Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Her Majesty's Attorney-General for the Colony of British Honduras v. *Bristowe and Hunter, from the Supreme Court of British Honduras; delivered Thursday, November* 18*th*, 1880.

Present:

SIR JAMES COLVILE.
SIR MONTAGUE SMITH.
SIR ROBERT COLLIER.

THIS Appeal arises in the case of an Information of Intrusion filed by the Attorney-General of the colony of British Honduras to oust the two Defendants, Mr. Hunter and Mr. Bristowe, from a tract of land in the colony which has acquired the name of "Grant's Work," and is so called in the Information. The Information alleged that the Queen was seised of the land in right of Her Crown, and that the Defendant Bristowe had claimed possession under a conveyance made to him in 1870, and had subsequently conveyed the land to the Defendant Hunter. The answer of the Defendants denied the title of the Crown, and also alleged a title derived from the devisees of the will of one James Grant, which had passed to Bristowe and from him to Hunter.

In the view their Lordships take of the case it will not be necessary to go into a wide field of discussion. It will, however, be necessary before stating the facts relating to the land in dispute to make a short reference to the history of the colony.

The country which now forms British Honduras was one of the Spanish possessions

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in America, and formed part of the province of Yucatan. It does not appear to have been inhabited by the Spaniards; but the English, principally from Jamaica, resorted to it for the purpose of cutting the valuable woods which its forests contained. They began to settle in Honduras for this purpose about the year 1759, and it seems they erected a fort there. Soon afterwards war broke out between England and Spain, and the treaty of 1763 made on the conclusion of it contained the following provision with respect to Honduras. The 17th section of the treaty is as follows: "His Britannic "Majesty shall cause to be demolished all the "fortifications which his subjects shall have "erected in the Bay of Honduras and other "places in the territory of Spain in that part of "the world four months after the ratification of "the present treaty, and His Catholic Majesty "shall not permit His Britannic Majesty's "subjects or their workmen to be disturbed or "molested under any pretence whatsoever in the "said places in their occupation of cutting, "loading, and carrying away logwood, and for "this purpose they may build without hindrance "and occupy without interruption the houses "and magazines which are necessary for them, "for their families, and for their effects; and His "Catholic Majesty assures to them by this "Article the full enjoyment of those advantages "and powers on the Spanish coasts and terri-"tories as above stipulated immediately after "the ratification of the present treaty." In 1779 another war between England and Spain arose, and the English settlers were driven from Honduras and retired to the Mosquito coast. At the conclusion of that war these settlers appear to have returned to Honduras; and the Treaty of Versailles, of the 3rd of September 1783, contained, amongst other things which it is not necessary to quote, this

stipulation with regard to the cutting of logwood: "Commissaires on either side shall fix on "convenient places in the territory above "marked out, in order that His Britannic "Majesty's subjects employed in the felling of "logwood may without interruption build "thereon houses and magazines necessary for "themselves, their families and effects; and His "Catholic Majesty assures to them the enjoy- "ment of all that is expressed in this present "Article, provided that these stipulations shall "not be considered as derogating in anywise "from his rights of sovereignty."

The last treaty between the two countries relating to Honduras is the Treaty of London of 1786, which enlarged the privileges of the English settlers, the third section of which is as follows: "Although no other advan- "tages have hitherto been in question except "that of cutting wood for dyeing, yet His "Catholic Majesty, as a greater proof of his "disposition to oblige the King of Great Britain, "will grant to the English the liberty of cutting "all other wood, without even excepting maho- "gany, as well as gathering all the fruits or "produce of the earth, purely natural and "uncultivated, which may, besides being carried "away in their natural state, become an object of "utility or of commerce, whether for food or for "manufactures; but it is expressly agreed that "this stipulation is never to be used as a pretext "for establishing in that country any plantation "of sugar, coffee, cocoa, or other like articles, or "any fabric or manufacture by means of mills "or other machines whatsoever (this restriction, "however, does not regard the use of sawmills "for cutting or otherwise preparing the wood); "since, all the lands in question being indis- "putably acknowledged to belong of right to the "Crown of Spain, no settlements of that kind or

" the population which would follow could be " allowed." This treaty considerably enlarged the privileges of the English settlers, for, whereas the privilege granted by the former treaties was confined to the cutting of logwood only, this last treaty conferred upon them the liberty of cutting all woods, not excepting mahogany, and of taking all the natural products of the soil.

