



[2013] JMSC Civ. 34

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN EQUITY  
SUIT NO. E. 804 of 2002**

<b>BETWEEN</b>	<b>DORETTE KELLY</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>A N D</b>	<b>GEORGE KELLY</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>A N D</b>	<b>BERRISFORD KELLY</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>A N D</b>	<b>GLENROY LAING</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>A N D</b>	<b>LANA LAING</b>	<b>2<sup>ND</sup> RESPONDENT</b>

Mr. Glenroy Mellish for the claimants instructed by Gifford, Thompson & Bright  
Mr. Glenroy Laing in person

**Heard: March 14, 2012 and March 22, 2013**

**LAND – LICENSE TO OCCUPY – FAMILY ARRANGEMENT – REVOCATION OF  
LICENSE – TIME TO BRING ACTION FOR RECOVERY OF POSSESSION –  
LIMITATION PERIOD – LIMITATION OF ACTIONS ACT S.3.**

**EDWARDS J**

**THE CLAIM**

[1] This matter was brought by way of originating summons for declarations touching and concerning property at Hampstead, Yallahs, Albion in the parish of St. Thomas. The declarations sought were as follows:

- 1. A declaration that the late Timothy Kelly was the sole legal and beneficial owner of all that parcel of land known as Hampstead, Yallahs, Albion in the parish of St. Thomas measuring approximately 896 sq meters.*

2. *A declaration that the applicants are lawfully entitled to the estate of Timothy Kelly.*
3. *A declaration that the applicants are lawfully entitled to the legal and beneficial interest in all that parcel of land known as Hampstead, Yallahs in the parish of Saint Thomas measuring approximately 896 sq. meters.*
4. *Such further and other relief.*

[2] In 2003, by order of the court, the claimant Dorette Kelly was appointed legal representative of the estate of Timothy Kelly for the purpose of this action. The originating summons was accompanied by affidavit from Dorette Kelly who was authorized to act on behalf of the other claimants. The defendant Glenroy Laing filed an affidavit in response.

[3] Both parties were giving evidence of things occurring before they were born. As such it was totally unnecessary to have cross examination on issues that were largely hearsay. Cross examination was waived by the parties. Most of the material facts on which the case is to be decided are by and large uncontested or corroborated by documentary evidence.

#### **THE ISSUES**

[4] The issues to be considered for the final disposition of this matter as I see them were;

1. *Whether the land in question formed part of property belonging to Matthew Laing or Carey Laing;*
2. *Who placed Timothy Kelly in possession of the land and what was his status in relation to the land at the time of possession;*
3. *Whether Timothy Kelly thereby acquired a license coupled with an equity in the said land; if not*
4. *Whether Timothy Kelly acquired title to the land by adverse possession.*

## **CLAIMANT'S CASE**

### **EVIDENCE OF DORETTE KELLY**

[5] The first claimant Dorette Kelly is the first child of Timothy Kelly. She was born on 2<sup>nd</sup> February 1957 at the family home Hampstead, Yallahs in the parish of St. Thomas. The 2<sup>nd</sup> and 3<sup>rd</sup> claimants are her brothers. Both were also born on the said property in 1958 and 1960 respectively. The defendants are the relatives of the claimants. They are cousins. The land in dispute is said by the defendants to have been owned by Carey Laing, great grandfather to the claimants and the grandfather of the defendants.

[6] The family tree as told to the court was as follows:

- Carey Laing was the father of Matthew Laing, Sammy Laing, William Laing and Agatha Laing.
- Sammy Laing had two children Glenroy Laing and Lana Laing, (the defendants).
- Agatha Laing had three children Timothy Kelly, John Kelly and Rebecca Kelly.
- Timothy Kelly had three children Dorette Kelly, Berrisford Kelly and George Kelly, (the claimants).

