CHARLES E. COOPER, Appellant, v. **FLORENCE COOPER-SCOTT**, Appellee.

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

Argued March 8, 1954. Decided May 28, 1954.

In ejectment the plaintiff must allege and prove his title to the property in question, and cannot rely upon the weakness of defendant's claim to title.

On appeal from judgment of the court below in ejectment proceedings, *judgment reversed and case remanded* with instructions that the parties replead.

R. F. D. Smallwood for appellant. *D. C. Caranda* and *T. Gyibli Collins* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

This is the second time that this case has been before us, for we remanded it during the March, 1950, term. *Cooper v. Cooper-Scott, 11* L.L.R. 7 (1951). We find no alternative but to remand it again.

About a century ago, one Hilary Teague became an insolvent debtor, and one Dixon B. Brown was appointed trustee of his estate for the creditors. The said trustee sold to Edward J. Roye a parcel of land located on the waterfront in Monrovia, which land is the bone of contention in these proceedings. Edward J. Roye died intestate. His surviving heirs were Victor L. Roye, Lionel E. A. Roye, and Matilda Roye McGill. They became tenants in common of the estate of their late father; but there is no evidence that the said estate was ever administered, distributed, or apportioned.

In 1888, Victor L. Roye, one of the heirs, and his wife, Affiah E. Roye, quitclaimed their "right, title, interest and estate" in and to Lot Number 325, Monrovia, which lot is the subject of the present controversy, to Lionel E. A. Roye, another heir. Thereafter one N. E. Carter also quitclaimed right, title and interest in and to said Lot Number 325 to the same Lionel E. A. Roye, without any record of the nature of such relationship, right, title, or interest.

On January 2, 1893, after Lionel E. A. Roye had died intestate, Victor L. Roye became the administrator and, "in pursuance of a sale had at public auction in

conformity with court's decree," sold the identical property, Lot Number 325 at the waterfront in Monrovia, to Thomas A. Mitchell, Sr., of the settlement of Millsburg, Montserrado County, for one thousand and ninety dollars, "being the highest bidder." On the same day, January 2, 1893, Thomas A. Mitchell, Sr., who had bought the lot at public auction, sold it back to Victor L. Roye for ten thousand and ninety dollars.

Victor L. Roye executed a will whereby he appointed his brother, Robert, Smith, and his uncle, Richard H. Mitchell, Sr., legatees, entitling the former to one-tenth, and the latter to nine-tenths of his estate with the following provisos : (1) "Should my uncle survive my brother and he, my brother, has no heirs, his portion of property shall go to my uncle and his heirs . . . ."; and (2) "I will, that should my brother survive my uncle, my uncle's portion of property shall go to my uncle's heirs."

It is interesting that, although Edward J. Roye died intestate, and although his estate apparently has not been apportioned among his heirs, a fact which is shown by the pertinent quitclaim deeds mentioned, *supra,* nevertheless, Victor L. Roye, in assuming the administration of his brother Lionel's estate, accepted the whole of Lot Number 325 as his brother's absolutely, and sold it to Thomas H. Mitchell who, in turn, resold it the self-same day to the said Victor L. Roye without regard to the interest of Matilda Roye McGill, who, as one of the heirs of the late Edward J. Roye, had not in any way alienated her share of the estate. Thomas H. Mitchell, perhaps upon the strength of the devise made to him under the will of Victor L. Roye, but without any showing that the said estate had been apportioned between him and Robert Smith according to the terms of the will, so as to give him his nine-tenths share, entered into leases with firms on the waterfront in Monrovia, including a lease dated June 7, 1927, to Paterson Zochonis & Co., Ltd.

In 1932 Robert F. Smith, T. Samuel A. Mitchell, and Tyler H. G. Mitchell, and in 1933 Tony Mitchell, sold the land in question to Charles E. Cooper, the original defendant in this case, in separate parcels, without showing that the property had ever been distributed or apportioned, or even under what color of right they sold it. In this manner the defendant herein came into possession of the said property. The present plaintiff on the other hand, is claiming under Clause "4" of the will of the late James B. R. McGill, a maternal grandson of Edward J. Roye, which will has been admitted to probate and provides, *inter alia,* as follows :

"I will and devise to Florence Cooper, daughter of John W. Cooper and S. A. Cooper, all of my right, share and interest in the estate of the late Honorable E. J. Roye, my late lamented grandfather."

The line of descent of James B. R. McGill from the late Edward J. Roye is not contested. But the defendant contends that, since James B. R. McGill is not a direct descendant, it was incumbent upon him to show that the devisees intervening between him and Edward J. Roye did not alienate his right and interest—a line of argument which might have had some force if the defendant had alleged that such alienation was effected by the mother of the said James B. R. McGill. But this was not alleged, since Count "3" of the defendant's answer is worded as follows :

"And also because, according to Clause "4" of the will of the late James Boyer McGill, a copy of which is annexed hereto there is nothing therein contained which gives evidence that the property which the plaintiff seeks to recover formed any part of his estate at the time of his death; nor does said will refer specifically to said property as being devised, since indeed the said testator had ancestors who were heirs to the estate of the late E. J. Roye before his time who could have easily disposed of said property before their death, and from the grandfather direct under the law of inheritance."

There is no showing of the means whereby plaintiff ascertained the extent of the interest of James B. R. McGill in the estate of E. J. Roye, or of how the executor was able to determine said interest in the execution of an executor's deed, since the said will does not show it, and no record has been adduced to show any distribution or apportionment thereof. With all these intricacies and complexities which the pleadings have not at all served to unravel, but rathe4- have rendered still more confusing, we deem it impossible for this Court to determine the issues presented.

The law of inheritance, especially in respect to the adjustment of rightful claims, is tedious, complex, and intricate, so that the greatest care should be taken in deciding cases arising thereunder. In the case at bar, with Edward J. Roye as the common ancestor, it is necessary in the apportionment and distribution of his intestate estate to take into consideration the number of direct legal heirs and from that point determine the *"stirpes."* In this case, Matilda Roye McGill would be one ; and the extent of her right, interest, and title must be determined. There is no evidence that this was ever done. Nor is there any proof that the right and interest of any of the other heirs has ever been determined, notwithstanding the several quitclaims shown in the records.

It is a fundamental principle of law in ejectment proceedings that the plaintiff must allege and prove his own title, and cannot rely upon alleged defects in the defendant's

title. *Bingham v. Oliver, 1* L.L.R. 47 (1870) ; *Savage v. Dennis, 1* L.L.R. 51 (1871) ; *Birch v. Quinn,* L.L.R. 309 (1897) ; *White* V. *Steel,* 2 L.L.R. 22 (1909) ; *Couwenhoven v. Beck,* 2 L.L.R. 364 (1920) ; 19 C.J. 1039 *Ejectment* ∫ 14; 28 C.J.S. 856 *Ejectment* ∫ 10; 18 AM. JUR. 21 *Ejectment* ∫ 20.

In the light of the foregoing, this Court has decided to reverse the judgment from which the instant appeal was taken, and to remand the case with instructions to the trial court to resume jurisdiction so that the parties may replead in a manner that will clearly and concisely, present the issues. Each party is to pay its own costs; the trial costs are to be born equally by the parties; and it is hereby so ordered.
Reversed.