C. B. REEVES, Appellant, vs. **MARK HYDER**, Appellee.

LRSC 3; 1 LLR 271

[January Term, A. D. 1895.]

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

Ejectment.

1. Ejectment supports the idea of adverse possession in the defendant. The questions involved in such trials are of a mixed nature, which under the statutes must be tried by a jury under the direction of the court. It is not error for the court to refuse to instruct the jury on any point in such trials, when in its opinion it does not appear proper so to do.

2. In ejectment the plaintiff must show in himself a legal title to the property in dispute to recover it; by title here is meant the right of possession arising either from descent or purchase, and the right of entry.

3. Under the statute the probation of a deed makes it legal evidence; where there are objections to same they should be made at the time the instrument is offered for probation, where the party has knowledge of the transaction. In trials of suits of ejectment it is not error in the court to instruct the jury that a party has offered no legal evidence in the shape of deed to the property in dispute; it is also not error for the court to instruct the jury that the plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's. (Oliver vs. Bigham, 1870, Harris vs. Locket, 1875.)

This appeal was taken from the proceedings, rulings, and final judgment of the Court of Common Pleas and Quarter Sessions, Grand Bassa County, at its June term for the year 1894, and is, brought before this court upon a bill of exceptions, for review. Before passing upon the material points presented for this court's consideration, it is due to the learned counsels conducting both the prosecution and the defense in this case, for us to acknowledge the great skill and legal ability displayed by them in urging the cause of their respective clients. This case is without a parallel in the history of our courts, and presents features the most complicated; but as in every question of human action there is involved a principle of both right and wrong, we have spared no pains to search out the legal rights surrounding this case, which has enabled us to come to such conclusions as are drawn from sound principles of the law.

Nothing tends greater to disturb tranquility, to hinder industry and improvement in communities, than the insecurity of property, personal or real, to prevent which courts of justice are established. This is an action of ejectment, the method employed by a plaintiff

to recover the possession of his lands wrongfully withheld from him by a defendant. Ejectment is therefore a possessory action and supports the idea of adverse possession, hence a trial of the legal titles of the contending parties. It being a mixed question of both law and fact, the statute provides that such trial is to be by a jury, with the assistance and under the direction of the court. (Lib. Stat. Book t, page 47, sec. 3.) It is therefore among the peculiar trials wherein the court may not only assist, but may direct the jury in coming to the conclusion warranted by law and facts in the case. Hence it is not error in the court to refuse to admit or instruct the jury on any matter which, in its opinion, does not tend to establish the truth and justice of the case. For this reason, the jury and the court have a right, in ejectment, to weigh probabilities and solve doubts as to matters of fact; and if in their minds the preponderance of proof, or rational influence as to any fact on which the title depends, is on the side of the plaintiff or defendant, they ought to find accordingly.

To recover in ejectment, the plaintiff must prove in himself a legal title. To this point, however, the court says the term "title" as is here meant, may be briefly stated to be the means whereby the owner of the lands has the just possession of his property; and we further remark that title to real estate is acquired by two methods, namely, by descent, and by purchase. Purchase in a limited sense is applied only to such acquisitions of lands as are obtained by way of bargain and sale, for money or some other valuable consideration. Therefore, in ejectment the plaintiff has a right to show a vested legal title, no matter how, if fairly acquired, or through whom it may have been delivered, and if no adverse right or possession be shown, such plaintiff may recover without showing possession or the right of possession, or any entry or the right of entry. This and similar situations authorize the exceptions to the general rule and doctrine frequently announced by this court and which the court reaffirms.

