

Z. T. GREEN, SAMUEL GRAY, and his wife ANNA S. GRAY, Appellants, vs. B. J. TURNER, Appellee.

LRSC 4; 1 LLR 276

[January Term, A. D. 1895.]

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

Injunction.

1. An answer filed within ten days after notice of the filing of the complaint is within the statute; it is the time the notice was served, and not when the complaint was filed, that governs the answer in this respect.
2. In injunctions the court cannot decide issue involving the validity of title, such being a mixed question which by statute is triable by a jury under the directions of the court.

This is an appeal case in an action of injunction brought up to this court from the Court of Quarter Sessions, Sinoe County, sitting in equity, by appellants (defendants below) upon a bill of exceptions. Before coming to a judgment in this case, the court will proceed to notice the points in the bill of exceptions to which its attention has been carefully given, and will dispose of them as they stand in their order. The first point to be considered and disposed of is set forth thus: "Your Honor's ruling out defendants' sufficient answer, which was in keeping with the statute laws of the Republic of Liberia in injunction, because the sheriff did not serve the notice on the plaintiff until one day after the expiration of the ten days which the statute law of Liberia allows for the filing of answers."

After carefully reviewing the record in the case the court finds that the answer was filed within the time allowed by statute; and it is not prescribed by statute that the "answer" must be filed within ten days after the filing of the "complaint," but within ten days after notice has been given of the filing of the complaint. (Lib. Stat. Bk. i, Chap. 5, sec. 5.) Therefore, it is the opinion of this court that the judge below erred in ruling out defendants' (now appellants') answer.

The second exception under consideration is, the objection of appellants to the first part of the decree of the judge below, in which the judge said that because the parties claimed titles to the land in question by deeds produced in evidence, which were given by the Republic of Liberia, he would not consider the validity of titles, or the matter of quiet enjoyment, which is collateral. On this point it is the opinion of this court that the judge below did not err in refusing to consider and decide the titles, for such a decree would be deciding a mixed question of law and fact, which cannot be tried and determined in equity; for the statutes declare that "all questions of law and fact must be tried by jury, assisted by the court."

The third point is appellants' exception to the last part of the decree of the judge below, in that he said that "the court has carefully and thoroughly digested the laws bearing on this action, and it appearing to the court that there are sufficient grounds, therefore the court adjudges that the defendants be forever enjoined and prohibited from intermeddling or annoying and harassing the said plaintiff in the cultivation of his twenty acres farm land, situated on Po River, and being number thirty-three, formerly styled number thirty-six, unless otherwise determined by law, and that the plaintiff recover from the defendants all legal costs in this action."

The opinion of the court on this point is that the judge below erred ; for in the first part of the decree the judge said that he could not consider the question of validity of titles, or the matter of quiet enjoyment, which is collateral, both parties claiming said land under

deeds from the Republic of Liberia. This court is at a loss to know by what parity of legal reasoning did the judge decree that the defendants, now appellants, be forever enjoined and prohibited from intermeddling, or annoying and harassing said plaintiff in the cultivation of his twenty acres of farm land situated on Po River, and bearing number thirty-three, formerly styled number thirty-six. And this court further says that the judge below erred in said decree by enjoining a perpetual injunction on defendants, now appellants, which, in the opinion of this court, is virtually deciding the validity of titles.

In this equity case the irregularity of the proceedings of the court below are so much opposed to equity and good conscience as to lead this court to the following determination: This court adjudges that the decree of the court below is hereby reversed and the injunction dissolved, and that appellants recover all costs in this appeal case from appellee. The clerk is hereby commanded to issue a mandate to the court from whence this case came, informing it of this decree.