[7] It was alleged that in or about 1949 Matthew Laing gave his nephew Timothy Kelly a piece of land which was part of the land known as Hampstead. It became the Kelly's family home measuring approximately 896 square meters and situated in Hampstead, Yallahs in the parish of St. Thomas. It was further alleged that the family house occupied by the claimant's as children was built on the land in the 1940's but was partially destroyed by the 1951 hurricane. It was also said that Timothy Kelly obtained government assistance to repair and reconstruct the house after presentation of a surveyors plan to the Ministry of Housing. A copy of a plan of the land was exhibited to the court. This plan was dated 19<sup>th</sup> march 1965.

[8] The claimant Dorette Kelly asserted that she went through the personal effects of Timothy Kelly after his death and discovered various documents from the Ministry of Housing evidencing assistance with the construction of the house. A copy of a document was exhibited to the court. This turned out to be a stores issue notice dated 1946 for the supply of kitchen and latrine building materials.

[9] It was not in dispute that Timothy Kelly lived at Hampstead Yallahs, St. Thomas up to the date of his death 7<sup>th</sup> April 1995 as his sole place of residence. Neither was it disputed that the applicant Dorette Kelly, her mother and two brothers lived at Hampstead, Yallahs, in the parish of St. Thomas; or that as children they attended the Yallahs Primary School and then Yallahs Secondary School.

[10] In 1976 George and Dorette Kelly migrated to Canada. In 1983 Berrisford Kelly joined them. Their father Timothy Kelly remained in Jamaica at Hampstead, Yallahs in the parish of St. Thomas. After Timothy Kelly's death in 1995, the siblings asked Silbert Douglas to become caretaker of the premises and to reside at the premises. At the same time the siblings began construction of a more modern accommodation on the property some distance from the original. Since 1995 Silbert Douglas has been in possession of the land as a caretaker.

[11] The claimant's allege that in or about 1997, their cousin Glenroy Laing, who was living overseas returned to Jamaica and began making claims, stating that all the property was owned by Matthew Laing including the area of land said to be owned by the late Timothy Kelly. The defendant's deny this, stating instead that their assertion at all times was that the land belonged to Carey Laing. It was further alleged that the said Glenroy Laing on two occasions in or about 1997 removed the fencing surrounding the premises said to be owned by the late Timothy Kelly. As a result of this conduct the claimants decided to obtain a new survey diagram of the property. This was however, not submitted to the court.

[12] The defendant Glenroy Laing attempted to obtain possession of the premises and did in fact serve Silbert Douglas a notice to quit and a plaint to attend the St. Thomas Resident Magistrate's Court in respect of a claim for possession of the land. Copies of the notice to quit and plaint received by the caretaker Silbert Douglas was exhibited to the court. The court hearing in the Resident Magistrate's Court was adjourned sine die.

[13] It was also part of the claimants' case that in April of 2002 the defendants claimed to be owners of the land and demanded payment for refund of taxes or possession. The claimants refused to pay, claiming that their father's ownership or possession of the land was never disputed by anyone during his lifetime. The defendants deny making any such demands. The claimants indicated an intention to administer the estate of Timothy Kelly pursuant to which these declarations as to the interest in the said land were sought in terms of the Originating Summons filed herein.

[14] In a surprising twist and unsupported by any documentary proof, Dorette Kelly asserted in her affidavits that Carey Laing sold the said land to the government after the 1951 hurricane. She asserted that after the sale, the government built the house as part of hurricane relief and it was allocated to Timothy Kelly by the Ministry of Housing; Timothy Kelly then made monthly payments to the Ministry of Housing for the said house. She claimed that it was in this house, built by the Ministry of Housing, that Timothy Kelly lived for the rest of his life. She said further that Timothy Kelly was at all material times resident at the said house and that she was born there. Her birth certificate was exhibited.

[15] She stated that at all times in question Timothy Kelly was held out and widely known to be the owner of the property in question. She explained in a further affidavit that in her first affidavit evidence she had intended to convey to the court that the land contained in the said plan exhibited was the exact parcel of land contained in the plan submitted to the Ministry of Housing in the 1950's.

Not that it was the said plan. She said her father told her this and she verily believed it. However, there was no proof provided of this plan which was submitted in the 1950's. She said also that the boundaries on the plan exhibited were the same as she had always known them and encompass the same property on which she was born and which is the subject of this suit.

