Mary F. Kpoto of the City of Monrovia, Liberia Plaintiff/Appellant versus **Percy Williams** of the City of Monrovia, Liberia, by and thru his Attorney-in-fact, **Ayo William**s Defendant/Appellee

APPEAL. JUDGMENT REVERSED.

Heard: March 18, 2008 Decided: June 27, 2008

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

In January 1962, Anthony Barclay filed a bill in equity to remove cloud from title against Igal Ammons, Elizabeth Ammons, Jemima Ammons, Lemuel Ammons and Caroline Ammons-Smythe, heirs of Gabriel and Henry Ammons. Following a trial during the September Term, 1965 of the Civil Law Court presided over by His Honor Judge Joseph P. H. Findley, the Court entered the following decree on November 8, 1965.

COURT'S FINAL DECREE

"'Where the plaintiff claims an interest in a thing. A proceeding quasi in rem may be brought in cases where the plaintiff claims an interest in a thing and asserts that the defendant claims an adverse interest. Thus, the plaintiff may bring an action to quiet title to land or to remove a cloud on title. In such a proceeding, the plaintiff asserts his claim to the land and alleges that a particular person or particular persons are claiming an adverse interest. A valid judgment establishing the plaintiffs claim cannot be collaterally attacked by the defendant or dependents, even though they were not personally subject to the jurisdiction of the court'. . . ."

"'Where the court has jurisdiction over the defendant as well as over property. In a proceeding quasi in rem where the court has jurisdiction over the property which is the subject matter of the proceeding, it may also acquire jurisdiction over the defendant personally, either by service of process upon him or by his appearance. In such a case, the court has jurisdiction not only to render a judgment with respect to interest in the property but also to render a personal judgment against him for costs or damages or otherwise. . . . So also, if the defendant appears generally in the proceeding and litigates a question, the determination of the question is res judicata in a subsequent action between him and the plaintiff. . . ."

"'Personal liabilities. In a proceeding quasi in rem to determine interest in property, the court cannot give a valid judgment imposing a personal liability upon the

defendant if it does not have jurisdiction over the defendant, if it does not have jurisdiction over the defendant. If, however, the court acquires jurisdiction over the defendant personally, by personal service of process upon him or by substituted service of process if he is domiciled within the State or by his general appearance in the action or otherwise, the court may not only render a judgment with respect to the defendant's interest in the property but may also render a personal judgment against him'. . . ." Restatement of the Law by the American Law Institute, *Judgments,* §§ 75 (b), 3 (b) and (c).

"On February 3, 1962, petitioner Anthony Barclay filed the present cause, a "bill in equity to remove cloud [on] title" against the respondents named herein above in the title of this action. The respondents, being duly summoned, appeared and filed their appearance in the office of the clerk of court on February 7, 1962, and after the pleadings rested, His Honor Judge John A. Dennis ruled the case to trial "on counts 1 to 5 of the complaint and prayer for relief, [counts] 9, 15, and 16 of the reply, and [counts] 4 to 8 of the sur-rejoinder; counts 7 and 8 of the answer, and [counts] 9 and 10 of the rejoinder. . . ." The case came up for hearing and final determination before us at this term.

"The complaint itself is a five-count bill, and in it petitioner sets out the following:

"1. That he is owner of "448 acres, 3 rods and 16 perches" of land in Paynesville on an area "called in former years Ammonsville." He made profert his deeds as exhibits "A," "B," "C," "D," "E" and "F." Looking at the complaint closely, and inspecting the exhibits as certified for filing, we find that exhibit "A" is for (100) acres of land sold to Arthur Barclay by Mary Freeman and J. B. Ammons, heirs of Gabriel Ammons of Monrovia, in 1892; exhibit "B" for (25) acres sold by the same grantors of the hundred acres to the same grantee in 1894; exhibit "C" for (73) acres, 2 rods and 16 perches from the Republic of Liberia, by and through President J. Jas. Cheeseman, to Arthur Barclay in 1895; exhibit "D" for (70) acres of land from the same Republic [of Liberia], by and through the same President [J. Jas.] Cheeseman, to the same Arthur Barclay in 1895; exhibit "E" for (30) acres of land from Henry Ammons to Arthur Barclay in 1896, signed by Simmia Ammons; and exhibit "F" for (150) acres of land from Pleh alias Joe Clark, Yarley alias Charlie Clark and Johnny Clarke, heirs of the late Joe Clarke of the township of Paynesville, to Anthony Barclay in 1953.

"Exhibit "A" is for "lot no. 2;" exhibit "B" is for "the numbers or parts 1 and 2;" exhibit "C" is for "the no. 4;" exhibit "D" is for "the no. 3, range first;" exhibit "E" is for "the no. 3;" exhibit "F" is for land petitioner is occupying "contiguous to"

grantors and according to a "plot drawn by the late Severin George, a surveyor, in the year 1894. . ."

"Petitioner states further that he and his predecessor, the late Honorable Arthur Barclay, his father, to whom he is privy in blood legally, have been in possession of "the greater part of said (448 acres, 3 rods and 16 perches) land for over sixty years to the institution of this suit.

"2. That by virtue of the allegation aforesaid, petitioner claims legal as well as equitable ownership to this reality as against the respondents, none *of whom he alleges are in actual possession of said property, nor any part thereof, but that these respondents, naming Igal Ammons specifically, claim "some purportable interest in and to the said lands, or to some part thereof, the exact nature of which claim and location is to them (respondents) indeed and in truth and to petitioner unknown," and this he, petitioner, contents casts a cloud upon his title which he would like this court to quiet, that is quiet title to the land and remove this purported cloud, especially and more so under the statute of limitations" since petitioner and his forebears have owned and used this parcel of land for over sixty years unmolested by any action at law or equity by any of the respondents, or person or persons claiming under them.*

"3. Then petitioner prays that respondents be called into chancery to show cause why an issue should not be framed into this court between them, the parties, for the settlement of this issue, to the effect of (a) decreeing petitioner free-simple owner of the property subject of this litigation and that title to this fee be quieted and that respondents' claims be removed, and (b) that respondents' "claim or demand of, in and to the aforesaid lands and every part and parcels thereof, and from prosecuting or attempting to prosecute any suit in chancery, or action at law to obtain the possession thereof or title thereto or any interest or estate therein," with our usual prayer for general relief [which] the court may seem just and equitable.

"We have already stated in our opening remarks to this ruling that "in cases where the plaintiff claims an interest in a thing and asserts that the defendant claims an adverse interest . . . plaintiff may bring an action to quiet title to the land or to remove a cloud on title. . ." We cited our authority which is patently manifest and obvious from sheet one of this ruling. Now let us see to what extent may the court grant such a relief, and [whether] its office of relief is in consonance with counts four and five of the petition, as well as petitioner's prayer as summarized in count three of our epitome of the complaint.

