

DORSEY BIRCH, Appellant, vs. **ISAM QUINN**, Appellee.

LRSC 8; 1 LLR 309

[January Term, A. D. 1897.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Ejectment.

1. Several verdicts rendered in the same case in favor of the same party will not operate as a bar to an appeal to a higher judicature from the judgment entered thereupon, nor does it decide the matter in controversy so conclusively as to prevent the appellate jurisdiction from reviewing the whole cause and giving such judgment as it deems proper and legal. A verdict to be valid must be in conformity with the facts submitted and the legal instructions of the court.
2. In ejectment the plaintiff must show a legal and not simply an equitable title to the property in dispute; the weakness of the defendant's title will not of itself enable him to recover.
3. To enable a party to make a transfer of property he must first have acquired a title therein himself. Under the Constitution the wife takes a life-estate in one third of the real property of the husband of which he died seized.
4. Lands will escheat to the State when all the legal claimants become either extinct or legally disqualified to hold property. The mere possession of government lands for twenty years will not give the occupant a vested title therein, nor does it deprive the Government from conveying the same.
5. Where a party permits another by his silence and tacit assent to acquire and improve property which he claims, with the view to entrap, he will lose his relief.

This case has created considerable interest in the public mind on account of the surroundings, and it has had no little attention of this court because of its novelty. In many respects it is without a parallel in appeal cases brought before this court for review. From the record we notice that in the court below this case have had four trials upon its merits and three successive verdicts in favor of the appellee by three regularly empanelled juries, and that final judgment was rendered by the court upon the last of said verdicts, in favor of said appellee (or defendant below). While all of this may be strongly urged—as it has been by the learned counsellor for the appellee—as conclusive that the right of the appellee to the property in dispute should be considered as settled, yet the court cannot forget that ejectment is a suit in which there is involved mixed questions of both law and fact. The

former is to be determined by the court, upon sound legal principles, which is to enlighten the jury in determining the facts submitted to them; and the latter is that which the jury will unbiasedly apply, connecting said instruction of the court with the facts presented in the case. Therefore the law provides that the verdict of the jury should be conformable to the law as laid down by the court and the facts in the case; should it be otherwise, and especially in cases of ejectment, the very foundation of legal rights to real property would be convulsed, if not absolutely destroyed. It is the province of the jury to try and determine the facts; but when their conclusions are either against the law, the evidence, or the legal instructions of the court upon a motion, the verdict should be set aside and a new trial ordered, that the ends of justice may be fully met.

In this action both the appellant and appellee claim ownership to farm land No. 24 in the settlement of Lexington, Sinoe County, the appellee being in possession. In actions of ejectment it has been laid down as a rule, both by ancient and modern law writers, that it is necessary in ejectment for the plaintiff to show in himself legal proof, i. e., a good and sufficient title to the land in dispute, against the whole world. He must not only have a title, but he must be clothed with the legal title to such lands; an equitable title, as a general rule, will not answer; he must recover, if at all, on the strength of his own title and not on the defects in that of his adversary's. This is an elementary principle in actions of ejectment and it has been reiterated over and over again by this court, as possession only gives a right against every person who cannot establish a better right.

The testimony in this case supports the following facts, which were submitted for the determination of the court and jury below, and now to this court for its determination: First, that in the year 18— one Abram Sterling drew his emigrant allotment to the land in dispute and obtained for same a deed in fee simple from the Republic of Liberia; that subsequently the said Abram Sterling died intestate, leaving a widow, but no surviving issue of his body—the testimony showing none.

Second, that shortly after the death of the testator, Sally Ann Sterling, his widow, took to lodging with the appellant, who supported her until her death. Third, that before her death it is said she made a will or testament, giving the land in dispute to the appellant. Fourth, that this will or testament is said to be lost and that no trace of it can be found either in the book of probate or in the registry department. Fifth, that the appellee sets up title to the same land under grant from the Liberian Government as his emigrant allotment, said deed having been issued, as required by the law in such cases, and further, that the appellee took possession of the same.

By this action the appellant seeks to eject the appellee, claiming prior ownership under the aforementioned will of the widow S. A. Sterling. This court is of the opinion, and in fact does say, that to establish the right of ownership of the land in dispute the appellant must show the legal title of the testator, Mrs. S. A. Sterling, under whose last will and testament he claims, and failing in this, his action must fall. It is a well-settled rule of law that the transfer of property must be by the true owner, as one cannot legally give away that which he does not legally own. By the eleventh section of the Constitution of the Republic of Liberia, the wife of a deceased intestate husband has a life estate in one third of the real property of which her husband died seized. This allowance does not in any way operate as a transfer or conveyance of such property, but only as a use or occupation, and the enjoyment of rents flowing out of such estate; nevertheless, she may, by the aid of the law, in assuming his debts obtain an equitable title, or even a legal title thereto, which in this case does not appear in the testimony. The very term "life estate" presents to the mind an estate which terminates at the death of the possessor. It is a settled policy of governments, that in case of an absolute failure of the legal ownership to lands, the same reverts back, or escheats to the original grantor—the State in this case. There is also another well-settled doctrine, established before the time at which the great "cake" flourished, which has not since been disturbed, and which reads, "Mere possession of government land, though open and exclusive and uninterrupted for twenty years, creates no impediment to its recovery by the Government or by anyone who within that period receives a conveyance from the Government." (1st U. S. Digest, p. io.)

There is another feature in this case which the court desires to examine. The record shows that one James Birch, a son of the appellant, sold the appellee a portion of said land some years ago. At the January term of this court, 1872, in the case of Willis Blunt against J. W. Barbour, this court laid it down as a settled principle of law, that it is contrary to equity and good conscience that a man should stand by and allow his neighbour to expend money for the purchase and improvement of property and conceal the fact that he is the owner and thus entrap his neighbor and then come forward and take advantage of his laches. The rule in equity is, that he must assert his claim to property or lose his relief. (1st Story, Equity, 192, 384, 388; 2nd Story, Equity, 1537, 1542, 1546; Adams on Equity, 156, 151.) The court is free of doubt in saying that Sally Ann Sterling could not legally give to the appellant the land in question, it not having been transferred or conveyed to her by her husband. This court therefore fails to see why the judgment of the court below should be disturbed.

Therefore the judgment of the court below is confirmed, and the appellant ruled to pay all legal costs; and the clerk of this court is ordered to notify the court below to the effect of this judgment.