**EVIDENCE OF WITNESS FOR CLAIMANT RAYMOND HARDY**

[16] Mr. Hardy died in hospital on July 24, 2005. His affidavit was accepted into evidence. The evidence contained in his affidavit before the court was that he knew the claimants as the children of Timothy Kelly from they were living in Hampstead and attending school in Yallahs. He also knew the late Timothy Kelly for over sixty-five (65) years.

[17] He said he knew that Timothy Kelly acquired an area of land from his uncle, Matthew Laing, in the 1940's and constructed a house on this property for his family and that Timothy Kelly lived on these said premises from 1940 as his permanent and sole place of residence.

[18] He also claimed that in 1951, the Hampstead area was affected by a hurricane and the government offered assistance to residents in the area including himself and Timothy Kelly to repair and reconstruct their homes. He further claimed that during the lifetime of Timothy Kelly, there had never been any dispute in respect of his ownership of the land he occupied.

[19] He went on to state that the defendants did not at anytime live in Hampstead, nor do they presently reside in the area or on the said land. He said that he knew Silbert Douglas who was in possession of the land owned by Timothy Kelly and since 1997 he became aware of a dispute in respect of ownership of the land. He also claimed that Glenroy Laing damaged the fencing erected around the premises and he was present.

## **THE DEFENDANT'S CASE**

### **EVIDENCE OF DEFENDANT GLENROY LAING**

[23] The evidence of the defendant is that in 1949 the land was owned by Carey Laing the father of Matthew Laing and at that time Carey Laing was alive and living on the land and Matthew Laing was in no position to give any part of the said land to Timothy Kelly or to anyone else.

[24] Whilst not disputing whether a house was built by anyone or by Timothy Kelly in the 1940's or whether it was destroyed by the hurricane in 1951, he pointed out that the diagram or plan exhibited to the applicant's Affidavit marked "DK2" was not a copy of a pre-checked diagram and was dated the 19<sup>th</sup> day of March, 1965 which meant it could not have been submitted or presented to the Ministry of Housing at any time in the 1950's or in 1956 the date of the Store Requisition and Issue Notes exhibited to the applicant's Affidavit and marked "DK3".

[25] He also pointed out that there was no proof that the Ministry of Housing issued the Store Requisition and Issue Notes exhibited by the applicant and that those Store Requisition and Issue Notes exhibited were addressed to Timothy Kelly at Pamphret, Yallahs and not at Hampstead. He declared that this was a clear indication that in 1956 Timothy Kelly resided in Pamphret, a separate district in Yallahs and not at Hampstead.

[26] The defendant claimed that on the death of Timothy Kelly the section of the land on which he lived remained a part of the estate of Carey Laing who had died sometime in or about 1960 or 1961 leaving three issue, namely; William Laing, Matthew Laing and Samuel Laing. The defendant made no mention of his aunt Agatha Laing, who was the claimants' grandmother and Carey Laing's only daughter. He said that accordingly, the claimants were in no position to appoint anyone or Silbert Douglas in particular as caretaker of the land..

[27] He denied that the land belonged to Matthew Laing and maintained that the land was the property of Carey Laing whose estate was yet to be settled. He said it was true that he removed the fencing but said further that he was prosecuted in the Resident Magistrate's Court for Malicious Destruction of Property and was acquitted at the end of the trial. He also denied that there was any agreement between the parties for a new survey of the land to be done or that one was done pursuant to any such agreement.

[28] He also denied that he demanded payment from the claimants or that he requested that they vacate the land or that he made any claim that he and the 2<sup>nd</sup> defendant were the sole owners of the land.

[29] The defendant also declared that there was never any suggestion during the lifetime of the father of the claimant that he was the owner of the land. He said that sometime in or about 1991 Samuel Laing conducted a survey of the land as a result of which a dispute arose between himself and Timothy Kelly. He stated also, that in or about 1988 as a result of a failure to pay land taxes the Government of Jamaica was threatening to cause the land to revert to the Crown and he sent money from the United States of America to clear the said arrears.

