Our first comment is, that it was most undesirable for the learned trial judge to have allowed the foreman of the jury to have embarked on the delivery of a speech before returning their verdicts. He should have been firmly silenced and told to get on with the business in hand. Nothing could have been more irregular and more demonstrative of the misconception of the functions of a jury than the conduct of this foreman. We would like to express the hope that no trial judge will permit a repetition of such a thing in this court in future. The next comment is, that we think that after the foreman returned a verdict of not guilty of murder in favour of these appellants, the learned trial judge ought not to have permitted the registrar to put the further question—"What of manslaughter?" in the light of the jury's rejection of the legal position of these appellants. The learned trial judge should, with respect, have proceeded to acquit each of them in turn after that jury's verdict.

*Appeal of first appellant dismissed; appeals of second and third appellants allowed.*

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## COLLIER v. WILLIAMS

COURT OF APPEAL (Sir Samuel Bankole Jones, P., Tejan-Sie, C.J. and Luke, Ag. J.A.): July 10th, 1967
(Civil App. No. 25/66)

**[1] Civil Procedure—parties—plaintiffs—trespass to land—person in possession proper plaintiff:** Trespass is an injury to a possessory right, and therefore the proper plaintiff in an action for trespass to land is the person who was, or is deemed to have been, in possession at the time of the trespass; and where possession is doubtful or equivocal, the law attaches it to the title (page 200, lines 34–36; page 201, lines 3–4).

**[2] Civil Procedure—parties—trespass to land—person in possession proper plaintiff:** See [1] above.

**[3] Tort—trespass—trespass to land—possession supports action—where possession doubtful law attaches it to title:** See [1] above.

The respondent brought an action against the appellant in the Supreme Court for damages for trespass and an injunction.

The respondent and the appellant each led evidence of being in possession of the land in dispute. The respondent traced her

title back to a conveyance to a predecessor in title in 1918 and put her documents of title in evidence. The appellant traced his title back to a conveyance to his father in 1929 and did not put the conveyance in evidence. The Supreme Court (Cole, Ag. C.J.) gave judgment for the respondent.

On appeal, the appellant contended that the trial court had not directed itself properly on the question of possession.

Cases referred to

(1) *Canvey Island Commrs.* v. *Preedy,* [1922] 1 Ch. 179; (1921), 126 L.T. 445, applied.

(2) *Jones* v. *Chapman* (1847), 2 Exch. 803; 154 E.R. 717, *dicta* of Maule, J. applied.

Statute construed:

Registration of Instruments Act (Laws of Sierra Leone, 1960, *cap.* 256), s.4:

The relevant terms of this section are set out at page 201, lines 25–29.

*Buck* for the appellant;
*McCormack* for the respondent.

LUKE, Ag. J.A.:

This is an appeal from the judgment of Cole, Ag. C.J. in a case for damages against the appellant for trespass and an injunction brought by the respondent. The facts briefly were that the respondent on June 9th, 1964 bought a piece of land for which she obtained a conveyance which she put in evidence as Exhibit A. In Exhibit A the land was particularly demarcated. The vendor who sold to her stated that he and his predecessors in title had been in undisturbed possession of the land for over 40 years, and he tendered Exhibits C and D. Exhibit C was a conveyance from Cicely Bright Deveneaux and others to Richard Bright Marke, the vendor, dated October 25th, 1950, and Exhibit D showed that the vendor's father had a conveyance, of which this land formed a portion, from George Thomas Reffell to Mathew John Marke dated October 26th, 1918. A surveyor gave evidence to the effect that he surveyed the land on May 21st, 1964 and that he had cause to re-survey it some time later, when he discovered that beacons which were placed on the land had been removed, and from investigations as regards the removal of the beacons he discovered it was done by

the defendant. He was asked to look at the plan in Exhibit C and see whether he could locate this land on it, and he did so in green ink.

The appellant in his evidence stated that he and certain others owned the land in question, which was bought by his father in 1929 from one George Cummings, and that he became acquainted with this land over 25 years ago and knew the land very well and there were beacons made of railway iron all round. His father is now dead, having died on January 23rd, 1962; he owned the land up to the time of his death, and the only dispute about the land was the present dispute. During the trial, the appellant sought and obtained leave to amend his defence and counterclaim, and set out his title in paras. 5 and 6, which read:

> "5. By indenture of conveyance made the 22nd day of November, 1929 and expressed to be between George Cummings therein described as the vendor of the one part and one Gilbert Marie Collier therein described as the purchaser of the other part and registered at page 492 in volume 119 of the record books of conveyances kept in the office of the Registrar General in Freetown a certain piece or parcel of land and hereditaments (including the said land now in question) was granted and conveyed to the said Gilbert Marie Collier in fee simple absolute in possession thereof.
>
> 6. The said Gilbert Marie Collier having died some time in the year 1963, intestate, the defendant and certain others became and are entitled to the fee simple ownership of all and singular the estate and effects of the said deceased, being his surviving heirs and next-of-kin, and have since been in undisturbed possession and uninterrupted occupation of the said land and hereditaments (including the said land in question), being a part of the said estate of the said deceased, letters of administration of all and singular the estate and effects of the said deceased having been granted to Bridget Odelia Collier by this Honourable Court on the 31st day of March, 1965."