We now come to an important period, namely, the year 1798. In that year, during the war which commenced in 1796, an attack was made by the Spanish forces on the English settlers, which was repulsed, and the Spaniards withdrew from the territory. There appears to be no trace of their having re-occupied it. Down to this time the sovereignty of the territory had undoubtedly remained in the Crown of Spain; but no future attempt was made by the Spanish Crown to restore its authority, and its dominion seems to have been tacitly abandoned. The exact time when the Spanish Government can be said to have finally relinquished the territory, and the time when the British Crown assumed territorial sovereignty over it, are, as the Solicitor-General, who argued the case for the Crown, admitted, both undefined. There certainly seems to have been an interval between the abandonment of Spanish and the assumption of British sovereignty, though the length of that interval cannot be determined.

During the time when the country was unquestionably under Spanish dominion a superintendent was appointed by the English Crown. Various powers were also conferred by it upon the English settlers, and amongst them the right of granting probate of testamentary documents. The country was formally declared to be a British colony, and

formally annexed to the British dominions, by a Proclamation of Her Majesty, dated on the 12th May 1862. The learned Chief Justice was of opinion that the Crown had not acquired or assumed territorial sovereignty in Honduras until this date. Their Lordships cannot concur in this view. Without going into the various acts previously done or exercised by the Crown with regard to this colony, or attempting to fix the precise date when the territorial sovereignty was first assumed, it is sufficient for the decision of this case to say that the fact, which is fully established, that grants of lands were made by the Crown as early as the year 1817, affords ample evidence that in that year at least the Crown had assumed territorial dominion in Honduras.

The facts which more immediately relate to the land in dispute may now be referred to. It seems that the early settlers were governed by rules passed by assemblies of the whole body, and that magistrates were elected to enforce the observance of these rules, and generally to administer justice. Amongst those rules were regulations for allotting plots of land to the settlers, which acquired the name of "locations." A compilation called the "Burnaby laws" contains a series of rules regulating these locations, which, amongst other things, provide that they shall be recorded. In the view their Lordships take of this case they do not think it necessary, for the purpose of their decision, to enter upon a discussion of this code. "Grant's Work" no doubt had its origin in what was called by the settlers a location—whether originally made in conformity with Burnaby's code or not—which belonged to one James Grant. There can be no doubt, upon the evidence and the findings of the Chief

Justice, that Grant had an allotment of land with defined boundaries—whether properly called a location or not—on which he exercised the right of cutting logwood, which at the time when Grant lived was the only right which the Spanish authorities had allowed. The fact that Grant had a number of slaves belonging to him affords a strong presumption that he had a location, for in his time cutting timber was the only occupation in which slaves could have been employed in Honduras.

Grant's will is dated on the 30th January 1779. It is headed "Bay Honduras," and Grant is described as "of the aforesaid Bay, gentleman." After referring to the iniquity of slavery, and the gift of several legacies, the will contains this passage: "And as my negroes have behaved "faithfully to me, I therefore immediately after "my decease do manumit and set every one of "them, their issue, offspring, and increase, free "from all manner of labour or service whatso- "ever, yet subject to the aforesaid legacies, "which I think may be paid and discharged in "four years after my decease; and in order "to enable them to pay off the same I leave "them and their heirs and assigns all my "effects, of what kind soever, I may have in "the Bay Honduras, money in Great Britain "or elsewhere (my lands and effects in Jamaica "excepted)." It has been argued that the word "effects" would not carry "Grant's Work," if that were to be treated as landed property, and further that, the testator himself not having mentioned the "Work," it may be presumed that it was not intended to pass by the will. Their Lordships think that the word "effects" would pass land; and that word is certainly sufficient to pass that which at the time he made his will Grant alone had, namely, the privilege under the treaty with the Spanish Government