"Mr. Justice Reeves, speaking for the Supreme Court of Liberia, in *Republic v. Massaquoi,* 10 LLR 350, 358 (1950), "Bill in Equity against the Republic . . . for the cancellation of an instrument to remove cloud on the title of real property" . . . had this to say for and on behalf of the Court, and he was quoting from *American Jurisprudence:*

"The rule is that equity will not enter a partial or incomplete decree. Having taken cognizance of a cause for any purpose, a court of equity will ordinarily retain jurisdiction for all purposes; decide all issues which are involved in the subject matter of the dispute between the litigants; award relief which is complete, and finally dispose of the litigation so as to make performance of the court's decree perfectly safe *to those who may be compelled to obey it, accomplish full justice between the party litigants; and prevent future litigation. All persons who are interested in the subject matter of dispute will be brought before the court in order that there may be entered and enforced a complete and effective decree which will finally adjust the rights of all concerned"* (emphasis supplied by the court).

"We are of the opinion, and considerably so, that the petition meets the foregoing citation in all respects, and having met it, a writ of summons as aforesaid was accordingly issued and served upon the respondents who appeared and put in their defense which Judge Dennis ruled should [be] considered at the trial from counts (7) and (8) of the answer, and counts (9) and (10) of the rejoinder. Looking at these counts of the respective pleadings, here is what we find:

"(1)In count (7) of the answer,. "respondents say that the late Arthur Barclay, father of petitioner, was lawyer for respondents' grandfather and father during their life-time and as a result of which some deeds belonging to respondent's *(sic)* father were *(sic)* giving *(sic)* to their lawyer for safe-keeping, but which deeds were illegally detained by petitioner and refused to turn over to respondents," to quote count seven of the answer. This, in our opinion, seems to suggest that the title upon which respondents rely in this litigation is among such deeds which the petitioner's father received from respondents' forebears as they allege, and normally according to our practice and law, they should have given notice that they would call upon petitioner to produce this deed or such deeds as they so rely upon by the suggestion in said count of the answer. Of course, count eight (8) of the answer is the usual general denial of "all and singular the allegations of petitioner as contained in his complaint, not made the subject of a special traverse" in the answer, and so this amounts to a bare denial or general [denial].

"In count (15) of the reply, also ruled to trial, petitioner denies this allegation in count (7) of the answer.

"(2) Then in court (9) of their rejoinder, respondents insist and "submit that they are prepared to produce witnesses on the stand to prove that the late Arthur Barclay, father of petitioner, did come in possession of deeds belonging to their grandfather and father by virtue of his (Arthur Barclay) *(sic)* relationship as counsel for the late Gabriel and Henry Ammons and which deeds were in possession of petitioner when he asked respondents to sell or exchange their land for another which he pointed to them and went so far as to get a surveyor to have said land surveyed as late as 1960-1961 . . ." and count (10) of the rejoinder is also a general denial of facts not specifically traversed in the rejoinder as to the reply. This allegation petitioner denies in count (8) of the rejoinder which is also ruled to trial.

"These are the issues we took upon ourselves to try and determine, notwithstanding the protracted time that attended this trial at respondents' instance. We will now examine the facts, or rather evidence adduced at the trial.

"A. Petitioner

"(1). Witness Anthony Barclay. On October 14, 1965, petitioner took the witness stand, and in support of his complaint reaffirmed it by oral testimony, and introduced into evidence as support of his possession of and right to the reality in issue nine instruments marked by court "P/1," "P/2," "P/3," "P/4," "P/5," "P/6," "P/7," "P/8," and "P/9," respectively.

"P/1", according to the witness, is simply a surveyor's certificate for property covered by "P/8" and (70) seventy acres of land from the Republic of Liberia to A. Barclay in 1895, and "P/9," another deed from the Republic of Liberia to A. Barclay for "73A, 2R 16 P in 1895 as well;" "P/2" is the deed mentioned and exhibited in the complaint as exhibit "F" for (150) acres of land sold to Anthony Barclay, the petitioner, by Pleh alias Joe Clark, Yarlay alias Charlie and Johnny Clarke; "P/3" is the deed exhibited as "A" with the complaint for one hundred (100) acres of land from Mary Freeman and J. B. Ammons, heirs of Gabriel Ammons, to Arthur Barclay in 1892; "P/4," though not exhibited with the complaint, is the original deed from the Republic of Liberia to Gabriel Ammons for (100) acres of land, the number two in 1859, which tacks the transfer from Mary Freeman and J. B. Ammons to Arthur Barclay; "P/3" for the same number two in "Ammonsville;" "P/5" is the deed exhibited with the complaint as exhibit "B" for (25) acres of land from Mary E. Freeman and J. B. Ammons, heirs of Gabriel Ammons, to Arthur Barclay in 1894; "P/6" is a certified copy from the

State Department under Seal of the deed exhibited with the complaint as "Exhibit "E" from Henry Ammons to Arthur Barclay for (30) acres of land, signed by Henry Ammons and Simmia Ammons; the Court might mention here that "P/8" and "P/9" already referred to herein are also certified deeds from the State Department under Seal calling property exhibited with the complaint as exhibits "C" and "D, respectively; and "P/7," though not pleaded in and exhibited with the complaint, is the original deed from the Republic of Liberia to Henry Ammons in 1859 for the same (30) acres of land sold to Arthur Barclay by Henry Ammons mentioned here as "P/6" and for same "number 3." Having already mentioned "P/8" and "P/9," and "P/6" in connection with "P/1", they need no further comment.

"Going over petitioner's deeds again, we find "P/2" is for land "contiguous to" grantors as the complaint states; "P/3," as well as its supporting original deed "P/4," is for lot number two in Ammonsville, and of course "P/2" is in Paynesville which the evidence shown is the same place formerly known as Ammonsville; "P/5" is for the "number or parts 1 and 2 in Ammonsville; "P/6 for the "number (3)" in the same settlement as its supporting original from the State "P/7" also show; "P/8" is for "the no. 3 range first" in "the Settlement for Ammonsville, Old Field;" and "P/9" for the no. 4 on range 2n d is the same Settlement as "P/8," all of the property being [in] Montserrado County as the complaint substantially states. Witness Anthony Barclay reaffirmed his complaint when he said: "This land we have been owning now over sixty years without any objection or questing by any of the respondents or their predecessors," in his testimony on sheet (1) of October 14, 1965, to the tenor of his complaint, without contradiction from anyone during the trial, not to mention the respondents.

"2. Witness J. C. N. Howard. On October 18, 1965, witness Howard came to the stand [and] testified that he knew of a parcel to land in the township of Paynesville which was formerly referred to as Ammonsville before Paynesville was incorporated in 1871, "but since that time and during my incumbency as Commissioner of said township petitioner Anthony Barclay presented to my office deeds calling for said area transferred to his late father, Arthur Barclay, to be recorded in the Archives of the township of Paynesville," the witness went on; the deeds as identified by the first witness were passed to witness Howard who also identified them. Howard also stated that from his observation of the deeds, especially the ones from the "both of the Ammons transferred to the late Arthur Barclay do (sic) not resemble handing over the original deeds for safe-keeping; "he said further, on the direct examination, that he did" not know for certain of any of the respondents actually residing on any portion of said property prior to 1962 sometime thereabout when co-respondent Igal

Ammons went up ". . . surveying and making gardens claiming the property to be his or the property of heirs of the late Henry and Gabriel Ammons." The deeds were then confirmed.

