

**Treldon Connell**

*Appellant*

v.

**Claribelle Connell (by her duly constituted  
attorney on record Marissa Creese)**

*Respondent*

*and*

**Treldon Connell**

*Appellant*

v.

**Marcelle Alexander Findlay**

*Respondent*

FROM

**THE COURT OF APPEAL OF  
SAINT VINCENT AND THE GRENADINES**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 13<sup>th</sup> October 2008

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*Present at the hearing:-*

Lord Hope of Craighead  
Lord Scott of Foscote  
Lord Walker of Gestingthorpe  
Baroness Hale of Richmond  
Lord Neuberger of Abbotsbury

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*[Delivered by Lord Walker of Gestingthorpe]*

1. This is an unfortunate family dispute about property in St Vincent. In the interests of simplicity, and without intending any disrespect, I shall refer to all the individuals concerned by their first names.
2. Selwyn Connell (“Selwyn”) died intestate on 27 May 1976 survived by his widow, Claribelle Connell (“Claribelle”). They had married in 1941 and had no children. However Selwyn had previously lived with an unmarried partner, Imore Caesar (“Imore”), and they had three sons, including Trelton Connell (“Trelton”), the appellant in these proceedings. Trelton was born in 1938. He left home in about 1960 to study medicine at the University of the West Indies and then travelled to England where he lived and worked as a medical practitioner for many years, visiting St Vincent from time to time.
3. Claribelle obtained a grant of letters of administration to Selwyn’s estate on 18 April 1985. In the application leading to the grant she deposed that Selwyn died intestate leaving her as his widow and having “no issue, no parents, or uncles, aunts or grandparents or other person entitled to share in his estate.” However in Schedule D to the estate duty affidavit she named Trelton as entitled to two-thirds of the estate (his proper share had he, and he alone, been a legitimate child). This has led to an issue as to the intestacy law of St Vincent which has been raised for the first time before the Board.
4. Claribelle died on 1 January 2004. She had during her lifetime made a gift of property to her niece Marcelle Alexander Findlay (“Marcelle”), who lives in England. Marcelle has two children, resident in St Vincent, who feature in this matter, Marissa Creese, a schoolteacher (“Marissa”) and Geoffrey Creese (“Geoffrey”).
5. During his lifetime Selwyn owned, or at any rate claimed to own, three separate parcels of land in Barrouallie, St Vincent, as follows:
  - (1) the matrimonial home at Middle Street;
  - (2) another house with two garages (“the shoreside house”), sometimes described as in Quow Street; and
  - (3) a property known as the Salvatory Building now tenanted by the National Commercial Bank.

These appeals are concerned with the matrimonial home and the shoreside house. No issue arises as to the Salvatory Building, though it was mentioned from time to time in the course of the proceedings. Selwyn had a good paper title to this property, commencing with a mortgagee’s sale by a conveyance dated 2 October 1950 between (1) F G Dare and (2) Selwyn.

6. These appeals are concerned with two different sets of proceedings relating to the matrimonial home and the shoreside house respectively, as follows:

- (1) Appeal No 21 of 2006 in the matter originally designated as No 31 of 2003, an action which Claribelle commenced against Trelton on 28 January 2003; after her death Geoffrey was appointed to represent her estate.
- (2) Appeal No 68 of 2006 in the matter originally designated as No 32 of 2003, an action which Marcelle commenced against Trelton on 28 January 2003.

Their Lordships will refer to these proceedings by their original designations, that is 31 of 2003 and 32 of 2003 respectively.

7. Both sets of proceedings were framed as actions for trespass, but also included claims for declaratory relief. In 31 of 2003 Claribelle complained of a violent trespass by Trelton in the matrimonial home on 28 July 2002. In 32 of 2003 Marcelle (in proceedings started by Marissa as her attorney) complained of trespass (including the changing of locks) at the shoreside house on 26 January 2003. Although both sets of proceedings included claims for declaratory relief, neither statement of claim attempted to deduce a full paper title. In 31 of 2003 Claribelle simply referred to her occupation of the matrimonial home with Selwyn. In 32 of 2003 Marcelle based her claim on a deed of gift dated 3 May 1985 made between (1) Claribelle and (2) Marcelle, without going further back into the title. Although the two sets of proceedings were started on the same day by the same attorneys against the same defendant, it does not seem to have occurred to anyone that the interests of justice might be best served by having the cases heard together. Until coming together on the final appeal to the Board, the proceedings have followed their separate courses and must be considered separately.

8. In 31 of 2003 Trelton's pleaded case was that he had not expelled Claribelle from the matrimonial home but that Marissa had taken her away (it was common ground that Claribelle, who was then in her 90s, was in a poor state of physical and mental health). Trelton's pleaded case was that the matrimonial home had been purchased by Selwyn and Imore and belonged to them in equal shares, and that the property did not form part of Selwyn's estate because Selwyn had disposed of it during his lifetime. Trelton did not give any particulars of this disposition, nor was he asked for any. Regrettably, the pleadings did not clearly define the issues.

