

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Trinidad Asphalte Company v. Coryat, from the Supreme Court of Trinidad and Tobago; delivered 28th July 1896.

Present:

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The facts material for the decision of this case may be stated in a short compass. Nicola Dernier was grantee under the Crown of the land in dispute. One Alexis built a house on it, having acquired from Nicola a sufficient interest for that purpose. In the year 1881 Dulcinore Victor contracted with Alexis and Nicola for the purchase of the land, and she paid for it, and entered into possession, but without any conveyance. Nicola died in 1885. In 1888 Dulcinore agreed to sell the land to McCarthy for 30 dollars, and for that purpose executed a conveyance which was registered. Marie Dernier, a sister of Nicola, who had lived with him, joined in the conveyance, presumably with the object of passing the legal estate. She however was not Nicola's heir. McCarthy took possession, and his title has passed to the Defendants, the Asphalte Company. During these transactions the land was of very small value; but the development of the Pitch Lake which it adjoins has increased its value an hundredfold or so. In the year 1892 the

Plaintiff obtained a conveyance from the heir of Nicola.

The Plaintiff now sues for possession. The Defendants claim to be equitable owners in fee, and demand that the Plaintiff shall convey the legal estate to them, on the ground that he had notice of their title when he bought the legal estate. Mr. Justice Nathan at the trial, and afterwards the Court of Appeal have decided in favour of the Plaintiff. The Defendants are now appealing against the decree of the Supreme Court.

The Plaintiff's Counsel at this bar have disputed the acquisition of an equitable estate in the property by Dulcinore. It seems to have been hardly, if at all, discussed in the Court below. At the trial Mr. Justice Nathan spoke of it as apparently true, and did not hint that the reality differed from the appearance. In appeal the learned Judges, without intimating any doubt, simply state the fact, and conduct elaborate legal discussions on that basis. Mr. Crackanthorpe has argued that there was no evidence on which the Court could found such a conclusion, but it appears to their Lordships that the evidence is quite sufficient for the purpose.

The case really made by the Plaintiff below was that he is a purchaser for value without notice, and that his legal title overrides the equitable interest acquired by the Defendants. The argument of his Counsel at the trial, so far as reported in the Judge's notes, and the judgments in his favour, all turn on the absence of notice to him.

The registered deed of conveyance to Macarthy is in the following terms :—

“ Conveyance.

“ This deed made this twenty-fifth day of January in the
“ year of our Lord one thousand eight hundred and eighty-
eight between Marie Accout Damien* of the Ward of La

Sic.

* *Sic.*

“ Brea in the Island of Trinidad spinster of the first part,
 “ Dulcimore Victor also of the ward of La Brea aforesaid
 “ laundress of the second part and John William McCarthy
 “ manager of the Pitch Works at La Brea aforesaid of the
 “ third part. Whereas the said Dulcimore* Victor some time
 “ in the year one thousand eight hundred and eighty-one
 “ purchased from the said Marie Accent Damien the here-
 “ ditaments hereinafter granted and was thereupon let into
 “ possession of the same but no deed of conveyance was ever
 “ executed by the said Marie Accent Damien. And whereas
 “ the said John William McCarthy has lately contracted and
 “ agreed with the said Dulcimore Victor for the purchase of
 “ the said hereditament at the price of thirty dollars And
 “ whereas the said Marie Accent Damien has consented to be
 “ made a party to these presents for the purposes hereinafter
 “ expressed Now this deed witnesseth that in pursuance of
 “ the said agreement and in consideration of the sum of thirty
 “ dollars as purchase money to the said Dulcimore Victor
 “ paid by the said John William McCarthy on or before the
 “ execution of these presents the receipt whereof the said
 “ Dulcimore Victor hereby acknowledges the said Marie
 “ Accent Damien as beneficial owner at the request and
 “ by the direction of the said Dulcimore Victor hereby
 “ conveys and the said Dulcimore Victor hereby conveys
 “ and confirms unto the said John William McCarthy all and
 “ singular that certain piece or parcel of land situate in the
 “ ward of La Brea aforesaid measuring seventy-five feet on
 “ the northern side thereof seventy-five feet on the southern
 “ side thereof and forty feet in width and bounded on the
 “ north by lands now or formerly of one Henry Angeas on the
 “ south and west by lands of the said Marie Accent Damien
 “ and on the east by the Pitch Lake Road To hold the same
 “ unto and to the use of the said John William McCarthy in
 “ fee simple.

“ In witness whereof the said parties hereto have here-
 “ unto set their hands the day and year first herein above
 “ written.

[* *Sic.* in
 Transcript
 Record.]

