



[2015] JMSC. Civ 264

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2010 HCV 03366

BETWEEN	JASSIL BARNETT	1ST CLAIMANT
AND	NULIS BARNES	2ND CLAIMANT
(ADMINISTRATORS, THE ESTATE OF THEODORE BARNETT)		
AND	NEVILLE EBANKS	1ST DEFENDANT
AND	MOVINE EBANKS	2ND DEFENDANT

Mr. Debayo A. Adedipe for the Claimants

Mr. Ewan Thompson for the Defendants

Heard: July 28 & 29, November 17, 2014 and April 29, 2015

Sale of land – Claim for declaration that defendants entitled to one acre of land

Trespass – Damages – Application for perpetual injunction

V. HARRIS J

- [1] The claimants, Mr. Jassil Barnett and Mrs. Nulis Barnes are siblings. Their father Mr. Theodore Barnett died intestate on December 23, 1966. Their mother Mrs. Mabel Barnett was appointed the administrator of their father's, Mr. Theodore Barnett, estate in 1968. Mrs. Barnett also died intestate on November 19, 1990 leaving the estate of her husband unadministered.

- [2] On October 3, 2009 a grant of Administration De Bonis Non was made to Mr. Barnett and Mrs. Barnes in their father's estate. On January 11, 2010 they were granted Letters of Administration in the estate of their mother.
- [3] The first and second defendants Mr. Neville Ebanks and Mrs. Movine Ebanks are husband and wife. Mrs. Movine Ebanks is Mr. Barnett's and Mrs. Barnes' niece.
- [4] The late Mr. Barnett owned three acres of land at Flagaman District in the parish of St. Elizabeth on which he resided during his lifetime. He also owned property elsewhere.
- [5] On February 25, 1971, Mrs. Barnes purchased one acre of a one and a quarter (1 ¼) acre plot of land from her cousin Ms. Darcelene Hudson. This entire parcel of land adjoined her late father's property.
- [6] At the time of this transaction, Miss Hudson also gave a quarter (1/4) of an acre of land to Mrs. Barnes in exchange for another quarter (1/4) of an acre that was located elsewhere in the district.
- [7] The boundaries of these two parcels of land are described in a document entitled "Transaction Re: Lands situated at Flagaman District in the parish of St. Elizabeth" (hereinafter the Hudson/Barnes document).
- [8] The Hudson/Barnes document was signed by both Ms. Hudson and Mrs. Barnes. Mr. Jassil Barnett also signed as a witness.
- [9] On September 12, 2001, Mrs. Barnes by way of an Indenture dated September 12, 2001 (the Indenture), conveyed one acre of land by estimation to Mr. and Mrs. Ebanks pursuant to an agreement for sale (the disputed land). The description of the boundaries of the disputed land in the Indenture was similar to the boundaries of the one and one quarter (1 ¼) acre of land outlined in the Hudson/Barnes document.
- [10] On June 06, 2008 Mr. and Mrs. Ebanks who were desirous of obtaining a registered title decided to survey the disputed land. Mrs. Barnes was notified. However, she was unable to attend due to ill health. Her brother Mr. Barnett was overseas at the time. The survey went ahead without either of them being present. The area of land that was eventually identified as belonging to the Ebanks measured approximately one and one third (1 1/3) acres. This land in dispute was then fenced by them.
- [11] Mr. Barnett and Mrs. Barnes are aggrieved by both the survey and the subsequent fencing of the disputed land. They have asserted that the Ebanks have wrongly trespassed upon lands belonging to their father's estate. It is their

contention that Mrs. Barnes sold one acre, more or less, to them and that this extra one third (1/3) of an acre of land rightly belonged to the estate.

[12] They are seeking the following orders from the Court:

(i) a declaration that the defendants are entitled to one acre of land only pursuant to the conveyance between the second claimant and the defendants dated September 12, 2001;

(ii) damages for trespass; and

(iii) an injunction restraining the defendants from committing further acts of trespass on the lands belonging to the estate of Theodore Barnett.

The Issues

[13] These are the issues to be determined:

(i) Does the land in dispute forms part of the estate of Theodore Barnett or was it in fact owned by Mrs. Barnes in her own right?

(ii) Following on issue number one, is this dispute properly one between Mrs. Barnes and Mr. and Mrs. Ebanks?

