

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

COMMONWEALTH OF DOMINICA

DOMHCVAP2012/0013

BETWEEN:

DAVID GEORGE

Appellant

and

ALBERT GUYE

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Gertel Thom
The Hon. Mr. Tyrone Chong, QC

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Zena Dyer and Ms. Gina Dyer-Munro for the Appellant
Mr. Michael E. Bruney for the Respondent

2015: June 17;
2017: June 12.

Civil appeal – Indefeasibility of title – Real Property Limitation Act, Chap. 54:07 – Title by Registration Act, Chap. 56:50 – Adverse possession – Proper procedure for claiming title to land acquired by prescription – s. 33 of Title by Registration Act – Whether respondent’s title to disputed land superseded by appellant’s title acquired under Real Property Limitation Act

The appellant, David George, was the occupier of a strip of land (“the disputed strip”) which formed part of a larger piece of land, of which the respondent, Albert Guye, was the registered proprietor. The respondent had purchased his land in 1995 and in 2004, began operating a tyre shop on it. The appellant also operated a tyre shop on the property which he occupied adjacent to the respondent, known as John Tyre Services. This property was registered in the name of his deceased father, John George. The disputed strip was situated between the two tyre businesses.

The respondent’s pleaded case was that he was the registered proprietor in possession at

all material times of the disputed strip, and he sought a declaration that the appellant not be entitled to enter or cross his land. Further, he sought to have the appellant remove a wooden shed that he had erected on the disputed strip and vacate the land. The appellant, in his defence, pleaded that he was entitled to have and remain in possession of the disputed strip by virtue of the fact that the respondent is barred from bringing the action against him under the Real Property Limitation Act since he (the appellant) and his predecessors had been in undisturbed long possession of the land for about 30 years. Alternatively, he pleaded that the respondent is estopped by conduct from claiming entitlement to the property. The appellant filed a counterclaim, seeking kindred declarations.

Notwithstanding that the learned judge accepted that the appellant had been in possession of the disputed strip for more than 12 years and that he (the judge) was 'content to treat the possession of the [appellant] and his predecessors in title as adverse', he gave judgment in favour of the respondent. The judge stated that treating the appellant's possession as adverse was not conclusive of the claim. The respondent's title to the disputed strip was 'indefeasible, except, inter alia, "on the ground that his title has been superseded by a title acquired under the Real Properties (sic) Limitation Act"'. The judge rejected the notion that the appellant had acquired title under the Real Property Limitation Act. He reasoned that it would have been open to the appellant to apply to the Registrar for a certificate of title under section 33 of the Title by Registration Act on the basis of long adverse possession, but, not having done so, he did not have a title acquired under the Real Property Limitation Act. In these circumstances, the fullest rights of the registered proprietor, that is, the respondent, must be given effect to.

The judge further declared that the appellant is not entitled to enter or remain on the land comprised in the respondent's certificate of title. The appellant was ordered to remove the structures erected on the disputed strip and the judge granted the respondent a permanent injunction restraining the appellant and his successors in title from entering or crossing his land. The judge also dismissed the appellant's counterclaim.

The appellant appealed, arguing, among other things, that the judge erred in finding that although the appellant and his predecessors in title had been in possession of the disputed strip for over 12 years, the appellant could not rely on section 2 of the Real Property Act to establish that he was entitled to remain in possession of the land. Section 12 barred the respondent's claim while section 10 extinguished his rights and title to the land. The respondent, in seeking to uphold the judge's decision, contended that section 10 of the Real Property Limitation Act cannot extinguish the rights and title of a registered owner under the Title by Registration Act unless the provisions of section 33 of the Title by Registration Act are complied with and the court directs the Registrar to issue a certificate of title to the appellant.

Held: dismissing the appeal and ordering that the appellant pay the respondent costs of this appeal, being two thirds of the costs of \$7,500.00 awarded below, as well as the costs in the court below, that:

Section 33 of the **Title by Registration Act** provides the procedure by which a claim to a

title acquired by prescription in respect of registered land is to be made. The appellant not having invoked section 33, the respondent's title was not superseded by the title acquired by the appellant under the **Real Property Limitation Act**. In the absence of the court directing the Registrar to issue a certificate of title to the appellant pursuant to section 33, there could be no superseding of the respondent's title. The respondent is protected by his indefeasibility of title and no issue can arise as to his right to recover the land being barred or his title being extinguished. In the circumstances, his right to recover the disputed strip from the appellant was not barred nor was his title to the land extinguished.