"Petitioner's witnesses were rigidly cross-examined, but, in our opinion, without avail to discredit what they had said about the complaint, and against the respondents. Petitioner then rested oral testimony, had his documents, "P/1" to "P/9," admitted into evidence, not without objections of course, and rested evidence with the usual reservation of rebuttal, if necessary.

"B. Respondents

"1. Witness Igal Ammons. The first witness for [the respondents] was Mr. Igal Ammons, one of the respondents, who took the witness stand on October 22, 1965. This witness stated that he "categorically denied the fact that any parcel of land situated in Paynesville was sold to the late Mr. Barclay by the late Henry Ammons, formerly owned by his father Gabriel Ammons. We have not molested the said plaintiff," the witness went on, "but in other words he has and is still molesting the heirs of Gabriel Ammons." He said in 1927 when he was in school, petitioner's late father was or rather became Ammons' father's lawyer and "automatically became the custodian of my fathers deeds," to quote the witness. He said further that in 1946 to 1947 the petitioner approached him "if we (respondents) could sell him a portion of this land," as Ammons said the petitioner was interested in moving to Paynesville. Right here, one is lead to conclude that the approach was made in connection with the deeds which Ammons says petitioner's father "automatically became the custodian of "as his father's lawyer in 1927, but then Ammons goes on to say after this alleged approach of petitioner to him, and the court would prefer to quote Mr. Ammons, "I said to him that my brother was living in Kakata *who had all of the deeds,* and I would have to see him before committing myself." How well this latter statement that his brother had all the deeds in Kakata holds with Ammons's statement that petitioner's father had had the former's father's deeds since 1927 will be stated later in this ruling, the support seems patently very lame now.

"But witness Ammons goes on and says that petitioner again went to Paynesville on a Saturday and asked Igal, who says he was then living in Paynesville, where respondents' grandfather's grave is, to sell petitioner "a passage to get to his land," because according to Ammons, Mr. Barclay's land was on the water front. Ammons said yet again [he[told Mr. Barclay he could not do it alone; then Mr. Ammons says Mr. Barclay right away told him that he had come to survey his land as he had found

some deeds since they last spoke for some property sold to petitioner's father, obviously in the same area; respondents or his children for that matter, that the property was joint tenancy. He never willed or sold it, and his Ammons' father's sister, "Mary E. Freeman, was one of the sole heirs," to quote Mr. Ammons. He said further he went along with Messrs Barclay and Joseph Anderson, the surveyor, and they made the survey for a whole day, but never told this court what was the result of this survey that Saturday. Anyway, Mr. Ammons says he subsequently observed Mr. Barclay building on the place, so Ammons asked petitioner if the respondents had agreed to sell him the place and petitioner told him, as Ammons puts it "it is only a matter of agreement with you people to sell me this property and I shall pay you for it. . . ."

"Before going any further this court would like to know how well his Saturday morning request for a passage by petitioner to respondent Igal Ammons in the light of Ammons' statement that Mr. Barclay told him he had discovered deeds for the property to his father, and not only that but had brought his surveyor, Mr. Anderson, to make the survey which Ammons participated in, in the light of truth? It seems unlikely and very faulty, too, that petitioner would both have deeds and go to the place for a survey on the very property, and yet ask respondent Ammons for a portion of the same for passage as this witness's testimony suggests. Moreover, Ammons suggests joint tenancy as to what he says his father told him why the latter did not dispose of the property by sale or will, and that his sister, Mary E. Freeman, was "one of sole heirs." Well, besides the jocular aspect of this particular testimony, which suggests the "sole heirs" means more than one person, this court wonders, as we sit in chancery, what brought about the conversation that had to Mr. Ammons' father telling his children this. Why? Had the children heard their father had disposed of this property and asked him about this on the day of this conversation, or had the children discovered a will made by their father in which he willed his property to another person leaving them out? Respondent Igal Ammons' testimony does not suggest any of these which this court now ponders, in the light of this witness's categorical denial that his father ever sold any of the property, so we are of the opinion that it is unlikely that any of the two incidents took place, that is that Mr. Barclay went with a surveyor to survey after he had discovered deeds for the property, yet asked Mr. Ammons for passage from the land for which he had so discovered these deeds; and secondly, that Ammons' father did have such conversation with and [told] his children he never willed nor sold this property re the matter of joint tenancy. We are of the opinion that his did not happen, and therefore rule that part of witness Igal Ammons' testimony as untrue, [and] discredited, for one

can already see that this joint tenancy affair is being suggested to show that if there was a sale, it is illegal, and not that no sale was ever made.

"We are taking up so much time on Igal Ammons, for he really talked at length, and saying too much more that the other Respondents who talked about this matter. Then witness Ammons goes further to state two conferences in which proposals were made by Mr. Barclay to purchase the property for lot nos. (4) and (6) covered by court's marks "D/2" and "D/2 (a)" offered but not admitted into evidence, and therefore said deed forms no part of the evidence. But should like to say something as to the matter of proof of the conferences: at the first conference, Mr. Ammons says two surveyors, besides himself, his sister Caroline and brother Lemmuel, were present. The surveyors were Messrs. B. Joseph K. Anderson and Mr. F. Tarr Grimes, and notwithstanding respondents gave notice, faithfully promised the court that they would produce this witness F. Tarr Grimes, they never did nor did explain to the Judge their reason for waiving, but it being a party's right to waive witnesses in his favor, this court did not think it wise to interfere with the defense; moreover, Mr. Joseph Anderson had been in court or rather was in and out of this court, and even testified in Marlinda Parker vs. Cooper ejectment case, but no effort to get him into court was ever made by respondents to substantiate this conference. The Court still wonders why such an important step was waived?

"At the second conference, besides Edwin Smythe who is privy by blood to one of the respondents, Mrs. Caroline Smythe-Bull, it also mentioned that surveyor Anderson and Civil Engineer Samuel Brownell were present; only witness Smythe was called to say something about the conference and no effort was made to bring in Mr. Brownell and/or Mr. Anderson again. Mr. Ammons also mentioned something of a survey ordered by Judge Azango with respect to the lost nos. (4) and (6), and says further that from the survey it was discovered that their land would run through Mr. Barclay's present dwelling house; that this survey was undertaken by Mr. Anderson, Mr. Brownell and a certain Whiteman who found out that their, the respondents' deed for these nos. (4) and (6) was older than Mr. Barclay's deed. Not only have respondents failed to bring either Anderson or Brownell or even the Whiteman to establish, but the witness says the survey was never concluded. Besides looking through the pleadings, that is court four of the answer which is overruled, we find that respondents have one deed for the nos. (4) and (6), whereas an inspection of all of petitioner's title papers, from "P/1" to "P/9," there is no deed calling any one parcel of land with the numbers (4) and (6) together, as the purported conclusion of the surveyors as to this older deed would seem to be suggested by Mr. Ammons' testimony. Well then, from what deed of Mr. Barclay's did these surveyors make this

declaration? We are of the opinion that in the absence of some showing that Mr. Barclay had a deed calling for nos. (4) and (6) in the same instrument of conveyance, the surveyors could not make such a declaration and did not, not to mention that the survey was never concluded, according to Mr. Ammons. In fact the survey ordered by Judge [Azango] forms no part of this, but by way of giving effect to Mr. Ammons' testimony, the court has thought to spend this little thought [about] it. Furthermore, and to make things a bit clearer, we observe that petitioner has a deed marked by.court "P/9" for "the no. 4 on range 2" d ;" there is nothing among his papers for nos. (4) and (6) together, to warrant any such comparison as to older deed.