of cutting logwood on a definite piece of land which, under some arrangement with his brother settlers, had been allotted to him. As to his intention to give the "Work" to his slaves, the whole contents of the will leave no room for doubt. Then the will goes on, "And as no "community can subsist without regulations "I would have the following to be strictly kept." The will then contains various regulations for the government of the slaves as a community, to many of which it is not necessary to refer; but the following bear upon the questions which arise for decision: "And in order "that no difference may arise who shall "command, it is my will and desire that "Joseph, known by the name of Cudjoe, do "command for life, with the assistance "of Scotland, who commands after him, and "upon any emergencies to take the advice of "Charles, Billy, Guy, Prince, Devonshire, and "Cuffie, who are to have the command in succes- "sion on the like plan with Joseph, and after "their decease Dick, Will, George, Daniel, and "so on, in seniority of those born in the "community; but that no tax or cess be laid "but by the consent of fathers of families and "housekeepers, and that he or they so com- "manding shall not arrogate a power to impose "on any person in the community, it being his "or their business to see the laws and regula- "tions duly executed, and to use means for the "welfare and protection of the community." The testator evidently intended to devise to his slaves this "Work," whatever may have been its character at that time, to be enjoyed by them as a community under the regulations which he laid down by his will. This of course created a very peculiar state of things, but the bequest could perfectly take effect as a bequest to the persons who were his slaves, and

then formed the community; and it seems to have been considered, when the estate was sold to Mr. Bristowe in 1870, that the bequest had been to them as joint tenants.

Soon after the date of this will the settlers, and amongst them Grant, were driven from Honduras by the Spaniards, and consequently the possession of any "Works" they may have had was for the time lost, and the privileges which they had hitherto enjoyed were for the time put an end to. The settlers, however, appear to have returned to Honduras in 1783, about the time of the Treaty of Versailles, which has been already referred to. What took place immediately after their return must remain in some obscurity, the time being beyond the memory of any living persons. It appears, however, that Grant made a second will whilst he was absent on the Mosquito coast, and a question arose whether that will, or the prior will of 1779, should be treated as his true will and testament. The matter was determined in 1794 by the magistrates of the settlement in favour of the first will, that of 1779, and their decision is recorded in one of the documents which have been given in evidence in this case. It appears to have been decided on the petition of Cudjoe, the man named in the will as the first ruler, and of Scotland, who was to command after him. The minute or record states, as follows:—"Read "the petition of Cudjoe and Scotland, two "negro men, on behalf of themselves, their "families, and all the negro and other families "of colour of the late James Grant, deceased; "the renunciation of James Bartlet, Esq.,"—one of the executors; "the answer given to "the said petition by the magistrates, at "November Quarterly Court, 1793; the will "and testament of the said James Grant, made

"the 30th of January 1779, proved by Thomas
"Potts, Esq., in which probate, it having
"been observed that the word 'seen' was
"omitted, it was interlined, and Mr. Potts
"again sworn to the same; likewise the will and
"testament of the said James Grant, made the
"9th of September 1783, and the affidavit of
"James Blinshall, when the affidavits of Thomas
"Potts, James Bartlet, Esqs., Gerald Fitz-
"gibbon, and William Mucklehany were severally
"taken: it was then resolved unanimously,
"That, from the before-mentioned affidavits, and
"the will made the 30th January 1779, being
"sufficiently proved, that the said will be con-
"sidered as the real last and true will and
"testament of James Grant, deceased, and that
"every part thereof, so far as the situation of
"this settlement will admit of, be put in force;
"for which purpose the magistrates appoint
"Richard Hoare and Thomas Potts, Esq., as
"trustees for the same estate (James Bartlet,
"Esq., one of the executors named in the said
"will, having in public Court renounced his
"right as executor aforesaid, and disclaimed all
"right to act therein either as an executor or as
"a trustee, and the other executor named in the
"said will being dead). The said trustees to
"have full power and authority to examine into
"the situation of the said estate, to call all
"and every person concerned to an account for
"their intromissions with the estate, and to
"inspect into the situation of the negroes, and
"in every respect to act in such manner as may
"appear best for the general good of the said
"estate." What was "the estate" referred to?
It seems to their Lordships that it could have
been no other than the only immovable property
the testator had, or could at that time have had,
in Honduras; viz., "Grant's Work." That was
the property upon which the slaves had been

employed, and which, as devisees, they, according to the evidence, subsequently in fact occupied.