[30] With respect to the Affidavit of Raymond Hardy he denied that he had never resided in Hampstead and that he ever damaged any fence or that he damaged any fence in the presence of Mr. Hardy.

#### **DOCUMENTARY EVIDENCE**

[31] The claimant filed with the affidavit a copy of a survey done of the subject land in 1965. The survey indicated that the persons in possession of the land bordering the property to be surveyed was Matthew Laing to the North and George Gayle to the South. Timothy Kelly, George Gayle and Matthew Laing were served with notices and all three appeared at that survey exercise. There was no objection to the survey noted on the face of the document. There was a

second survey done of the entire land by the defendant in 1991. The acreage is said to be 1 acre 2 roods and 14.95 of a perch. The persons to whom notice of survey was given was entirely different this time around than in 1965. There was also a store requisition and issue note referring to the supply of kitchen and latrine materials to Timothy Kelly in 1956 with an address at Pamphret in St. Thomas.

### **FINDINGS**

[32] The survey conducted on the land by Timothy Kelly showed the person on the tax roll to be Timothy Kelly and one of the adjoining persons in possession to be Matthew Laing. Matthew Laing was present at this survey and made no objections. Dorette Kelly's birth Certificate suggests she was born at Hampstead in 1957 at home attended by a midwife. She claims and I accept that her siblings and herself were born on the land and lived in the house of Timothy Kelly which rest on the land. Timothy Kelly died on the land in 1995. I am uncertain what to make of the store requisition form as the address quoted on the form for Timothy Kelly is Pamphret, Yallahs. What is clear, however, is that he was given material to build and he did build a wooden structure on the land in Hampstead. He lived there, had children there and died there. This is largely not disputed by the defendant. I accept the evidence on affidavit of Thomas Hardy that he knew Timothy Kelly and knew him to live on the property since the nineteen fifties.

[33] I find that here are conflicts in the affidavit evidence of Dorette Kelly. In the first instance she stated that the land was given to her father by his uncle Matthew Laing, who was the first born son of Carey Laing. Then in her second affidavit in reply to the defendant's affidavit she stated that the land was sold to the government by Carey Laing in and around 1951 after which the land was allocated to her father by the government as part of the hurricane relief. Both assertions cannot be true. These conflicts are not surprising as both affiants are speaking of events of which they have no personal knowledge and it is all hearsay. The supporting affidavit of Mr. Hardy states the land was given to

Timothy Kelly by Matthew Laing. I find therefore that the claimants' evidence is conflicting in this regard.

[34] What is clear however is that Timothy Kelly resided on the land since the 1950's and died there in 1995. Despite the defendant's claim that the land was owned by Carey Laing, no documentary proof of this was submitted by them. The only reference to who possessed the land was on the survey attached to the affidavit of Dorette Kelly which referred to Matthew Laing. There was no mention of Carey Laing. Neither was there any mention of Carey Laing on the survey tendered by the defendant Glenroy Laing. In fact the only Laing appearing on that survey was himself as the person at whose instance the survey was done.

[35] If one were to find that Matthew Laing owned the land then he was entitled to give a portion to whomever he wished. The conveyance would simply be an imperfect conveyance to be dealt with according to law. The doctrine of proprietary estoppel prevents the revocation of a right affecting land, which one party has been led by the other to believe to be permanent. This is based on a wider doctrine of unconscionability in equity. Such an estoppel may arise in cases where the owner purports to make a gift of land to another but it is incomplete because all the formalities have not been complied with. Nevertheless, the grantee has gone on the land and as acted to his detriment in reliance on the gift. Equity will allow such an imperfect gift to be perfected. See **Sealy v Sealy** (1990) High court of Barbados, No. 1492 of 1987 unreported which applied the principle long laid out in the English case of **Dillwyn v Llewellyn** [1861-73] ALL ER Rep 384.

