EUGENIA SIMPSON COOPER, et al., Appellants, v. WILLIAM R. DAVIS, SR., et al., Appellees.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,

MONTSERRADO COUNTY.

Argued October 31, 1978. Decided December 14, 1978.

1 Where a lawyer is a member of a law firm, he is not required to pay the license fee prescribed in the Revenue and Finance Law, Rev. Code 35 :12.31, for individual practitioners, but is in compliance with the law if the firm has paid the fee therein prescribed for partnerships and the business registration fee required of partnerships by the General Business Law, Rev. Code 14 :4.3(3).

2 The Supreme Court will not review issues where no exceptions were taken in the lower court, or consider an issue not included in the bill of exceptions.

3 All issues of law raised in the pleadings must be decided by the trial judge before trial of issues of fact, and failure to do so is, reason for the appellate court to remand the case for new trial.

4 A denial of allegations of the complaint and an allegation of new matter as a defense thereto in the nature of confession and avoidance may be pleaded together, but each defense should be asserted in a separate count.

5 A plaintiff in ejectment can recover only by proof of title which must be established by proof either of descent or purchase.

6 In an ejectment action, a duly probated and registered deed is superior, as evidence of title, to any prior instruments or indicia which have not been duly probated and registered.

7 In an action of ejectment, the plaintiff must establish his case upon the strength of his own title and not upon the weakness of the defendant's title.

8 Ordinarily a verdict will not be set aside as being excessive, but an appellate court will do so where there is no evidence to support the amount awarded.

In an action of ejectment, a verdict and judgment in the amount of $85,000 were rendered for plaintiff. On defendant's appeal to the Supreme Court, it was held that the trial judge committed error in not passing on several issues of law before the trial of the issues of fact. The Court also considered the damages awarded to be excessive. For these reasons the *judgment* was *reversed* and the *case remanded* for a new trial.

Joseph J. F. Chesson for appellants. *Peter Amos George* for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

According to the record certified to this Court, the appellees have claimed ownership to lot No. 261, situated on Ashmun Street, Monrovia, Liberia, on the ground that this property was owned by their grandfather and great-grandfather, William McCall Davis, as a result of a mortgage deed given to him by one Frances M. McGill. The appellees proffered with their complaint in ejectment a deed probated and registered on April 6, 1891, naming as grantors Elizabeth L. Moore for herself and as guardian for her infant sister Fenoa Grace McGill and Caroline Augusta Haylebong, heirs of the late Frances M. McGill. According to the deed the conveyance was made because of the grantors' inability to redeem the mortgage deed.

William McCall Davis, the grantee, died in 1892, allegedly leaving a will in which all his real property

was bequeathed to his male heirs. This purported will was never proffered nor offered into evidence; hence it is not a part of the certified record before this Court. In any event, the estate was administered and closed, and thus far it is not known whether he died seized of the property or to whom the property descended. One of the male heirs of William McCall Davis was William Seton Davis, father and grandfather of the appellees, who died in 1905. There is no evidence as to whether he left a will or not, or what happened to lot No. 261 prior to his death, as no will or deed was proffered or offered into evidence.

According to the testimony of William R. Davis, Jr., one of the appellees, they, the appellees, knew nothing about lot No. 261 until 1968, when William McCall Davis' deed miraculously came into their possession, 76 years after his demise. Nine years later, that is to say, in 1977, this action of ejectment was instituted, approximately

85 years altogether since the death of William McCall Davis.

