

CAROLINE PRATT for her Husband **JACOB O. PRATT**, Deceased, Plaintiff-in-Error, v. **JAMES T. PHILLIPS** and His Honor **EDWARD J. SUMMERVILLE**, presiding at the September Term, 1944 of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Defendants-in-Error.

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

Argued March 13-14, 1950. Decided June 8, 1950.

An action of ejectment involves questions of both law and fact, which under the statutes must be tried by a jury under the direction of the court.

James T. Phillips, defendant-in-error herein, successfully sued Jacob O. Pratt, whose widow has been substituted for him as plaintiff-in-error, herein, in ejectment in the lower court. On appeal to this Court, in a per curiam decision we reversed the court below and remanded the case with instructions to order the parties to replead and, if it should seem that there had been an encroachment, to order a survey. *Pratt v. Phillips*, 7 L.L.R. 276 (undated). After the legal issues were disposed of in the lower court, the case was ruled to trial upon the data that would be submitted after the survey. The trial judge disposed of the case without a jury, and rendered judgment in favor of James T. Phillips. Jacob O. Pratt was denied an alternative writ of error by the Justice in chambers. On appeal to this Court *en banc*, the petition for the writ was granted. *Pratt v. Phillips*, 9 L.L.R. 4.46 (1947). Upon hearing of the writ of error in this Court, judgment of the lower court *reversed and remanded*.

R. A. Henries for plaintiff-in-error. R. F. D. Smallwood for defendant-in-error.

MR. JUSTICE REEVES delivered the opinion of the Court.

Since the institution, trial and appeal in 1939 of the case at bar, the Court has rendered four opinions, including the present. *Pratt v. Phillips*, 7 L.L.R. 218 (1941), 7 L.L.R. 276 (undated), 9 L.L.R. 446 (1947). This should not be surprising, for the Constitution declares that:

"All men are born equally free and independent, and have certain natural, inherent and inalienable rights; among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of pursuing and obtaining safety and happiness.

"No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land." Const. Lib. art. I, §§ 3, 8, 2 Hub. 853.

So imperative are these declarations of the organic law of this country that the Court realizes its duty, regardless of the number of opinions rendered in any one case, always to adjudicate and determine issues presented on appeals.

In this appeal, Caroline Pratt, widow of the late Jacob O. Pratt, plaintiff-in-error, moved the Court at the October term, 1949 to be substituted in place of her late husband as plaintiff-in-error, which permission was granted.

The records in the ejectment action having been sent forward in keeping with the writ of error previously prayed for and granted, 9 L.L.R. 446 (1947), the case was called for hearing at this term of the Court. Counsel for plaintiff-in-error and defendant-in-error, having filed their briefs, argued ably the law issues therein contained, to which the Court listened attentively.

Mr. Justice Russell, now Chief Justice, in speaking for the Court at the October term, 1947, when the writ of error was granted, said *inter alia*:

"The crux of the case, however, would seem to rest upon the manner in which the trial judge finally disposed of the case and rendered judgment, that is to say, without the aid of a jury. The trial judge based his action upon the fact that Judge Smallwood had ruled that the case should be tried on the data which the surveyor would bring in regarding the two pieces of property. The report of the surveyor was that Pratt was occupying a portion of Phillips' land. The judge held that the report of the surveyor was in the nature of an award by an arbitrator and, since it was not attacked by the defendant, plaintiff-in-error herein, all the court had to do was confirm it and give final judgment accordingly without the aid of a jury. He predicated his authority for so doing upon the opinion rendered by this court on January 10, 1916 in the case *Roberts v. Howard*, 2 L.L.R. 226, 6 Semi-Ann. Ser. 17, involving ejectment wherein it was held that where the facts are admitted in a case, leaving only issues of law to be determined, it is not error for the court to hear and determine same without the intervention of a jury.

"Now we must emphasize here that in the case cited above the facts, as the opinion recites, were admitted, while in the case at bar no evidence has so far been adduced to prove that the facts were also admitted, thus leaving only issues of law to be disposed

of. The report of the surveyor we hold to be in the nature of evidence rather than an award. Again, we do not see that the silence of plaintiff-in-error could reasonably be construed as an admission of the facts since it has not been shown that he was summoned to appear after his counsel had given notice that he was inhibited from further practice as a lawyer. Since the matter involved facts, it should have been submitted to a jury.

"Defendant-in-error further alleged that plaintiff-in-error refused to turn over to the surveyor his title deed as ordered by the court. If, as the records state, the surveyor was appointed by the court to survey the parcel of land in question and ruled that the parties turn their deeds over to said officer, it seems to us not only a reflection on the authority and dignity of the court to say that a litigant refused to obey the court's order, but also a reflection upon the trial judge who permitted it. Where is the inherent power of the court to hold in contempt those who neglect and refuse to obey its mandate?

"In *Ruling Case Law* we find that 'It is a general principle that a disobedience of any valid order of the court constitutes contempt, unless the defendant is unable to comply therewith.' 6 *Id. Contempt* § 15, at 502 (1915).

"Judge Bouvier states that: 'Contempts of court are of two kinds : such as are committed in the presence of the court, and which interrupt its proceedings which may be summarily punished by order of the presiding judge; and constructive contempts, arising from a refusal to comply with an Order of court. . . 1 Bouvier, *Law Dictionary Contempt* 651 (Rawle's 3d rev. 1914).

"Inasmuch as the court had inherent power to enforce its order, we cannot accept the alleged refusal of plaintiff-in-error to turn over to the surveyor his title deed as a ground for divesting him of his property except by the law of the land. Indeed, we must question the validity of the survey and the subsequent report thereon. We are amazed that the surveyor was able to determine who was the trespassor [*sic*] when he had only one of the deeds in his possession and therefore was unable to compare their respective dates of issuance, probate, and registration.

"In the case *Reeves v. Hyder*, 1 L.L.R. 271 (1895), this Court held *inter alia*: 'Ejectment . . . supports the idea of adverse possession, hence a trial of the legal titles of the contending parties. It being a mixed question of both law and facts the statutes provides that such trial is to be by a jury, with the assistance and under the direction of the court. . . *Id.* at 272, *Harris v. Locket*, 1 L.L.R. 79 (1875)." 9 L.L.R. 450.

This Court thus handed down its opinion expressing a denunciation of the procedure of the lower court during the original trial, it being in derogation of the statute law :

"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.

We conclude that it is needless for us to say anything further on the question; and, the majority of us being in agreement, reverse the judgment of the court below and remand the cause with orders that a trial by jury be had in keeping with law. Costs are ruled against defendant-in-error; and it is hereby so ordered.

Our colleague Mr. Justice Shannon, who was not present during the hearing of the case, agrees with our conclusions because of his familiarity with the case during its previous hearings.

Our colleague Mr. Justice Barclay does not agree with this opinion and our conclusions in this case.

Reversed.