SAMUEL B. COOPER, SR., Appellant, *v.* **PETER GISSIE,** RICHARD DeSHIELD, SEKOU JABATEH, and ANTHONY BARCLAY, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 17, 1979. Decided: December 20, 1979.

1. In ejectment, the principles are definite that there must be title in the plaintiff to entitle him to ownership of the property he claims.
2. Where both sides allege that their titles derive from the Republic of Liberia, documentary evidence to support this claim must be annexed to the pleadings.
3. Where both sides trace their titles to the State for the same piece of property, and have exhibited deeds in support of their respective claims, the more recent deed is the proper subject for cancellation.
4. The principle is that plaintiff must always recover on the strength of his own title, and not on the weakness of his adversary's.
5. Our law on the correction of deeds for public land requires that the President investigates the alleged errors complained of as appearing on the face of a Government deed, and if satisfied that error exists thereon shall order the defective deed canceled, and after the deed containing the errors has been canceled by a court, he shall deliver to the applicant under his hand and official seal the corrected deed which shall be registered by the Registrar of Deeds.
6. Title, older title, and superior title have always been the controlling principles in cases of ejectment.

Appellant sued out an action of ejectment based on a public land sale deed of 1947. Appellees defended their title based on a claim traced to an 1858 public land sale deed. Appellees also challenged appellant's deed as being void because the considera-tion was not stated. Appellant then had the court, sitting in equity, order the correction be made on his deed to provide for the consideration.

At trial, a verdict and judgment of not liable were entered for appellees and on appeal, the Supreme Court ruled that the older deed bestowed superior title in the appellees. The

Supreme Court also ruled that appellant's deed was void as the procedure adopted for its correction was inconsistent with the law on the correction of errors on a public land sale deed. It therefore affirmed the judgment of the trial court.

Stephen Dunbar, Sr. appeared for the appellant. *Philip J. L. Brumskine* and *Daniel S. P. Draper* appeared for the appellees.

MR. JUSTICE PIERRE delivered the opinion of the Court.

This is a suit in ejectment, and in ejectment the principles are definite that there must be title in the plaintiff to entitle him to ownership of the property he claims. *Gibson v. Jones,* 3 LLR 78 (1929), *Yamma v. Street*, 12 LLR 356 (1956). There must be a complete chain of title from the source of all title, the State, to the parties, without missing links; and where both sides allege to be able to trace their titles to the Republic of Liberia, documentary evidence to support this claim must be annexed to the pleadings. *Walker v. Morris,* 15 LLR 424, 426,427 (1963). Where both sides trace their titles to the State for the same piece of property, and have exhibited deeds in support of their respective claims, according to the position taken in *Walker v. Morris*, cited above, the more recent deed is the proper subject for cancellation. See *Davies v. Republic,* 14 LLR 246 (1960).

Moreover, the plaintiff must be able to establish a better title and a more perfect chain than his adversary, to connect himself with the property and thereby entitle him to stand in litigation, and this is so even where his adversary's title might be faulty. The principle is that plaintiff must always recover on the strength of his own title, and not on the weakness of his adversary's, *Salifu v. Lassannah,* 5 LLR 152 (1936). These are principles known in the practice for as long as our courts have handled ejectment. With this as a background, let us look at the title positions of the parties on both sides, and we will begin with that of the plaintiff/appellant.

On the 30th of September, 1947, President Tubman signed a public land sale deed in favour of Samuel B. Cooper, plaintiff/ appellant in this case, and thereby sold to him sixty and three-fifth acres of public land in what was known at the time as Paynesville, in Montserrado County. A portion of this property is claimed by the plaintiff/appellant to have been encroached upon by defendant/appellees, as a result of which this action of ejectment has been brought.

In the complaint filed by plaintiff/appellant, he proffered one deed, issued to him in 1947

by President Tubman; and since this deed gave him title from the State he has relied upon it as the only authority upon which he claimed in the ejectment he sued out. Under normal circumstances this would seem to be in order. But defendants/appellees appeared and filed an answer, and Anthony Barclay, claiming by motion to be grantor to defend-ants, moved the court to intervene to fulfill his obligation under the terms of a warranty deed executed by him in favour of defendants; this motion was granted by court. The intervenor then joined defendants in an amended answer, to which plaintiff filed an amended reply; but we shall traverse these later.