The appellants claimed ownership of lot No. 261 as a result of a purchase by the late Philip F. Simpson, appellants' father and grandfather, from the late Rev. Ashford Sims; who in turn had received it as a grant from the Government of Liberia for services rendered during a military expedition. They claimed that the deed from Rev. Sims to Philip F. Simpson had been destroyed in a fire in 1927; that lot No. 261 was willed by Simpson to his late daughter, Sarah Simpson-George; that upon failure to get a copy of the original deed from the State Department's archives, the late Sarah Simpson-George petitioned the Sixth Judicial Circuit Court in 196o for issuance of a registrar's deed in her name for lot No. 261. The court heard and granted the petition, and a deed signed by President William V. S. Tubman was issued to her for the property in 1963, in pursuance of the court's decree dated 1960. She in turn willed it to her nieces Eugenia Robertha and Elenora Simpson. Also found in the records is an indenture between Philip
F. Simpson and Sarah Simpson-George for lot No. 261 probated and registered April 7, 1942, which formed part of the petition presented to the Sixth Judicial Circuit Court in 1960.

The trial in the action of ejectment resulted in a jury verdict and final judgment, awarding $85,000 in damages for the plaintiffs/appellees. The defendants appealed.

Several issues were raised and argued during the hearing of this matter. We shall take up first those issues that we consider to be peripheral. The first issue concerns the appellants' contention that under the Judiciary Law a lawyer must have an individual lawyer's license to practice law; that where the lawyer is a member of a law firm, the firm's license alone does not give the lawyer the right to practice law; and therefore Counsellor Raymond Hoggard could not legally represent the appellees.
The trial judge overruled the objection, relying on the Revenue and Finance Law, subchapter C, which requires a law firm to acquire a license.

The Judiciary Law, published June 22, 1972, provides as follows:

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17.9. *Licenses.*

"1. *Required to practice law.* No person shall practice law or appear before any court as an attorney or counsellor at law without a valid license as a lawyer.

"2. *Licenses: by whom issued.* All licenses for attorneys or counsellors shall be issued by the Bureau of Revenues of the county or territory in which the licensee resides and be registered in the office of the Clerk of Court of the county territory."

This section is clear on its face in that all it requires is that a lawyer must have a license issued by the Bureau of Revenues before he can practice law or appear in any court. It is important to note that no fixed license fee is set here.

However, section 12.31 of the new Revenue and Finance Law, published June 20, 1977, Rev. Code, Title 36, provides a schedule of taxpayers required to obtain annual licenses and pay annual fixed license fees or professional trade levies therefor. The relevant portion reads as follows:

1. *Schedule A: Enterprises engaged in particular professions subject to fixed license fees.* Every sole proprietorship, partnership, corporation, or association engaged in a professional activity as described in schedule A subtended below shall obtain an annual professional license for which shall be paid a fixed fee of $30o in addition to the Business Registration fee payable under the

Business Registration Act, originally enacted as Commerce and Industries Registration Laws."
Law is the fifth profession in schedule A. The business
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registration fee is $ 100 for sole proprietorships and $1 so for partnerships, according to the General Business Law, Rev. Code 14:43 (3). Thus under these two statutes, a law firm must pay a total of $400 if it is a sole proprietorship, or $45o if it is a partnership.

The question now is whether each lawyer who practices law or who appears before a court must have an individual license, or whether the license fee of $450 for a law firm, as prescribed in the Revenue and Finance Law, meets the license requirement prescribed in the Judiciary Law, regardless of the number of lawyers in the firm. It is observed that neither the Judiciary Law nor the Revenue and Finance Law makes any reference to the other, and since the Judiciary Law does not fix a rate, the only amount that is required to be paid is that found in the Revenue and Finance Law and the registration fee fixed by the General Business Law. It means then that a sole proprietorship, that is to say a lawyer practicing alone, is required to pay $400; if he is in partnership with one or more lawyers, the partnership must pay $450. Under this interpretation, Counsellor Hoggard, who at the time was associated with the P. Amos George Law Firm, was properly licensed to practice law.

