against the defendant in the Supreme Court (being the action out of which the present appeal arises) for similar relief, the defendant counter-claiming for a declaration that the north and south boundaries of Nos. 101-3 and 105 as then existing were the true boundaries between the said properties and for rectification of the Register. This action was tried before Semper J. who by his judgment dated the 25th July, 1953, dismissed the plaintiff's claim, and made a declaration in the terms claimed by the defendant. The plaintiff appealed to the Court of Appeal of the Supreme Court (Carberry, C.J., MacGregor and Rennie, JJ.) who by their judgment dated the 30th July 1954, allowed the plaintiff's appeal, set aside the judgment of Semper J., and entered judgment for the plaintiff for the relief sought. The defendant now appeals from that judgment.

The questions in the appeal are in substance these:—

(i) whether the disputed strip formed part of the land comprised in Nos. 103 and 101, in respect of which the plaintiff's predecessor in title Mr. Morris Bonitto was registered as proprietor on the 21st January, 1901, or formed part of the land comprised in No. 105, in respect of which the defendant's predecessor in title Mrs. Eugenia Bonitto was registered as proprietor on the 12th March, 1928; and

(ii) in the event of that question being answered in favour of the plaintiff, whether his registered title had by the time of action brought been ousted in favour of the defendant *quoad* the disputed strip by the operation of the Limitation of Actions Law (Chap. 395 of the Revised Laws of Jamaica).

The trial Judge decided the first of these two questions in the defendant's favour and accordingly found it unnecessary to decide the second.

The Court of Appeal decided both questions in favour of the plaintiff, holding that so far as they were concerned the second question was concluded against the defendant by the majority decision of the same Court in the case of *Goodison v. Williams* (1931) Clark's Reports of Supreme Court Judgments p. 349, to which further reference will in due course be made.

Notwithstanding the full and careful argument presented on the defendant's behalf, their Lordships find themselves in agreement with the conclusion in favour of the plaintiff reached by the Court of Appeal on the first question, and substantially accept the reasons for that conclusion given in the Judgment of the Court delivered by MacGregor, J., which will gain nothing by repetition. Moreover the first question is deprived of practical significance by the view their Lordships have formed on the second.

In these circumstances their Lordships feel that no useful purpose would be served by debating the first question any further, and they refrain from doing so.

As to the question of limitation, the relevant statute of limitations is, as already observed, the Limitation of Actions Law (Chap. 395 of the Revised Laws of Jamaica).

Section 3 of that Law imposes a limitation period of twelve years on actions for the recovery of land, and is in these terms:—

“No person shall make an entry or distress, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to the person making or bringing the same.”

Section 31 is in these terms:—

“At the determination of the period limited by this Part of this Law to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period, shall be extinguished.”

Section 46 contains special provisions as to boundaries, and so far as material for the present purpose is in these terms:—

“In all cases where the lands of several proprietors bind or have bound upon each other, and a reputed boundary hath been or shall be acquiesced in and submitted to by the several proprietors owning such lands, or the persons under whom such proprietors claim, for the space of seven years together, such reputed boundary shall for ever be deemed and adjudged to be the true boundary between such proprietors; and such reputed boundary shall and may be given in evidence upon the general issue, in all trials to be had or held concerning lands, or the boundaries of the same, any law, custom or usage to the contrary in anywise notwithstanding.”

Section 46 of Chapter 395 was, but section 3 was not, pleaded in the Defence, and an objection was taken on the plaintiff's behalf to reliance being placed by the defendant on section 3, but this objection was not persisted in, and their Lordships accordingly propose to deal with the question of limitation on the footing that section 3 is available to the defendant as well as section 46.

It is common ground that if this was a case of common law, as distinct from registered titles, the defendant would be entitled to succeed under either section.

As regards section 3 the defendant can show over twelve years continuous possession of the disputed strip from the date of his purchase of No. 105 on the 12th April, 1928, down to the date of commencement of the present proceedings on the 31st January, 1951.