Graham-Davis and Another v Charles and Others (1992) 43 WIR 188 followed.

JUDGMENT

- [1] **BAPTISTE, JA:** This appeal essentially brings to the fore the relationship between the **Real Property Limitation Act**¹ and the **Title by Registration Act**.² At the root of the relationship is the powerful concept of indefeasibility of title guaranteed to the registered owner of land – the holder of the certificate of title – held under the **Title by Registration Act**. Pitted against this is the position of a person who has acquired or claims to have acquired under the **Real Property Limitation Act**, ownership of land brought under the **Title by Registration Act**.

Background

- [2] The appeal stems from a dispute over a strip of land (“the disputed strip”) which is occupied by the appellant, David George (the defendant in the court below), but forms part of a larger piece of which the respondent, Albert Guye (the claimant in the court below), is the registered proprietor. The respondent purchased the land in 1995 and in 2004 began operating a tyre repair shop thereon.
- [3] The appellant also operates a tyre shop, known as John Tyre Services, on property adjacent to that of the respondent. The property is registered in the name of his deceased father, John George. The disputed strip is between the two business operations.

¹ Chap. 54:07, Revised Laws of the Commonwealth of Dominica 1990.

² Chap. 56:50, Revised Laws of the Commonwealth of Dominica 1990.

[4] The respondent pleaded in his statement of claim that he was at all material times the registered proprietor in possession and sought a declaration that the appellant is not entitled to enter or cross his land; as well as injunctive relief in that regard. He also sought an order that the appellant forthwith pull down and remove a wooden shed built thereon and all things belonging to him or brought onto the land by him and that he vacates the land.

[5] The appellant filed a defence and counterclaim. In the defence he pleaded that he is entitled to have and remain in possession of the land by virtue of the fact that the respondent is barred from bringing the action under the **Real Property Limitation Act** since he and his predecessors in title have been in undisturbed long possession for about 30 years. Alternatively, he pleaded that the respondent is estopped by conduct from claiming entitlement to the property. In the counterclaim he sought kindred declarations.

Judgment Below

[6] The matter came up for hearing before Cottle J who held that the respondent is entitled to rely on his certificate of title and to possession of the disputed strip. He declared that the appellant is not entitled to enter or remain on the land comprised in the respondent's certificate of title. He ordered the appellant to remove the structures erected on the respondent's land and granted a permanent injunction restraining the appellant and his successors in title from entering or crossing the respondent's land. Cottle J also dismissed the appellant's counterclaim.

[7] In delivering judgment, Cottle J stated:

“From the evidence it appears clear to me that the defendant has been in possession of the disputed strip for a period of more than 12 years.”³

Cottle J accepted that the defendant and his predecessors in title had operated the tyre repair business on the disputed strip since at least 1980. Cottle J further

³ At para. 11.

stated:

“For the purpose of this case I am content to treat the possession of the defendant and his predecessors in title as adverse but that is not conclusive of this claim. The indisputable fact is that the claimant has a Certificate of Title. That means that his title to the disputed strip is indefeasible, except, inter alia, ‘on the ground that his title has been superseded by a title acquired under the Real Properties (sic) Limitation Act’.”⁴

[8] Cottle J rejected the notion that the appellant had acquired title under the **Real Property Limitation Act**. He reasoned that it would have been open to the appellant to apply to the Registrar for a certificate of title under section 33 (although section 34 erroneously appears in the judgment) of the **Title by Registration Act** on the basis of long adverse possession; not having done so, he does not have a title acquired under the **Real Property Limitation Act**. In these circumstances, the fullest rights of the registered proprietor must be given effect to.

[9] In rejecting the sustainability of the counterclaim, Cottle J applied the reasoning of Archer P in **George v Rosalie Estates Ltd**⁵ that the current defendant would have been a person qualifying for title by adverse possession but until he applied for and obtained his own certificate of title he would be powerless to defeat the registered proprietor of the land.