"(2) The other witnesses for respondents, Caroline Ammons Smythe-Bull, Edwin Smythe and Lemmuel Ammons, all testified to this conference and Mr. Barclay, the petitioner's offer to purchase or exchange the land for nos. (4) and (6), which petitioner denies and brings documentary evidence to establish his right to premises he occupies. But Lemmuel Ammons and Igal [Ammons] insist that deed or deeds the petitioner has for the property are forged, without showing any evidence to prove this allegation. Moreover, they, the respondents, according to the terms of this trial, were to show what deeds their late father give to Mr. Barclay for safekeeping that he, the late former President, has so self-servingly transferred to himself, and which the court was thinking that respondents would have brought up a transfer deed showing transfer of the property for lot nos. (4) and (6) to the late Arthur Barclay under a fraudulent signature of their late father or grandfather, but they have done nothing of the sort; instead they insist upon having us to consider the matter of these two nos. (4) and (6) from different perspective, without the pale of the trail and issues they have raised themselves. The court cannot consider their evidence, as these, at the trial relevant to matter tendered and raised by them for trial.

"Here is our law on relevancy of evidence at trials.

"Relevance of evidence. All evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties. . ." Civil Procedure Law, 1 L.C.L., tit. 6, § 683, (1956).

"In our opinion, petitioner has tendered evidence relevant to his complaint, but respondents have failed to do this, from the facts and circumstances related herein and above. There is one thing though, that instead of "448 acres, 3 rods and 16 perches," petitioner has adduced evidence for 448 acres, 2 rods and 16 perches of land, as will more fully appear from "1 319," which shows "2" instead of "3" rods. This conclusion is based upon our considered opinion that petitioner has produced

evidence in support of his complaint as against the respondents, who have failed to comply with the following provisions of our law:

"Burden of proof. It shall be the duty of every party alleging the existence of any fact to prove it. The burden of proof rests in the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved. ." Civil Procedure Law, 1 L.C.L., tit. 6, § 683 (1956).

"Now where in the evidence have respondents shown that the late Arthur Barclay had deeds for their late father which he transferred to himself, and if so what the numbers of such deeds or property that they have named with respect to petitioner's papers, his titles set out in the complaint. Nowhere is this shown. The court might mention here that it observes from "P/6" and "P/7," as well as "P/3" and "P/4" of petitioner's evidence, that "P/7" is the original deed from the Republic of Liberia to Henry Ammons for thirty acres of land, the number three sold to Arthur Barclay by Henry Ammons according [to] "P/6"; also that "P/4" is the original deed from the Republic of Liberia to Gabriel Ammons and Mary E. Freeman, the number two according to "P/3". But is there anything spurious about these deeds, and has anyone said anything, even the respondents that those transfers were forged and proven this allegation at the trial? No. There is from the record no such proof in our opinion.

"Deeds and other writings. Deeds and other writings shall be admissible against all parties to them and shall also be evidence against all mankind of the transfer of all titles or rights transferred by them. . ." Civil Procedure Law, 1 L.C.L., tit. 6, § 733 (1956).

"Now these two transfer deeds, "P/3" and "P/6," are more than thirty years old; "P/3" being issued in 1892 and "P/6" in 1896, so they, "automatically," to use one of witness Igal Ammons' words, prove themselves, since no suspicious fraud has been prove against them at this trial.

"When a document proves itself. A document more than thirty years old which is proved to have been found in the possession of a person who may reasonably be supposed to have possession of it if it is genuine and which is attended by no circumstances tending to throw suspicion on it shall be deemed to prove itself. . . ." Civil Procedure Law, 1 L.C.L., tit. 6, § 740 (1956).

"We have referred to these two deeds because they are the only ones which show that petitioner had the originals to respondents' forebears in his possession, but the facts show that petitioner's father bought the property and not that he had them for safe-keeping, and self-servingly transferred them to himself, even "P/5", the deed from Mary E. Freeman and J. B. Ammons for (25) acres of land, for the numbers or parts 1 and 2 to Arthur Barclay was issued March 30, 1894 and proves itself, being over thirty years old. These deeds must bind respondents who are privies in blood to the late Mr. Arthur Barclay's grantors, Mary E. Freeman, J. B. Ammons and Henry and Simmia Ammons.

"Privity. This word indicates a relationship between persons having an interest in property, often land. So an heir and his ancestor are privies in blood, an executor and his testator are privies in law, a lessee and his lessor are privies in estate, and a purchaser and his vender are privies in interest.

"An admission by a predecessor in title binds his successor, providing it affects the title, and is made during the predecessor's interest. . ." *Introduction to Evidence* by G. D. Mokes, p. 279 (2nd ed., 1956).

"The deeds speaking for themselves showing that petitioner's late father purchased them from respondents' forebears who at the time had interest in the land, this admission of sale by the deeds exhibited, both in the complaint and in the trial, affects respondents' right and divests them of any right to the realty subject of said deeds. We are also of the opinion the petitioner has established his averment, that his number of years, over sixty, of possession of this realty bars respondents from asserting further right to and molesting him, the petitioner, re said possession. Here is our statute on that point:

"Limitations on commencement of actions. The time within which to commence civil actions after the cause of action has accrued shall be as follows:

"(a) In an action to recover the possession of real property, twenty years. ." Civil Procedure Law, 1 L.C.L., tit. 6, § 50(a) (1956).

"Surely from Gabriel Ammons' time in the 1800s to respondents themselves far exceeds, the limitation period, both legally and factually. And now we must make a rule to govern the parties hereafter as to the property in litigation. We had said before that "the plaintiff may bring an action to quiet title to land or to remove a cloud on title," as in this case where someone, as respondents, claim "an adverse interest;" we

have also said that the court must acquire jurisdiction over both the subject matter and the person of the adverse party, in this [case the] respondents, and if it so acquires jurisdiction over their persons by service of process and the defendants appear, as in this case, "the court may not only render a judgment with respect to the defendant's interest in the property but may also render a personal judgment against him." Now, what rule should we make? Here is what our Supreme Court authorizes:

" 1. . . The decree should be adapted to the circumstances and necessities of each case and should be so designed as to put an end to the litigation, and not to foster it. A final decree which undertakes to dispose of the whole cause should include a disposition of issues which are raised by a cross bill and answer, as well as those which are presented by the pleadings in chief.

"Where several parties, being all those interested in a legal controversy, are before the court asking their respective rights, be determined, and such rights are capable of ascertainment, a decree, based upon indefinite findings, which does not determine the essential rights of all the parties and leaves a material part of the controversy undermined, is insufficient. . . ." *Republic v. Massaquoi,* 10 L.L.R. 351, 359 (1950).

