JAMES W. DRAPER and CHARLOTTE S. DRAPER, Appellants, vs. JAMES WILSON, CHARLOTTE HARRIS and BENJAMIN HARRIS, Appellees.
LRSC 1; 1 LLR 126 (1880)

[January Term, A. D. 1880.]

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

Reply-Complaint-Mixed questions.

1. Where a reply is adjudged insufficient, judgment shall be given for the defendant; where a reply is not filed within ten days after notice of the filing of the answer the plaintiff is presumed to rest upon the denial of the truth of the answer only, but where an indistinct or insufficient reply is filed judgment shall be given for defendant.
2. A complaint which is indistinct with respect to the parties to a suit is bad.

The ejectment in this case, which comes up on appeal from the Court of Quarter Sessions, Sinoe County, was brought by the present appellants to recover possession of a certain piece of land, the title to which they claim has come to them as an estate of inheritance, etc.

In reviewing the proceedings of this case, as presented by the record, we must remark that very few if any cases have come before us burdened with greater complications and legal mistakes than appear in this case.

The first exception taken by the defendants is because the court below ruled "that the plaintiffs' reply be abated, and they rely upon the grounds taken in their complaint."

The Supreme Court is of the opinion that the ruling of the court below on this point, as set out in the bill of exceptions, is erroneous, and unwarranted by the statute and common law. Because if the court upon inspection had discovered the insufficiency of the reply, its duty was to have given judgment for the defendants. And no consideration whatever ought to have induced the court to apply any other principle to an insufficient reply, but that embraced in the fifth section of the law on the 27th page of Liberia Statute, Book 1.

When the plaintiff fails to reply to the defendant's answer within ten days after he has notice that it is filed, the law directs that he shall be obliged to rest his case on the denial of the truth of the answer only; but when the reply is not distinct, intelligible and sufficient, judgment shall be given for the other party.

The second exception is to the ruling of the court below, to the effect that the plaintiffs' complaint is sufficiently distinct and intelligible. On inspection of the complaint, this court finds a want of distinctness therein in respect to the names of the plaintiffs in this action. In the same complaint it is made to appear that one Charlotte Harris is the wife of Benjamin Harris, and also that one Charlotte Wilson is the wife of Benjamin Harris, and that both of these females, together with James Wilson and Benjamin Harris, are plaintiffs. Charlotte Harris is set out as one of the surviving heirs at the commencement of the complaint, but at the conclusion thereof Charlotte Wilson's name is substituted. Now the question as to whether Charlotte Harris is the same person called Charlotte Wilson, or whether they are two separate persons, ought to have been distinctly set out. The complaint must be distinct and intelligible so as to enable the court to know for or

against whom it should give its decree or judgment. To guard, therefore, this principle of the law, the court says the Court below erred in ruling that the complaint was sufficient.

The third exception is taken to the court proceeding to try a mixed question before the questions of law contained in defendants' answer were disposed of; but the question referred to not being stated or laid in said exception, the court will not give any expression with regard thereto.

As to the fourth exception, to the court ruling that the third point in defendants' answer was a question of law, we are of the opinion that the said count manifestly contained a mixed question of law and facts,—the jurisdiction of the court, and the acts of the guardian. And the mixed nature of the question is also presented in the judge's ruling on said count, in which he says: "The facts appearing that Henderson Wilson acting in the capacity of guardian did make a prayer to the Probate Court of this County, and did obtain an order and did sell said property or estate in question, which is in contradiction to the power and right granted by the statutes of Liberia, and that of the common law as set forth in the commentaries on American law by Kent," etc.

Now the acts performed by the guardian were questions of fact, while the right of the court to invest him with the authority to perform the acts was a question of law. The judge therefore erred in his ruling on this point.

The fifth exception is taken by the defendants, now appellants, because they are of the opinion that the final judgment is erroneous because it finally disposes of real property and settles the title of the same without the assistance or intervention of a jury.

To this we would say that in actions of ejectment the titles of parties to real property ought to be determined by a jury under the direction of the court, unless the law otherwise directs; and the ruling of this court in the case of Harris against Locket at its January term, 1875, was that "Ejectment being an action involving a mixture of questions of law and facts, must be tried by a jury.',

For these errors the judgment of the court below is reversed and appellees ruled to pay costs.