Grounds of appeal

[10] The appellant/defendant is dissatisfied with the judgment and has accordingly appealed. Six grounds of appeal have been advanced. Three of the grounds concern section 2 of the **Real Property Limitation Act**. I will consider those grounds first as they constitute the core of the appeal. The grounds are that:

- (i) Cottle J erred in law in finding that although the appellant and his predecessors in title had been in possession of the disputed strip for over 12 years, the appellant could not rely on section 2 of the **Real Property**

⁴ At para. 12.

⁵ (1965) 13 WIR 401.

Limitation Act.

- (ii) Cottle J erred in law and/or misinterpreted section 2 of the Real Property Limitation Act when he interpreted it to mean: 'an owner of land who does not hold a certificate of title is prevented from bringing an action to evict a squatter after 12 years of adverse possession' but not an owner who holds a certificate of title.
- (iii) Cottle J was wrong in law in holding that section 2 does not apply where the respondent/claimant holds a certificate of title.

Arguments of parties

- [11] I will set out the arguments with respect to the first three grounds of appeal as advanced by Ms. Dyer-Munro. The central tenet of the appellant's case is that having found that the appellant was in adverse possession of the disputed strip for more than 12 years, Cottle J ought to have held that section 2 of the **Real Property Limitation Act** barred the respondent's claim and section 10 extinguished his rights and title; he therefore should have dismissed the respondent's case.
- [12] Ms. Dyer-Munro also submits that Cottle J incorrectly applied section 2 of the **Real Property Limitation Act** in that the effect of the section is not determined by whether or not the paper title owner has a certificate of title. In the circumstances, Ms. Dyer Munro contends that there was no need for Cottle J to embark on a discussion of indefeasibility vis a vis adverse possession. There is no variance between the **Real Property Limitation Act** and indefeasibility of title.
- [13] In advancing the appellant's case, Mrs. Dyer-Munro also relies on a number of cases including **Burton Riviere v Judith Durand**,⁶ an appeal court decision from the Commonwealth of Dominica. There, the Court of Appeal stated that the judge was correct in holding that the **Real Property Limitation Act** barred the

⁶ DOMHCVAP2006/0013 (delivered 10th November 2010, unreported).

appellant's claim. However in light of section 33 of the **Title by Registration Act** it would not have been within the judge's jurisdiction to order that the respondent be issued a certificate of title to the disputed strip.

[14] In seeking to uphold the decision of Cottle J, Mr. Bruney submits that the appellant could not have acquired title by virtue of the provisions of the **Real Property Limitation Act**. Mr. Bruney points out that the effect of the provisions of the Act is not to vest title in a squatter but to protect the squatter against tardy actions by the owner of the land. In that regard, he refers to the judgment of George-Creque JA in **Arnold Celestine (Administrator of the Estate of O'Ferril Celestine) v Carlton Baptiste**.⁷

[15] Mr. Bruney argues that while section XXXIV (34) of the English Real Property Limitation Act⁸ (incorporated into the **Real Property Limitation Act** of Dominica) seeks to extinguish the rights and title to land at the expiration of the limitation period, the section cannot operate to extinguish the rights and title of a registered owner under the **Title by Registration Act** unless section 33 of that Act is complied with. Therefore the phrase 'a title acquired under the Real Property Limitation Act' appearing in the definition of "indefeasible" in the First Schedule of that Act can only properly be interpreted to mean a certificate of title acquired pursuant to section 33 of the **Title by Registration Act**.

[16] Mr. Bruney points out that the **Title by Registration Act**⁹ was passed after the **Real Property Limitation Act**.¹⁰ It introduced a system of registered land by which the registered proprietor is clothed with the fullest rights, declares his title to be indefeasible and requires the registration of all dealings on the certificate of title. Mr. Bruney accordingly contends that the provisions of the **Title by Registration Act** must therefore have impliedly revoked section XXXIV of the

⁷ At para. 13.

⁸ 24th July 1833 (3 & 4 W. 4, c. 27).

⁹ Act No. 1 of 1886, Laws of the Commonwealth of Dominica (as amended).

¹⁰ Act No. 11 of 1877, Laws of the Commonwealth of Dominica.

English Real Property Limitation Act passed in third and fourth years of the reign of King William the Fourth.