Apart from the recital of this conveyance in the pleadings, the appellant did not produce the deed in evidence, due to some oversight by his learned counsel who attempted to put in the certified copy, whereon learned counsel for the respondent raised an objection which was upheld by the court. As the learned trial judge in the court below stated in his judgment, the original deed was not put

in evidence and no explanation was given why this was not done. The alleged vendor, George Cummings, was not called as a witness and no reason was given why he was not called.

The learned judge then dealt with the evidence which the appellant produced to support his case. I may here state that during the course of the trial, when learned counsel for the appellant made an application for the court to visit the *locus in quo,* the learned judge opined as follows:

> "The main issue raised in the pleadings in this action is not one of a boundary dispute—both sides appear to agree on the evidence as to the identity of the land; the main issues for the court to decide are:
>
> (a) who has a better title to the piece of land in question?
>
> (b) has there been a trespass in the light of the answer to question (a)?
>
> (c) what quantum of damages is due?
>
> In the circumstances, no benefit will be derived from granting the application except to accumulate costs. In the circumstances, the application is refused."

During the hearing of the appeal, four grounds were submitted, and in the course of the argument learned counsel emphasised that the learned judge did not advert his mind to the question of possession, and referred to certain passages both in the record and judgment. There is however this fact which seems to have escaped counsel's mind, that is, that at an early stage in the trial both plaintiff's and defendant's counsel agreed that there was no dispute as to the identity of the land; Exhibit E, the plan of the appellant's land, is more or less the same as that shown in Exhibit C, the plan in the vendor's title deed. The appellant's counsel, in his argument before this court, agreed that the identity of the land in dispute was the same and therefore it was not a boundary dispute.

In such a case, what is the principle which should be employed? 38 *Halsbury's Laws of England,* 3rd ed., at 744, para. 1214, says: "Trespass is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who was, or is deemed to have been, in possession at the time of the trespass." Evidence was given that the respondent was in possession and traced her right to possession from the person from whom she bought the property. The appellant led evidence that he and his father, from whom he claimed the land, had been in possession. In such circumstances the learned trial judge was quite correct when he posed

as his first question for determining the issue, which of the two had the better title to the land in question? In such cases, Halsbury in the same para. 1214 has this to say: "Where possession is doubtful, or equivocal, the law attaches it to the title." The cases cited are: *Canvey Island Commrs.* v. *Preedy* (1); *Jones* v. *Chapman* (2).

I refer to the case of *Jones* v. *Chapman*. In the judgment of Maule, J. it is stated (2 Exch. at 821; 154 E.R. at 724):

> "If there are two persons in a field, each asserting that the field is his, and each doing some act in the assertion of the right of possession, and if the question is, which of those two is in actual possession, I answer, the person who has the title is in actual possession, and the other person is a trespasser. They differ in no other respects. You cannot say that it is joint possession; you cannot say that it is a possession as tenants in common. It cannot be denied that one is in possession and the other is a trespasser. Then that is to be determined, as it seems to me, by the fact of the title, each having the same apparent actual possession:—the question as to which of the two really is in possession, is determined by the fact of the possession following the title,—that is, by the law, which makes it follow the title."

In support of the reasoning of the learned trial judge that the respondent's title was the better of the two, I shall refer to our Registration of Instruments Act (*cap.* 256), s.4, which reads:

> "Every deed, contract, or conveyance, executed after the ninth day of February, eighteen hundred and fifty seven, so far as regards any land to be thereby affected, shall take effect, as against other deeds affecting the same land, from the date of its registration. . . ."

It is evident that from the nature of the claim of possession it is equivocal, and the law attaches the title to the possessor who has the better title. The trial judge found that the respondent had the better title, having claimed through his predecessor in title who dates his title from 1918, as against the appellant's predecessor in title, who goes back to 1929.

Under the circumstances, the learned trial judge was right in his finding and the appeal is therefore dismissed with costs.

SIR SAMUEL BANKOLE JONES, P. and TEJAN-SIE, C.J., concurred.

*Appeal dismissed.*