(iii) What was sold to the Ebanks by Mrs. Barnes as one acre more or less? That is, what did Mrs. Barnes purport to sell and what was she capable of selling?

(iv) Whether Mr. and Mrs. Ebanks can properly claim to be entitled to one and one third (1 1/3) acres of land?

(vi) Did Mrs. Barnes put the Ebanks in possession of the disputed land?

(vii) Did Mr. and Mrs. Ebanks trespass on any land belonging to Mr. Theodore Barnett's estate?

(viii) Are Mr. Barnett and Mrs. Barnes entitled to the reliefs they have claimed?

The Claimants' position

[14] Mrs. Barnes in paragraphs 6 and 7 of her witness statement filed on May 15, 2014 stated that Ms Hudson gave her the additional one quarter (1/4) of an acre of land in exchange for land that her late father had given to Ms Hudson elsewhere in Flagaman District.

[15] She further said that at the time of the transaction between them (Hudson/Barnes) she managed or took care of her parents' business matters.

She said that the one acre plot which she bought from Ms Hudson and later sold to the Ebanks belonged to her while the quarter (1/4) acre was held by her for her father's estate. This one acre plot was not surveyed before it was sold to them.

- [16] When Mr. and Mrs. Ebanks decided to survey the land, they did so in the absence of both herself and her brother although she had asked them to postpone the survey until Mr. Barnett could be present. Her request, she stated, was not accommodated.
- [17] She subsequently discovered that the survey that Mr. and Mrs. Ebanks caused to be done took in approximately one and a third (1 1/3) acre of land, which was more land than she had sold to them. They then fenced it. The fencing of the disputed land was the catalyst of the dispute.
- [18] When Mr. Barnett returned from overseas, he voiced strong objections to the survey and fencing of the disputed land, so much so, that a second survey was undertaken. A new diagram was issued in favour of Mr. and Mrs. Ebanks for one acre of land. The previous survey diagram for one and one third (1 1/3) acres of land was cancelled.
- [19] Mrs. Barnes further asserted that in spite of this second survey, Mr. and Mrs. Ebanks continued to occupy more than the one acre of land which she sold to them. As a result of the fence that they have erected, she, as well as Mr. Barnett, and other members of their family have no access to her late parents' home and graves.
- [20] In cross examination Mrs. Barnes stated that while she was aware that the Ebanks had been farming the land in dispute, she maintained that she never put them in possession of it. She denied that she had pointed out its boundaries to them. She also refuted that the one and a quarter (1 1/4) acres of land was owned exclusively by her.
- [21] Mr. Barnett's evidence supported that of Mrs. Barnes. He also stated that at the time of the transaction between Ms. Hudson and Mrs. Barnes, Ms. Hudson gave a quarter (1/4) of an acre of land to his sister on behalf of his father's estate. Therefore, she did not own this parcel of land in her own right and lacked the authority to dispose of it.
- [22] In cross examination he also stated that the Ebanks were put in possession of one acre of land only. He was quite insistent that they were never put in possession of the entire parcel of land that they had surveyed and enclosed.

The evidence of the surveyor

- [23] Mr. Atneil Braham, commissioned land surveyor, gave evidence of the two surveys that he carried out in relation to the disputed land. The first survey was done on the instructions of the Ebanks on June 06, 2008. He said he determined the boundaries based on the areas that were pointed out to him by Mr. Ebanks and Mrs. Barnes who were present during the survey. He also referred to the Indenture dated September 12, 2001.
- [24] Mr. Braham said that he observed a Birch tree and an old iron peg that was beside it. He said he could not recall seeing any hardwood pegs which would have been used by a surveyor to mark the boundaries. What he saw, he said, looked like fence posts that were chopped down. This evidence contrasts with that of Mr. Ebanks who said that the boundaries were identified by hardwood pegs. He placed iron pegs on the property to mark the boundaries at the areas where he saw the cut off fence posts.
- [25] He was also able to determine the boundaries to the disputed land because certain of its boundaries were already defined. On the western boundary a wire fence was already erected there. On the northern boundary, the adjoining owner had a registered title so it was easy for him to establish that boundary. An old peg was found more to the east of the southern boundary and there was what he termed a '12 feet reserve road' on the western boundary which led to the disputed land.
- [26] At the conclusion of this first survey, Mr. Braham determined the area of the disputed land to be one and one third ($1 \frac{1}{3}$) acres.
- [27] On January 19, 2009 another survey was carried out by him on the instructions of Mr. Barnett with the written agreement of the Ebanks who were not present at the time. Mr. Braham was also instructed by Mr. and Mrs. Ebanks in writing to cut off one quarter ($\frac{1}{4}$) of an acre from the one and a third ($1 \frac{1}{3}$) acres of land and return it to Mrs. Barnes. The Ebanks also gave instructions as to how this should be done. (See Ebanks/Braham letters dated January 12, 2009). They also gave instructions to Mr. Braham about their 20 feet roadway and fence.
- [28] At the conclusion of the second survey, Mr. Braham said that he removed from the disputed land one third ($\frac{1}{3}$) of an acre instead of the quarter ($\frac{1}{4}$) of an acre that the Ebanks had directed him to do. He also moved the roadway that led to the property from the western boundary and placed it along the eastern boundary. He was instructed by Mr. Barnett to carry out these two modifications. He subsequently cancelled the diagram that was produced for the first survey and issued a new one based on the second survey.