As regards section 46, the defendant can show more than seven years of acquiescence in the position of the physical boundary from the date of his purchase on the 12th April, 1928, down to the commencement of the

plaintiff's first, and abortive, action on the 18th November, 1942. Moreover the defendant had completed more than twelve years possession from the 12th April, 1928, before the Administrator General procured the issue to himself on the 16th October, 1941, of a new Certificate of Title to Nos. 101-103 in place of the lost Certificate which had been issued to him on the 7th May, 1919; and there had also been more than seven years acquiescence in the position of the physical boundary from the 12th April, 1928, by the date of the issue of such new Certificate.

The plaintiff's contention is that under the provisions of the Registration of Titles Law (Chap. 353) the issue of the new Certificate in place of the lost one on the 16th October, 1941, had the effect of destroying the rights which had already accrued to the defendant under the Limitation of Actions Law (Chap. 395) so that the defendant in order to make good his defence of limitation must show twelve years possession under section 3 or seven years acquiescence under section 46 computed from the 16th October, 1941. This the defendant could not do, since the present proceedings were commenced on the 31st January, 1951, which was less than twelve years from the 16th October, 1941; and the period of acquiescence computed from the latter date would have been interrupted before it reached seven years by the commencement of the plaintiff's abortive action on the 18th November, 1942, and if computed from the date of discontinuance of that action on the 21st June, 1944, would not have reached seven years by the 31st January, 1951, when the present proceedings were started.

The plaintiff's contention on this part of the case demands reference at some length to the provisions of the Registration of Titles Law. This Law is one of many enactments for the registration of titles in force in this country and in various parts of the Commonwealth and Empire. But these enactments are by no means uniform in their terms, and it was agreed in the course of the argument that no useful purpose would be served by comparing other enactments with the Jamaican law, or citing cases decided on other enactments as aids to the construction of the Jamaican law. Their Lordships therefore approach this question as one which turns simply and solely upon the true construction of the Jamaican Law itself.

Section 2 of the Law is in these terms:—

“All laws and practice whatsoever, relating to freehold and other interests in land, so far as is inconsistent with the provisions of this Law, are hereby repealed, as far as regards their application to land under the provisions of this Law, or the bringing of land under the operation of this Law.”

Section 3 contains a number of definitions and includes the following:—

“‘incumbrance’ shall include all estates, interests, rights, claims and demands, which can or may be had, made or set up, in, to, upon or in respect of the land adversely and preferentially to the title of the proprietor;

‘instrument’ shall include a conveyance, assignment, transfer, lease, mortgage, charge and also the creation of an easement.”

Sections 23 to 25 provide as follows:—

“23. Land may be brought under the operation of this Law by the Registrar registering the title of some person thereto as the proprietor thereof in manner hereinafter provided.

24. The title of any person to land brought under the operation of this Law shall be registered either as an absolute or as a qualified title.

25. A person registered under this Law as proprietor of any land 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—

(a) to the incumbrances (if any) entered on the certificate of title, and

(b) 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, property 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."

Section 32 provides (to put it shortly) that when the registration of any title has been provisionally approved by one of the referees under the Act notification thereof is to be given by advertisement or advertisements as therein mentioned and also personally to all persons in possession or charge of the adjoining lands so as to give them an opportunity of lodging a caveat against the registration of the title in question. Section 36 provides that if no caveat is lodged within the time limited by the notice the title is to be registered. Under section 54 land is to be brought under the operation of the Law by the registration by the Registrar of a certificate in the prescribed form. The certificate is to be made out in duplicate, one copy being bound up in the register book and the other issued to the proprietor.

Sections 67 and 69 (the critical sections for the purposes of the present case) are in these terms:—

"67. No certificate of title registered and granted under this law shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all Courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seized or possessed of such estate or interest or has such power."

"69. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Law might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Law shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser:

Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was brought under the operation of this Law under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit-rents or taxes, that have accrued due since the land

was brought under the operation of this Law, and also to the interests of any tenant of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument."

