ABAYOMI KARNGA, Appellant, v. **HENRIETTA M. WILLIAMS**, **WILLIAM O. DESHIELD**, and **JAMES H. DESHIELD**, **Jr.**, Appellees.

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

Argued November 30, December 2, 7, 1948. Decided January 6, 1949.

1. It would be a dangerous precedent if courts were to allow their ministerial officers, making returns to precepts issued to them in judicial proceedings, to issue certificates beyond their official returns already made and of record.

2. Since the defendants were summoned on successive days, without stating on which date each of them was summoned, out of fairness and to avoid confusion where the various defendants could have elected to file a joint answer, the computation as to the time of their appearances and the filing of their answers should commence from the last named day and date.

3. Since the Constitution of the Republic guarantees to each citizen the right to the acquisition, protection, and defense of property, the legal procedure to contest this right should be meticulously and jealously prescribed and guarded.

4. For this reason, where a defendant in an action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default.

5. For this reason, the statutes also provide that there shall be placed upon the property, the subject of the action, copies of the summons and re-summons as further assurance that the defendant or defendants will have due notice of the pending action.

6. In ejectment one verdict and one judgment in a party's favor are not conclusive evidence of title even as against the party whose interest is adversely affected by said verdict and judgment.

At the previous term this Court denied a motion to dismiss this appeal from a verdict and judgment in favor of plaintiffs, now appellees, in an action of ejectment. 10 L.L.R. 10 (1948). Now, on appeal, *judgment reversed and case remanded.*

A. W. Karnga and *D. C. Caranda*for appellant. *Benjamin G. Freeman, Richard A. Henries,* and O. *Natty B. Davis* for appellees.

MR. JUSTICE SHANNON delivered the opinion of the Court.

Before the Civil Law Court of the Sixth Judicial Circuit, Montserrado County in its law division, in the March term, 1947, Henrietta M. Williams, William O. Deshield, and James B. Deshield, Jr., plaintiffs, now appellees, instituted an action of ejectment against Abayomi Karnga, appellant, and sundry other persons as defendants. Only Abayomi Karnga among the said defendants appeared and filed an answer, the rest failing or declining to do either or both. The pleadings reached the surrejoinder of the plaintiffs, and when the cause was assigned and came up for hearing before His Honor Edward Summerville, the presiding judge, after hearing the legal pleadings, dismissed the answer of defendant Karnga upon the ground that it was not filed within ten days after the notice of the complaint was served upon defendant as required by statute, thus confining the defense to a bare denial of the facts stated in the complaint. Because of this ruling, other issues raised in the answer of the defendant which the court characterized as "salient contested law issues" were not disposed of. The trial resulted in a verdict and judgment for the plaintiffs and it is from this judgment, together with the other several rulings of the trial judge, that this appeal is taken and brought before this Court.

During the argument before us it became patently apparent that the crux of the entire case hinged upon the legal question of whether or not the trial judge properly dismissed defendant Karnga's answer and ruled the case to trial upon a bare denial of the facts stated in plaintiffs' complaint and upon that only. This ruling sustained count one of plaintiffs' reply which reads as follows:

"Because plaintiffs say that the answer should be dismissed and defendant left to rest upon the bare denial of the facts in that even though Abayomi Karnga, one of the defendants aforesaid, was summoned on the 6th day of February, A. D. 1947 and was on said day and date delivered a copy of the plaintiffs' complaint as will be more shown by copy of the Sheriff's certificate herewith attached and marked exhibit 'A' and made a part of this reply, he should have filed his answer on or before the 16th day of February, A. D. 1947. Having failed to do so said answer was thereby filed out of the statutory time and should be dismissed and plaintiffs so pray."

In response to this defendant Karnga in count one of his rejoinder pleaded the following:

"Because the defendant says to count one of plaintiffs' reply the defendant's answer was filed in time in keeping with law, that is within ten (10) days after his appearance ; said reply ought therefore to be dismissed. And this the defendant is ready to prove."

The trial judge's ruling on this issue as taken from the records is as follows:

"Reviewing the written pleadings we find that the answer of the defendant contained all of the salient contested law issues in this case, the subsequent pleadings being only a traverse of the answer and the reply. The parties have argued all of the law issues and it becomes our duty to pass on them, but since the answer is attacked on the ground that it was filed out of the time required by statute, said answer should be dismissed. In other words defendant having failed to file an answer within the time required by statute he is to be considered as not having any answer at all in court. We feel that this point should claim our attention, because if the defendant has no legal answer in court then it follows that there is hardly any need for us to consider the points therein since there is an illegally filed answer which would have to be dismissed together with all of the defenses therein pleaded.