- [29] Mr. Braham gave an explanation for the two changes he made in the second survey when he was cross-examined. He said that during the survey he was in contact with the Ebanks and he explained to them that during the first survey they had received more than one and a quarter ($1 \frac{1}{4}$) acres of land. Mr. Braham said that Mr. and Mrs. Ebanks instructed him to cut off the excess and this he did.
- [30] He agreed that Mr. and Mrs. Ebanks did not consent to the removal of the access road from the western to the eastern boundary. However, he said that he specifically put the access road as an easement or right of way and that this could be put at any boundary. He also agreed that in the Indenture it was stated that the disputed land was bounded 'west by Samuel Barnett and out the west by 12 feet road leading to said land coming off the land of Theodore Barnett'.
- [31] Naturally, the outcome of the second survey did not find favour with the Ebanks.

The Defendants' position

- [32] Mr. and Mrs. Ebanks stated that on September 12, 2001 Mrs. Barnes took them, along with Alvin and Kirk Ebanks, to the property they had purchased from her and pointed out the boundaries to them. The boundaries were identified by three hardwood pegs and a big Birch tree. After this was done, Mrs. Barnes allegedly said, "This is now your property, not mine anymore." She did not return to the land after that.
- [33] They then took possession of all the land that Mrs. Barnes had shown to them and they remained in open possession, farming the entire land and were never molested by anyone.
- [34] The disagreement arose in June of 2008 when they decided to survey the disputed land in order to obtain a registered title. Mr. and Mrs. Ebanks said that they arranged for the survey to be done and all adjoining owners of land, including Mrs. Barnes, were notified. Mr. Ebanks stated that Mrs. Barnes was not present when the survey was done because she informed him that she was ill. He said that Mrs. Barnes never asked him to postpone the survey until her brother could be present but instead told him that they could go ahead with it as she trusted him.
- [35] According to the Ebanks, the land that they pointed out to Mr. Braham was the same land with the exact boundaries that were pointed out to them by Mrs. Barnes on September 12, 2001. The land measured one and a third ($1 \frac{1}{3}$) acres. They said that they had been occupying this entire parcel of land since

they purchased it and they were put in possession by Mrs. Barnes as being one acre, more or less.

