JOSEPH C. DENNIS and **WILLIE A. DENNIS**, Appellants, v. **CATHERINE HOLDER** by her Husband, **S. A. HOLDER**, **ROBERT D. UREY**, **FRANCES UREY** by her Husband, **WILLIAM F. UREY**, **ROSE JEAN UREY-KENNEDY** by her Husband, **WILLIAM H. KENNEDY**, **RACHAEL UREY-JOHNSON** by her Husband, **GRAY G. JOHNSON**, **EMMA UREY**, **MARY UREY**, **AREMITA WALKER** by her Husband, **GEORGE A. WALKER**, for their Minor Children, **JAMES D. UREY** and **AREMITA UREY**, **NANCY A. WORDSWORTH** by her Husband, **WILLIAM E. WORDSWORTH**, **WILLIAM A. FREEMAN**, **JOHN R. FREEMAN**, **DANIEL E. FREEMAN**, **JULIA PHELPS** by her Husband, **MONROE PHELPS**, and **BENJAMIN G. FREEMAN**, Heirs and Legatees of the Late DANIEL W. U.REY, Appellees.

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

Argued October 18, 19, 23, 25, 26, 30, 31, 1950. Decided May 11, 1951.

1. Objections to the probate of a deed should be made at the time the instrument is offered for probate when the objector has knowledge of the transaction.

2. A party will be estopped from denying his own deed as unlawful.

Plaintiffs-appellees brought an action in ejectment against defendants-appellants for detaining certain lands. On appeal from judgment for appellees, appellees moved to dismiss the appeal on the ground that the appeal bond was defective. The Supreme Court denied the motion. *Dennis v. Holder,* to L.L.R. 301 (1950). On appeal to this Court, *judgment reversed.*

T. Gyibli Collins for appellants. *D. B. Cooper* and *R. F. D. Smallwood* for appellees.

MR. CHIEF JUSTICE RUSSELL delivered the opinion of the Court.

This case is before us on an appeal from the ruling and final judgment of the Circuit Court of the Sixth Judicial Circuit, Montserrado County.

In 1896, Daniel W. Urey, Sr., one of the oldest settlers of Careysburg, died and left a will. He bequeathed and devised to his widow, Mary E. Urey, one-third of his real and personal property. The remaining two-thirds he bequeathed and devised in equal parts to his six children, William, Mary, Daniel, Jr., Pernecy, Buchanan, and David;

and directed that the property never be divided, but descend from heir to heir as a whole.

In 1919, after most of the children had reached their majority, they approached the widow, Mary E. Urey, to give them their share of the estate. She petitioned the Monthly and Probate Court of Careysburg for assistance ; and it appointed the late W. T. Hagans and the said Mary E. Urey to apportion the estate. Their report reads as follows :

"We beg to submit our report of the apportionment of the estate of the late D. W. Urey, Sr., of Careysburg among the heirs. Upon examination of the deeds of the estate we found three thousand one hundred and fifty acres of land. One thousand and fifty acres, being one-third of the whole estate, was assigned to the widow as her third or dower; the other two-thirds, or two thousand one hundred acres, we divided into five equal parts, of four hundred and twenty acres each, among five heirs, as follows : (1) to William F. Urey heirs, the two hundred-acre block on which the house stands and two hundred and twenty acres of the thousand-acre block, making their share four hundred and twenty acres; (2) to M. E. Freeman, farm lot number eleven fronting the motor road and containing thirty acres, and also three hundred and ninety acres of the seven hundred and eighty-acre block, making his share four hundred and twenty acres ; (3) to D. Webster Urey, four hundred and twenty acres of the thousand-acre block running Southeast from lands of the William F. Urey heirs ; (4) to P. A. Deputie, farm lot number seven fronting the motor road and containing thirty acres of, and also the remaining three hundred and sixty acres of the thousand-acre block, and also thirty acres of the seven hundred and eighty-acre block making her share four hundred and twenty acres. (5) to Daniel A. Urey, seven thirty-acre tracts, and two hundred and ten acres of the seven hundred and eighty-acre block, totalling four hundred and twenty acres."

In 1928, Mary E. Urey, the widow of Daniel W. Urey, Sr., died, and, immediately thereafter, a scramble for her property began. Daniel W. Urey, Jr., and David A. Urey disposed of certain portions of the property left by the widow, among them lots number 3, 5, 7, and 9, which were sold to appellants. Other portions of the lands were also sold to parties including the late James W. Dennis, Sr., and N. T. Dennis. Following in her uncles' wake, Ellen Urey sold to appellants lot number 11. Lots number 6 and 8 were bought by appellants from the estate of the late James W. Dennis, Sr.