As far back as living memory can be carried, there is evidence that some of those forming the group of devisees occupied "Grant's Work," and there is no evidence whatever that any other person enjoyed or occupied or in any way interfered with the land. At the time when the decision was given in 1794 the only right which the manumitted slaves, the devisees, could have exercised with any show of title was the right to cut wood and to take the natural products of the soil; but after the final retreat of the Spaniards in 1798 the strong presumption is, that the devisees who were then actually upon the land would proceed to occupy and cultivate it, and to treat it, for all purposes, as their own. After the retirement of the Spaniards there would be no one to interfere with them, for the British Crown had not at that time assumed territorial sovereignty. The strong probability therefore is, that those who were placed in the advantageous position of holding, as "a location," a definite piece of land, would not confine themselves to the limited privilege allowed by the Spaniards, and would enter upon full possession and enjoyment of the land. The evidence appears to be in accordance with the obvious probability. It goes back nearly to the time when the will was established in 1794, and to the time when the Spaniards left in 1798. The Chief Justice, who tried the cause, by the consent of the parties, was to act as a jury and decide the questions of fact as well as of law which arose in the case. His note is that the evidence of the old witnesses was so clear and trustworthy that the parties left the questions of fact to him. The inferences which the learned Judge drew from the evidence will be referred to afterwards; but it will be well to advert, though shortly, to

some of the witnesses. A witness whose testimony is entitled to great weight, Clashmore Lawless, an old mahogany cutter, who said that he was upwards of 90 years old, states:—"I remember old Cudjoe,"—the first ruler mentioned in the will;—"he is dead long ago. He was the first "ruler on 'Grant's Work' and lived at the "Bluff." It has been objected at the bar that there is not sufficient evidence that this "Bluff" was part of "Grant's Work"; but their Lordships cannot give effect to this objection. The limits of the "Work" are described in the Information. The trial was conducted upon the assumption that it was a definite piece of land which both parties understood, and upon the boundaries of which there was no dispute. There is not a word in the evidence to show that there was any dispute as to boundaries, and it cannot be supposed that the learned Judge would have taken down evidence with regard to the "Bluff," if it had not been within what was understood to be "Grant's Work." The witness says, "I saw the wood piled up there. I knew "Scotland Grant too, and Samuel Grant, and I "knew Mary Grant also. They are all dead. I "know Grant's Creek and Nancy Peny Creek." Then he says he was 15 years old when the battle of St. George's Kaye (1798) was fought, "which "I remember. I know that old James Grant "was the 'master,' but I did not know him "personally." This witnesss was of an age which would enable him to know what he states, that the first ruler of "Grant's Work" lived at the Bluff. Thus a possession under the will of James Grant is proved at a very early date, and soon after the decision establishing it. Then a number of old witnesses are called, most of them on the part of the Crown, whose evidence is to the effect that the devisees and their descendants and families exercised various

acts of ownership upon the land, not confined to the cutting of wood; there was a large quarry the stones of which were quarried by them or by persons who had their authority to take them, and they received money for the permission granted. There seems to be no doubt that these persons were occupying and enjoying this land and treating themselves as the owners of it, and certainly without anyone interfering with them. Their occupation appears to have continued down to 1870, when the conveyance was made to the Defendant Bristowe. The grantors in this conveyance were Mary Collins, whose maiden name was Grant, a woman nearly a hundred years old, who is stated to be the last survivor of the original devisees under Grant's will, and some descendants of the other devisees.