“ MARIE A. DEMIER.*
 “ DULCIMORE × VICTOR
 “ Her mark.”

This is on the face of it a very careless composition. The names are misstated. Marie is made to convey as “beneficial owner,” though it is stated that she had sold to Dulcinore in the year 1881, and though it is Dulcinore and not Marie who is the contracting vendor and the recipient of the purchase money. Another mistake is made which is not apparent from the deed itself, viz., that Dulcinore is represented

as having purchased, not from Nicola as the fact was, but from Marie, who never had any interest.

On the ground of this mistake the learned Judges below came to the very startling conclusion that the deed was a nullity; that because Dulcinore did not derive title from Marie, therefore she conveyed nothing at all; and that Macarthy, though he contracted for the purchase, not of any particular interest in the land but of the very land, and not with Marie but with Dulcinore, received nothing at all. At best, they say, the deed took effect as between Dulcinore and Macarthy by way of estoppel. Then they proceed to discuss whether the Plaintiff, finding the Defendants in possession, was bound to inquire into the nature of their interest, and come to the conclusion that because a system of registration exists in Trinidad he was not so bound.

The Plaintiff's Counsel here have declined to attempt the hopeless task of supporting this construction of the deed. It is beyond dispute that it transferred to Macarthy whatever interest Dulcinore had. But then they argue, if their Lordships rightly understand them, that this transfer, though absolute in its terms, only operated between grantor and grantee, and that as between the grantee and all other persons, only so much interest passed as Dulcinore derived from Marie, which was nothing at all. This is extremely like a reversion to the repudiated theory of estoppel. Why the deed should be construed differently according to the person who comes to construe it, has not been explained, nor can their Lordships comprehend.

The Registration Ordinance has been referred to; but its only bearing on the case is, first, that it gives legal priority to deeds according to the date of their registration instead of the date of

their execution ; and secondly that it provides a public office in which they may be seen. Here the Defendants' deed was prior in every respect. Nothing turns on the system of registration. There is no question in the case beyond the familiar one, whether the Plaintiff had notice, express or other, of the Defendants' equity before he bought the legal estate.

Their Lordships have not been able to understand how there can be room for doubt in answering that question. There was the deed, plain for everybody to see. Whatever was in that deed the Plaintiff saw and knew. And the deed told him that in the year 1881 Dulcinore purchased the land, and took possession, and that she contracted to sell it to Macarthy, and actually conveyed it to him, and received the purchase money. Knowing all this, the Plaintiff yet asserts that he had no notice of the grantee's equity because the deed contains an erroneous recital of the mode in which that equity became vested in the grantor.

The Plaintiff seems to have imagined that he, a stranger to the deed, was entitled to treat the recitals as indisputable, and to insist that the grantee should not show the truth of the case if it was contrary to the recitals. He has treated the matter as though some representation had been made to him on the faith of which he had acted. He did not abstain from inquiry. He inquired carefully enough to ascertain that Nicola and not Marie was the owner of the land, and that Marie was not Nicola's heir, and to trace out the heir. And then having got the legal estate he thought he might safely proceed to eject the possessors. But he never inquired in the right and obvious quarter. He must have disregarded the fact disclosed by the deed that Dulcinore purchased and took possession in 1881, when Nicola was living, as the Plaintiff, who

had searched out the heir, must have known. If he had made inquiry with reference to that fact and to the inference which it suggests, he would probably have avoided the error which led him to bring this suit.

Their Lordships make this remark with reference to the tone of complaint which is taken on the ground that the Plaintiff has been deceived by the recitals in the deed; not as intimating that the case turns on the question whether the Plaintiff ought or ought not to have made further inquiry. On that question they only think it right to say that they are not prepared to agree that the existence of a register relieves one who is dealing with a vendor out of possession, from ascertaining the interest of one in possession, when that possession is in accordance with a registered deed. But they do not rest their judgment on that ground. They rest it on the plain and obvious ground that the Plaintiff had express notice that the Defendants were transferees of Dulcinore's interest whatever it might be, and that an erroneous recital of her earlier title does not preclude her grantee from showing what interest really passed by her grant.

The consequence is that the Plaintiff's suit entirely fails; and as he has got the legal estate with notice of the Defendants' title, he is bound to convey it to them. The proper course will be to discharge the decrees below; to dismiss the Plaintiff's claim; to give the Defendants judgment on their counter-claim, and to order the Plaintiff to pay the whole costs of the suit in both Courts.

Their Lordships will humbly advise Her Majesty in accordance with this opinion.

The Plaintiff must also pay the costs of this appeal.