These events naturally caused dissatisfaction. Pernecy Urey-Deputie petitioned the

Monthly and Probate Court of Careysburg to partition the widow's dower among the heirs. The court thereupon appointed Charles A. Burke and J. E. Sims as apportioners. The report of the apportioners reads as follows :

"There were found 140 acres of land to be apportioned between D. W. Urey, Jr., and P. A. Deputie as follows : For D. W. Urey, Jr., 70 acres of land from block number 8. For P. A. Deputie, to acres of land from block number 8 ; 30 acres from block number 6 ; 30 acres from block number 14.

"There were 540 acres of land remaining as widow dower in lieu of blocks numbered 1, 3, 5 and 9, of 120 acres of land, being part of the said widow dower sold to J. C. and W. A. Dennis by D. A. and D. W. Urey, Jr.; and also 60 acres of block number 3 sold to N. T. Dennis by P. A. Deputie, all being of the widow dower. We apportion to the heirs of F. W. Urey and M. E. Freeman, the following tracts of land :

"To F. W. Urey heirs, lots numbers 4 and 6, of 30 acres each ; in all, 6o acres. To M. E. Freeman heirs, lots numbers 10 and 12, of 3o acres each ; in all, 6o acres. The remaining 430 acres have been apportioned as follows :

"To F. W. Urey heirs, farm lot number 8, containing 30 acres ; one half farm lot number 20, containing 15 acres; farm lot number 8, containing 6o acres; in all, 105 acres.

"To M. E. Freeman heirs farm lot number 3, containing los acres.

"To D. W. Urey, Sr., farm lot number 3, containing 74 acres, farm lot number 2, containing 30 acres; in all, Jos acres.

"To P. A. Deputie, farm lots numbers 1, 9, 18, 19, and one half lot number 20; in all, 105 acres ; of which lot number 19 was given F. W. Urey heirs." In distributing the property, the apportioners assigned to the heirs who had made previous sales the identical parcels which they had sold, the other heirs receiving equal portions. There appeared to be no dissatisfaction regarding this partitioning; and all was quiet until about eleven years thereafter, when the present action was instituted.

At that time, the appellees, as plaintiffs in the court below, complained that the defendants, now appellants, were wrongfully detaining lots numbers 2, 3, 4, 5, 6, 7, 8, 9, and 11, and adduced, as proof of title, a copy of a deed from Benjamin G. Freeman and M. E. Freeman to Francis W. Urey and M. E. Urey, executor and

executrix of the estate of Daniel W. Urey, for lots numbers 1, 3, 5, 6, 7, 8, 9, to, 11, 12, 13, 15, 17, and 19, comprising four hundred and fifty acres, which were to be held "in trust for the heirs of the said estate to their use and behalf forever." The appellees, in their argument before this Court, centered their position on the decision of the late Judge Summerville that the Probate Court was without equity jurisdiction and hence could not legally apportion said property in view of the limitations couched in the will of Daniel W. Urey, Sr. Appellees also contended that those heirs who had sold the lands in question which originally formed a part of the estate of Daniel W. Urey, Sr., had done so illegally, hence the titles they sought to convey were nullifies.

The appellants contended that, inasmuch as said lands were bought "in trust for the heirs of said estate to their use and behalf forever," it was their right to have same apportioned when they reached their majority, and to dispose of same as they saw fit; and that the construction which appellees were seeking to apply to that clause of the will of the late Daniel W. Urey, Sr., that no portion of the estate should ever be sold but should descend from heir to heir, tended to create perpetuities which the law looks upon with disfavor. Appellants also adduced a copy of a list from the Bureau of Revenues showing that the several parties had been paying their taxes separately on the pieces of land assigned them in the report of the apportioners.

The appellants contended further that the appellees were estopped from contesting title to said property since : (1) B. G. Freeman, one of the heirs, and an appellee in this case, witnessed the deed of sale for lot number 2, and also offered for probate said deed in the Monthly and Probate Court at Careysburg; (2) R. D. Urey, also one of the heirs, and an appellee herein, witnessed the deed of sale for lot number it, sold by his sister, Ellen D. Urey-Walker, one of the heirs and an appellee in this case ; (3) Nancy Freeman Wordsworth, one of the heirs, and an appellee in this case, witnessed the deed of sale for lot number 11 ; and (4) William E. Wordsworth, who is a party to this suit as one of the appellees, representing his wife Nancy Freeman Wordsworth, one of the heirs, witnessed the deed of sale to appellants for lots numbers 6 and 8. These affirmative acts, the appellants contended, were sufficient to bar appellees' recovery, on the principle that a party cannot take advantage of his own illegal acts.