[36] If he did not own the land but nevertheless gave it to Timothy Kelly, then Timothy Kelly would have either acquired the land under a mistake, in which case if the true owner stood by and watched him take the land under a mistake and allowed him to expend on the land pursuant to that mistake to his detriment, then the true owner would be estopped from denying that he had acquired an

equity in the land. On the other hand if he acquired the land under a family arrangement, then in such a case he would only have been given a license to occupy the land. In the circumstances of the case a different issue would then arise as to whether he acquired an equity in the land coupled with that license. See the case of **Sharon and Harold Burghardt v Tracy Taylor** [2012] JMSC Civ. 126, where the Honourable Mr. Justice Evan Brown gave a lucid disposition of the law surrounding licenses in such circumstances. I need not repeat any of it except to say that I agree with his application of the law in that case which shows similar features to this one.

[37] However, due to the conflicts in the claimants' evidence, I am prepared to accept that on a balance of probabilities, the land originally belonged to Carey Laing but portions of it was occupied by Matthew Laing his first born son. I am also prepared to accept on a balance of probabilities that Timothy Kelly was given a portion to occupy by Matthew Laing acting under a family arrangement with the agreement and consent of Carey Laing. This is the one and only inescapable inference that may be drawn from the fact that no dispute arose as to Timothy Kelly's occupation and possession of that portion of the land before 1991.

#### **ANALYSIS OF THE APPLICATION OF LAW TO THE FACTS**

[38] If in any sense Timothy Kelly occupied the land under a family arrangement and he was put in possession by a beneficiary or agent of the true owner, in this case Carey Laing, any such occupation arising out of family arrangement, an act of friendship or generosity tends to rebut any inference that the parties intended to create the legal relations necessary to create an equity in the land. Indeed, the grant of exclusive possession in a family arrangement has been held to confer no more than a licence on the occupant. An occupant in these circumstances cannot acquire title by adverse possession. One illustration of the rule in such case presents itself in **Cobb v Lane** (1952) 1 All ER 1199, where the owner of premises allowed her brother to occupy her house without

the payment of rent. It was held that there was no intention to create any legal relationship and therefore a tenancy at will could not be implied. In other words, the brother was a mere licensee. A licence gives no more than permission to enter land, that is, a bare or gratuitous licence. It has been said that it makes lawful what would otherwise be unlawful. Unless there are special circumstances, a licence is revocable at the will of the licensor and by the death of either party.

[39] The defendant does not state how Timothy Kelly came to occupy the land being content only to assert that the land belonged to Carey Laing and therefore Matthew Laing could not give it away. But Matthew Laing was the first born son of Carey Laing, one of his legal beneficiaries and was certainly in possession of at least part of the land. Carey Laing died in the 1960's without doing anything about Timothy Kelly's occupation of the land. Since the 1960's none of the representatives of the estate of Carey Laing did anything about Timothy's possession of the land until 1991 when Samuel Laing, another son of Carey Laing, conducted a survey and a dispute arose. There is absolutely no evidence of what has become of Matthew Laing to date.

[40] This brings us to the final issue as to whether in the circumstances as outlined above, Timothy Kelly acquired the land by adverse possession. The application of the law dealing with "adverse possession" must begin with the Limitation of Actions Act 1881, part 1. Section 3 limits the action for entry and recovery of land to within 12 years of the accrual of the right to make such an entry or bring such action. Section 4 speaks to the time at which the right of entry or right to bring an action has accrued. Section 30 speaks to the extinguishment of the right of entry or the right of action at the determination of the period limited by this part of the Act. Section 8 speaks to the claim by an administrator. Section 16 speaks to acknowledgement of title in writing.

[41] The historical basis of title in English common law is possession. One holding a possessory title holds something which is good against all except one

who has a better title or a better right to possession. The doctrine of adverse possession is rooted in the concept that a person in possession as a squatter or a trespasser may obtain a good title against the paper owner who fails to assert his right before the limitation period ends. After the requisite limitation period the person with paper title or the true owner will be statute barred from exerting his paper title as his legal right would have been extinguished. The squatter in possession then acquires a good title good against all the world; **Nec vi, nec clam, nec precario**. Possession must be peaceful, open, and undisturbed or adverse. There must be animus possidendi, that is, an intent to possess to the exclusion of the true owner. Possession by the claimant must be notorious and unconcealed.