"Whereupon, and in view of the foregoing facts and circumstances, this court decrees:

Decree.

"That petitioner's complaint be and the same id hereby granted; it appearing to this court that the facts set forth in the complaint are true, the relief prayed for there is also granted, and petitioner be and he is hereby entitled to the rightful possession of the realty, 448 acres, 2 rods and 16 perches, subject of his complaint, and he is be this decree freed, cleared, released and discharged from any claim or cloud from said realty from any person or persons whomsoever and whatsoever. It is further decreed and adjudged that petitioner be and he is the rightful owner in fee of the property described herein and subject to this litigation, and his title thereto is henceforth quited and established, and the claims of respondents Igal Ammons, Elizabeth Ammons, Jemima Ammons, Lemmuel Ammons and Caroline Ammons-Smythe and all those interested in the property subject of this suit, be and the same, that is said claims are also hereby and henceforth removed as clouds upon the title of Petitioner to said realty; it is also further decreed and adjudged that the respondents "and all persons interested in this property as "as heirs at-law, devises, grantees or other claimants under Gabriel Ammons and Henry Ammons," be and they are hereby forever and permanently enjoined and restrained by this decree from asserting any

right, title interest, claim or demand of and to said reality, subject of these proceedings and every part thereof, and they, subject of and these proceedings and every part thereof, and they, the respondents and such person or persons so claiming in privity with the said Gabriel Ammons and Henry. Ammons, now deceased, be and are hereby barred from entering any suit, both in equity and at law, to obtain possession of the property, subject of this litigation, and already litigated on both sides by this trial.

"This decree shall be binding on the parties as aforesaid, upon them and their heirs, both in law and equity. Costs against the respondents, and it is hereby so ordered.

"Given officially in open court this 8th day of November, 1965.

"(Sgd). Joseph Findley
Circuit Judge."

The respondents excepted to the court's final decree and announced an appeal to the Supreme Court of Liberia. The exceptions were noted, and the appeal was granted.

On August 19, 1966, counsel for Anthony Barclay filed with the Clerk of the Supreme Court of Liberia a "motion for order of court to resume jurisdiction and execute its decree" against Igal Ammons, Elizabeth Ammons, Jeminia Ammons, Lemuel Ammons and Caroline Ammons-Smythe, heirs of Gabriel and Henry Ammons. In an opinion delivered during its October Term, 1966, the Supreme Court granted the motion, holding:

"The appeal not having been perfected for one hundred and twenty-nine days since the final decree was entered in the trial court, nothing remains for this appellate court to do under the circumstance than to order the trial court to resume jurisdiction and proceed to enforce its decree immediately. Costs are ruled against the appellants. It is hereby so ordered." *Ammons v. Barclay,* 18 LLR 212, 219 (1967).

On August 6, 2001, Mai Barclay-Roberts, executrix of the estate of the late Anthony Barclay, for and in consideration of the sum of US$4,600.00 (four thousand six hundred United States dollars) conveyed by executor's deed to Keikura B. Kpoto and Mary F. Kpoto the following described property:

"Commencing at a point south 32 degrees 40 minutes feet west 29 feet from the southeastern corner of Harry F. Moniba's property, thence running on magnetic

bearings south 70 degrees East 129 feet to a point; thence running south 23 degrees west 319 feet parallel with the right-of-way on the Monrovia-Kakata Highway to a point; thence running south 11 degrees 10 minutes west 113 feet to a point; thence running north 71 degrees 45 minutes west 160 feet to a point; thence running north 45 degrees 25 minutes east 135 feet to a point; thence running north 32 degrees 40 minutes east 293 feet to the point of commencement and containing 5.75 lots or 1.43 acres of land and no more."

The executor's deed executed by Mai Barclay-Roberts in favor of Keikura B. Kpoto and Mary F. Kpoto vested in the two an estate by entireties with the right of survivorship, they having been husband and wife at the time of the execution of the deed. On the death of one before the other, the survivor acquired absolute title to the realty, which does not form part of the estate of the deceased spouse.

"An estate by the entireties is one in which a husband and wife hold property as a single entity. Under a conveyance or devise creating an estate by the entireties, the husband and wife, by reason of their legal unity by marriage, take the whole estate as a single person with the right of survivorship, so that if one dies the entire estate belongs to the other." 41 Am Jur 2d *Husband and Wife,* § 28.

"On the death of one spouse, the whole of an estate by the entireties held by husband and wife remains to the surviving spouse, not because he or she is vested with any new or increased interest therein, but because each originally took the entirety to remain to the survivor. This, property held by the entireties is not part of the decedent spouse's estate and the law of descent and distribution does not apply to property passing to the survivor." 41 Am Jur 2d *Husband and Wife,* § 48.

We note, however, that on July 27, 2004, Keikura Bayoh Kpoto, Jr., Jarwoellie Kpoto Togba and Ziama Kpoto, administrators of the intestate estate of the late Keikura B. Kpoto, as plaintiffs, filed an eight-count action of ejectment against Madam Kadiatu Nasser and Percy A. Williams, by and thru his attorney-in-fact, Ayo Williams, defendants. Subsequently, Mary F. Kpoto, widow of the late Keikura B. Kpoto, was joined as a party-plaintiff.

The administrators of the estate of the late Keikura B. Kpoto should have been dropped as party-plaintiffs, and Mary F. Kpoto substituted as plaintiff, by the court on its own initiative.

Civil Procedure Law, 1 L.C.L.Rev., tit. 1, § 5.56 (1972) provides:

"Misjoinder of parties is not ground for dismissal of an action, but for a motion to drop the misjoined party. Parties may be dropped by order of the court on motion of any party, or on its own initiative at any stage of the action on any terms that are just."

We decide, therefore, and drop the administrators of the intestate estate of the late Keikura Kpoto as party-plaintiffs/appellants, and substitute Mary Kpoto, under the principle of tenancy by the entirety, as the sole and proper party-plaintiff/appellant.

We quote hereunder the complaint.

"Plaintiffs in the above entitled cause of action complains of and against the defendants and show the following:

"1. Plaintiffs complain and say that they are the surviving heirs of the late Keikura B. Kpoto who died intestate on August 20, 2002, and thereafter plaintiffs obtained letters of administration to administer the [intestate] estate to prevent same from devastation. Attached hereto, marked exhibit "A," to form a cogent part of this complaint, is a copy of the letters of administration.

"2. Plaintiffs aver that prior to the death of Keikura B. Kpoto he honorably purchased 5.75 lots or 1.43 acres of land from Mai Barclay-Roberts, executrix of the estate of the late Anthony Barclay, said property being, lying and situated in Paynesville, Montserrado County and described in their deed duly signed, probated and registered according to law. Attached hereto, marked exhibit "B," to form a cogent part of this complaint, is a copy of the title deed.

"3. Plaintiffs, in order to secure their property, requested their grantor, Mai Barclay-Roberts, to provide plaintiffs a copy of the "mother deed," which she provided. Attached hereto, marked exhibit "C," to form a cogent part of this complaint, is a copy of the "mother deed."