In ejectment the plaintiff recovers upon the strength of his own title and not on the weakness of that of his adversary. This support, however weak, that a defendant sets up title either legal or equitable, in the absence of both, in contemplation of law, debars the trespasser. None, therefore, can fail to see that the application of the above doctrine, without the exception pointed out, would defeat the very intention of the action of ejectment, whose primary use is to try the titles of the litigant parties in dispute. In reviewing the transcript of the record showing the proceedings of the court in the trial below, we find that the estate of one John Parker, deceased, intestate, was by the Probate Court of Grand Bassa County, ordered to be sold by the administrator of the said estate, acting under authority granted by that court, and that a sale took place by public auction and that at the said auction Mark Hyder, the said plaintiff below, bought that part of said estate as is known to be lot number 17, in the township of Hartford in the County of

Grand Bassa. The record further shows that he, the said plaintiff below, paid the purchase money for said land, but did not obtain a deed for the same from said administrator, and that the said administrator died (if previously to closing the said estate as required by law, the record fails to show) ; that during the year 1893, the said Mark Hyder made petition before the Monthly and Probate Court of Grand Bassa, S. S. Herring, judge presiding, to appoint administrators of the estate of the said John Parker, which was granted. P. M. Scott and

John Watson were appointed, who completed the title of the plaintiff below to lot number 17, in Hartford, as aforementioned, by granting him a deed; that said deed was probated and registered according to law. This court is of the opinion that the time a deed is offered for probation is the proper time to set up legal or equitable objections to it, by any party who may be affected by its probation; since by statute the probation makes it legal evidence before courts of law, all such objections being referable 'to the Court of Quarter Sessions for determination. The evidence in this case fails to show that any objections were offered at the time of the probation of this deed by the defendant below, or any one representing him; hence its probation was not opposed. It is proper for us to notice next, the evidence furnished in the record of the Monthly and Probate Court of Grand Bassa County in the trial of this case. It appears that one Dr. Smith, being present at the time of the probation of this deed of the said Mark Hyder, stated to the court, as his objection, that he through mistake sold this tract of land number 17, to the defendant below. This was, as is obvious to all, not an objection to the deed, unless it applied to the one he gave to the defendant below through mistake. The jurisdiction of the Probate Court to appoint the acting *administrators under surrounding circumstances, not having been put in issue, is not before this court, as it was not before the court below.

The third exception taken is because during the trial the plaintiff below offered as evidence a copy of the record of the Monthly and Probate Court containing matters and statements made in his absence. Had this point of exception contained an averment or statement that the plaintiff below omitted or refused to cite or give notice to the appellant to be present at the time when such statements were recorded in the court referred to, it would have been error in' the court below to have admitted such evidence; but no such facts being found in the record, this court is of opinion that irregularities do not appear such as to amount to an error.

The fourth exception presented to this court for its consideration is, because the court below instructed the jury to the effect that the appellant in this case had no evidence in the shape of a deed of title. This court, after careful examination of the entire record and

proceedings in this case, fails to see wherein the appellant offered either oral or written testimony to prove the right of possession or the right of entry, or any lawful or equitable title to lot number 17, in the township of Hartford in the County of Grand Bassa. Hence, considering that the trial was by a jury with the assistance and direction of the court, it was not error f or the court to instruct the jury that the appellant had offered or had no evidence in the shape of title for the land in dispute. As to the point that the court instructed the jury to the effect that they should not notice the weakness of the appellant's title, but the strength of the appellee's, we remark that this is not error, but is in support of the repeated rulings of this court. See decision in cases of Oliver vs. Bigham, and Harris vs. Locket, namely, that the plaintiff in ejectment must recover upon the strength of his own legal title and not on the weakness of that of his adversary.

The fifth exception embodies the other exceptions taken at the trial below, which is, because the court refused to grant a new trial when prayed for after verdict. As to this point the court says, the granting or refusal of a new trial is a matter in the sound discretion of the court, according to the exigency of each particular case, upon principles of sound justice and equity, and this discretion is not generally reviewable on error, when the court is satisfied that the verdict is not contrary to the law, the evidence and its legal instructions. Otherwise it should grant a new trial.

Considering this case from every reasonable standpoint, this court fails to see sufficient cause to disturb the judgment of the court below, and therefore adjudges that the judgment of the court below ought to be and the same is hereby affirmed, and that appellant pay all costs in this action.