

JACOB O. PRATT, Plaintiff-in-Error, v. **JAMES T. PHILLIPS** and **EDWARD J. SUMMERVILLE**, Assigned Judge Presiding at the Circuit Court for the Sixth Judicial Circuit, Montserrado County, Defendants-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Argued April 5, 1949. Decided April 22, 1949.

1. Rules of court are for the purpose of aiding the speedy determination of causes while the courts are established for the higher purpose of the administration of justice, and where the strict enforcement of the rule would tend to prevent or jeopardize the administration of justice the rule must yield to the higher purpose.
2. Neither justice nor equity would support striking from the docket this case of ejectment, the records of which have been transmitted to this Court after granting the writ of error, merely because plaintiff-in-error died in the interim and no motion for substitution had been filed in keeping with Supreme Court rule of court until the March term of the Court, thereby depriving his representatives of the right granted by the Constitution to defend property.
3. Ejectment, being a mixed question of law and fact, shall be tried by a jury.

James T. Phillips, defendant-in-error herein, successfully sues Jacob O. Pratt, plaintiff-in-error herein, in ejectment in the circuit court. On appeal to this Court, the case was remanded for repleading and, if an issue of fact regarding encroachment arose, the trial court was instructed to order a survey of the disputed property. *Pratt v. Phillips*, 7 L.L.R. 276 (1941). After repleading the case was ordered to trial on the date submitted after said survey. The trial judge did not allow the then defendant his day in court and without a jury decided in favor of the then plaintiff. The plaintiff-in-error unsuccessfully applied in Chambers for a writ of error. On appeal to this Court, *en banc*, the application was granted. Upon assignment of this case for hearing wherein defendant-in-error moved to strike the case from the *motion denied*.

R. A. Henries for plaintiff-in-error. R. F. D. Smallwood for H. Lafayette Harmon of counsel for James T. Phillips.

MR. JUSTICE REEVES delivered the opinion of the Court.

From the records in the above case, the following facts have been culled:

In the month of April, 1939 James T. Phillips, plaintiff, now defendant-in-error, instituted an action of ejectment in the Circuit Court for the First Judicial Circuit, Montserrado County, against Jacob O. Pratt, defendant, now plaintiff-in-error, for ten acres of land situated in the District of Careysburg, being a part of one hundred acres to which he held bona fide title. To this complaint Jacob O. Pratt, defendant, now plaintiff-in-error, filed an answer in denial, and then ensued a legal contest of pleadings.

At the November term, 1939 of said court the case was duly tried and judgment rendered in favor of James T. Phillips, plaintiff, now defendant-in-error, from which judgment plaintiff-in-error appealed to this Court. Said appeal case after due deliberation thereon by the Supreme Court after trial during the April term, 1941 was remanded with the following instructions:

"(1) To order the parties to replead; and (2) Should an issue of fact thereafter emerge tending to show that either party has encroached upon the property of the other, to order a survey by one or more surveyors, as the necessity of having one or more shall to the trial court seem expedient, the survey to be paid for by both parties through the officers of court; and the costs of the proceedings up to this point shall be borne by each party himself ; and all other costs shall abide final judgment of said court." *Id.*, 7 L.L.R. 276.

In keeping with said decision of the Supreme Court the parties repleaded in the court below, and after they had rested, the legal issues were duly disposed of by His Honor R. F. D. Smallwood, then Judge of the First Judicial Circuit, who ruled said case to trial upon the data that would be submitted after the survey of the land in dispute by a surveyor. Subsequently, on October 24, 1944 the case was called up by His Honor Edward J. Summerville, Judge presiding over the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, which court had been empowered with such jurisdiction, and, without allowing defendant Pratt, now plaintiff-in-error, his day in court, rendered final judgment against him on October 25, 1944, without the assistance of a jury, in violation of the statute requiring questions of fact arising in ejectment cases to be tried by a jury and in violation of the order of the Supreme Court in its judgment remanding said case for repleading and trial under special instructions. Judge Summerville also ordered a notice to be issued and served on the defendant commanding him to vacate his said premises within ten days from the date of its issuance on October 25, 1944.

