EAST AFRICAN COMPANY, late Hendrik Muller of Rotterdam, Appellants,
vs. **HARRIET F. DUNBAR**, Appellee.

LRSC 5; 1 LLR 279

[January Term, A. D. 1895.]

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

Ejectment.

1. The plea of estoppel is a good plea and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a party to disclaim his own acts as unlawful. The same rule applies to privies.

2. In ejectment, where damages are sought, the complaint must be so constructed as to put in issue this point; where it is not so framed it is error to award damages, and where under such circumstances the jury allowed damages, and a motion for a new trial on this ground was rejected by the lower judge, it is an error which the appellate jurisdiction will take cognizance of.

3. The Constitutional inhibition with respect to citizens only holding free-hold estates, does not preclude foreigners from holding leaseholds. The legal term of a lease to foreigners is twenty years, but it will be a good lease if it contains a provision for renewal after the expiration of the term granted. A conveyance made transferring the fee in certain lease-hold estate, but subject to the terms of the lease, creates a future estate, and where the consignee, acting in the dual position of assignee and administratrix for the lessee, conveys a title in the same estate to another party, she is estopped from raising any objection to the original lease and in denying the rights granted therein.

This is an appeal case that was tried in the Court of Quarter Sessions, Sinoe County, at its November term, A. D. 1894, and is brought to this court upon a bill of exceptions for review. In considering this case we regret that the issues presented in the exceptions did not claim more of the attention of the counsellors in the case, as that would have enabled this court to see better the point aimed at by the parties. Such have been the irregularities in this case, in nearly every stage of its proceedings, that only after hard labor are we enabled to get the case into such a form as to apply the law and facts to the proceedings below. It may be well for us to remark just here, that the law makes no distinction between men when before it; the high and the low here are both on a level. The law, while just, has no sympathy; it neither makes men rich nor poor; hence the claim to be rich can have no influence with it, and to plead poverty can awaken no sympathy.

This is an action of ejectment and consequently subject to the law governing the proceedings in such actions. We will here repeat the rule of universal acceptance in such cases: The plaintiff must not only show in himself title, but lawful title to the lands in dispute, and also the right of entry at the time of purchase, or his legal claim would, if a remainder-man, be reduced to an equitable claim, until the happening of the contingency then effecting his right of entry. The exceptions taken in this case are many, and are so taken as to enter into two or three points, upon which the proceedings must tumble for the want of legal foundation; hence this court will notice only such as will enable it to arrive at a just determination of the case.

The first exception claiming the immediate attention of this court, is the second found in the bill of exceptions, and is as follows: "Because the court overruled the plea of estoppel set up in the defendant's answer." The plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds, and when founded in truth must meet the sanction of the courts of law. Nothing would work greater injustice than for a man to execute a note or deed in favor of another, and then attempt to prove its unlawfulness. In law he would be estopped, or hindered from doing it, and if such acts committed by any party, no matter in what capacity acting, becomes a question of lawfulness, neither the party himself, nor any one representing him, should be allowed to impeach his own deed, note or acts. In this the court below greatly erred. The court should have sustained the plea and abated the suit in its very commencement, it appearing in the record that the plaintiff below, with others, sold and supported the entry of the defendant below in all the rights of the original lessee, for whom she acted as executrix.

The fourth exception taken is as follows: "Because the court sustained a motion opposed by appellant, to order a jury to assess damages, the verdict of the ejectment case having been rendered in favor of the plaintiff below." This irregularity tended not only to greater confusion, but to a direct violation of universal law. To make plain the meaning of this court we remark, that the forms laid down in the statute are but outlines or models and are to be modified to suit particular cases. In ejectment, where damages are also craved, the complaint should be so modified as to show damage, thereby giving notice to the defendant of the fact plaintiff intends to prove (Stat. 1st Book, page 4s, sec. 8), otherwise a separate action for damage would be the only means whereby damage could be recovered. The complaint not being thus modified, the court erred in sustaining the petition.

The eighth exception is: "Because the court refused, on a motion of defendant below, to set aside the verdict of the jury returned and awarding damages to the plaintiff below." Nothing constitutes a more glaring wrong than this act of the court below, because the

verdict on its face shows that it is returned in an action of damages, whereas the action of damages was never entered and tried by the court. Therefore, in this the court below erred, and the verdict should have been set aside. Before proceeding further we take occasion to say that to hold property and to enjoy leasehold are two distinct things in law: the former none but citizens of Liberia may enjoy, under the Constitution; the latter anyone may enjoy, without respect to race or nationality. A lease may be for any term not exceeding that which may put the estate out of market, or in perpetuity. This term is limited by the decision of this court to twenty years, which this court in this present decision does not feel authorized to overthrow or to disturb. However, as the decision referred to does not annunciate the doctrine that a lease would be illegal if it contained a term of years, subject to a renewal of said term after the expiration of the first, this court is of the opinion that the lease in question for twenty years, to be renewed after the expiration of the first term, is not against the Constitution of Liberia nor the decision of this court referred to, and such leases may be made by the owners of lands to suit their own convenience; otherwise owners would not have absolute right to property in their own hands, but would be merely trustees of the same.

We shall now briefly consider the facts in this case. In the record it appears that one Mrs. E. M. Morris, the owner of lots numbered 59 and 110, in the city of Greenville, Sinoe County, by deed, leased said lots to one Jose B. Oliver, his heirs, administrators, executors or assigns, for a term of twenty years, for five hundred dollars, being the lease money. Said lease was to be renewed at the will or desire of the said Oliver after the expiration of twenty years, he paying all the taxes and giving one dollar, and further delivering up all improvements at the end of the second term, to the lessor. That this covenant not only bound the parties to the transaction, but all claiming under them, is the opinion of this court.

It appears that soon after the transaction referred to, the said Mrs. E. M. Morris sold to plaintiff below her fee titles to the said lots numbered 59 and 110, but in her deed to the plaintiff points out the lease of the said Oliver, so as to convey to her a future estate. This in the first instance constitutes a bar to an entry, and also admits the right of entry of the said Oliver, upon the terms and recitals in both his and her deed. And it further appears, that shortly afterwards both Mrs. Morris and Oliver died, and this event placed Mrs. Dunbar, the plaintiff below, in a dual position, first as assignee of Mrs. Morris, and secondly, Oliver leaving her executrix of his will, which appointment she accepted, thereby representing Oliver also. And it further appears that the said Mrs. Dunbar and her co-executor sold unto one N. J. A. Maarschalk, agent of H. Muller & Company, his heirs and assigns, all the rights, titles and interests of the said Oliver in the lots now in dispute, one term having nearly expired, before which, it appears, those holding under the claim of

Oliver tried by all means to secure an express renewal of the lease for the second term. But those claiming under Mrs. Morris' right failed to do as provided in the covenant, by remaining dormant and allowing over five years of the second term to expire. This silence on the part of plaintiff is, in the opinion of this court, equal to an implied ratification of the second term, the assent being equal to consent.

Considering this case from every reasonable and honorable standpoint, this court adjudges that the judgment rendered by the court below be and is hereby reversed, to all intents and purposes, both as to the ouster until the expiration of the time limited in the covenant, and as to the damages awarded, and that the appellant recover from the appellee all legal costs of this action. Further, the clerk of this court is hereby directed to issue a mandate directed to the Court of Quarter Sessions, Sinoe County, to the effect of this judgment.

Key Description: Aliens, Immigration, and Citizenship (Constitutional restriction of rights as to real property)