

REPUBLIC OF LIBERIA, Appellant, v. **J. DANIEL POTTER**, *et al.*, Appellees.

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

Argued May 23, 1957. Decided June 14, 1957.

The Legislature not having enacted any waiver of the sovereign immunity of the Republic of Liberia with respect to actions to recover or try title to property, an action of ejectment will not lie against the State, the sole statutory remedy for taking of property in such case being an action for compensation.

On appeal from a judgment of the court below in an ejectment action, appellant's *motion* to dismiss the case and vacate all proceedings therein for lack of jurisdiction of the subject matter was *granted*; the *action* was *dismissed*; and the *judgment* was *vacated*.

Assistant Attorney General J. Dossen Richards for appellant *Momolu S. Cooper* and *K. S. Tamba* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

This case of ejectment entered against the Republic of Liberia was tried and determined during the June, 1956, term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County. Upon rendition of final judgment, appellant entered exceptions and prayed an appeal to this Court of last resort.

At the call of the case for hearing, the appellant submitted a motion to dismiss the case and all proceedings had therein in the court below for want of jurisdiction over the subject matter. We quote hereunder relevant portion of the said motion, as follows :

"1. Because appellant says and respectfully submits that the trial court had no jurisdiction over the subject matter of the cause, nor any authority of law to try and determine said cause, because under the provision of Article I, Section 17th of the Constitution of Liberia, suits may be brought against the government in such manner and for such causes as the Legislature shall by law direct. Appellant submits that there is no legislative authorization for institution of an action of ejectment against the government, nor has it prescribed the manner in which such an action might be brought; hence the trial court had no authority and was without jurisdiction over the

subject matter to hear and determine said cause."

Appellees, in resisting appellant's motion, as quoted, *supra*, especially in Counts "1" and "2" thereof, which this Court considers worthy of attention, contended as follows :

"1. Because the proposition advanced by appellant in the motion is untenable in law, and should not be entertained by this Court; for apart from the fundamental principle that there can be no injury without a remedy, the provision of our statute apparently sought to be relied upon by the appellant is being deliberately misconstrued ; for closer examination of the Revised Statutes discloses :

" 'And whenever any person shall sustain any loss by the application of any part of his property by the Republic for its own use, or otherwise, he shall enter his complaint according to law in the Court of Quarter Sessions and Common Pleas [now the Circuit Court] (1), naming the Republic of Liberia as defendant, Rev. Stat., § 283.

"It is thus patent that the contention of the appellant is void of merit, and should be denied and overruled ; and appellees so pray.

"2. And also because appellees submit that the Legislature of this country has, in addition to the statute cited in Count `i,' made provisions as to how suits may be brought against the Government, the relevant portion of which law reads :

" ` . . . and any person, who may sustain any injury to his person or property by any wrongful act of the Government, shall have a right of action against the Government in any Court of competent jurisdiction under the laws relating to actions and special proceedings. No writ, however, shall issue in any such action; but the party shall file his complaint with the Justice of the Peace, or the Clerk of the Court, naming the "Republic of Liberia" as defendant.' Rev. Stat., § 1401."

As to the question of what manner of suit may be brought against the Republic, the citations of law submitted by appellees in support of their resistance have no reference to or bearing on an action of ejectment.

"The claim shall be tried before a jury, and the Plaintiff shall receive such compensation as a Jury shall award." Rev. Stat., § 283.

"If final Judgment should be entered against the Republic, the Clerk shall deliver to the party a certified copy thereof. Upon the presentation to the President of such judgment, he shall endorse thereon an order directing its payment by the Secretary of the Treasury, or a Sub-Treasurer and the same shall be paid forthwith." Rev. Stat., § 1401.

The above quotations are the concluding portions of the statutes cited in support of the resistance as aforesaid which, as it would appear, appellees studiously omitted.

It is obvious that the spirit and intent of the above-quoted passages of law are in perfect agreement with and unequivocally support the principle that any persons who sustain damages to or loss of property by the application of the same to the use of the Republic should be accorded pecuniary consideration therefore; and could not be construed to provide for the recovery of possession or title to real property.

Let us examine briefly the purpose or object of an action of ejectment. The definition given in the "Old Blue Book" is as follows :

"Ejectment is an action to recover possession of real or immoveable property, wrongfully withheld by the defendant from the plaintiff. . . ." 1847 Dig. pt. I, tit. II, ch. I, sec. 14; 2 Hub. 1526.