- [17] Mr. Bruney forcefully contends that if one is to agree with the appellant's argument it would mean that the holder of a registered title which is occupied by an adverse possessor for more than 12 years loses his rights to the land while the land is still registered in his name. Such a position would be in conflict with the policy and every other fundamental provision of the **Title by Registration Act**. Mr. Bruney underscores the necessity of complying with the provisions of section 33 in order to challenge the respondent's certificate of title and submits that until the appellant's proprietorship is registered, no right in respect of the land could have been conferred on him which would entitle him to challenge the indefeasible title of the respondent in any court or maintain suit against him.

Approach

- [18] The arguments of both counsel necessarily entail a consideration of the relevant statutory framework with respect to the issues raised in the grounds of appeal under consideration. The statutes in question are the **Title by Registration Act** and the **Real Property Limitation Act** of the Commonwealth of Dominica. The issue essentially boils down to one of construction. A useful backdrop for the examination of the statutes would be a brief consideration of the salient features of the Torrens system of land registration embodied in the **Title by Registration Act** and the guidance provided by the cases with respect to the construction of statutes embodying the Torrens system.

Torrens System

- [19] The Torrens system, which is a system of 'title by registration', originated in two statutes passed in 1858 by the Parliament of South Australia prompted by a Member of Parliament, Sir Robert Torrens, after whom the system is named. One of its basal features is that transactions in land should be carried out by their registration in a government office, thus guaranteeing ownership of an absolute

and indefeasible title to realty.¹¹ '[I]ndefeasibility of title ... is the foundation of the Torrens system of title'.¹²

- [20] The essential characteristic of the Torrens system is stated by Barwick CJ in **Breskvar v Wall**.¹³

"The Torrens system of registered title ... is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor."

- [21] A Torrens system statute necessarily contains two key provisions: one, a provision that makes a certificate (or duplicate certificate) of title conclusive proof of the title of the registered proprietor so that no other person can be heard to claim that he or she is the proprietor of the title to which the certificate relates; and, two, a provision that makes that title immune from defeasance by a paramount title.¹⁴

Construction of Act

- [22] In **Shillingford v The Attorney-General of Dominica**¹⁵ the Court of Appeal commented that the **Title by Registration Act** 'is unique in that the definition of "indefeasible" does not appear in other statutes which govern the Torrens system of Land Registration existing in other Commonwealth countries. As such it must be construed in accordance with what it says and in accordance with its ordinary normal meaning'.¹⁶ In that same case, in giving the advice of the Board in the Privy Council¹⁷ Sir Frank Kitto observed that:

"[T]he Ordinance [the Title by Registration Act] differs in many respects from enactments in force in other jurisdictions concerning title to land by registration, and of course it must be interpreted according to its own

¹¹ Per Rich J in *Wright and Another v Gibbons* (1949) 78 CLR 313 at 325.

¹² Per Mason CJ and Dawson J in *Bahr v Nicolay* (No. 2) (1988) 164 CLR 604.

¹³ (1971) 126 CLR 376 at 385.

¹⁴ Per Brennan J in *Parramore v Duggan* [1995] HCA 21.

¹⁵ (1968) 12 WIR 57.

¹⁶ At p. 79.

¹⁷ *Attorney-General of Dominica v Shillingford* (1970) 14 WIR 526.

terms.”¹⁸

- [23] In **James Clinton Chisholm v James Hall**¹⁹ Lord Jenkins noted that the **Registration of Titles Law** of Jamaica was one of many enactments for the registration of titles in force in Jamaica, and in various parts of the Commonwealth and Empire. The enactments are not uniform in their terms. The Board approached the question before it as one which turned simply and solely upon the true construction of the Jamaican law itself.
- [24] In **Richardson Anthony Arthur v The Attorney General of the Turks & Caicos Islands**,²⁰ Sir Terence Etherton noted that the Torrens system has been implemented in different countries with varying degrees of flexibility. When considering the effect of legislation implementing the Torrens system in any particular jurisdiction, it is necessary to focus on the provisions of the particular legislation in question, and to take special care when considering the relevance and usefulness of judgments in cases in other jurisdictions where the legislation, policy consideration and general principles of law may be different.
- [25] The following propositions emerge from the cases: the **Title by Registration Act** must be interpreted according to its own terms and is to be construed in accordance with its ordinary normal meaning. It is important to focus on the provisions of the Act and the policy considerations governing it.