Another issue which is mentioned only in passing relates to the appellees' allegation that Counsellor C. Abayomi Cassell, who had been called as a witness by the appellants, had previously given a written opinion on the subject matter in the instant case to the appellees for which he had received payment. Counsellor Cassell admitted writing an opinion for the appellees some years ago but doubted that any reference was made to lot No. 261. The trial court did not pursue the matter any further, and no exception was taken to the witness's testimony on that ground. In keeping with a long line of cases, this Court cannot review issues where no exceptions were taken in the lower court, *Urey v. Republic, 5*

LLR 120 (1936), or consider an issue not included in the bill of exceptions, *Richards v. Coleman,* 6 LLR 285 (1938). This applies also to the issue concerning Counsellor Joseph J. F. Chesson, counsel for appellants, who, it was alleged in plaintiffs' reply, was previously retained by the appellees to represent them in this same matter. This was denied by the counsel. Again the court did not make a ruling on it, and no exceptions were taken; hence it cannot be considered here.

Several interesting legal issues were raised, but the court did not pass upon all of them. Some of them are:

(1) That the deed executed by Elizabeth L. Moore for herself and as guardian for her infant sister Fenoa G. McGill in favor of William McCall Davis, under whom appellees are claiming title to lot No. 261, is invalid because there is no evidence to show how the purported guardian was appointed and by what legal authority she was granted the right to sell property allegedly belonging to her infant sister;
(2) That William McCall Davis held this deed under a mortgage, and there is no evidence that the mortgage was ever foreclosed;
(3) That the description in the two deeds under which the parties are claiming ownership of the property differ considerably, and yet no effort was made to determine whether in fact the deeds related to the same property;
(4) That appellees questioned the registrar's deed which was proffered by the appellants on the ground that the deed could not convey title, that it is fraudulent and has no standing as against the deed under which the appellees are claiming title to the land; and
(5) That the appellants' answer was evasive and contradictory in that it both denies the truthfulness of the complaint and sets up a plea of justification.

These are all issues of law which should have been passed upon by the trial judge before trial of the issues of fact. Failure to pass upon the issues of law in a comprehensive manner has always been a reason for remanding the case for a new trial. *Claratown Engineers, Inc. v. Tucker,* 23 LLR 211 (1974); *Zakaria Bros. v. Pannell,* 19 LLR 170 (1969) ; *Thomas v. Dayrell,* Ts LLR 304. (1963); *Wright* V. *Richards,* 12 LLR 423 (1 957)•

Much was made of the fact that the appellants in their answer stated several defenses, in addition to denying that they are occupying premises belonging to the appelilees. Some of the defenses were estoppel, waiver, laches, and statute of limitations. The appellees contended that pleading in such a manner is inconsistent, unless the party so pleading first confesses and then avoids. Since reference has been made to this with respect to the ruling on the law issues, it seems necessary to point out that this Court in *Mourad v. Oost Afrikaansche Compagnie (0i1 C),* 23 LLR 183 (1974), held that, in keeping with section 9.3(3) of the Civil Procedure Law, Rev. Code, Title I, when a party has several claims or defenses which may appropriately be made or raised in the same action, he may state them all, but assert them in separate counts.

Further in *Claratown Engineers, supra,* at 213, with respect to determining inconsistency of defenses, it was pointed out that defenses are not inconsistent where they may all be true. Under modern code practice "a denial of allegations of the complaint and an allegation of new matter as a defense thereto in the nature of confession and avoidance are not necessarily inconsistent as not to be pleadable together. The defendant may plead by way of denial and also plead the statute of limitations." 61 AM. JUR. 2d, *Pleading,* §§ 163, 164 (1972). The rationale for this, according to this authority, is that "if the statutory

allowance of several defenses were to be limited by the strict logic of the old special pleas in bar, all special defenses would be cut off where the cause of action was denied, for such special defenses are supposed to confess

and avoid, although in fact they may not confess at all." Such an interpretation of the statute should be avoided if there is any other that will give a party his clear right to several defenses. 61 AM. JUR. 2d, *Pleading, supra, §*

