

KIKE NOWA and CHEH DUEAH, Appellants, v. **MARY ELIZABETH WOLO**, Executrix of the Will of the Late P. GBE WOLO, Appellee.

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

Argued October 9, 10, 1944. Decided November 17, 1944.

1. Both the Circuit Court and the Monthly and Probate Court for Montserrado County have appellate jurisdiction over all cases appealed from the Courts of Justices of the Peace in Montserrado County and from the Magisterial Courts in Montserrado County.
2. One cannot bring suit in his own behalf for damage done to another's property.
3. Our Constitution expressly provides that every person injured shall have remedy therefor by due course of law.

Plaintiff, now appellee, began an action for damages in the Municipal Court of Monrovia. Upon a decision for plaintiff, now appellee, defendants, now appellants, excepted and appealed to the Monthly and Probate Court of Montserrado County. Before completion of said appeal, upon the application of plaintiff, now appellee, the municipal court judge issued an execution against defendants, now appellants, returnable before the Circuit Court for the First Judicial Circuit, Montserrado County. Upon appeal from judgment for plaintiff, now appellee, in the said circuit court, *judgment reversed.*

B. G. Freeman for appellants. *H. Lafayette Harmon* for appellee.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

On March 19, 1941, Mary Elizabeth Wolo, as nominated executrix of the last will and testament of the late P. Gbe Wolo, entered an action of damages in the Municipal Court of the Commonwealth District of Monrovia against Kike Nowa and Cheh Dueah of Krutown, Monrovia, setting out her complaint as follows :

"1. That at the time hereinafter mentioned, plaintiff was and still is in possession of a piece of land with the buildings thereon, situated on Camp Johnson Road, part of Lot No. 13, commonly known as the former dwelling house of the late P. Gbe Wolo,

in the City of Monrovia.

"2. That heretofore on the 6th day of October A. D. 1940, and on divers other days up to the time of the commencement of this action, defendants aforesaid unlawfully and violently entered upon said premises and with force and without legal authority attempted to forcibly eject the plaintiff's tenant and by means of said illegal entrance without any colour of right, took away from said plaintiff's tenant, James Morris, during his absence, while at work, to wit :-

"One pair gent's shoes	£1: 5: 0
Two bed spreads	1 :4: 0
Two pillow cases	-: 2 : 6
Three arrow shirts and the sum of	1: 8 : 6
six pounds and three pence sterling	6: 0: 0"

On October 17 of the same year the municipal court rendered judgment in favor of the plaintiff, now appellee, handing down the following ruling:

"The within case came off for trial after many a long delay on the date upon which it was assigned. Plaintiff with all her witnesses present, represented by Counsellor H. L. Harmon assisted by Counsellor C. T. O. King, and Counsellor D. C. Caranda for defendants. Demurrers to the writ were duly filed together with their resistance. The court overruled said demurrers and ruled the case on for trial [see records]. At the call of the case upon the day duly assigned, defendants with their lawyer were absent although in Court at the time the assignment made but wilfully absented themselves from court; thereupon plaintiff moved the court for the case to go on since no observations have been made by them [defendants]. The court made observations [see record]. Witnesses for plaintiff called, qualified and deposed. After such arguments by plaintiff; judgment reserved. The court is therefore of the opinion that plaintiff has conclusively proved her case and therefore orders that she shall recover the amount of £10: 8: 5 : together with all costs of court. . . ."

To this ruling of the municipal court the defendants, now appellants, took exceptions and prayed an appeal to the Monthly and Probate Court for Montserrado County, but before said appeal could be completed the plaintiff, now appellee, had applied for, and the judge of the municipal court had issued, an execution against the appellants returnable before the Circuit Court for the First Judicial Circuit, Montserrado County.

When the case was tried before said tribunal the appellants contended that appeals

from the municipal court lie to the Monthly and Probate Court exclusively, but this contention the court below overruled, and exceptions having been taken thereto it is now one of the points upon which this Court must give a decision. Therefore, let us examine the statutes setting out the jurisdictions of the two courts in question. The code of the justices of the peace has set out that appeals from their courts should be taken as follows :

"All persons shall have the right to appeal from every decision of a Justice of the Peace to the Court of Quarter Sessions [now the Circuit Court] of the County within which such Justice is acting; and they shall not be required to pay the costs adjudged against them by the Justice, until the final decision of the Court, to which the appeal is taken, has been rendered." 1 Rev. Stat. § 669; Justice of Peace Code.

The act creating the Monthly and Probate Court for Montserrado County, approved February 20, 1940, has also made the following provision with respect to appeals from courts of justices of the peace :

"The Monthly and Probate Court shall also have appellate jurisdiction over, and shall hear and determine, appeals from Justices of the Peace and Magistrates Courts in the County, Territorial and District Divisions. Appeals either in law or Probate, from the decisions of the Probate Court shall be direct to the Supreme Court of Liberia." L. 1939-40, ch. XV, § 7.

From the above quoted statutes it can be clearly seen that both the Circuit Court, formerly the court of quarter sessions, and the Monthly and Probate Court for Montserrado County have appellate jurisdiction over all cases appealed from the courts of Justices of the Peace in Montserrado County and from the Magisterial Courts in Montserrado County. In the case *Brumskine v. Vietor*, Mr. Justice Johnson, later Chief Justice Johnson, speaking for this Court said *inter alia*: "As to the question raised by appellant that the amendatory Act repealed that portion of the prior Act, which referred to justices of the peace, we must observe that ordinarily express language is used where a repeal is intended, and a repeal by implication is not favored, unless the two Acts are irreconcilably inconsistent. The rule is that if two statutes on the same subject can stand together without destroying the evident intent and meaning of the latter one there will be no repeal. 'It must be known,' says Lord Coke, 'that for as much as Acts of Parliament are established with such wisdom and universal consent of the whole realm, they ought not by any constrained construction out of the general and ambiguous words of a subsequent statute to be abrogated. . . ." *Id.* 2 L.L.R. 123, 125 (1913).

It is therefore our opinion that the judge of the circuit court did not err when he overruled this point of appellant's resistance of the execution.

The records also revealed in the complaint that the appellee, plaintiff below, while describing herself as the nominated executrix of the estate of the late P. Gbe Wolo, had brought an action of damages for the loss of certain personal property which belonged to a tenant, James K. Morris by name, then occupying the premises of lot Number 13 under her authority. The appellee's counsel in answer to the Court's query as to why Morris had not brought a suit in his own behalf contended that by the forcible entry made upon the premises, the lock and other portions of the realty were damaged. Upon inspection of the record there was no allegation in the complaint of said damage and as against his contention the judgment of the municipal court was obviously an award for the loss of personal property belonging to James K. Morris for which plaintiff, now appellee, had sued.

Appellee's counsel further contended that said award would rightfully be the appellee's redress for the damage sustained to her property in the breaking of the lock from the door, but the facts in the case as contained in the record do not support this contention in the slightest degree. Rather it would appear that it was James K. Morris who had sustained a damage, in which case he has the right at law to enter action in his own behalf ; but his landlady could not, upon the strength of the relation of landlord and tenant, bring suit in his or her own behalf, as appellee's counsel contended, for personal property belonging to Morris. The Constitution of Liberia expressly provides in Article 1 section 6, that "Every person injured shall have remedy therefor, by due course of law. . . ."

This Court is therefore of the opinion that inasmuch as the action was not brought by the proper party, the judgment of the court below should be reversed and the appellee ruled to pay all costs of these proceedings; and it is hereby so ordered.

Reversed.