Supreme Court of the Hawaiian Islands, In Banco—October Term. 1882.

Kalacokekoi, (K.,) vs. D. Kahanu. Judd, C. J., McCully and Austin, J. J.

OPINION OF THE COURT BY JUDD, C. J.

This is an action of ejectment to recover certain premises in Honolulu, being a portion of Apana 1 of Royal Patent No. 1985, L. C. A. No. 6245, No. 1. The case was tried at the July Term, 1882, and the jury rendered a verdict for the defendant under instructions from the Court. The above-mentioned Royal Patent, No. 1985, when introduced in evidence, was found to contain the following words, viz: "Whereas the Board of Commissioners to Quiet Land Titles have, by their decision, awarded unto Kalacokekoi, for Kalakini, Land Claim No. 6245, No. 1," etc. "And, whereas, the said Kalakini has commuted the titles awarded for a fee simple title by the payment of," etc. "Therefore, Kamehameha III., etc., has this day granted and given absolutely the fee simple unto Kalacokekoi, for Kalakini, all that certain piece of land, etc., etc., to have and to hold, etc., unto the said Kalacokekoi, for Kalani, her heirs and assigns forever." The original Award, No. 6245, No. 1, contained these words, to wit: "Part 1. This is what we now award to Kalacokekoi and his heirs." "Signed by the members of the Land Commission. In the survey following, are these words: "Description of boundaries of five parts of the land of Kamakela, in the property of Kalacokekoi, for Kalakini."

There was also put in evidence Award No. 6245, to "Kalacokekoi, (no Keaka,") of a piece of land in Lahaina.

The Court ruled: "I hold that the original Royal Patent produced, conveys the land described in Award 6245, No. 1, and runs to Kalacokekoi, for Kalakini; and this makes the heirs of Kalakini the owners of the land in question." Whereupon the jury were instructed to return a verdict for defendant, which they did; and which was duly accepted to and exceptions allowed.

The plaintiff is the younger of the name Kalacokekoi and claimed by descent from him, and the defendant claims the land through Kalakini.

It is evident upon the face of the papers on file that Kalacokekoi died after filing his claim and before the judgment of the Land Commission was made. Otherwise the award would not have run Kalacokekoi "for his heirs."

The case of Davis vs. Brewer 3rd Hawaiian Reports 270 settles the law that a Royal Patent not void on its face can only be set aside in equity. The Court say "To Rule that every Royal Patent issued to any person other than the one named in the award is *prima facie* void as against such award would upset land titles and make strange confusion." "The presumption, on the contrary, is, that the Patent was issued to the legal holder of or to the one legally entitled to the award." "It is not denied that a Patent conveys only a legal title and leaves the equities open. But we merely decide that a Patent valid on its face is good in law and is the best evidence of title, and that the equities can only be reached in a Court af Equity and not by an action of ejectment." In that case the plaintiff claimed under an award to himself and the defendant claimed under a Royal Patent to himself for the same land and based on the same award, where the government had undertaken to issue the Patent to grantee of the original award. The Court, on page 282 of the decision, recognized the principle that a land Patent may be issued to the heirs of the person who held the certificate entitling him to the land and cited 4 Blackford 196, 6 McLean 562 and 2 Wash. R. P. 542.

The case at bar is a stronger one for the application of the principle that a Royal Patent valid on its face is good in law as the best evidence of title, for in our case the plaintiff bases his suit on the Royal Patent itself. The Royal Patent being to Kalacokekoi for Kalakini and he claiming through Kalacokekoi and not through Kalakini, he cannot recover against the heirs or assigns of Kalakini.

This was so held in Kane et al vs. Perry 3d Hawaiian 663.

But it is contended that by a latter decision, Brunz vs. Minister of Interior 3d Hawaiian 783, it was held that Royal Patents based on Awards do not confer or confirm title."

We remark here that since the decision in the case of Brewer vs. Davis and before the case last cited was tried, the Legislature (Acts of 1872 Chapt. 21) passed an Act requiring that every Royal Patent thereafter issued upon an Award shall be in the name of the person to whom the original award was made, though the original awardee be dead or have alienated the land, and enacting that all Royal Patents so issued shall inure to the benefit of the heirs and assigns of the holder of such original award, and it was in the light of this statute that the Court used the following language, "Patents based on Awards do not therefore confer or confirm titles." The name of the holder of the Award who applies and pays the commutation, if he be is other than the original grantee, does not appear in it. The title of every holder or part holder is left to be derived from the "person to whom the original award was made." This cannot be held to apply to Royal Patents issued prior to the Act of 1872.

The learned Justice who presided at the trial of the case at bar was right in his instructions to the Jury and the Exceptions are accordingly overruled.

A. S. Hole for plaintiff. J. M. Davidson for defendant.

Honolulu, November 23d, 1882.

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