"Count one of the reply avers that defendant [Karnga] was summoned on the 6th day of February, A. D., 1947 and was on said day and date delivered a copy of plaintiffs' complaint by the Sheriff, and defendant should have in keeping with statute filed his answer ten days after he had notice of the filing of plaintiffs' complaint, that is to say on the i6th day of February, A.D. 1947, instead of which defendant filed his answer on the seventeenth day of February, A. D. 1947, that is to say eleven days after he had notice of the filing of the complaint. Defendant in his rejoinder does not deny that he was summoned on the 6th day of February, A.D. 1947 (which in law we must consider as an admission on his part that he was summoned on the 6th day of February aforesaid) but defended his answer by saying that he filed it ten days after his appearance or ten days after he had notice of the filing of the complaint. The law on this point is as follows :—

" 'Every answer must be filed within twenty days after the appearance of the defendant, provided that the complaint shall have been filed before the expiration of ten days from the said appearance, otherwise it shall be filed within ten days after the defendant shall have received notice of filing the complaint.' (See Old Blue Book Statute, pg. 26, sec. 5 [ch. V, 2 Flub. 1540]).

As we see it the only time when an answer may be filed after the defendant's

appearance is when the complaint is filed after the appearance, but when the complaint is filed at a time the suit is instituted as was done in this case, the answer must be filed ten days thereafter.

"The defendant in his argument observed that he did not consider the fact that the Sheriff served a copy of the complaint on him at the time he was summoned, notice of its filing within the meaning of the law. This point, however, was never raised in the rejoinder so as to warrant us making expression thereon; we might mention, however, that the Supreme Court has always held that when a copy of the complaint is served on the defendant at the time he is summoned this serves as a sufficient notice of the filing of the complaint and this position is in agreement with the common law. See 3 B.L.D. under NOTICE [2368 (Rawle's 3d rev. 1914)]."

At first blush the conclusion of the trial judge would seem to be correct as the principles enunciated have support under our statutes; but let us see how far they are suited to the facts and circumstances presented in the records.

Upon the institution of the action by the plaintiffs against Abayomi Karnga and seventeen other defendants, a writ of summons was issued by the clerk of the trial court directing the summoning of the said defendants and requiring them to appear at the said clerk's office "on or before the loth day of February A.D. 1947," at which time the ministerial officer was also to make his returns to said writ as evidence of his service. Accordingly, on February 8, 1947, the said officer made the following returns endorsed on the back of the writ:

"On the 6th, 7th, and 8th days of February, A. D. 1947, I duly served within writ of summons on the within named defendants and I left the copy of the within complaint on Abayomi Karnga, being the first named defendant; and not having sufficient copies to be left with each within named defendants; I further notified them to file their formal appearance with the clerk at his office on or before the loth day of February, A.D. 1947, I now submit this as my official returns to the Clerk's office. Dated this 8th day of February, A. D. 1947,

"URIAS DIXON,
Sheriff, Mo. Co."

The returns thus made were filed in the clerk's office on February 10, 1947, as certified by the clerk of said court. Following the directions and requirements of said writ of summons, defendant Karnga appeared on February 1o, 1947. On February 17,

1947, defendant filed an answer in which he did not associate himself with the other defendants, and it is this answer which the plaintiffs contended was out of time, claiming that defendant Karnga having been summoned on February 6, 1947 (though the returns of the sheriff do not so state specifically), should have filed his answer not later than February 16, 1947. As evidence of their claim that defendant Karnga was summoned on February 6, 1947, plaintiffs made profert of a certificate from the same sheriff who made the returns above quoted, which certificate is as follows:

"OFFICE OF THE SHERIFF OF MONTSERRADO COUNTY, MON., LIBERIA.

"CERTIFICATE.
"This is to certify that on the 6th day of February, A.D. 1947, I served a writ of summons directed duly issued from the clerk of the Civil Law Court for the sixth judicial circuit, Montserrado County, on Abayomi Karnga, one of the defendants named in an action of ejectment proceedings in which Henrietta Williams, W. O. Deshield and James H. Deshield, Jr. are pleading plaintiffs and on said day and date left with him the copy of the plaintiffs' complaint which was handed to serve on the defendants along with the writ of summons.