"4. Plaintiffs, having secured their title to the land, observed the defendants were encroaching on same, and they were requested to stop operation of all kind on the property in question. Attached hereto, marked exhibit "D," to form a cogent part of this complaint, is a copy of a letter dated May 22, 2004, under the signature of Honorable Sylvester S. Gbaintor, Deputy Minister of Justice for Legal Affairs addressed to co-defendant Kadiatu Nasser.

"5. Instead of abiding by the letter or courtesy addressed to co-defendant Kadiatu Nasser, co-defendant H. Ayo Williams wrote to the Deputy Minister of Justice for Legal Affairs on December 23, 2002 claiming title to the property. Attached hereto, marked exhibit "E," to form a cogent part of this complaint, is a copy of said communication.

"6. Plaintiffs in their efforts to avoid conflict over the property called the defendants' attention to the Circuit Court's final decree in favor of the late Anthony Barclay, the father of Mai Barclay-Roberts, dated September November 8, 1965, signed by His Honor Judge Joseph P. H. Findley, and the opinion of the Supreme Court of Liberia dated January 18, 1968, confirming the Circuit Court's final decree of November 8, 1965; yet the defendants have failed and refused, and have defied the decree of the Circuit Court and the opinion of the Supreme Court of Liberia without any justifiable cause. Attached hereto, marked exhibit "F" in bulk, to form a cogent part of this complaint, are copies of the Circuit Court's final decree and the opinion of the supreme Court of Liberia.

"7. Plaintiffs further aver that notwithstanding the late J. B. Ammons and M. E. Freeman relinquished title to the property to the grandfather of plaintiffs grantor, the late President Arthur Barclay on August 1, 1892, the defendants have still refused to submit. Attached hereto, marked exhibit "G," to form a cogent part of this complaint, is a copy of a deed from J. B.

"8.Plaintiffs having exerted all efforts for a peaceful resolution of the matter and having failed are left with no alternative but to file this complaint against the defendants before Your Honor and this Honorable Court for illegal entry, encroachment upon, and construction upon their property over and against plaintiffs' objection, will and consent. Plaintiffs therefore submit that in spite of repeated demands that defendants desist their illegal encroachment upon plaintiffs' property, defendants have failed and refused to do so which action have caused plaintiffs injury and damages.

"Wherefore and in view of the foregoing, plaintiffs bring this action praying this Your Honor and this Honorable Court for judgment against the defendants, ousting, evicting and ejecting defendants from plaintiffs' property, with and awarding damages for their illegal and wrongful withholding of plaintiffs property, and that this Court will grant further relief in keeping with law and transparent justice."

On August 6, 2004, the defendants filed the following fifteen-count answer to plaintiffs' complaint.

"And now comes defendant Percy Williams, by and thru his attorney-in-fact Ayo Williams, who deny the legal sufficiency of the plaintiffs complaint and pray Your Honor and this Honorable Court to dismiss the said complaint in its entirety for the following legal and factual reasons:

"1. As to the entire complaint of the plaintiffs, same is evasive, misleading, impregnated with false averments, and thus a fit and proper subject for dismissal.

"2. Defendant Ayo Williams is the attorney-in-fact of his father, Percy A. Williams, who is currently residing in the United States of America, and is therefore clothed with the authority to act in his behalf and represent him in matters pertaining to the estate.

"3. Defendant avers that as to counts one through three, of the plaintiffs' complaint, there are no issues contained therein to traverse, as it is the prerogative of the plaintiffs to petition for and be granted letters of administration to manage their late father's estate.

"4. Further to count three above, defendant says it was also the right of the plaintiffs' late father [and wife] to have obtained a deed for land purchased, and further request a copy of the "mother's deed" from his grantor.

"5. As to count four of the plaintiffs' complaint, the defendant denies ever encroaching on the plaintiffs' property as alleged, and state that the property occupied by the defendant was purchased on October 3, 1980, with a structure thereon, from Igal and Eleatha Ammons. Attached, marked exhibit "13/1," is a copy of defendant Percy A. Williams's title deed for the 1.8 lots, with metes and bounds described therein.

"6. Defendant submits and gives notice to this Honorable Court that at the trial of this case, a copy of the grantor's deed will be produced so as to further substantiate and authenticate his title to the property.

"7. Further as to count five above, defendant laments that the property mentioned by the plaintiffs, with deed attached and marked exhibit "B," was acquired on August 6, 2001, twenty-one years after defendant's father acquired his property. One would

wonder how it was possible for the defendant to encroach upon the plaintiffs' property when the defendant's property, with a structure erected thereon, was purchased twenty-one years prior to the plaintiffs' acquisition of what the same, property. Can this be termed encroachment? The answer is no, for the defendant is in possession of his and only his property, without any encroachment whatsoever on anybody else's property.

"8. Defendant avers and says that since he acquired title to the property comprising 1.8 lots of land in 1980, his family has legally and lawfully occupied the said property under color of title, and has notoriously lived peacefully and quietly, and has enjoyed an uninterrupted stay on the property for twenty-one years, making development thereon, and paying all taxes incidental thereto.

"9. Defendant says further that during the twenty-one years occupation of the property, there has been no time that the plaintiffs' grantor, Mai Barclay-Roberts, has approached him about said property, despite her presence and continuous stay within the bailiwick of the Republic of Liberia, neither have any other interested parties. How is it possible that the plaintiffs' grantor, Mai Barclay-Roberts, believing and knowing that she owned a piece of property, with a structure thereon, would sit supinely for twenty-one years and watch her property been sold out without acting?

"10. Under our law, one who without taking action or giving notice, allows another to uninterruptedly and notoriously occupy his property, i.e. land, and remain thereon for twenty-one years is estopped from bringing any action to recover said property. Furthermore, the title deed exhibited by plaintiffs is fake and the product of secret and surreptitious transaction as the defendant was never notified of any survey of his property to be done in favor of the plaintiffs, which leads the defendant to conclude that there was never any survey because had there been one, the plaintiffs would have known that a fenced-in structure was on the premises and which would have put him on sufficient notice of the ownership of the defendant.

"11. Further, we are convinced that the plaintiffs were aware of defendant's structure on the ground, of the fence constructed around it and that the property for the past twenty-one years was the property of the defendant, but because of the late Keikura B. Kpoto's political clout at the time, the motive must have been to illegally oust and deprive defendant of his property by brute force, which is not possible under the present political situation that has now compelled his heirs to bring this unwarranted and frivolous suit as no one can even assert to own property without a duly authorized survey, with notice to all concerned. Defendant therefore invokes, in

addition to his title deed, the statute of limitations on real property, as a legal and equitable defense.

"12. Further to count five of the plaintiffs complaint, the defendant says that it is true that he received a communication from Honorable Sylvester S. Gbaintor, Deputy Minister of Justice for Legal Affairs, in 2002 concerning the property, but he asserted that the property was legally acquired in 1980, and from that time up to and including 2001, he and his family had quietly, peacefully and uninterruptedly lived on the property and developed same, relying on his title to the property.

