

**JOHN W. WEST**, Appellant, vs. **HARRIET F. DUNBAR**, Appellee.

**LRSC 9; 1 LLR 313**

[January Term, A. D. 1897.]

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

1. A party who makes an illegal contract will not be allowed to take advantage of his own wrongs by showing the illegality of the same, nor can he seek relief at law or in equity, either to enforce or annul his illegal act; the doctrine of estoppel will not permit it

2. A lease for lands to a foreigner for fifty years, although repugnant to the Constitution, will not nevertheless be set aside at the instance of a party thereto; a party will not be allowed to impeach his own deed.

This case comes up from the Court of Quarter Sessions and Common Pleas, Sinoe County, upon a bill of exceptions, under the statutes regulating appeals. The appellee sets up claim as owner and the right of possession to three fourths of lot No. 109, in the city of Greenville, alleging that the same is wrongfully withheld from her by the appellant, and by this action she seeks to eject the appellant from said lot.

The appellant in defence of his possession to the said three fourths of said lot No. 109, sets up the plea of estoppel, and declares that the appellee having during the year 1876, for the consideration of the sum of seven hundred dollars, under written contract, leased said three fourths lot to C. F. Bertrams, agent for A. Woerman of Hamburg, his heirs and assigns, and the said C. Woerman during the year 1892 having assigned to J. W. West, the appellant, all legal rights possessed by said C. Woerman, lessee, for the unexpired time therein, she is thereby estopped from impeaching her own deed ; and appellant prayed judgment be estoppel.

The lease being for fifty years with the privilege of renewal on payment of fifty dollars, after the expiration of the first term, the appellee replied and declared that said deed of lease was in violation of the organic law of the State, as well as the ruling of this court in the case of Bigham against Oliver, determined at its January term, A. D. 1869, and hence not binding. This case was among the many cases docketed in this court at its last session, the present appellant being then the appellee, who had obtained a verdict and judgment in his favor at the trial below. At the call of this case both parties joined in a formal motion requesting that the case be remanded to the court below, in order that the mixed questions of law and fact determined by the court below may be submitted to a jury as is required by

law in all actions of ejectment, the court below having neglected to do so. This court accordingly ordered a remand of the case, and at the new trial the appellee, H. F. Dunbar, obtained a verdict in her favor, to which verdict and judgment the appellant, J. W. West, defendant below, excepts, which brings the case again before this court for review.

The general principles of law when applied to this case must lead this court and every unselfish mind to such conclusions as are founded in law and justice. In no respect is the plea of estoppel, raised in this case, different from that determined by this court at its January term, 1895, in the action of ejectment in the case of East Africa Company, late Hendrik Muller & Co., against H. F. Dunbar. Upon the plea of estoppel raised in the case, this court then said, and which doctrine it will here again reiterate, enunciate and declare, that 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 receive the sanction of the courts of law.

Nothing would work greater injustice and give greater encouragement to fraud, than for a man to execute a deed or note in favor of another, and afterwards to be allowed to invoke the aid of the law to prove its unlawfulness. In law he is estopped or hindered from doing so. The great principle founded in justice to prevent fraud is not confined to the common law, but by the fathers of our country it is emphatically carried and incorporated into our statute law, only in different words. Liberia Statutes, Bk. i, page 24, section 13, read thus: "No action can grow out of an immoral or illegal contract;"—which may be justly interpreted to mean that no one shall be benefited by his own illegal acts. Again, the maxim, "No one shall take advantage of his own wrongs," and further, "Whatever has been said by a party himself is evidence against him." Therefore, the plea of estoppel entered in this case was well founded, and the court below erred in not sustaining it and submitting its opinion of the law as evidence to the jury, directing them to render their verdict accordingly.

Another exception taken by the appellant is because the court in admitting the deed under which he claims possession only admitted it in part and not as a whole. This fact appearing in the record compels us to say, this act of the judge of the court below was in violation of the rules of evidence, because by statute the whole deed, if admitted by the court, should have been submitted to the jury as evidence of all exceptions and denials contained therein and of all facts connected with the question stated therein. (Liberia Statutes, Book i, page 56, section a5: "Deeds and all other writings shall be evidence against all parties to them, and shall also be evidence of the transfer of all titles or rights transferable by them against all mankind.") The appellee not objecting to the admission of the deed, but admitting it,

the jury was then bound to consider it in all its parts, and in the absence of rebutting evidence could not disregard it, as its admittance established facts they were bound to consider in making up their verdict. In not doing this, the verdict was contrary to the evidence and should therefore have been set aside and a new trial ordered.

During the traverse of this case, repeated reference has been made to the ruling and opinion of this court as pronounced in the case of Richard Bigham against J. Oliver. The court sees no reason for disturbing that judgment, or any other opinion previously expressed by this court, and will not, unless bound by duty to do so, when it will be in either upholding or overthrowing such judgments as are not in keeping with law and the Constitution. This court feels bound only by the law, the Constitution, and well-founded precedents.

In this case the issue is not joined upon the point of legal or illegal contract, constitutional or unconstitutional agreement, but it is presented in this wise: The appellant in his answer sets up the plea of estoppel, insisting that the appellee is concluded by her own deed. To this the appellee replies, denying the legality of her deed of lease. Hence the issue rests in the plea of estoppel, which plea was prominently before the court below and which plea this court is bound to consider; and we here say all opinions given by courts not in conformity to the issues submitted to them may be considered obiter dictum.

This court feels bound by law and justice to pronounce the following decision: The court adjudges that the judgment rendered in this case by the court below be reversed, vacated and rendered null and void, the appellee paying all costs. The clerk of this court is ordered to notify the court below to the effect of this judgment.

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