Then there is the important evidence of the Crown surveyor, Mr. Faber, who in 1862 went over a great part of the colony and made a map. He says: "I am the late Crown surveyor. I pro-" duce this copy of a map. It is a traced copy of " my own original map made in 1862 delineating " all the private property in the colony. The pro-" perty of private individuals is uncoloured. The " property of the Crown is green. The property " of Messrs. Toledo and Co. is blue, and the " property of the Belize Estate and Produce " Company is red." Then there is this note of the Judge: "The map is put in and marked C. " (the witness, being called upon, points out " 'Grant's Work' on his map, which 'Grant's " Work' is uncoloured, as being the property of a " private individual and not the property of the " Crown)." That is a significant fact. It is not at all conclusive against the title of the Crown, but it distinctly shows that at that time the land was occupied by persons who claimed to hold it as private property. The explanation given by the surveyor upon his further examination

was, "I made inquiries and found that it all hinged upon old Grant's will." It is plain from that evidence that the claim made by the persons who were then occupying was a claim to hold under Grant's will: "I knew the upper "boundary, but not the extent. I left it un-"coloured because it was not decided." The Crown apparently had not decided at that time to treat "Grant's Work" as Crown land, and so he left it uncoloured in the same way as he left all land occupied by private persons. Therefore the evidence of the surveyor, though not affecting the Crown as regards the title, which is not within his province, is distinct, as has been already observed, to show that the occupation was then held by persons claiming to hold as private owners. These persons claimed title under Grant's will, on which, as he says, he understood the whole question turned.

It is to be observed that there is no opposing evidence. There is not the slightest trace of any persons other than those claiming under Grant's will exercising any act of ownership over this property, or of the Crown making any claim to it.

Their Lordships, even if they had not come to the same conclusion, would have been extremely reluctant to differ from the view which the learned Judge, deciding as a jury, has taken of the evidence. His second finding is, "that "after the death of the said James Grant, "his devisees, under the captaincy of one of "their number named Cudjoe, entered into pos-"session as joint tenants of the property so "bequeathed to them by the testator." His further finding, the fifth, is: "That by the re-"linquishment on the part of Spain of all exercise "or assertion of dominion within the settlement "of Honduras, the qualified rights of the settlers, "as they existed under the treaties above men-

" tioned, were, by virtue of continued occupancy
" and long industrial possession, converted into
" and became merged in the higher and more
" ample title of estates in fee simple; and as
" such they were regarded and dealt with by the
" inhabitants in public meeting assembled." It may be that it is not technically accurate to say that the qualified rights were merged in the higher and more ample title of estates in fee simple; but the expression clearly indicates the view of the Chief Justice that the devisees had acquired the absolute ownership of the land, and gives force to his finding as to the possession, and long-continued occupancy, of these persons.

Assuming then the conclusion of fact to be established, as their Lordships think it is, that, in the interval which elapsed between the retirement of the Spaniards in 1798 and the assumption of territorial sovereignty by the British Crown, full possession of the land had been taken by the devisees, and that such possession had been continued by them and their assignees down to the date of the filing of the information, it becomes unnecessary to determine the question whether the devisees, at the time the British Crown annexed the territory, had acquired a title to the land by first occupancy or otherwise, which the Crown was bound to recognise. Their Lordships are by no means prepared to say that such a title has not been shown, but they think it unnecessary so to decide, because the facts, as proved and found, establish adverse possession against the Crown for a period exceeding 60 years; namely, a possession commencing before 1817, in or before which period the Crown had certainly assumed territorial sovereignty in Honduras, and continued without disturbance or effectual claim by the Crown, down to the period of the filing of the Information.

The ground on which their Lordships' decision has been placed renders it immaterial to consider the effect of the Ordinances of the 14th Victoria, cap. 22. and 22 Victoria, cap. 19, and the Crown Lands Ordinance of 1872; though they are by no means satisfied that a location, such as is meant by the 35th section of the Ordinance of 1872, might not be presumed, which would entitle the Respondents to the benefit of that remedial law.

On the whole case their Lordships are of opinion that this Appeal fails, and they must humbly advise Her Majesty to affirm the Judgment of the Supreme Court of Honduras and to dismiss the Appeal with costs.