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The most important issue, as in all cases of ejectment, is title, which must be established either by proof of descent or purchase. *Reeves v. Hyder, i* LLR 271 (1895). In the case at bar, proof of purchase is of no import, since the appellees are claiming ownership to lot No. 261 by virtue of their being the lineal descendants of William McCall Davis. However, the fact that they are his direct descendants does not *ipso facto* give them title to the property. Rather they must show that he died seized of the property, and that at the distribution of his testate estate they were given an executor's deed for the property. Being more specific, if it can be established that he died possessed of lot No. 261, it must be shown that William Seton Davis, his son, acquired it in keeping with the wishes of the testator; and that in a similar fashion, William R. Davis, Sr., one of the appellees, acquired title to the property.

As for the other appellees, William R. Davis, Jr., and

Mary Davis, since their father William R. Davis, Sr., is alive and is one of the parties, whatever claim they might have to lot No. 261 must depend on whether title can be traced directly from William McCall Davis, their great grandfather, to their father, and thereafter on what disposition he might make of it, assuming he has title to it.

In other words, they can assert ownership only by title and not by ties of blood. In ejectment the plaintiff must show in himself a legal title to the property in dispute to recover it. His title is not presumed, but must be established beyond question. Title and not ties of blood is the essential issue. *Cooper-King v. Cooper-Scott, 15* LLR 390 (1963).

The appellants have proffered a duly probated and

registered deed which was issued as a result of the lower court's decree, which was also proffered. A court should take judicial notice of its own decrees. The appellees have attacked the deed, but it is settled that in an ejectment action, a duly probated and registered deed is superior as evidence of title to any prior instruments or indicia which have not been duly probated and registered. *Dundas v. Botoe,* 17 LLR 457 (1966). More important is the well-established rule that a plaintiff in ejectment must recover unaided by any defects or mistakes of the defendant; he must establish his case upon the strength of his own title and not upon the weakness of the defendant's title. *Tay v. T eh,* 18 LLR 310 (1968); *Duncan v. Perry,* 13 LLR 510 (1960) ; *Williams v. Karnga, 3* LLR 234. (1931). These principles of law as a matter of public policy must be insisted upon and strictly adhered to, especially in cases of stale and belated claims where, by the passage of time, the condition of the party occupying the property in good faith has so changed that he cannot be restored to his former state.

The last issue of importance is the verdict of the jury which was in the amount of $85,000. Reviewing the record of the trial we found nothing to warrant a verdict in that amount. In fact, there was no evidence that the appellees had suffered any damage. A mere allegation is not proof; evidence must support the allegation, for it is evidence alone which enables the court to decide with certainty the matter in dispute. *Houston v. Fischer and Lemcke, 1* LLR 434, 436 (1904) ; *Jogensen v. Knowland,*

LLR 266, 267 (1895). It is true that appellees asked for only general damages which are not required to be pleaded specifically, but this does not relieve them of the responsibility of proving that such damages are traceable to, and the probable and necessary result of, the injury. According to 22 AM. JUR. 2d, *Damages, § is* (1965), "general damages are those which are the natural and necessary result of the wrongful act or omission asserted as the foundation of liability." Clearly some evidence is necessary to sustain the awarding of $85,000 as general damages.

Ordinarily a verdict will not be set aside as being excessive, but an appellate court will do so where there is no evidence to support the amount awarded; where the verdict is so grossly disproportionate to the measure of damages; and where the testimony most favorable to the successful party will not sustain the inference of fact on which the damages were estimated. *Levin v. Juvico Supermarket,* 24 LLR 187 (1975) ; 5 C.J.S., *Appeal and* Error, § 1651 (1958).

Because the trial judge erred in not ruling on all of the issues of law raised in the pleadings and because of the excessiveness of the verdict, this case is reversed and remanded for a new trial, permission being given the parties to replead if they so desire. Costs to abide final determination. And it hereby so ordered.

Judgment reversed; case remanded.