- [36] After the survey was completed they decided to fence the land. It was then, Mr. Ebanks testified, that Mr. Barnett decided to survey his late father's estate. He said that it was after that survey was completed that the argument about the amount of land he and his wife had purchased from Mrs. Barnes began.
- [37] In an effort to end the row, the Ebanks agreed to a second survey of the disputed land. This survey was done in their absence. They gave written authorisation to Mr. Braham to cut off a quarter ($1/4$) of an acre which was to be reinstated to Mrs. Barnes. However, as it turned out, a third ($1/3$) of an acre was removed.
- [38] Rather than subsiding, the dispute escalated, Mr. Ebanks said. This was because Mr. Barnett is now contending that they have no road to the property (presumably from the western boundary) and he constructed a large concrete post which he placed in the middle of their driveway. This post has since been demolished by them.
- [39] The Ebanks denied that they have wrongfully trespassed on any land and knowingly took in one third ($1/3$) of an acre that belonged to the estate of Theodore Barnett. The disputed land, they are saying, has been owned, farmed and possessed by them from September 12, 2001 without molestation for anyone.
- [40] In cross-examination, Mr. Ebanks stated that Mrs. Barnes had initially orally agreed to sell them 'her piece' of land. While he did not know its actual acreage, he said he knew the land (presumably what it looks like on the ground). He accepted a conveyance from Mrs. Barnes for one acre more or less.
- [41] He also stated that he was prepared to give up a quarter ($1/4$) of an acre from the one and a third ($1 \frac{1}{3}$) acres of land by survey for a peaceful life but he wished to retain the difference (this would be about $1/12$ of an acre).
- [42] Mr. Alvin Ebanks also gave evidence on behalf of Mr. and Mrs. Ebanks. The important features of his evidence were that he knew that the disputed land was owned by Mrs. Barnes and that no part of it belonged to the estate of her father. He said he knew this because he farmed the entire parcel for Mrs. Barnes during the time she owned it and he also knew the lands which formed part of Mr. Theodore Barnett's estate. Before he did farming for Mrs. Barnes, he also did farming for her mother on the lands that belonged to her deceased father. He is therefore claiming familiarity with both parcels of land.

- [43] Additionally, he was present on September 12, 2001 when Mrs. Barnes pointed out the four corners of the land to Mr. and Mrs. Ebanks. This was also done in the presence of Mr. Kirk Ebanks. He said the four corners of the land consisted of a Birch tree and three hard wood stumps planted in the ground.
- [44] He continued farming all of this land which was pointed out to the Ebanks by Mrs. Barnes. He was also present at the first survey and boundaries that Mrs. Barnes pointed out on September 12, 2001 were the same ones shown to Mr. Braham.
- [45] As far as he is aware, the first survey correctly captured all the land that was formerly owned by Mrs. Barnes. The disputed land is not a part of her late father's estate but rather was bounded on the south by lands that belonged to him.

Issue 1: Does the land in dispute forms part of the estate of Theodore Barnett or was it in fact owned by Mrs. Barnes in her own right?

- [46] The credibility of the parties is crucial to the resolution of this issue. Mrs. Barnes is saying that although it was not expressly stated in the Hudson/Barnes document that the quarter (1/4) of an acre was given to her to hold upon trust for her father's estate, this was in fact the case. She said that Ms. Hudson made a mistake when she omitted to include this important element in the document, because it was her father, not her, who had given Ms Hudson the other quarter (1/4) of an acre located elsewhere in the district.
- [47] Learned counsel Mr. Adedipe is asking the Court to find that Mrs. Barnes and Mr. Barnett are speaking the truth when they stated that this additional quarter (1/4) of an acre of land fell to their father's estate.
- [48] Mr. and Mrs. Ebanks, on the contrary, are saying that the disputed land in its entirety belonged to Mrs. Barnes. She owned it in her own right. This was what she sold to them and put them in possession of, after pointing out the boundaries. They are saying that the dispute which has arisen is between Mrs. Barnes and them and not her father's estate.
- [49] The Hudson/Barnes document, learned counsel Mr. Thompson has submitted on behalf of the Ebanks, makes this crystal clear. The document is not ambiguous. It was a contract between Ms. Hudson and Mrs. Barnes and should be treated as such by the Court. He is saying that oral or parol evidence should not be admitted to add, vary or contradict this document because there is no evidence that brings this case within any of the recognised exceptions. Mr. Thompson is relying on the case of **Jacobs v Batavia and General Plantations Trust** [1924] 1 Ch. 287.

- [50] Learned counsel Mr. Thompson is also asking me to take into account the evidence from Mr. Barnett that the disputed land was given to him by his father before he died and that he owned it. He has urged me to consider as well the contents of the notices to quit that were served on his clients by Mr. Barnett as owner. These two details, Mr. Thompson put forward, are inconsistent with the position that the disputed land belonged to the estate.
- [51] Additionally, in assessing Mrs. Barnes' and Mr. Barnett's credibility, I should take into account a letter written on April 15, 2009 from the attorneys-at-law who then represented them which stated that the disputed land was a portion that Mrs. Barnes obtained by way of exchange and which she had already passed to her brother Mr. Barnett.
- [52] The upshot of these submissions is that the land did not fall to the estate as Mrs. Barnes and Mr. Barnett said and that the claim as commenced is misconceived and must fail.