9. The case was heard by Bruce-Lyle J who gave judgment on 25 November 2004. In his evidence Trelton was referred to the estate duty affidavit which appeared to show him as interested in Selwyn's estate, but he stood by his position that he was not claiming through his father's estate. He gave evidence that Claribelle had only a life interest in the property. He said during cross-examination:

“There is other evidence I can show to prove ownership. I owned the land since 1976. He gave me the land. I owned the land on condition that my step-mother had a life interest. After that the whole property would become mine. She understood this for ten years until she developed senile dementia. My father did not give me a deed for this land.”

Later in his evidence he said that he was claiming through his mother. Then the two elements of his testimony converged:

“My mother told me the land was hers. His intention was that all he owned he would give to me. The property was built on land belonging to my mother. He gave me a paper saying all the property was mine on his death. I misplaced the paper, and someone gave it to my step-mother and that was the end of that.”

That paper is now said to have been recovered, as appears below.

10. The judge seems to have treated the issue as essentially one of fact. He held that Claribelle, through Marissa (her only witness) had not made out her case, mainly because the property was (for whatever reason) not included in the estate duty affidavit. Yet on Trelton's counterclaim the judge made a declaration of title in his favour, despite the sketchy and contradictory nature of his evidence as to title.
11. Geoffrey, as Claribelle's executor, appealed from the judge's order and on 26 May 2005 the Court of Appeal (Alleyne CJ (Ag), Barrow JA (Ag) and Benjamin JA (Ag)) reversed his decision. In the leading judgment Benjamin JA (Ag) noted Trelton's departure from his pleaded case and correctly analysed the position (para 9):

“Neither party has presented any valid paper title to the property. Suffice it to say that the Deed of Settlement and the Possessory Title, are self-serving and in no way amount to valid legal title . . .since [Trelton] at trial was faced with

the admitted occupation of the property by [Claribelle] with Selwyn Connell from 1941 until his decease in 1976 and thereafter by herself, the burden was cast upon him to prove a better title to occupy the property if he was to successfully dispossess [Claribelle]. Regrettably, the learned trial judge did not adopt this approach. [Claribelle's] long occupation was not treated as prima facie entitlement to possession."

He referred to repairs to the property which Trelton claimed to have made, but rightly regarded such acts as equivocal ("as the same could be ascribed to the devotion of a grateful and dutiful stepson") and as not amounting to evidence of ownership. The Court of Appeal made a declaration that Claribelle's estate was entitled to possession; awarded her damages of \$5,000, together with an injunction; and dismissed the counterclaim.

12. Marcelle's claim in 32 of 2003 against Trelton in respect of the shoreside house was heard by Blenman J, who gave judgment on 5 November 2004. The judge heard evidence from Marissa and her husband Ethron, whom she found to be reliable witnesses, and from Trelton, whom she found to be an extremely unreliable witness. Marissa's evidence was that the shoreside house was let and that she collected the rents on behalf of Marcelle (who lived in England, but visited St Vincent from time to time). Trelton's counsel referred to the fact that Trelton was mentioned in the estate duty affidavit as a person entitled to share in Selwyn's estate, but Trelton himself was adamant that he was not claiming through his father's estate, but under a different title.

13. The judge summarised her conclusions as follows (para 26):

"The evidence, which I accept, is as follows: Mr Selwyn Connell owned the disputed property and died intestate. The deceased's wife Mrs Claribelle Connell properly obtained letters of administration to the estate of Selwyn Connell [and] vested the property in herself as the person lawfully entitled to the estate. After the death of her husband she rented the ground floor of the wooden house to Mr Norris Roberts and collected the rents. Subsequently, she gave the disputed property to [Marcelle], the latter who contributed to the financial maintenance of the late Mrs Connell. [Marcelle] obtained proper title to the disputed property and is its lawful owner."

The judge made in favour of Marcelle a declaration as to her title and an order for possession; she also awarded her damages of \$2,000 and granted an injunction. Trelton's counterclaim was dismissed.

14. Trelton appealed to the Court of Appeal. While the appeal was pending, Trelton, on his account of the matter, made a dramatic discovery, which he described in an affidavit sworn on 29 August 2005. He deposed that in April 1969 his father was very ill and gave him a signed manuscript note which he (Trelton) put away in the house. Later it was found and given to Claribelle. (This is consistent with Trelton's evidence in 31 of 2003 quoted above). After his father's death he made several searches for it but did not find it. But according to his affidavit he eventually found it:

“On Sunday, 5 June 2005 which was after the trial of this matter I decided to go into the ceiling of the house at the waterfront at Barrouallie where my father and stepmother lived and in the said ceiling I found the remains of a hardcover notebook which was tied with a piece of string. When I removed the piece of string I found two pieces of paper with writings that read as will and on another piece of paper I found the declaration dated 22 April 1969 and written by my father whose handwriting I knew very well. This is the said declaration which my father wrote when he was very ill in April 1969 and gave to me. There were also other documents pertaining to the payment of taxes and rates for properties in Barrouallie which were owned by my father among other things. The said declaration had affixed to it two five cents postage stamps including a stamp marking the establishment of CARIFTA the Caribbean Free Trade Area in 1969 and was made by my father in the presence of one Comsie Reece.”