In *Reeves v. Hyder, 1* L.L.R. 271 (1895), the Court held that, by statute, the probate of a deed makes it legal evidence. If there are objections to probate, where the party has knowledge of the transaction, the objections should be made at the time the instrument is offered for probate.

In the sale of lot number 2, Benjamin G. Freeman, a lawyer, not only witnessed the

deed, but also offered same for probate before the Monthly and Probate Court of Careysburg. Such an act on the part of an attorney is, in our opinion, an affirmative one, and, where he had a personal interest, is construed as agreement with what was done. Thus, having had due notice, he could not later attempt to nullify the validity of the deed by denying the legality of his acts.

The case of Ellen D. Urey-Walker is even more to the point. She, in her own right, alienated to appellants lot number 11, transfer of title to which was witnessed by her brother, R. D. Urey, who, along with his sister, is one of the appellees in this case. It is difficult to understand how this appellee, knowing that she had sold a portion of the properties in question, could come before a court of law and seek to have the court make null and void the sale of lot number 11 for which she had freely received a valuable consideration. In *East African* Company *v. Dunbar, 1* L.L.R., 279 (1895), involving ejectment, this Court held that the plea of estoppel, if founded in truth, will prevent a party from denying his own acts or deeds. Neither law nor equity will permit a party or his privies to impeach his own acts. Furthermore, in *West v. Dunbar, 1* L.L.R. 313 (1897), involving ejectment, which reaffirmed *East African Company v. Dunbar, supra,* it was held that, under the doctrine of estoppel, a party who makes an illegal contract will not be allowed to take advantage of his own wrongs by showing its illegality; nor can he seek relief at law or in equity, either to enforce or annul his illegal act; estoppel will not permit it. Thus, in *West v. Dunbar, supra,* a lease of lands to a foreigner for fifty years, although repugnant to the Constitution, was not set aside.

Application of the principles enunciated in the above rulings shows clearly that the appellees endeavored to take advantage of their own illegal acts, and to annul the titles of appellants upon the ground that the appellees had assigned such titles illegally. This Court has ever and anon frowned upon such deceptive practices. They tend only to stir up strife and ill will.

The instance of Ellen Urey-Walker is particularly reprehensible. She, of her own free will, and for a valuable consideration, transferred lot number 11 to appellants. She made no allegation of duress, or of any kind of compulsion in the assignment of the property. Yet she has come before a court of justice to nullify her own act, and to deprive the appellants of the lands she freely transferred to them, as well as of the fruits of the labor they expended thereon. Such a deed is unrighteous and unjust. This Court will frown upon and discourage all such acts.

Lastly, we will consider Count "2" of the appellants' bill of exceptions which states that, although defendants raised the plea of estoppel against plaintiffs' disaffirmance

of the division of the widow's dower, as approved by the Provisional Monthly and Probate Court of Careysburg, and as conceded by the letter of Benjamin G. Freeman, one of the plaintiffs, said court dwelt only on its lack of jurisdiction to order division of said estate.

We find further in *East African Company v. Dunbar, supra* (at 1 L.L.R. 280):

"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 meet the sanction of the courts of law. Nothing would work greater injustice than for a man to execute a note or deed in favor of another, and then attempt to prove its unlawfulness. In law he would be estopped, or hindered from doing it, and if such acts committed by any party, no matter in what capacity acting, becomes a question of lawfulness, neither the party himself, nor anyone representing him, should be allowed to impeach his own deed, note or acts. In this the court below greatly erred. The court should have sustained the plea and abated the suit in its very commencement, . . ."

Viewing this case from all angles, we are of the opinion that the court below erred when it refused to give consideration to appellants' contention that appellees were estopped from bringing this suit to deprive appellants of property, using as grounds their own illegal acts. This Court is of the opinion that the plaintiffs, now appellees, ought not to recover; and that they are estopped from bringing this suit, because they were directly or indirectly concerned in the perpetration of the acts complained of, either as lawyers, as witnesses, or as alienators; and, more especially so, when they themselves appealed to the Monthly and Probate Court of Careysburg for partitioning of the property. For the above reasons, we are of the opinion that the judgment of the court below should be reversed with costs against the appellees.
Reversed.