On the appellee's side, the records before us show that on the 19th day of June, 1858, President Stephen Allen Benson caused to be carved out of the public domain in Montserrado County and in a settlement known at the time as Ammonsville, ten acres of land, and conveyed the same to Gabriel Ammons. Again on the 3rd of December, 1859, that is to say 88 years before President Tubman issued the plaintiff's deed, President Benson had executed public land sale deed whereby one hundred acres of public land were granted, sold and conveyed to the said Gabriel Ammons in the aforesaid settlement of Ammonsville in Montserrado County. These two instruments have been proffered with the pleadings in this case, and are found in the records certified to us from the trial court below. The deed for the ten acres bears the number one, and that for the hundred acres is number two.

On the 13th day of January, 1892, the heirs of Gabriel Ammons sold the second piece of property aforesaid bearing the number two in the records for Montserrado County and containing one hundred acres to Arthur Barclay; this warranty deed is also in the records certified to us from the lower court. These one hundred acres descended to Anthony Barclay, son of the aforesaid Arthur Barclay who is intervenor herein, and is defending the rights of the defendants in this case.

In December 1972, intervenor Anthony Barclay sold to Richard DeShield, and in July of 1974 he also sold to Peter Gissie and Madam Yei pieces of property from the aforesaid one hundred acres of lot number two. Both of these deeds have been annexed to the pleadings of defendants/appellees, and have also been certified by the clerk of the trial court, and they appeared in the records before us, thus completing a chain of title to the land in dispute; i.e., from the State to Gabriel Ammons, and from Ammons to Arthur Barclay and then to Arthur Barclay's son Anthony who sold to defendants/appellees.

It is important that we mention at this point that neither side has explained what appears to be a gap in the records with respect to the exact location of the property in dispute, that is to say, whether the property sold to the appellees' side by President Benson in 1859 is the

same locality as that sold to appellant by President Tubman in 1947, 88 years later. There would seem to be no controversy on this point as important as it would seem to be, therefore we have assumed that this is so; that is, that what was known in 1859 as Ammonsville, had become known as Paynesville in 1947 when President Tubman sold to Appellant Cooper. And it is upon this that we now proceed to decide the rights of the parties in keeping with the pleadings, the records before us and the law controlling in ejectment. It is also important to mention that what was known as Paynesville in 1947 when Appellant Cooper acquired title to his 60 3/5 acres is now called Paynesward.

In the amended answer which appellees filed, not only did they deny appellant's right to recover against them but they also claimed (a) that the only deed which appellant relied on and which was annexed to his complaint, is a void document because it does not contain any amount as a consideration to make it a valid contract; (b) they also say that although appellant would seem to have taken title from the Republic of Liberia - the source from which they and their privies took, their original deed is 88 years older than the appellant's, and therefore is preferred accord-ing to our practice and procedure. Let us consider these two points in the order of their presentation.

Recourse to the pleadings of plaintiff/appellant—the com-plaint and the amended reply, show that two deeds are annexed. Both are signed by President Tubman on the 30th day of Septem-ber, 1947. Both are shown to be recorded in Volume 59 and on pages 499/500 of the Archives of Montserrado County, and both are shown to have been ordered registered by Commissioner of Probate S. Raymond Horace on the 9th of October, 1947. One of these two deeds - that is, the one attached to the complaint, carries no amount as consideration in its body as should have been done. The other annexed to the amended reply shows that $30.50 cash consideration was paid into the Bureau of Revenues, as the law required. This point had been raised in appellants' amended answer, and they had contended therein that the first deed proffered with the complaint being devoid of consideration, could not support a complaint in ejectment.