Jacob O. Pratt, plaintiff-in-error, then defendant, being dissatisfied with the final judgment rendered by the judge below and the order issued to vacate said premises, filed an application for a writ of error in the Chamber Session of this Supreme Court in the October term, 1944. Said application was heard and on September 19, 1947 the writ prayed for was denied by the Associate Justice then presiding in Chambers, from which decision the plaintiff-in-error appealed to the Bench *en banc*. Said appeal was heard during the October term of said year by the Bench *en banc*, and the application for the issuance of a writ of error was granted by the majority of the Justices, one Justice dissenting. Upon the granting of said writ a mandate was sent to the lower court, and the records of the court below were transmitted to this Court. Upon the assignment of the case for hearing by the Court at this term Counsellor Smallwood for H. Lafayette Harmon, of Counsel for James T. Phillips, defendant-in-error, filed a motion to strike the case from the docket because the plaintiff-in-error had died since October, 1947 and there had been no motion filed for substitution of party since under the rule of court more than two terms of court had since elapsed. This motion was resisted by Counsellor Richard Henries, of counsel for plaintiff-in-error, who simultaneously filed a motion for substitution of party which was also resisted by counsel for defendant-in-error.

The Court per subsequent assignment patiently heard the arguments of counsel on said motion filed and its resistance, permitting said counsel considerable latitude. Defendant-in-error's counsellor at law, R. F. D. Smallwood, referred to and read Rule VI of the Revised Rules of the Supreme Court of Liberia [2 L.L.R. 661, 665] and elaborately argued thereon; but when his attention was called to the last clause of section one of said rule he frankly admitted that said clause made the rule discretionary and not mandatory.

"In the case of the death of either party, the name of the executor, or administrator may be substituted and the cause pending be proceeded with. Either party may submit a motion for such substitution and the same shall be disposed of as justice and equity may require.

"If no representative of a deceased party shall appear with a motion for substitution for two terms after the death of the party, the cause may be stricken from the calendar upon the motion of the opposite party." Rules of Sup. Ct., VI, 2 L.L.R. 665.

That rules of courts are under the control of the courts is accepted universally.

"Rules of Practice are for purpose of aiding in speedy determination of causes, while the courts are established for the higher purpose of the administration of practice [*sic*], and, where the strict enforcement of the letter of a rule would tend to prevent or jeopardize the administration of justice, the rule must yield to the higher purpose, and be relaxed by the court." 21 C.J.S. *Courts* §178a., n. 11 (1940).

In further support of said principle, see 7 R.C.L. 1027 (1915).

Such a principle was universally accepted ostensibly to prevent the jeopardization of the administration of justice. This is vividly borne out in the issue now before this Court, for without such a universally accepted principle which finds support in the last clause of section one of Rule VI of this Court, "either party may submit a motion for such substitution and the same shall be disposed of as justice and equity may require," the Court would have no alternative but to grant defendant-in-error's motion to strike the case from the docket. However, under the accepted universal principle that rules of courts are but the means to accomplish the ends of justice and that it is always in the power of the court to suspend its own rules and except a particular case from its operation, whenever the purposes of justice require, the Court is of the opinion that this case falls within this category. Neither justice nor equity would support striking from the docket this case of ejectment, the records of which have been transmitted to this Court upon a mandate issued to the lower court after granting the writ of error, merely because plaintiff-in-error died in the interim and no motion for substitution had been filed in keeping with Rule VI, *supra*, until the March term of the Court, thereby depriving his representatives of the right granted by the Constitution to defend property. This principle is even more particularly appropriate in this case where plaintiff-in-error was the defendant in the ejectment action.

"The trial of all mixed questions of law and fact, shall be by jury, with the assistance, and under the direction of the court, unless where the court could try question, if one of mere fact." Stat. of Liberia (Old Blue Book), ch. VII, § 3, 2 Hub. 1542.

In the case *Reeves v. Hyder*, 1 L.L.R. 271 (1895) this Court held: "ejectment . . . supports the idea of adverse possession. . . . It being a mixed question of both law and fact, the statute provides that such trial is to be by a jury . . . under the direction of the court. . . ." *Id.* at 272; *Harris v. Lockett*, 1 L.L.R. 79 (1875).

This Court is of the opinion as stated *supra* that this case falls within the category of cases in which a court is justified in excluding the operation of any of its rules

whenever the purposes of justice require, since rules of courts are but the means to accomplish the ends of justice, and it therefore denies said motion and refuses to strike said case from its docket.

In the opinion of the Court a legal trial of said case should be had in conformity with the Constitution so that equity and justice may be meted out in the premises to all parties concerned ; and it is hereby so ordered.

Motion denied.