

E. A. L. McAULEY, Appellant, vs. **BENJAMIN MADISON** and **MARIA MADISON**, Appellee.

LRSC 2; 1 LLR 287

[January Term, A. D. 1896.]

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

Ejectment.

1. The court is not bound to instruct the jury upon any point of law bearing on the merits of a case where such point was not formally raised in the pleadings, if it was proper so to do.
2. The statute limiting the jurisdiction of the Monthly and Probate Court in matters of debt does not apply to suits brought for the foreclosure of a mortgage.
3. The Monthly and Probate Court may order the sale of property accruing to an infant where it appears necessary to do so for its benefit.
4. A deed or other conveyance which is not entered for probate within four months after its execution is by statute voidable.
5. A party who, being under no legal disability at the time, stands by and permits property, which he claims, to pass into the possession of another without objecting thereto at the time, is presumed to have assented to the transaction and is estopped from afterwards raising claims thereto. (*Savage vs. Dennis*, and *Blunt vs. Barbour*, 1871 and 1872.)

This is an action of ejectment tried and determined by the Court of Quarter Sessions and Common Pleas of Sinoe County at its August term, A. D. 1894, and brought up to this court for review by the appellant on a bill of exceptions, at its January term, A. D. 1895, but deferred until this present term. The court will now proceed to consider the case by reviewing the bill of exceptions and the evidence in the case, applying the law, and then rendering its judgment accordingly.

1. The appellant objects to the instructions, of the judge below, in that he refused to charge the jury as to partition and collateral heir. This court says that the judge below did not err in refusing to give such instructions to the jury, since said question was not raised in defendant's (now appellant's) answer, so that said issue might be brought properly within the reach of the court. It is a principle of law that any matter not laid in the written pleadings of a case cannot be expected to receive the legal consideration of the court. (*Lib. Stat. Bk. 1, Chap. 5, sec. 8.*)

2. The court says it is of the opinion that the judge below erred in ruling against the jurisdiction of the Monthly and Probate Court in foreclosing the mortgage deed from Peel to Maarschalk, agent of Hendrik Muller & Co., for the reason that the law limiting the original jurisdiction of said court in cases of debt to two hundred dollars does not debar the said court of the right to foreclose a mortgage deed for that or any amount, any more than it hinders said court from probating such a deed. The matter of debt was not an issue before the court for its consideration, but simply foreclosing a mortgage, involving no trial of issue.

3. And the court further says that the deed of Lewis Brown should have been admitted as evidence; first, because the Probate Court did not transcend its jurisdiction in ordering the property in question sold, when it was made clear to said court that it was necessary to sell the same for the benefit of the said infant Julia Peel in question; and secondly, while it is true that the law requires the probaton of all deeds and other conveyances (Act of the Legislature of Liberia, 1861, p. 91, sec. 2), still, section five of the same act voids prior claims when there has been a flagrant neglect of probaton for four months, and when said neglect results in litigations arising from subsequent conveyances. And this court further says that even if the appellees are legal heirs, by descent, of the said Allen Peel, Sr., which has not been conclusively proven by the testimony adduced in the court below, still they are estopped from now claiming any part of said land in dispute, in that they are guilty of laches by allowing four subsequent conveyances of the said quarter of lot of land No. 13 to be made without enforcing their rights, to which in law the presumption is that they either assented or that they had no legal claims on said piece of land; and for which, the law under the circumstances will not lend its aid for the recovery. (See Decisions of Supreme Court of Liberia in the cases Savage vs. Dennis, and Blunt vs. Barbour.)

And again, this court says that the claim of appellees is not proven to be sufficiently strong as to entitle them to recover; for the principle of law prevails, and this court will ever maintain the same, that in cases of ejectment "the plaintiff must recover on the strength of his own claim, and not on the weakness of that of the defendant."

Therefore, this court adjudges that the judgment of the court below is hereby reversed and made null and void, now and forever and that appellant recover all costs in this action. The clerk of this court is hereby commanded to send a mandate to the judge of the court below, to the effect of this decision.