"Given under my hand and official signature this 26th day of February, A.D. 1947
"URIAS DIXON,
Sheriff for Montserrado County."

Whilst it is true that the defendant in his rejoinder did not join issue with count one of the plaintiffs' reply which is founded upon this certificate of the sheriff which ordinarily would be accepted as an admission of its correctness ; nevertheless we are of the opinion that it would be setting a dangerous precedent if we were to allow ministerial officers of court, making their returns to precepts issued to them in judicial proceedings, to issue certificates beyond their official returns already made and of record. It would eventually lend aid to the direct encouragement of the whims and notions of certain parties litigant or their counsel, resulting in obvious travesties of justice.

It appears to us that since the returns of the sheriff show that the defendants were all summoned on February 6, 7, and 8, 1947, without stating on which date each of them was summoned, out of fairness and in order to avoid confusion where the various defendants could have elected to file a joint answer, the computation as to the time of their appearances and the filing of their answers should commence from the

last named day and date. The reasonableness of this position is the more apparent where in such a case, were we to accept the view taken by the plaintiffs and supported by the trial court, the defendant allegedly summoned on February 6 would be out of time to have filed an answer on February 17 or February 18, and those summoned on February 7 would be late in answering on February 18. An unwilling separation of defense would be imposed.

This is a well-grounded legal proposition since the defendants were all grouped in one action under one complaint with one certified copy thereof furnished to be served on all of the defendants. They might have elected to join their defense. A different result might possibly obtain where the returns and not an independent certificate had shown on precisely what day and date defendant Karnga, or possibly each of the other seventeen defendants, was summoned.

In passing, we would observe that the statutes of the country are somewhat more rigid in the conduct of cases in ejectment than they are with respect to many other civil cases. Since the Constitution of the Republic guarantees to each citizen the right to the acquisition, protection, and defense of property, the legal procedure to contest this right should be meticulously and jealously prescribed and guarded. For this reason, where a defendant in an action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default; the statutes further provide that in this instance there shall be placed upon the property, the subject of the action, copies of the summons and re-summons as further assurance that the defendant or defendants will have due notice of the pending action. We quote the relevant statute :

"In ejectment there shall be no writ of attachment or of arrest, nor any bail required, but on a return of a writ of summons, the plaintiff, having filed his complaint, if the defendant do not appear, may cause a copy thereof, together with a copy of the writ of resummons, to be set upon the property claimed, ten days before the return day of the re-summons, and for that purpose may have a writ of re-summons, although the writ of summons may have been returned summoned ; and if the defendant do not appear within four days after the said return day, the plaintiff shall be entitled to a judgment by default." Stat. of Liberia (Old Blue Book) ch. II, § 36, 2 Hub. 1553.

There is no evidence of record that this course was followed or even that a judgment by default was ever requested and entered against the other defendants who did not appear which would have authorized the court to perfect it against all of them, as was done in the judgment before us.

There is additional evidence of the zealousness with which real property is guarded. One verdict and one judgment in a party's favor are not conclusive evidence of title even as against the party whose interest is adversely affected by said verdict and judgment. We quote:

"A verdict and judgment in ejectment shall be evidence, but not conclusive evidence of title, but two verdicts in actions between the same parties or those under whom they claim, in favor of the same side, shall be conclusive, unless it is shown that there has been a verdict and judgment the other way, and even in that case, three similar verdicts and judgments shall be final and conclusive." Stat. of Liberia (Old Blue Book) ch. XI, § 20, 2 Hub. 1552.

It is seen, therefore, how particularly careful courts ought to be in deciding cases affecting real property and how meticulous parties should also be in prosecuting such causes.

Because of our unwillingness to agree with the ruling entered by the trial judge dismissing defendant Karnga's answer on the alleged ground that it was filed out of time, it is our opinion that the final judgment entered should be reversed and the cause remanded for trial as if the legal pleadings had not been disposed of, barring counts one of the reply and one of the rejoinder, and from that stage the cause should proceed to final determination of same according to law, costs to abide said final determination; and it is hereby so ordered.

Reversed.