The Law

- [53] At the risk oversimplification, the general principle is that verbal/oral evidence is inadmissible to vary or contradict the terms of a written agreement. This is known as the parol evidence rule. This rule is not absolute and is subject to certain exceptions. So for example where the terms of a contract are ambiguous, oral evidence can be received by the Court to assist with their interpretation. Oral evidence is also admissible, as an exception to this rule, to show that the term of a contract is a mistake.

Analysis

- [54] I have disregarded the evidence given by Mr. Barnett that his father had given the disputed land to him before he died for two reasons. Firstly, I find that this is inconsistent with his evidence that Mrs. Barnes had received it in exchange for a parcel of land of the same acreage given by their father to Ms Hudson. It is also discrepant with the evidence given by Mrs. Barnes.
- [55] Secondly, this transaction took place in 1971, five years after his father's death. What this means is that at the time of Mr. Theodore Barnett's death, the disputed land was owned by Ms. Hudson and did not form part of his estate. I therefore find that Mr. Barnett's father could not give what he did not have.
- [56] Mrs. Barnes in her evidence indicated that she never gave Ms. Hudson any land. She said that this was done by her father. This aspect of her evidence was not

challenged. If this evidence is accepted, it raises the question as to why Ms. Hudson would be then be exchanging land with her.

[57] I also take into account that the Hudson/Barnes document was drafted by Ms. Hudson herself who may have failed to appreciate the importance of including in the document that the disputed land was given to Mrs. Barnes on behalf of her father's estate in exchange for land that he had given to her. Mrs. Barnes and Mr. Barnett I find also overlooked this significant detail. I have also considered that they were all related and I am quite aware of the informalities that are often observed between family members in transactions of this nature.

[58] The question may well be asked why this transaction was done with Mrs. Barnes instead of her mother who was the administrator of her father's estate at the time. The evidence of Mrs. Barnes was that she was the one who took care of her parents' business at that time. Mr. Ebanks also stated this when he gave evidence. It is therefore not inconceivable to me that this matter took place between Ms. Hudson and Mrs. Barnes instead of with her mother.

[59] I am therefore prepared to accept the evidence of Mrs. Barnes on this issue. I was impressed with her demeanour as she gave her evidence. I found her to be forthright and unshaken by cross-examination. Given the circumstances of this case, I have concluded that the oral evidence given by both Mr. Barnett and Mrs. Barnes is necessary to provide the court with a clearer understanding of the parties' intention concerning the exchange of land that is the Hudson/Barnes document.

[60] I therefore find that the disputed land was not given to Mrs. Barnes in her own right and that it fell to her father's estate. As a result, Mr. Barnett and Mrs. Barnes are the correct parties to have commenced this claim in their representative capacities as administrators of their father's estate.

Issue 2: Following on issue number one, is this dispute properly one between Mrs. Barnes and Mr. and Mrs. Ebanks?

[61] The answer to this question is no, given the decision above.

Issue 3: What was sold to the Ebanks by Mrs. Barnes as one acre more or less, that is, what did Mrs. Barnes purport to sell and what was she capable of selling?

[62] Having found that the disputed land fell to the estate of Mr. Theodore Barnett, the Court finds that all Mrs. Barnes owned in her own right was one acre of land and that this was all she was capable of selling to Mr. and Mrs. Ebanks.

- [63] Taking the Ebanks' argument about this issue at its highest, if I were to accept as they have said, that Mrs. Barnes owned the entire disputed land and that this was what she sold to them, then this would mean that Mrs. Barnes would have known at the time of the agreement for sale that she owned one and a quarter ($1\frac{1}{4}$) acres of land.
- [64] Why then would she have agreed to sell only one acre by estimation? Why not sell them the entire acre and a quarter, if this was what she really intended? The simple answer is that the Indenture states clearly what Mrs. Barnes intended to sell and what the Ebanks agreed to purchase - one acre of land by estimation.
- [65] In any event, Mrs. Barnes would not have had the authority to dispose of the disputed land to the Ebanks in 2001, as she had not yet obtained a grant of administration in her father's estate. This did not happen until 2009. It is also my view that when the terms of the Indenture are carefully considered, she did not purport to do so.