Section 81 (under which the Administrator General obtained his second new certificate in the present case) provides by sub-sections (1) and (2) as follows:—

"81.—(1) Whenever a duplicate certificate of title or special certificate of title is lost or destroyed the registered proprietor of the land or some person claiming through him may apply to the Registrar to cancel the certificate of title and to register a new certificate in duplicate in the name of the registered proprietor or his transferee in place of such certificate and duplicate or special certificate. On proof being furnished to his satisfaction of such loss or destruction, and on such requisitions, if any, which he may make being complied with, and on the expiration of the notice to be given as hereinafter provided without sufficient cause having been shown against the application, the Registrar shall cancel the certificate and register a new certificate in duplicate in the name of the registered proprietor or his transferee in place of the former certificate and duplicate or special certificate, both of which shall thereupon be deemed to be cancelled.

(2) Before disposing of the application the Registrar shall give at least fourteen days' notice thereof in at least one newspaper and such other notice, if any, as he may think fit."

Section 84 enables a proprietor to transfer his interest, and provides that:—

... "Upon the registration of the transfer, the estate and interest of the proprietor as set forth in such instrument, or which he shall be entitled or able to transfer or dispose of under any power, with all rights, powers and privileges thereto belonging or appertaining, shall pass to the transferee; and such transferee shall thereupon become the proprietor thereof, and whilst continuing such shall be subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if he had been the former proprietor, or the original lessee, mortgagee or annuitant."

Section 87 after providing for cases in which part only of the land comprised in a registered title is transferred continues as follows:—

... "but when the whole of the land passes to any person other than as aforesaid, it shall not be incumbent on the Registrar to make out a new certificate of title in the name of such person, but such person shall be deemed to be duly registered as proprietor of such land when a memorandum of the transfer or other legal mode as aforesaid shall have been registered under this Law:

Provided always that if the transferee desire it, the Registrar shall cancel the certificate of title and the duplicate, and shall retain such duplicate, and issue a new certificate of title in the name of the transferee ..."

Section 124 provides for the registration of persons acquiring registered land by transmission, this being the provision under which the Administrator General was registered in respect of Nos. 101 and 103 in the present case.

Many other sections of the Law were referred to in the course of the argument, but the question at issue in the end turns upon the true construction of sections 67 and 69, which contain the only references to limitation to be found in the Law.

Section 67 provides that "every certificate of title . . . shall be received in all Courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall subject to the subsequent operation of any statute of limitations. be conclusive evidence that the

person named in such certificate as the proprietor of or having any estate or interest in . . . the land therein described is seised or possessed of such estate or interest . . .”

That provision if it stood alone might well lead to the conclusion that “subsequent” must mean “subsequent to the issue of the certificate in question” and that on the principle of *expressio unius exclusio alterius* any interest in the land in question acquired by the prior operation of any statute of limitations is defeated by the issue of a certificate of title under any of the provisions of the Law, the distinction being between rights so acquired before the issue of the certificate which are extinguished and rights so acquired after the issue of the certificate, which are preserved. But section 69 contains a positive provision to the effect that “the land which shall be included in any certificate of title or registered instrument” (which by definition includes a transfer) “shall be deemed to be subject . . . to any rights acquired over such land since the same was brought under the operation of this Law under any statute of limitations . . . notwithstanding the same . . . may not be specially notified as incumbrances in such certificate or instrument.”

The construction which it might be proper to place on section 67 construed in isolation is in flat contradiction of the express provisions of section 69. The two sections must clearly be read together and so far as possible reconciled with each other. If the words “subject to the subsequent operation of any statute of limitations” had been omitted from section 67 it would have been reasonably plain that section 67 must be understood as taking effect subject to the provisions of section 69 regarding rights acquired over the land in question since first registration under any statute of limitations, and it can hardly be right to hold that the inclusion in section 67 of the words “subject to the subsequent operation of any statute of limitations” should by implication abrogate the express saving accorded by section 69 to all rights of this description acquired since first registration, whether before or after the date of the certificate of title for the time being in force.