15. The document (the original of which has been seen by the Board) was in the following terms:

“To whom it may concern  
I Selwyn Connell of Barrouallie, St Vincent, West Indies, do solemnly and sincerely declare as follows.  
After the death of my wife, Claribelle Connell, my three properties at Barrouallie I give to my son Trelton Connell.  
Signed by me this 22 April, 1969, Selwyn Connell JP in the presence of Comsie Reece.”

Comsie Reece is said to have been a friend of Selwyn. She has since died. It is not suggested that she signed the document.

16. Trelton applied to the Court of Appeal for leave to adduce this document as fresh evidence. In a very briefly reported judgment the Court of Appeal (Alleyne CJ (Ag), Barrow and Rawlins JJA) refused the application to adduce fresh evidence and dismissed the appeal on 11 October 2005. The application was rejected on the ground that the document, assuming it to be authentic, could not effect an *inter vivos* disposition of land. The Court of Appeal rejected the original grounds of appeal, notably the allegation of lack of authority for the commencement of proceedings, and the judge's finding about entitlement on Selwyn's death intestate. The Court of Appeal emphasised that Trelton had specifically disclaimed any interest in Selwyn's estate and had claimed his interest on other grounds.
17. Before the Board Mr Feltham (for Trelton) challenged the decision of the Court of Appeal in 32 of 2003 not to admit the document into evidence. He also applied for the document to be admitted as fresh evidence in 31 of 2003 (the Court of Appeal had given judgment in 31 of 2003 only about ten days before the discovery of the document as described in Trelton's affidavit of 29 August 2005).
18. It is common ground that the Board, in considering this ground of appeal in 32 of 2003, and in considering the application in 31 of 2003, should have regard to the well-known principles laid down in *Ladd v Marshall* [1954] 1 WLR 1489. Their Lordships have approached the matter, at this stage, on the basis that the document must be assumed to be authentic. Trelton is a professional man, and he has offered to have the document submitted for forensic examination, an offer which has not yet been acted on. Their Lordships also assume in Trelton's favour that the document could not, with reasonable diligence, have been obtained at either trial.
19. Their Lordships are however of the clear opinion that the document, if admitted, would not provide any significant assistance to Trelton's case. Mr Feltham submitted that the document, if admitted, ought to receive a benevolent construction (*ut res magis valeat quam pereat*), and that, construed in that way, it could be treated as an immediate, effective *inter vivos* declaration of trust. But those submissions, attractively though they were put, must be rejected. There is no equity to perfect an imperfect gift (which is what the argument for a benevolent construction amounted to). The document is on its face a testamentary document, but it cannot be valid as a testamentary document since it is not witnessed as required by law.

Its testamentary character appears from a number of features: it contains no words of immediate disposition, but is expressed to take effect after Claribelle's death (so giving her, in a testamentary document, a life interest by implication); it contains no declaration of trust, either immediately or at all; it says nothing about beneficial ownership of the properties during Selwyn's lifetime.

20. There is another new point that Mr Feltham sought to raise for the first time before the Board. That is an alternative claim (if Trelton's primary case on an *inter vivos* disposition fails) that Trelton was, despite his illegitimate birth, entitled to share (with his two brothers) under Selwyn's intestacy. This point has caused their Lordships some concern, since section 61 of the Administration of Estates Act (apparently enacted, or last consolidated, in 1989) provides for illegitimate issue to share on any death intestate on or after 1 January 1970. But counsel were unable to explain this reference to 1 January 1970, or to reconcile it with the terms of sections 3 and 4 (and especially section 4(3)) of the Status of Children Act 1980. Moreover (and more importantly) this issue was simply not properly pleaded or raised in the courts below (although it bobbed to the surface once or twice when the estate duty affidavit was mentioned). The intestacy point, and the fact that Claribelle assumed the fiduciary position of administratrix, also has implications for the Statute of Limitations (Limitation Act 1988 sections 23, 24 and 27).
21. It is most regrettable that these points were not recognised and properly analysed and pleaded, either initially or by amendment. It may be that the original pleadings were prepared in haste, with a view to seeking or resisting interlocutory injunctions, but in any case they should have been reconsidered in the light of the documents disclosed on discovery. But their Lordships are satisfied that they cannot decide these appeals on a point which was never considered by the courts below, largely because of Trelton's insistence that he was not claiming through his father's estate.
22. Once those points are out of the way, there is little left in the appeals. Mr Feltham ably said all that could be said in support of them. But in 31 of 2003 the Court of Appeal was clearly right to correct the trial judge's failure to analyse the real issues. In 32 of 2003 the trial judge did correctly analyse the issues, and the Court of Appeal was right to dismiss the appeal from her clear and thorough judgment. There are no grounds for upsetting either award of damages as excessive.

23. Their Lordships will therefore humbly advise Her Majesty that these appeals should be dismissed with costs.