[42] Possession cannot be joint with that of the paper owner, nor must it be as a result of a licence, or lease, or by way of a family arrangement. Such arrangements would be by consent.

[43] This topic has been subjected to close scrutiny and severe criticisms in the Privy Council and the House of Lords. This is due wholly to the meaning of the term "adverse possession" given by the courts after 1881. On 1<sup>st</sup> December 2003 the Privy Council in **Wills v Wills** PCA 50/2002 sought to put to rest all misconceptions on the meaning of the term as it relates to the statute. In this case the statute at bar is the Limitations of Actions Act of Jamaica Cap 222, enacted in 1881, the terms of which the Privy Council found to be in para materia with the English Real Property Limitations Act 1833.

[44] The Privy Council made a number of findings and statements of principles in the judgment in **Wills v Wills**. Firstly, it found that "adverse possession" was a common law notion. It declared that the Act of 1833 swept away all notions of "adverse possession" and "non-adverse possession" so that by section 2, if one party had been in actual possession (in England) for (20) years, whether adversely or not, the claimant whose original right of entry accrued above 20

years before bringing the ejectment was barred by the section. The court referred to the landmark case of **JA Pye (Oxford) Ltd v Graham** (2003) 1 AC 419 and approved the principles outlined in that case. It disapproved **Archer v Georgiana Holding Ltd**. (1974) 21 WIR 431, for wrongly relying on adverse possession in the technical sense of inconsistency with the owners use. The court noted that factors which were still important after 1881 were: -

- (a) *The extent and character of the land in question.*
- (b) *The use to which it had been put.*
- (c) *Other use to which it might be put.*

[45] It further noted that trivial acts do not infer possession and fencing, though significant, was not invariably sufficient. It also cited the case of **Buckenshire County Counsel v Mora** (1990) Chancery 623, as being of significance in this area of the law. Under the statute, the issue for the court is not adverse possession in the sense of inconsistency but the court must look at the facts and determine whether what had been done in relation to the land constituted possession.

[46] The Privy Council found that the decision in **Archer** was now qualified by **PYE**. The Board found that **Archer's** decision was arrived at on the consideration of persuasive authority of the English decisions (11 no less). It therefore found that the court in **Archer** adapted and followed the English approaches prior to **Pye** and therefore their decision was applicable to Jamaican law.

[47] The Privy Council declared that recognition of a claim is not the same as acknowledgment of the claim as a good claim. It also held that it was not the intention of the paper owner to which the court must look but it was the state of the squatter, which was relevant and decisive. The Court found that the law as expounded in **Pye** has been the law in Jamaica since 1881.

[48] The Privy Council also declared that the true position under the statute was simply whether the paper owner had been dispossessed by virtue of the squatter going into ordinary possession of the land. There was no requirement for the legal owner to be ousted from the land. The Privy Council found possession to be consistent with two elements:

- (i) *Factual possession (uninterrupted)*
- (ii) *Intention to possess (intention to exercise custody and control on behalf of oneself and for one's own benefit).*

[49] Three questions are of importance here:

- (a) *When did possession cease by the paper owner?*
- (b) *At what point was the owner dispossessed?*
- (c) *Did the squatter then remain in possession for 12 years?*

So long as the squatter occupied the land with the owner's consent he could not be treated as having dispossessed the owner. The Privy Council approved the judgment of Slade J. in the case of **Powell v McFarlane** (1977) 38 P & CR 452, which was also approved by the House of Lords in **Pye**. In **Powell** Slade J defined possession as;

*...."bearing the traditional sense of that degree of occupation or physical control coupled with the requisite intention commonly referred to as animous possidendi, that would entitle a person to maintain an action of trespass in relation to the relevant land; likewise I would have regarded the word "dispossession" in the act as denoting simply the taking of possession in such sense from another without the other's license or consent."*