Ejectment has also been authoritatively defined as :

"A form of action by which possessory titles to corporal hereditaments may be tried and possession obtained.

"A form of action which lies to regain the possession of real property, with damages for the unlawful detention." BOUVIER, LAW DICTIONARY 976 *Ejectment* (Rawle's 3rd rev. 1914).

It has been further stated that:

"In a general way, it may be said that ejectment is a form of action in which the right of possession to corporal hereditaments may be tried and the possession obtained. In some States, it is defined by statute as 'an action to recover the immediate possession of real property.' At common law, ejectment is a purely possessory action; and even as modified by statute, and though based on title, it is essentially of that nature." 18 AM. JUR. 7 *Ejectment* § 2.

It is evident that ejectment, being a purely possessory action having for its sole object the recovery of the possession of real property, is not listed among the suits which the Legislature has authorized to be brought against the Republic; hence, this form of action is not maintainable against the State.

In view of the foregoing it is the opinion of this Court that appellant's motion should be granted, the entire proceedings in this case vacated and made null and void, and costs disallowed. And it is hereby so ordered.

Judgment vacated.

MR. CHIEF JUSTICE SHANNON dissenting.

It is my opinion that the issue upon which this case has been decided and dismissed is of such vital, basic, and momentous importance that not only should I indicate my disagreement with my colleagues as to the majority opinion just read, but that I should also express the grounds of my said disagreement; hence this dissent.

J. Daniel Potter and others entered an action of ejectment against the Republic of Liberia for a certain parcel of land, situated on Ashmun Street in Monrovia, on which the building presently occupied by the Department of Justice is located. The Republic of Liberia lost the case in the court below, and has brought the matter up here on appeal. Among the issues saved on exceptions for the appeal is the question of an alleged inhibition against any person bringing an action of ejectment against the Republic of Liberia, based upon both the Constitution of the Republic and the statute laws thereof ; so that when the appeal was called up, instead of allowing the court to fully enter the records certified to it, the Republic of Liberia, appellant, presented a jurisdictional motion involving only the issue of the constitutional inhibition.

It is true that the Constitution in Article I, Section 17th, provides that: "Suits may be brought against the Republic in such manner, and in such cases as the Legislature may, by law direct." It is also true that the Legislature has made provisions whereby suits may be brought against the Republic, and in what cases.

It is from these statutes that the Republic of Liberia finds basis for her contention that appellee is without right to enter an action of ejectment against her, since ejectment is not mentioned as one of the causes for which actions may be brought against her; which contention has found support in the majority opinion. It is useful

to state that no specific forms of action have been enumerated in the enabling act, but rather in the first section there is provision for persons aggrieved "by the non-performance of any contract or contracts made on the part of the Government by any person or persons whose duties it shall be to make such contracts, having authority for that purpose from the Government," which section obviously would not involve actions of ejectment not founded on contracts or the violation thereof; but from the third section of said act we find the right given any person or persons who "shall receive any damage by the application of any part of his or their property by this Republic to its use, or otherwise, so as to occasion any damage or loss," to commence an action or suit in manner as provided in section two of said act.

It is my opinion that to conclude that, because ejectment has not been specifically named in this act, no action can lie against the Republic for an alleged or claimed unlawful possession and withholding from a person of his real property, which in effect would be a damage and a loss to him, would be actually unjust, unethical, unfair, and inequitable; especially so, since no distinguishing point is made in said act between real and personal property. To hold otherwise would, further, in my opinion, mean that the Republic could with impunity dispossess a party of his property and indefinitely hold same against him without being made liable in law for said unlawful possession because, as the majority opinion seeks to establish, ejectment is no suit for claim for loss or damage in money. Further, it would be establishing the doctrine that, if even the aggrieved party suffered any "loss or damage" to his realty consequent upon the unlawful possession and withholding by the Republic, only an action for such loss and damage as might be assessed in terms of money could lie, and none for dispossession.

The situation thus created by the majority opinion is what law writers call "*damnum absque injuria*," and is not favored by the law.

I am, therefore, of the opinion that an action of ejectment can lie against the Republic by force of the provisions of the statutes found in the "Old Blue Book" and Revised Statutes; and hence this dissent.