"13. As to count six of the plaintiffs' complaint, the defendant says that the Circuit Court's final decree attached as an exhibit does not state precisely the metes and bounds of the property mentioned in the final decree. The final decree only gave the total acreage of land that is 448 acres, 3 rods and 16 perches. It is unclear whether the defendant's property, with its metes and bounds, as described in the attached defendant's exhibit "D/2", is included in the 448 acres referred to in the Circuit Court's final decree.

"14. It has been held that where an accurate description of property is not given, that is where the metes and bounds are not contained in the description of the property, the one claiming title will be denied same. There are no metes and bounds of the property mentioned in the Circuit Court's final decree, as attached to plaintiffs' complaint; hence the plaintiffs cannot claim the defendant's property is part of the 448 acres referred to in the Circuit Court's final decree.

"15. Defendant denies every single count that has not been made a subject of special traverse in these proceedings.

"Wherefore and in view of the foregoing, defendant prays Your Honor and this Honorable Court to dismiss the plaintiffs' complaint as the defendant did acquire title to the property more than twenty years ago, and has enjoyed uninterrupted, unmolested and a peaceful stay, and that Your Honor grants unto your humble defendant all further relief that may be deemed just, legal and equitable in matters such as this."

To this answer, the plaintiffs filed the following eight-count reply.

"And now come the plaintiffs in the above entitled cause of action who deny the legal sufficiency of the defendant's answer, and most respectfully pray Your Honor and

this Honorable Court to discard, deny and dismiss same for the following legal and factual reasons.

"1. Plaintiffs say as to counts one, two and three of the defendant's answer, same contain no refutable facts and therefore do not require a special traverse.

"2. As to count four of the defendant's answer, plaintiffs aver that same admits the existence of plaintiffs' title to the subject property.

"3. As to count five of the defendant's answer, plaintiffs further aver that there can never be any parity of legal reasoning for the defendant to have purchased the subject property on October 3, 1980 from the heirs of the late Igal and Eleatha Ammons because the Ammons's were divested oflegal title to the property by the judgment of the Honorable Supreme Court of Liberia [in *Ammons et. al. v. Barclay,* 18 LLR 212, 219 (1967)] in favor of the plaintiffs' grantor, coupled with the fact that plaintiffs' grantor are possessed with a complete chain of title as pleaded with plaintiffs' complaint. Plaintiffs request this Honorable Court to take judicial notice of the complaint.

"4. Plaintiffs further contend that as to count six of the defendant's answer, same should be dismissed as the defendant has failed to plead his grantor's deed so as to afford the plaintiffs due notice, as notice is one of the cardinal principles of pleadings. This blunder, being incurable, renders the answer a fit subject for dismissal.

"5. That as to count seven of the defendant's answer, plaintiffs contend that the doctrine of older title which the defendant attempts to rely upon is not applicable in this case, in that the age of the plaintiffs' title is determined by the date of his grantor's deed, commencing from the one granted by the Republic of Liberia to plaintiffs' immediate grantor. Count seven being baseless should crumble and fall.

"6. Further to count seven of the defendant's answer, including counts eight and nine, plaintiffs say that the defendant has interposed a bad pleading by attempting to plead title and at the same time plead adverse possession and/or the statute of limitations. Under prevailing law in this jurisdiction, the plea of adverse possession or statute of limitations cannot hypothetically be interposed. Plaintiffs therefore submit that count seven should also be overruled and dismissed.

“7. As to count eleven of the defendant's answer, assuming without admitting that the defendant's plea of adverse possession is factual, same cannot obtain as the defendant has admitted in counts eleven and twelve of his answer of being notified

by the plaintiffs, through the Office of Counselor Sylvester Gbaintor in 2002. Plaintiffs submit that the defendant cannot contend that he has enjoyed quiet and peaceful occupancy of the subject property for more than twenty-one years because the defendant's grantor was adjudged liable by the Civil Law Court as not being the legal owner ofthe subject property [and title quieted in Anthony Barclay, plaintiffs' grantor], which decree of the Civil Law. Court was confirmed by the Supreme Court of Liberia, which opinion serves as sufficient notice and is perpetual to all persons within and without the Republic of Liberia. Countseleven and twelve of the answer should be dismissed.

"8. Plaintiffs deny every single count that has not been made a subject of special traverse in [this reply].

"Wherefore, it is the pray that Your Honor and this Honorable Court will ignore, discard, deny and dismiss the defendant's entire answer and sustain the plaintiffs' complaint, as the defendant has attempted to mislead this Honorable Court that he has notoriously, quietly and peacefully occupied the subject property without any disturbance when they cannot traverse the count of plaintiffs' complaint touching on the Civil Law Court's decree which was confirmed by the Supreme Court of Liberia, and to grant unto plaintiffs all such further relief that may seem just and legal, with costs against the defendant."

The case was ruled to trial by jury, the parties having conceded that the pleadings raised mixed issues of law and facts.

The jury trial commenced on Friday, September 22, 2006.

Four witnesses testified for the plaintiff. Mary Kpoto, the plaintiff; Yarkpawolo T. Kollie, a registered land surveyor employed with the Ministry of Lands, Mines and energy; Richard Barclay, foster son of the late Anthony Barclay and foster brother of Mai Barclay-Roberts; and Joseph Siafa, nephew of the late Keikura Kpoto.

Four witnesses testified for the defendant. Percy A. Williams, the defendant; Joseph Maximore, head of the businessmen on the defendant's property; Mary Beyan, caretaker of defendant Williams' property, and Shafi Dennis, a resident of Redlight, Paynesville.

Following the resting of evidence by both the plaintiffs and the defendant, the Court entertained arguments, and thereafter charged the empaneled jury. Following

deliberations, the empaneled jury returned a verdict of not liable in favor of the defendant.

A motion for a new trial was denied, with the Court rendering final judgment affirming and confirming the verdict of the empaneled jury finding the defendant not liable. The appellants noted exceptions, announced an appeal and have appeared before this Court on an eight-count-bill of exceptions.

1. Your Honor erred when you failed to give credence to the Supreme Court's opinion Court's opinion in *Barclay v. Ammons et. al.* where the Supreme Court confirmed and final judgment of the Civil Law Court to the effect that Igal Ammons and his heirs were barred from claiming the property of Anthony Barclay, subject of the ejectment action. Your Honor, *inter alia,* charged the jury that defendant Percy Williams and Mary F. Kpoto were not parties to the case between the Barclay's and Ammons', when in fact the judgment of the Supreme Court is legally binding on all persons and courts of the Republic of Liberia.

2. Your Honor charged the jury on the principle of adverse possession or the statute of limitations instead of explaining to the jury the effect of the judgment of the Supreme Court of Liberia in the case relating to the selfsame property.

3. Your Honor further erred when you gave a directed verdict to the jury by instructing the jury to bring a verdict of "not liable" in favor of the defendant for reason that the defendant and his witnesses proved that the defendant has lived on the subject land for over 20 years.