Issue 4: Whether Mr. and Mrs. Ebanks can properly claim to be entitled to one and one third ($1\frac{1}{3}$) acres of land?

- [66] Learned counsel Mr. Adedipe has submitted that the case of **Tully v Robinson (1991) 29 JLR 268** could assist the Court to resolve this issue. In **Tully's case** it was held that the term 'more or less' in fact "contemplates a slight divergence either way but not a considerable departure from the stated figure".
- [67] Another helpful case, I have also found, is **Whittlemore v Whittlemore [1869] 8 Equity Cases 603**. It was held in that case that the term 'by estimation' which means the same as more or less applies to "small errors and not large deficiencies, that is, narrow ranges in the increase or decrease of the acreage of the land."
- [68] I have concluded, based on these two authorities that one third ($1/3$) of an acre is neither 'a slight divergence from the stated figure' nor does it represent a 'narrow increase in the acreage of the land' when an acre of land is being conveyed. As a result, Mr. and Mrs. Ebanks cannot properly claim to be entitled to one and a third ($1\frac{1}{3}$) acres of land.

Issue 5: Did Mrs. Barnes put the Ebanks in possession of the disputed land?

- [69] I have found, on a balance of the probabilities, that Mrs. Barnes is a witness of truth. I accept her evidence that she did not point out the boundaries of the disputed land to the Ebanks and neither did she put them in possession of it.

[70] What seems clear to me is that they (Mr. and Mrs. Ebanks) were put in possession of the land that was sold to them, one acre more or less. However, they were allowed to farm any part of the land that was owned and/or in the possession of the estate of Mr. Barnett, deceased. Mrs. Barnes testified that she was aware that the Ebanks did farming on the disputed property. This, without more, does not mean that they were put in possession by Mrs. Barnes or that they owned the areas of the land they farmed.

[71] It is borne in mind that the parties are close relatives and this may well have been the reason neither Mrs. Barnes nor Mr. Barnett made any fuss about their farming of the land. However, the dispute began after the survey and subsequent fencing. It was at that point Mr. Barnett and Mrs. Barnes said the access to their parents' house and graves was restricted. In addition, the Ebanks had taken more land than what was sold to them.

Issue 7: Did Mr. and Mrs. Ebanks trespass on any land belonging to Mr. Theodore Barnett's estate?

[72] It is the decision of the Court that Mr. and Mrs. Ebanks have trespassed on lands which belong to the estate of Mr. Theodore Barnett. The trespass took place when they surveyed the disputed land in 2008, took in an extra one third (1/3) of an acre and then went on to enclose it.

[73] It is agreed between the parties that the Ebanks were farming the disputed land. It has also been submitted that they were in possession of it since 2001. Even if this were so, I have found that Mr. Barnett and Mrs. Barnes as administrators of their father's estate had a superior or better 'title' to the land in dispute. That is, they were the ones who had the right to possess it. (**See Jones v Chapman (1849) 2 Exch 803**)

Issue 8: Are Mr. Barnett and Mrs. Barnes entitled to the reliefs they have claimed?

[74] In light of the foregoing, I am of the view that the Claimants are entitled to the reliefs that they have sought.

[75] It is settled that court proceedings may result in declarations about the rights of the parties. The modern trend is that the courts may make use of declaratory orders to settle disputed rights between litigants. (See the **14th edition of A Practical Approach to Civil Procedure by Stuart Sime page 8**)

[76] I am aware that the tort of trespass is actionable per se. There is no requirement in law for Mr. Barnett and Mrs. Barnes to prove damages. In the absence of

submissions, and taking into account the circumstances of this case, the Court will award a nominal figure as damages for trespass.

[77] The Court will also exercise its discretion and grant a perpetual injunction to restrain the Defendants, their servants and/or agents from committing further acts of trespass on the lands belonging to the estate of Theodore Barnett.

Conclusion and orders

[78] Judgment is given for the Claimants.

[79] The Court declares that the Defendants are entitled to one acre of land only in accordance with the provisions of the Indenture dated September 12, 2001.

[80] The sum of \$20,000.00 is awarded to the Claimants as nominal damages for trespass.

[81] A perpetual injunction is granted to restrain the Defendants, their servants and/or agents from committing any further acts of trespass on the lands which belong to the estate of Theodore Barnett, deceased.

[82] Costs to the Claimants to be taxed, if not agreed.