

**L. P. MILLER**, Appellant, v. **SAMUEL B. McCLAIN**, Appellee.

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

Argued March 22, 1954. Decided May 28, 1954.

1. Where an agent is authorized to sell real property the sale must be executed in the name of the principal.
2. In ejectment the plaintiff must allege and prove his own title, and cannot recover on the defectiveness of the defendant's title.

On appeal from judgment for plaintiff in ejectment action, *judgment reversed*.

*Richard A. Henries* for appellant. *K. S. Tamba* and *Momolu S. Cooper* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.

Samuel B. McClain, appellee, instituted an action of ejectment against L. P. Miller, appellant, in the court below. The complaint alleged that: ". . . the plaintiff, is entitled to the possession of and is the owner in fee simple of one-eighth acre of land, or half a town lot, in the City of Monrovia, Montserrado County, by virtue of a warranty deed from one J. C. Hansford."

The defendant's answer did not assert title to the said land, but, in substance, alleged as follows :

1. That J. G. Hansford had no legal right to sell the property to the plaintiff.
2. That the said property was owned by one William O. Taylor, now deceased, who had departed from Liberia in 1929; and that the property had not been conveyed by the said William O. Taylor.
3. That in 1930 the defendant approached the aforesaid late William O. Taylor for the purchase of the said property when he had no intention of returning to Liberia; and that, with the consent of Mr. Taylor, the defendant began to operate upon the said half lot in July, 1930, more than twenty-one years prior to the filing of this suit of ejectment; and that, from the time of the commencement of defendant's operation

on the said half lot, he occupied it continuously up to the present time.

4. That the aforesaid owner of the property was at the time of his death a British subject domiciled in Sierra Leone; hence plaintiff lacked legal right to bring an action of ejectment based upon a deed which did not form a perfect chain of title.

Plaintiff's reply did not traverse the allegation contained in Count "1" of the defendant's answer, to the effect that J. G. Hansford, who was alleged to have sold the property to the plaintiff, had no legal right to sell it.

The above are the salient issues. The records certified to this Court reveal that, on the trial in the lower court, a written power of attorney from William O. Taylor empowering J. G. Hansford to sell the property was introduced into evidence without objection. The defendant did not interpose any claim respecting said land by virtue of title deed or adverse possession; but, having been permitted to enter, operate upon, and care for said land by William O. Taylor, the defendant contested the right of J. G. Hansford to sell the land, although not claiming title in himself. The trial court held in favor of the plaintiff. Defendant filed a motion for a new trial, which was denied, and judgment was entered accordingly. Defendant took exceptions and prayed an appeal to this Court.

We shall now proceed to re-examine the evidence adduced on the trial of the case with a view to answering the following questions :

1. T. Did J. G. Hansford execute the deed for the land in question in his own name as grantor to plaintiff ; and, if so, was title legally vested in him?
2. Was the plaintiff the duly authorized agent of William O. Taylor?

On direct examination the plaintiff was asked:

"You have instituted an action of ejectment against L. P. Miller, defendant, alleging title to a portion of Lot Number 85, alleging at the same time that the defendant wrongfully detained said property from you. You will please state all facts and circumstances within your possession in support of your complaint."

The plaintiff answered, *inter alia*, as follows :

"On the ninth day of April, 1951, Mr. J. G. Hansford went to me and offered me a

deed to purchase a portion of the property I am contending for. He gave me a power of attorney from William O. Taylor with the original deed to show that he was the right man to sell this place. . . ."

From this it is obvious that J. G. Hansford was an agent of William O. Taylor, the owner of the land, but was not himself the owner. The deed discloses on its face that Hansford executed it in his own name as grantor and not as the authorized agent of Taylor. Moreover the fact that Hansford possessed a power of attorney from Taylor to convey Taylor's property demonstrates conclusively that title was not vested in Hansford. We are of the opinion that Hansford, as the agent of Taylor, should have executed the deed transferring the property to the plaintiff in Taylor's name as well as in his own. This would have given the plaintiff title in and to said land. In support thereof we quote the following from Judge Bouvier :

"As to the form to be observed in the execution of an authority, where an agent is authorized to make a contract for his principal in writing, it must, in general, be personally signed by him; but in the name of the principal and not merely in the attorney's name, though the latter be described as attorney in the instrument; . . . But it matters not in what words this is done, if it sufficiently appears to be in the name of the principal. 'For AB' (the principal), 'CD' (the attorney) has been held to be sufficient. . . ." 3 BOUVIER, LAW DICTIONARY 2691 (Rawle's 3d rev. 1914).

Since this was not done, there is a missing link in the plaintiff's chain of title which renders such title patently defective.

"In actions of ejectment it has been laid down as a rule, both by ancient and modern law writers, that it is necessary in ejectment for the plaintiff to show in himself legal proof, *i.e.*, a good and sufficient title to the land in dispute, against the whole world. He must not only have a title, but he must be clothed with the legal title to such lands; an equitable title, as a general rule, will not answer; he must recover, if at all, on the strength of his own title and not on the defects in that of his adversary's." *Birch v. Quinn*, 1 L.L.R. 309, 310 (1897).

As the agent of Taylor, Hansford had no title in himself and could not convey the property except as agent.

Count "2" of defendant's answer alleged the decease of W. O. Taylor. Defendant testified that Taylor had died in 1944, and thereby attempted to show that, even if Hansford did possess a power of attorney from Taylor to sell the property, the sale in

April, 1951, was illegal, since death cancels such an agency. Defendant's witness corroborated the testimony as to the death of Taylor, but failed to corroborate the date of death, which must therefore be deemed uncertain. Although the defendant also alleged that Taylor was a British subject, domiciled in Sierra Leone at the time of his death, this allegation was not proved on the trial.

We are therefore of the opinion that the judgment of the lower court should be reversed and the parties restored to their *status quo*, as of before the commencement of the present action. The appellee is to pay all costs ; and it is hereby so ordered.

*Reversed.*