The appellant must have conceded this contention, for included in the records although not attached to his amended reply, he proffered a deed which carries the $30.50 consideration as aforesaid and he also proffered the court's decree which had corrected appellant's deed to include the amount of considera-tion. That decree has been quoted hereunder for the benefit of this opinion:

"COURT'S FINAL DECREE

A decree in equity must be supported by evidence. Among the several scopes and

functions of equity is one of which being in case of mistake or omission. Petitioner in these proceedings has invoked the aid of equity to supply the amount of $30.50 which is omitted in the deed from the Republic of Liberia to him.

A deed being in the nature of a written contract is not legal unless it carries a valuable consideration.

It having appeared satisfactory to the court from both the oral and written evidence in this case, and based upon the law of contracts found in the 1956 Code, the petition be and the same is hereby granted.

The clerk of this court is hereby ordered to send a copy of this final decree to the Ministry of Foreign Affairs to be channeled to the Bureaus of Archives or wherever said deed should be recorded so as to have the same corrected by inserting the amount of $30.50. AND IT IS SO ORDERED.

Given under my hand in open court
this 24th. day of October A.D. 1973.
Sgd. John A. Dennis
ASSIGNED JUDGE, CIVIL LAW COURT"

Although plaintiff/appellant appeared to have conceded the defect in the deed proffered with his complaint, he did not withdraw either the complaint or the defective deeds but merely included in the records the judge's decree of correction as well as the deed corrected. Hence, the complaint with the defective and the corrected deeds are in the records before us to be given consideration. No where in his pleadings had he said just what effect he intended the equity court's decree and the corrected deed should have with respect to the case and the court could not do for him what he failed to do in his own interest.

Moreover, in counts 4 and 6 of defendants/appellees' amended answer, they questioned the procedure adopted for the purported correction of the plaintiff's deed in which no monetary consideration is mentioned. Here are the two counts of the amended answer raising the issue:

"4. And also because, as to counts 1, 2, and 3 of exhibit 'A,' defendants say that it is quite surprising that the said exhibit 'A' is now distinctly different from the deed which plaintiff exhibited at the conference of August 7th, 1973 to which reference has already been made, in that, the deed exhibited at the conference aforesaid did not have therein any consideration whatsoever, whereas plaintiff's exhibit 'A' now contains a monetary consideration of $30.50 (Thirty Dollars and Fifty Cents). Defendants submit in this connection, that the subsequent insertion into plaintiff's

deed of the amount of $30.50 can avail plaintiff absolutely nothing unless said alteration had been effected by a court sitting in equity, and in strict accordance with the statute controlling the correction of deeds for public lands and even then, only after proper notice had been served defendant and their grantor whose property rights were likely to be affected therein growing out of the longstanding dispute between plaintiff and defendants over ownership of the identical property in question.

6. And also because, further as to counts 1, 2, and 3 of the complaint with particular reference to count 1 thereof, defendants say that there is no evidence in the entire complaint to support the fact that plaintiff's deed of 1947 was ever corrected in accordance with the statute in that, according to the relevant statute, the procedure is that upon application of any person holding a deed for land drawn or purchased from the Government which is believed to contain errors, the President shall make such investigation as he may deem advisable, and if he finds that an error does in fact exist, he shall after the deed containing the error had been canceled by a court of equity, deliver to the applicant under his hand and official seal corrected deed which shall be registered by the Registrar of Deeds. This mandatory statutory procedure plaintiff has neglected to follow and his failure in this regard is fatal to his action in its entirety, especially since such failure establishes beyond all doubts the complete want of any kind of legal title in plaintiff."

According to these two counts of the appellees' amended answer, no valid deed was annexed to the complaint, to warrant this necessity for the appellees to have to prove their title to the land. The deed annexed to the complaint, they contended, had been shown to be defective, and the appellant's own act of seeking correction in equity is tacit admission of the deed's defectiveness. Even the procedure adopted for correcting the deed has been questioned and there would seem to be merit in the challenge against the legality of the procedure. An exami-nation of the decree correcting the deed showed that it was done in 1973; yet, the corrected deed is shown to have been signed by President Tubman in 1947—a physical impossibility, since the corrected deed could not have been signed by a President who was no longer in office. A deed for public land must be signed by the President in whose administration the correction took place.