4. Your Honor should not have countenance defendant's inconsistent defense of statute of limitations, in that defendant contended in his answer that he is the legal and lawful owner of the disputed land by virtue of a purchase from Igal Ammons. It was, therefore, to accept the pleas of legal title and statute of limitation.

5. The statute of limitation can only obtain where there is no title. It can obtain where the defendant has not deed or title, but has lived on the premises for more than 20 years. In the instant case, the defendant pleaded a deed from the Ammons' and principally relied on the strength of same.

6. The verdict was manifestly against the weight of the evidence adduced at the trial of this case, in that plaintiff established a prima facie case when she produced the final judgment of the Civil Law Court, opinion of the Supreme Court to the effect

that the defendant's grantor did not have any title, same having been cancelled, to all intents and purposes.

7. Even though Your Honor recognized the legitimacy of plaintiffs title, yet Your Honor confirmed and affirmed the verdict of the jury, which was against the weight of the evidence adduced at the trial.

8. Your Honor erred when you stated in your final judgment that the Barclays should have instituted the action against the defendant, when in fact the Barclays conveyed a portion of the subject land to the plaintiff.

We have determined two issues are determinative of this case.

1. Whether Igal and Eleatha Ammons, grantors of the defendants/appellees, had title to the realty which they conveyed to the defendants/appellees?

2. Whether the plaintiff/appellant's suit was barred by the statute of limitations?

The first issue for our determination is whether Igal and Eleatha Ammons, grantors of the defendants/appellees, had title to the realty which they conveyed to the defendants/appellees? We hold that they did not, and that the conveyance to Percy A. Williams by Igal and Eleatha Ammons on October 3, 1980, fourteen years after the decision of the Supreme Court, was not only a contemptuous act, but was null and void *ab initio.*

The subject of the bill in equity to remove cloud from title which Anthony Barclay filed against Igal Ammons, Elizabeth Ammons, Jemima Ammons, Lemuel Ammons and Caroline Ammons-Smythe, heirs of Gabriel and Henry Ammons was "448 acres, 3 rods and 16 perches" of land situated in an area in Paynesville "called in former years Amonsville." The subject of the court's final decree of His Honor Judge Joseph P. H. Findley, dated November 8, 1965, in favor of Anthony Barclay, the petitioner, was for "448 acres, 3 rods and 16 perches." Following the circuit court's decree, and the subsequent granting by the Supreme Court of the petitioner's motion to dismiss the appeal, title to the realty vested exclusively in Anthony Barclay and his heirs.

In *Wallace v. Green,* 13 L.L.R. 269, 277 (1958), Mr. Justice Mitchell, citing *Corpus Juris Secumden,* and speaking for the Court, held.

"There should be some title of interest, in law or in equity, in the grantor to enable him to convey, and a deed from a person not in possession, or not shown to be the owner, establishes no title." 26 C.J.S. *Deeds,* § 14."

We confirm the holding in the *Wallace* case and, in addition, cite the following from American Jurisprudence.

"A valid deed property executed and delivered is operative to convey such estate as the grantor has notwithstanding it purports to convey a larger estate. Thus, a deed by a life tenant purporting to convey the fee simple will operate to convey the life estate. Likewise, the fact that more real estate is described in a deed than is owned by the grantor will not destroy its operative effect as to described land actually owned. And a partner who attempts to convey the partnership property by a deed not so executed as to have that effect may thereby transfer whatever interest he himself has. *No one, however, can convey a better or greater title than he has; that is, no deed can operate so as to convey an interest which the grantor does not have in the land described in the deed, or so as to convey a greater estate or interest than the grantor has, even though by its terms it may purport to do so and even though it may, at least if it is a warranty deed, operate by way of estoppel to pass to the grantor any title or interest thereafter acquired by the grantor"* (emphasis supplied). 23 Am Jur 2d *Deeds,* § 336.

The second issue for our determination is whether the plaintiffs/appellants' suit was barred by the statute of limitations? We hold that the plaintiffs/appellants' suit was not barred.

Civil Procedure Law, 1 L.C.L.Rev., tit. 1, ch. 2, Limitation of actions, sub-chapter B. Limitations in particular actions, § 2.12(2) provides:

"Actions affecting real property.

"2. To, recover real property. An action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years."

The trial judge, in his charge to the empaneled jury, gave the following instruction on adverse possession.

"In this jurisdiction, the law provides that one who brings a case to court must prove that case by the preponderance of the evidence. In this case, plaintiffs' complaint of

the defendant to the effect that the defendant is illegally encroaching on his 5.75 lots purchased from Mai Barclay-Roberts in 2001, probated and registered. The defendant contends that he is not encroaching on plaintiffs' property, but rather that he bought 1.8 lots from Igal Ammons in 1980, with his deed probated and registered according to law.

"The witness told you that since he purchased the land in 1980, he has lived and continues to live on this property unmolested for about twenty-one years. You will see that Igal Ammons' family is the grantor of both the Barclays and Percy Williams.

"The Barclays upon taking the stand confirmed that Percy Williams bought the 1.8 lots from Igal Ammons, but that lgal Ammons had no more title to the land, and therefore Mr. Percy Williams bought the land from the wrongful owner. Madam Juanita Maximore testified that there spite the purchase from lgal Ammons, the Ammons continue to sell their land in total disregard of the[Supreme] Court's decision in 1967. The witness also testified in the case of Percy Williams, the Barclay family made an attempt to talk with Mr. Williams, but he elected not to recognize the Barclays as the legitimate owner of the property.

"Under our law, it is stated that a party alleged to be encroaching on another's property may prove his title either by deed or by adverse possession. In the instant case, the defendant informed this court and you the trial jury that he had lived on this land for over twenty-one years, besides the warranty deed issued to him by Igal Ammons in 1980. *Our law provides that where one owns real property and a wrongdoer moves on the property and remains on that property, and the owner of that property sees the wrongdoer on that property without making any attempt to remove that person from the property, either by court's proceedings, and the person remains on the property for more than twenty-one years, the law cannot move that person. So adverse possession is an alternative pleading under our lavv"* (emphasis supplied). (See minutes of Court, 10 day's jury session, Tuesday, September 28, 2008, sheet seven).

This charge of the trial judge was erroneous; for, it does not take into consideration the issue against whom does the statute of limitations run. Assuming the appellee had been in possession of the realty for twenty-one years, against whom does the statute of limitations run? The grantor or the grantee.

"The possession of one holding in adverse possession is good as against strangers. The adverse claimant is not an outlaw, and has a right to remain peaceably in possession until expelled by the owner or someone who can show a superior right of

possession. The courts will protect the adverse claimant against all the world except *the true owner*. . . ." 3 Am Jur 2d *Adverse possession,* § 294.

We hold that *"the true owner"* in this case is the plaintiff/appellant, Mary F. Kpoto, against whom the statute of limitations has not run.

In view of the foregoing, the judgment of the lower court is hereby reversed. The Clerk of this Court is ordered to send a mandate to the Civil Law Court for Montserrado County commanding the judge presiding therein to resume jurisdiction over this matter, and order a writ of possession issued in favor of the plaintiff/appellee. It is so ordered.

Judgment reversed.