Basic purposes

- [26] The basic purposes of the **Title by Registration Act** are to provide for certainty of title to land, to facilitate the proof and transfer of such titles, and to make dealing with lands simpler and less expensive.²¹ His Lordship noted that in order to achieve these purposes, the Act created a system of registration of titles which has as one of its fundamental principles that the certificate of title issued to a

¹⁸ At p. 531.

¹⁹ (1959) 1 WIR 413 at 417 (PC).

²⁰ [2012] UKPC 30, paras. 14 and 15.

²¹ Per Cecil Lewis JA in *Shillingford v The Attorney-General of Dominica* (1968) 12 WIR 57.

registered proprietor is, with certain exceptions mentioned in the Act, to be indefeasible. It appears to me therefore that a consideration of the fundamental principle of indefeasibility of title is critical to the disposition of the appeal as will be borne out by an examination of the **Title by Registration Act** and the pertinent case law.

Relevant statutes

- [27] The **Real Property Limitation Act**, commenced on 1st January 1883. The relevant provisions are sections 2 and 10. Section 2 essentially bars the bringing of action or suit to recover land but within twelve years from the accrual of the right. Section 2 states:

“After the commencement of this Act, 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 the entry or distress, or to bring the action or suit, has first accrued to some person through whom he claims; or, if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action or suit, has first accrued to the person making or bringing the same.”

- [28] Section 10 of the **Real Property Limitation Act** incorporates section XXXIV (34) of the English Real Property Limitation Act into the laws of Dominica. It basically provides that at the determination of the period limited by the Act to any person for making an entry or distress, or bringing any writ, action or suit, the right and title of such person to the land or rent, recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period, shall be extinguished.

- [29] The **Title by Registration Act** commenced on 1st February 1887. Section 8 provides that:

“All certificates of title granted under this Act, and all notings of mortgages and incumbrances on the same, shall be indefeasible.”

The First Schedule of the Act defines “indefeasible” as:

“The word used to express that the certificate of title issued by the

Registrar of Titles, and the notings by him thereon, cannot be challenged in any court of law on the ground that some person other than the person named therein as the registered proprietor, is the true owner of the land therein set forth, or on the ground that the mortgages or incumbrances in the notings thereon are not mortgages and incumbrances on the said land; except on the ground of fraud connected with the issue of the certificate of title, or the noting of the mortgages or incumbrances, or that the title of the registered proprietor had been superseded by a title acquired under the Real Property Limitation Act, by the person making the challenge. The word also means that, the certificate of title being issued by the Government, the Government is, with the exceptions above mentioned, prepared to maintain the title in favour of the registered proprietor, leaving anyone justly aggrieved by its issue to bring an action for money damages against the Government.”

Section 10 of the **Title by Registration Act** deals with the right of a registered proprietor. It states that:

“The right of the registered proprietor named in a certificate of title to the land comprised in a certificate of title granted under this Act shall be the fullest and most unqualified right which can be held in land by any subject of the State under the law of Dominica, and such right cannot be qualified or limited by any limitations or qualifications in the certificate of title itself
...”

The section goes on to provide three exceptions to the limitations or qualifications, none of which are relevant to this appeal; included in the three is where mortgages and incumbrances are noted on the certificate of title.

[30] Section 33 of the **Title by Registration Act** states:

“Where any person has acquired, or claims to have acquired under the Real Property Limitation Act, the ownership of land brought upon [sic] the operation of this Act, he shall present a request to the Registrar of Titles to have a certificate of title issued to him in lieu of the registered proprietor in the original certificate of title, and the person who has acquired, or claims to have acquired, the ownership shall not be entitled to maintain any suit in regard to the land until he has obtained a certificate of title thereto. When a request for such a certificate of title is presented to the Registrar of Titles, he shall state a case to the Court, and shall not issue a certificate of title on the request until he has received the direction of the Court thereupon.”

