Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of De Silva v. *The Attorney-General for Trinidad, from the Supreme Court of Trinidad and Tobago; delivered 26th July* 1898.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR HENRY STRONG.

[*Delivered by Lord Hobhouse.*]

The suit in which this Appeal is presented was brought against the Appellant and others to establish the right of the Crown to certain parcels of land called the estate of Mon Repos in the village of La Brea. The suit is in form an information of intrusion by the Attorney-General. After stating that the Defendants are in occupation of the land and have refused to give up possession to the proper officer, the Attorney-General prays that due process may be awarded against the Defendants to make them answer to the Queen, and for an interim injunction to restrain them from digging asphalt. The land is some nine acres in extent, formerly part of the natural savannah of La Brea, and of very little value till the recent discovery that it contained copious deposits of asphalt or pitch.

The Appellant denied the title of the Crown and claimed to be owner of the freehold and to have a right to take the pitch. As to one acre he claimed by virtue of a conveyance from John

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Baptiste and Anna his wife; and as to an undivided moiety of the remainder by conveyance from Theodore Eriché the grandson of Pierre Benicourt. This Benicourt was a former occupant of the land, and after his death in the year 1835 his children occupied it. Whether he or they had acquired any title previously to the year 1868 is uncertain, nor need it now be enquired into because the title of the Crown, if not otherwise proved, is well founded on legal proceedings which took place in that year.

By Ordinance XIII. of 1852 provision is made for rating all owners or persons in possession of land within each ward. In default of payment the warden may levy a distress upon goods and chattels whether on the premises or belonging to the persons rated, and the Court of Intendant may order the rated property to be put up for sale at an upset price. If there is no bidding at that price the property is to be forfeited to and to vest in the Queen absolutely discharged of all other claims; the Escribano of the Court is to give a certificate to that effect; and a writ is to issue to the Surveyor-General who is to take possession on behalf of Her Majesty.

In 1867 and 1868 some Ward Rates were not paid, the processes prescribed by the Ordinance were followed, and the lands forfeited to the Queen. Attempts were made in the Courts below, and have been renewed here to show irregularity in the sale-processes. But a receipt for the rates which was put in by the Defendants was found to be a forgery; the proceedings on the face of them were all regular, and the Courts below rightly held that they could not now be questioned.

Then the Appellant attempts to make title by showing that after the forfeiture those who sold to him occupied parts of the forfeited land and paid Ward Rates. This it is contended is a

waiver of the forfeiture by the Crown. It appears that some of the land was occupied by persons without any title who being found in occupation were rated and paid the rates. This cannot be taken as a waiver by the Crown. The Warden had no authority to make such a waiver; nor is there any trace of such an idea being present to the minds either of the Crown Officers or of the occupants. As to the acre conveyed to the Appellant and others by the Baptistes, it is shown by Anna Baptiste that she was a mere caretaker put in by one of Benicourt's daughters who herself had no title; and that seeing other occupants selling pieces of land she thought she might as well sell hers. The Court of Appeal below styles the occupants as mere squatters; nor is there any evidence to prove that they had any more stable legal position; at highest they were tenants by sufferance or at will, and liable to be displaced in a summary way.

The cause was tried before the Chief Justice who found as follows:—

"In conclusion I find that Mon Repos the "land the subject matter of this information "was Crown land at the time that the trespass "complained of was committed, and that the "Defendants who have appeared respectively "have failed to make out that they had any right "to enter the land and dig the pitch.

"Therefore with the exception of John and Anna "Baptiste each of the Defendants are convicted "of the entry, intrusion, and making entry in "the information mentioned, and are to be "[evicted ?] from the possession of the said "parcel of land known as Mon Repos in the "information mentioned, and there must be an "injunction restraining the said Defendants, "their servants, &c., from entering upon the "said lands and from digging and removing pitch "therefrom."

His decision was affirmed by the Court of Appeal. Their Lordships think that no ground has been shown for interfering with it, and they will humbly advise Her Majesty to dismiss this appeal.

The Appellant must pay the costs.