Even if the word “subsequent” in section 67 should be construed as meaning “subsequent to the issue of the certificate in question” the two sections in their Lordships’ opinion can and should be reconciled by treating as applicable to section 67 the “deeming” provision enjoined by section 69. There is, so far as their Lordships can see, no reason why that provision, which is expressed in perfectly general terms, should not be so applicable. The result of applying it *quoad* limitation to section 67 is that the part of that section under which the certificate is to be conclusive evidence that the person therein named as proprietor of or having any estate or interest in the land therein described is seised or possessed of such estate or interest must be read as if it was followed by a proviso in terms conforming to the language of section 69, i.e. a proviso to the effect that the land described in the certificate is to be deemed to be subject to any rights acquired over it since first registration under any statute of limitations, notwithstanding that they are not notified as incumbrances in the certificate. If it is objected that this construction of section 67 makes the words “subject to the subsequent operation of any statute of limitations” mere surplusage, the answer is that even if that is so the anomalous and indeed absurd results ensuing from excluding all certificates *quoad* the effect of limitation from the “deeming” provision in section 69, so far as rights acquired prior to their issue are concerned, are in their Lordships’ view so extreme as to justify the construction so far placed on the two sections notwithstanding that the words above quoted may be said to be rendered otiose by that construction. But it does not appear to their Lordships that the construction so far placed on the two sections does necessarily render wholly otiose the words “subject to the subsequent operation of any statute of limitations” in section 67. Let a case be supposed in which some part of the land described in a given certificate had prior to its date been acquired from the registered proprietor by virtue of twelve years possession since the date of the first registration of the land so described. Then under sections 67 and 69,

as their Lordships have so far construed them, the certificate would be conclusive evidence that the person named in the certificate as proprietor of or having any estate or interest in the land therein described was seised or possessed of such estate or interest subject to the rights acquired over a part of such land by virtue of twelve years possession between the date of the first registration and the date of the certificate, those rights falling to be regarded by virtue of section 69 as if they had been notified as incumbrances in the certificate. But in the absence of any provision to the contrary it might be argued that section 67 made the certificate conclusive evidence that the land was held as described in the certificate subject only to rights acquired by limitation between the date of the first registration of the land and the date of the certificate and therefore ranking as registered incumbrances at that date, and not to any rights so acquired after the date of the certificate. The words "subject to the subsequent operation of any statute of limitations" might thus be regarded as having been put into section 67 *ex abundante cautela* to meet any argument of this kind.

But the same conclusion can in their Lordships' view be reached by another route. The critical words in section 67—"subject to the subsequent operation of any statute of limitations"—contain the first of the only two references to limitation to be found in the law. The reader is thus invited to look further to see what provision is made later in the Law in regard to the operation of any statute of limitations, the brief reference to limitation in section 67 being in itself of doubtful import. Looking further, the reader comes to section 69 and he there finds a provision to the effect that the land included in any certificate is to be deemed to be subject to any rights acquired over such land since the same was brought under the operation of the Law under any statute of limitations, notwithstanding that such rights may not be specially notified as incumbrances in such certificate. Having reached this point, is he not justified in concluding that the reference to limitation in section 67 is a mere reference forward to the provision in regard to limitation contained in section 69, and that "subsequent" in section 67 is no more than a short way of saying what is said by section 69 in the words "since the same" i.e. the land "was brought under the operation of this Law"? In their Lordships' view this construction, which can be compendiously described as making the word "subsequent" in section 67 mean subsequent to the date of issue of the first certificate issued in respect of the land in question, can legitimately be adopted for the purpose of reconciling the provisions of the two sections.

Accordingly their Lordships hold that on one or other of the methods of construction which they have propounded the defendant's contention as to the effect of sections 67 and 69 should prevail.