Analysis of the Statutes through the cases

[31] In **Shillingford v The Attorney-General of Dominica**, the Court of Appeal made very important pronouncements on various sections of the **Title by Registration Act**, which I gratefully adopt and apply to this appeal. An issue raised in the appeal was whether the appellant's certificate of title was indefeasible as against the Crown. The learned judge had held that the certificate of title was not conclusive against the Crown; the Crown not being bound by the relevant provisions of the **Title by Registration Act**. The appellant successfully appealed. The Court of Appeal held, among other things, that:

- (1) The indefeasibility of the certificate established by section 8 involves a guarantee or pledge by the Crown in its right of the Government of Dominica that it will maintain in favour of the registered proprietor the title which it has conferred on him by means of the certificate of title which it had himself issued to him.
- (2) Section 10 of the Act expressly defines the plenitude of the right in the registered land which registration confers upon a registered proprietor and it does so by reference to the law of England, equating the right of the registered proprietor to 'the fullest and most unqualified right which can be held in land by any subject of the Crown' under that law.
- (3) The words 'the certificate of title being issued by the Government of the Colony, ... against the Government of the colony' appearing in the definition of the word "indefeasible" create a statutory undertaking or guarantee by the Government to support and maintain the registered proprietor's title which is intended to be effective not only between subject and subject but also as between the Crown and subject.

[32] In **George v Rosalie Estates Ltd**²² – a decision of the British Caribbean Court of Appeal – the respondent held a certificate of title in respect of Rosalie Estate in

²² (1965) 13 WIR 401.

Dominica. The appellant instituted legal proceedings against the respondent in trespass, alleging that he and his predecessors had been in possession of 5.85 acres of the estate for over 30 years, thus he had acquired a title by prescription. At the time of the alleged trespass, the appellant had no certificate of title to the 5.85 acres. When the appellant issued his writ the respondent was the registered owner of the 5.85 acres of land, the subject matter of the trespass. At the trial, the respondent took the preliminary point that the cause of action had not accrued at the date of the issue of the writ. The judge upheld the contention and gave judgment for the respondent.

[33] On appeal, the appellant posited that the respondent's title had been superseded by section 2 of the **Real Property Limitation Act** and although he (the appellant) had no certificate of title for the land at the time of the alleged trespass, he could nevertheless bring his action against the respondent despite the provision of section 33 of the **Title by Registration Act**.

[34] The Court of Appeal held that the certificate of title issued to the respondent company on 8th December 1952, gave the company an indefeasible title to the land and therefore whatever inchoate rights were then possessed by the appellant or his predecessors in title were unenforceable while the company enjoyed the indefeasibility guaranteed to it by the certificate of title. The Court also held that when the appellant issued his writ he was still a squatter who may or may not have had rights which he could enforce under the **Title by Registration Act** but had not done so. The Court further held that even if the appellant may have had a right to the rectification of the register of titles, until the register was rectified, the respondent's title was unimpaired and nothing had happened to detract in the slightest degree from its indefeasibility.

[35] The court further held that the period of limitation on the expiry of which the respondent's right to the land and its remedy by way of entry would be barred had not yet terminated even on 9th October 1962, the date the appellant received his

certificate of title, but extinction of the respondent's title would have been of no avail to the appellant unless followed by rectification of the register. The appellant derived title under the certificate of title issued on 9th October 1962. Until then he was a person qualifying for a title by adverse possession but powerless to defeat the registered proprietor of the land.

Discussion

- [36] The authorities referred to above demonstrate beyond peradventure the foundational role and the pre-eminence of the principle of indefeasibility of title under the **Title by Registration Act**. The principle of indefeasibility of title of the registered owner will always be of critical importance in any prescriptive challenge, claim or defence where such challenge is not in consonance with section 33 of the Act. I, therefore, do not accept Ms. Dyer Munro's argument that in resolving the issue before him, Cottle J ought not to have embarked upon a consideration of indefeasibility of title.
- [37] When the respondent brought his claim against the appellant, he was asserting the plenitude of rights accorded to him by the indefeasibility of his certificate of title. It was not simply the bringing of an action in private law against someone who had occupied unregistered land in excess of twelve years. The distinction is important and was made very clear by the Court of Appeal in **George v Rosalie Estates Ltd**.²³ Assuming that the respondent's title had been extinguished, the result would not have been to transfer the respondent's right to the appellant. This would have been the case if the land in question had not been brought under the **Title by Registration Act**. That was the reasoning of the Court of Appeal in **George v Rosalie Estates Ltd**, which I adopt. Therefore, there is no merit in the complaint that the effect of section 2 of the **Real Property Limitation Act** is not determined by whether or not the paper owner has a certificate of title. In the circumstances Cottle J cannot be criticised for recognising the difference between unregistered land and land governed by the **Title by Registration Act**.