[50] The House of Lords in **Pye** held that from 1833 onwards, (bearing in mind the 1881 Act is in para materia to the 1883 Act), the only question was whether the squatter had been in possession in the ordinary sense of the word. Pertinent to that question was also whether the squatter had dispossessed the paper owner by going into ordinary possession of the land for the requisite period

without the consent of the owner. The court went on to state the following principle:

*"Except in the case of joint possession, possession is single and exclusive. Therefore if the squatter is in possession the paper owner cannot be."*

[51] Most notably too, in **Powell's** case, Slade, J said at page 470-471 which was approved in **Pye**:

*"Factual possession signifies an appropriate degree of physical control. It must be single and exclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time." (My emphasis)*

*The question of what actions constitute a sufficient degree of exclusive physical control must depend on the circumstances and in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.....Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so." (My emphasis)*

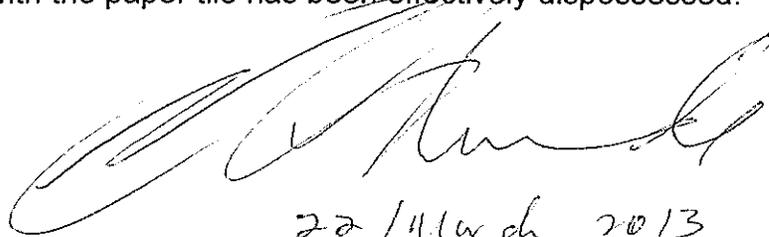
[52] This is a statement broadly accepted by Lord Browne-Wilkinson in **Pye**. Without the intention to possess there can be no possession. Slade, J in **Powell** stated that the intention to possess required an intention in ones own name and on ones own behalf, to exclude the world at large, including the owner with the paper title if he was not himself the possessor, so far as is reasonably practicable and so far as the process of the law would allow.

[53] Again this principle was approved by the House of Lords in **Pye** and approved by the Privy Council in **Wills v Wills**. The House in **Pye** also held that while the notion of inconsistent user was no longer good law, it was still good evidence of lack of intention to possess the land and may point to only an intention to occupy it until it is required by the paper owner.

[54] As already noted, I find firstly, that on the evidence on a balance of probability Carey Laing did own the land. The defendants say he did and the claimants say he did before he sold to the government. Secondly, what is equally clear is that Matthew Laing was in possession of the land or part thereof. There is no evidence what has become of Matthew Laing or his siblings but I find that assuming that Timothy Kelly held the land by consent under a family arrangement up to the 1960's, time began to run after the death of Carey Laing up to 1961 when his license would have been revoked. Right of re-entry then accrued to the beneficiaries and personal representatives of the estate of Carey Laing. Counting time from January 1962, Timothy Kelly was in adverse possession until his death in 1995. The title of the true owner was long extinguished as he acquired possessory title from the 1970's onward. For all that time he remained in quiet, open, undisturbed possession; fencing and surveying the land, building and improving upon his dwelling house and raising a family, all showing he had the required animus or intention to possess. The survey done by Samuel Laing, father of the defendants, could not oust him. The notice to quit given to the caretaker claimed the defendant was the owner but not only was this not true, it also could not oust him.

#### **CONCLUSION**

[55] When Carey Laing died in the 1960's, the license held by Timothy Kelly to occupy the land was revoked. The estate of Carey Laing having not been administered by his personal representative, Timothy Kelly continued in adverse possession until his death in 1995. All the elements of possession were factually present. He built a house on the land, the area claimed was fenced, he raised a family there and was known to the entire world as the person in possession of that portion of the land which he occupied openly, peacefully and undisturbed. The owner with the paper title has been effectively dispossessed.



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## **DECLARATIONS**

1. Timothy Kelly is the sole legal and beneficial owner of all that parcel of land part of lands known as Hampstead, Yallahs, Albion in the Parish of St. Thomas, measuring approximately 896, sq. metres and identified by boundaries appearing on the plan.
2. The applicants are lawfully entitled to administer the estate of Timothy Kelly.
3. No orders as to costs.