The scheme of section 69 is reasonably plain. The registration of the first proprietor is made to destroy any rights previously acquired against him by limitation, in reliance no doubt on the provisions as to the investigation of the title to the property and as to notices and advertisements, which are considered a sufficient protection to anyone claiming any rights of that description. But from and after the first registration the first proprietor and his successors are exposed to the risk of losing the land or any part of it under any relevant statute of limitations to some other person whose rights when acquired rank as if they were registered incumbrances noted in the certificate, and accordingly are not only binding upon the proprietor against whom they are originally acquired but are not displaced by any subsequent transfer or transmission. See as to transfers section 84 which provides that the transferee shall be "subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if he had been the former proprietor". This language indicates an intention to put the transferee in the same position for all purposes as the previous proprietor; and although the words used are not particularly apt to describe rights acquired by limitation, a transfer is in any case one of the instruments to which the "deeming" provision of section 69 is applicable.

The combined effect their Lordships would attribute to sections 67 and 69 may perhaps be criticised as inconvenient, in that it places upon a purchaser of registered land the onus of going behind the register, and satisfying himself that no adverse interest by limitation has been acquired, in every case in which more than twelve years have elapsed since the title was first registered. But that is simply the result of the policy adopted by the law of preserving rights acquired by limitation notwithstanding that they are not noted in the register.

At all events their Lordships' construction of sections 67 and 69 has the merit of consistency, and avoids the anomalous and absurd results which would ensue from the adoption of the construction which the plaintiff seeks to place upon the two sections. On that construction a man could acquire a title to registered land by twelve years possession and having done so enforce it against the registered proprietor, although no note of it was on the register, provided that no new certificate had been issued since his title by limitation was acquired. But the issue of a new certificate in whatever circumstances and for whatever reason, would destroy a complete title by limitation after it had been acquired. Thus if a transferee or person entitled by transmission was to demand and obtain a fresh certificate under section 87, any right over the land previously acquired by limitation would be extinguished, but if for any reason he did not do so the right would remain. More than one other example might be given but their Lordships are content to confine themselves to the actual case now before them. What happened here was that the Administrator General having lost the new certificate issued to him on the 7th May, 1919, as having become entitled by transmission to Nos. 101 and 103, applied for and obtained a further new certificate in place of the lost one under section 81 of the Law, such further new certificate being dated the 16th October, 1941. It is claimed on the plaintiff's behalf that the purely fortuitous circumstance of the loss of the certificate of the 7th May, 1919, and the consequent issue of the certificate of the 16th October, 1941, to take its place, had the effect of defeating the title by limitation to the disputed strip which the defendant had acquired under section 3 of the Limitation of Actions Law on the expiration on the 12th April, 1940, of the period of twelve years from the 12th April, 1928, when No. 105 together with the disputed strip came into his possession. Their Lordships find it quite impossible to attribute this effect to the issue of a new certificate in place of a lost one. Section 81 provides in such a case for the issue of a new certificate "in place of the former certificate". This language appears to their Lordships to indicate that the new certificate is merely a substitute for the lost one and that the procedure under section 81 whereby it is obtained merely has the effect of placing the proprietor in the same position as if the former certificate had not been lost, and does not bring about any alteration of rights. It may be observed that section 81 extends to the destruction as well as the loss of a certificate and that so far as destruction is concerned it is not confined to accidental destruction. Thus according to the plaintiff's argument it would seem that if the proprietor was minded to defeat a right to his land acquired by limitation he could do so by the simple expedient of destroying his certificate and obtaining a new one under section 81. This surely cannot be right.

As to the case of *Goodison v. Williams*, the decision of the Court of Appeal by which they held themselves bound to decide the question of limitation in the present case in favour of the plaintiff, that was a case in which after a title by twelve years possession had been acquired by another person, the registered proprietor transferred the land and a new certificate was issued to the transferee pursuant to what is now section 87 of the Law. It was held by the majority of the Court (Clark and Radcliffe, J.J.) that the issue of the new certificate to the transferee had the effect of defeating the title acquired by limitation. The third member of the Court, Brown, A.C.J., dissenting, held on substantially the same grounds as those already stated by their Lordships that the certificate did not have this effect but that the title by limitation was preserved

by what is now section 69, which must be read as qualifying what is now section 67. Clark, J. appears to have based his decision mainly upon the view that the exclusive possession "rights over land" contained in section 69 applied only to rights in the nature of easements and so forth, and not to the right of exclusive possession over the land itself. It appears to their Lordships that this view is untenable having regard to the express reference to "any statute of limitations".