²³ At p. 408.

[38] **Graham-Davis and Another v Charles and Others**²⁴ is also very instructive. The **Title by Registration Act** of Antigua and the **Real Property Limitation Act** of Antigua were traversed in that appeal. The relevant provisions of both Acts were identical to that of Dominica. The appeal arose out of a dispute surrounding the ownership of a piece of land in Antigua. In September 1975 a new system of land registration was introduced in Antigua. Before that time, the registration of title in Antigua was governed by the **Title by Registration Act**. That Act dated from 1887.

[39] Just as in Dominica, section 8 of the **Title by Registration Act** provided that all certificates of title granted under the Act should be indefeasible. The word indefeasible was defined in the First Schedule to the Act in the form of two propositions. In so far as is material, the first is that the certificate cannot be challenged in any court of law on the ground that some person other than the registered proprietor is the true owner of the land, except on the ground of fraud connected with its issue or that the title of the registered proprietor has been superseded by a title acquired under the **Real Property Limitation Act**. The second proposition is that the certificate of title being issued by the Government, the Government is, with the exceptions mentioned above, prepared to maintain the title in favour of the registered proprietor, leaving anyone justly aggrieved by its issue to bring an action for money damages against the Government.

[40] The Privy Council also looked at section 2 of the **Real Property Limitation Act**, of Antigua. It is in identical terms to section 2 of the **Real Property Limitation Act** of Dominica. The Board then looked at section 34 of the **Title by Registration Act** of Antigua, which is also in identical language to section 33 of the **Title by Registration Act** of Dominica.

[41] Having considered these provisions the Privy Council stated:

“It is apparent from these provisions that a title registered under the Title by Registration Act could only be superseded by a prescriptive title

²⁴ (1992) 43 WIR 188.

acquired under the Real Property Limitation Act where the court had directed the Registrar to issue a certificate of title to the person claiming under section 34 of the former [Title by Registration] Act.”

[42] I respectfully adopt the legal position as enunciated by the Board. It clearly sets out how the holder of a certificate of title issued under the **Title by Registration Act** could be superseded by a prescriptive title acquired under the **Real Property Limitation Act**. The Privy Council stated that no such supersession of the certificate of title of the appellants had taken place prior to the coming into effect in September 1975 of the new legislation governing registration of title. The Privy Council further noted that at the time the appellants had a certificate of title which was indefeasible as defined in the **Title by Registration Act**.

[43] The respondent to this appeal is in a kindred position. Section 33 of the **Title by Registration Act** provides the procedure by which a claim to a title acquired by prescription in respect of registered land is to be made. The appellant however did not invoke section 33. The position then is that the respondent’s title has not been superseded by a title acquired by the appellant under the **Real Property Limitation Act**. To be so superseded, it is imperative that the provisions of section 33 of the **Title by Registration Act** be complied with. This is fundamental. In the absence of the court directing the Registrar to issue a certificate of title to the appellant, there can be no superseding of the respondent’s title. The respondent is protected by his indefeasibility of title and no issue can arise as to his right to recover the land being barred or his title being extinguished. In the circumstances, his right to recover the land was not barred nor was his title extinguished.

[44] Further, the consequence of Ms. Dyer-Munro’s attempt to limit the inquiry to sections 2 and 10 of the **Real Property Limitation Act** would be an automatic extinguishment of the right and title of the registered proprietor after the expiry of the limitation period. Such a result would not be in sync with the tenor of the **Title by Registration Act**. In light of section 33, it would be impracticable to contend in

favour of automatic extinguishment of title of the registered proprietor as this would render the section sterile or nugatory. In my judgment, automatic extinguishment of title would also jeopardise one of the basal purposes of the **Title by Registration Act**, which is to provide certainty of title to land. In the circumstances of this case, it would mean that though the respondent's title is indefeasible, his right and title would be extinguished at the end of the limitation period, without the procedure for acquiring prescriptive title under section 33 having been employed. That situation would be both untenable and illogical.