Our law on the correction of deeds for public land requires that the President investigates the alleged errors complained of as appearing on the face of a Government deed, and if satisfied that error exists thereon shall order the defective deed canceled, and "after the deed containing the errors has been canceled by a court of equity, he, the President, shall deliver

to the applicant under his hand and official seal the corrected deeds which shall be registered by the Registrar of Deeds." Property Law, 1956 Code 29:110

According to this law, (1) the President should have ordered the deed canceled after he had satisfied himself that error or omission did appear on its face; (2) he should have under his hand and official seal signed and delivered a corrected deed to the plaintiffs; and (3) this corrected deed should then have been probated and registered in the Archives of Montserrado County. Only by this method would the law seem to have been complied with.

We know that President Tubman could not have ordered correction of a deed in 1973 when he was no longer in office; and we know that the present incumbent in the Presidential office had nothing to do with this deed because his name does not appear on its face. We also know that no corrected deed was issued after the decree of the judge, as the law required should have been done; and we know still further that the corrected deed sought to be attached to the appellants' complaint was never probated and registered as the law also required should have been done.

The decree ordering the clerk of court to send a copy thereof to the Ministry of Foreign Affairs to be channeled to the Bureau of Archives to have the same "corrected by inserting the amount of $30.50" in the already recorded document in the official records of the county, would seem to have no legal basis in this case and must therefore have to be declared a nullity.

This Court said in *Roberts v. Roberts,* 1 LLR 107 (1878), that "interlineations in deeds will be presumed to have been made contemporaneous with the execution of the instrument, unless there are reasons to suspect that fraud has been committed which is a question for the jury". Put simply, there is no valid title deed attached to the plaintiff's complaint.

In 25 AM. JUR., *Ejectment,* §26, the rule of evidence in ejectment cases is stated as follows:

> "Since in ejectment the plaintiff must as a general rule, recover upon the strength of his own title and not upon the weakness of his adversary's, where his title is controverted, the burden of proof is upon the plaintiff to establish title in himself, or at least such title to the premises in controversy as will entitle him to the possession thereof unless the defendant has a better title. Until the plaintiff has made a prima facie case by showing title sufficient upon which to base a right of recovery the defendant is not required to offer evidence of his title, and if the plaintiff fails in his proof of title, he cannot recover, however weak and defec-tive the defendant's title may be."

There does not seem to us to be any way in which the glaring and flagrant failure to have

corrected the defective deed attached to the complaint could be effected according to our law, and therefore, we cannot see how the complaint in this case of ejectment can stand.

We come now to consider the second important point in this case, to wit: older title in ejectment cases. In the case *Duncan v. Perry,* 13 LLR 510, 514-515 (1960), this Court said title, older title, and superior title, have always been controlling principles in cases of ejectment both in the English and American courts, and we know of no time when they did not control decisions in cases of ejectment in the courts of Liberia. We still maintain that position today.

In *Johnson et. al. v. Beyslow*, 11 LLR 365, 377 (1953), in which case the question of older title held by one of the parties to the same piece of property was the issue, this Court said: "An inspection of the deed proferted by respondents/appellants discloses that it was executed by the Republic of Liberia passing title to the land in question to Elijah Johnson, ninety seven years before the Immigrant Allotment Deed of S. B. A. Campbell was executed by the Republic for the same piece of land. It is evident therefore, that the President of Liberia executed the subsequent deed to objectors/appellees without being aware that the property in question was no longer a portion of the public domain, since title had vested in Elijah Johnson by virtue of the deed issued in his favour by Jehudi Ashmun." That is still a basic principle in ejectment in Liberia today.

In view of the circumstances and of the law quoted hereinabove, we have no alternative but to affirm the judgment of the trial court. The Clerk of this Court is hereby instructed to send a mandate to the trial court, commanding the judge presiding therein to resume jurisdiction over this cause and give effect to this judgment. And it is hereby so ordered.

Judgment affirmed.