Radcliffe, J. appears to have held that even if the "deeming" provision in section 69 did apply to rights of exclusive possession acquired by limitation, that carried the matter no further, having regard to the terms of section 67; and that section 69 did not affect a *bona fide* transferee for value who found no notice on the register of an adverse claim. This reasoning appears to their Lordships to ignore the express provision in section 69 to the effect that the rights acquired by limitation to which it applies are to be preserved notwithstanding that they may not be specially notified as incumbrances in the certificate or other instrument.

Their Lordships are of opinion that the view taken by the Acting Chief Justice in *Goodison v. Williams* in his dissenting judgment was right, and that the majority decision in that case was wrong and should be regarded as overruled.

Other Jamaican cases were referred to in the course of the argument. Their Lordships find it unnecessary to mention any of these with the exception of *Dartadeen v. Watson* (1937) 3 J.L.R. 87 in which a Court of Appeal of two Judges was equally divided in a case involving a title acquired by limitation to registered land and the effect thereon of what are now sections 67 and 69 of the Law, Furness, C.J., distinguishing *Goodison v. Williams* and upholding the claim to a title by limitation, and Sherlock, J. taking the opposite view.

It was suggested in argument that on the principle of *stare decisis* their Lordships should not disturb the decision in *Goodison v. Williams*. But the only decision bearing upon the point is *Goodison v. Williams* itself which was a majority decision reached by the two judges who formed the majority on different grounds, and strongly dissented from by the other member of the Court. In *Dartadeen v. Watson* (supra) the Court was equally divided as to the application of *Goodison v. Williams* to the facts of that case, which accordingly adds nothing by way of authority one way or the other.

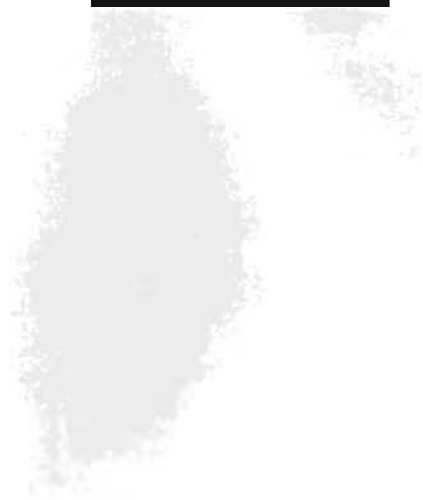
Moreover, it must be remembered that the present appeal differs from *Goodison v. Williams* in that it is concerned with the special case of a certificate issued in the place of a lost certificate.

Accordingly there is not in their Lordships' judgment any such uniform current of authority as would be required to justify them in departing from their own view of the construction and effect of the Registration of Titles Law with respect to limitation in deference to the principle of *stare decisis*, which in their judgment has no application here.

For the reasons which they have stated their Lordships are of opinion that the defendant while failing on the question concerning the inclusion of the disputed strip in the plaintiff's registered title, succeeds on the question of limitation.

Their Lordships will therefore humbly advise Her Majesty that this appeal should be allowed and the Order of the Court of Appeal dated 30th July, 1954, set aside and the Formal Judgment of the Supreme Court dated 25th July, 1953, restored.

The plaintiff must pay the costs of the present appeal and the costs awarded against him by the judgment of the Supreme Court as now restored; but in the somewhat unusual circumstance of the case their Lordships consider that each party should pay his own costs of the appeal to the Court of Appeal.



In the Privy Council

JAMES CLINTON CHISHOLM

v.

JAMES HALL

DELIVERED BY
LORD JENKINS