[45] As indicated earlier, Ms. Dyer-Munro relies on **Burton Riviere v Judith Durand**. In my view, this reliance does not advance the appellant's case. In **Burton Riviere v Judith Durand** the trial judge stated that if the respondent 'was in uninterrupted possession without paying rent since 1984, which is a period in excess of twelve years ... any attempt to remove her will [sic] have been statute barred'. The Court of Appeal stated that 'given the finding of the learned judge that the respondent never paid rent since 1984, ... the learned judge was clearly right in holding the appellant's claim to be statute barred in terms of the **Real Property Limitation Act**'. The Court commented that in light of section 33 of the **Title by Registration Act**, it would not have been within the judge's jurisdiction to order the respondent be issued a certificate of title to the disputed land even if a counterclaim had been filed. The parties are bound by the statutory provisions of section 33 of the Act.

[46] Mr. Bruney points out that **Burton Riviere v Judith Durand** concerned which of the parties who were both claiming ownership of a portion of registered land was entitled to the disputed land. Importantly, the registered proprietors of the disputed land were not parties to the action in that no claim was filed by or against them. The Court of Appeal specifically stated that the title to the land remained vested in the registered proprietors under the Act and the respondent was not entitled to maintain any suit in regard to the land. I agree with Mr. Bruney's statement that what is clear in **Burton Riviere v Judith Durand** is that the Court of Appeal

acknowledged the necessity for an adverse possessor to follow the procedure set down in section 33 of the **Title by Registration Act** which is the same approach taken by the learned trial judge in the instant case.

[47] In conclusion, as the registered owner of the land, the indefeasibility of title conferred upon the respondent by the **Title by Registration Act** is of fundamental importance. The plenitude of rights accorded to him, and his title to the land cannot be extinguished unless the appellant avails himself of the provisions of section 33 of the **Title by Registration Act** and the Court directs the Registrar to issue a certificate of title to the appellant. In the absence of that happening, the respondent's title is not superseded and he is protected by its indefeasibility. As the Privy Council reminded us in **Attorney-General of Dominica v Shillingford**,²⁵ the right of the registered proprietor to the land comprised in the certificate of title shall be the fullest and most unqualified right which can be held in land by any subject of the Crown under the law of England. In the circumstances, section 2 of the **Real Property Limitation Act** cannot avail the appellant.

[48] To the extent that there is any conflict between the provisions of sections 2 and 10 of the **Real Property Limitation Act** and the **Title by Registration Act**, paying regard to the ethos of the **Title by Registration Act** and the fact that it is a later Act, that conflict has to be resolved in favour of the **Title by Registration Act**.

[49] It follows therefore that grounds 1, 2 and 3 of the grounds of appeal are dismissed. I will briefly consider the remaining grounds.

Grounds 4 and 6

[50] The fourth and sixth grounds of appeal essentially challenge the exercise of the judge's discretion in granting injunctive relief and more so the mandatory injunction to remove the structure on the land. Both of these grounds are dismissed as I find no basis upon which the exercise of the judge's discretion can be successfully

²⁵ At p. 531.

impugned.

Ground 5

[51] The fifth ground complains that Cottle J erroneously accepted hearsay evidence on behalf of the respondent. Mr. Bruney contends that it is clear from the judgment that the learned judge either disregarded or alternatively chose not to rely on what is described as hearsay evidence given by the respondent and commented on by the appellant in his submission. Mr. Bruney further contends that in any event there was other independent material available to the judge which could have led him to the finding of fact revealed by the “hearsay” evidence. In my judgment, this ground does not advance the appeal any further in light of my conclusions on the critical grounds of the appeal.

[52] It is ordered that the appeal is dismissed. The appellant is to pay the respondent costs of this appeal being two thirds of the costs of \$7,500.00 awarded below, as well as the costs in the court below.

I concur.
Gertel Thom
Justice of Appeal

I concur.
Tyrone Chong, QC
Justice of Appeal [Ag.]

By the Court

Chief Registrar