REPUBLIC OF LIBERIA, Appellant, v. **RACHEL E. T. MASSAQUOI ET AL.**, Appellees.

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

Argued March 21, 1950. Decided June 8, 1950.

1. It is a fundamental principle of chancery courts finally to dispose of litigation, making as complete a decision on all the points embraced in a cause as the nature of the case will admit so as to preclude all further litigation of the subject matter between the parties.

2. If there is a cloud on title as a result of an indefinite description in the deed of the pertinent acreage, the proper procedure is a prayer for the removal of said cloud by reformation or rescission of the deed in a court of equity.

3. Only a court of equity can determine whether a deed containing a description of fifty acres "more or less" entitles the title holder to the remaining seventeen acres in the parcel.

4. It is the duty of the Attorney General to advise in the public interest when requested to do so, but such advice is not binding on a court of equity.

Plaintiffs, appellees herein, filed a bill in equity against the Republic, appellant herein, for the cancellation of an instrument to remove a cloud on the title of real property belonging to plaintiffs. Apparently the lower court judge dismissed the 'answer and took no further action. On appeal from said ruling whereby the appellant asks that a final decree be rendered, *judgment reversed and remanded.*

The Attorney General for appellant. *R. F. D. Smallwood* for appellees.

MR. JUSTICE REEVES delivered the opinion of the Court.

Rachel E. T. Massaquoi, et al., plaintiffs, descendants and heirs of the late Elijah Johnson, filed a bill in equity for the cancellation of a voidable instrument to remove a cloud on a title, against the Republic of Liberia by and through C. Abayomi Cassell, Attorney General for the Republic of Liberia, Defendant, in the Equity Division of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, September term,

1948, complaining as follows :

"That in the year 1839, during the colonial days of this Republic, Elijah Johnson, their great grandfather, purchased from the colonial Government, through Thomas Buchanan, the then Governor of said colony, a parcel of land more fully and sufficiently described in the title deed, executed to him by said Governor; a copy of this deed is herewith filed, marked exhibit 'A' and made a part thereof. According to the recital of quantity in this deed . .. the parcel of land therein conveyed, contains fifty acres of land more or less which indicated that the number of acres of the land did not enter into the essence of the contract, but that the selling was in gross and that all the land within the boundaries set out, was intended to be conveyed. Plaintiffs submit further that the title to said land has come to them and said land is now rightly their posesssion. And this the Plaintiffs are ready to prove.

"2. And Plaintiffs further complain that Joseph F. Dunbar, land Commissioner for Montserrado County and Government land Surveyor for said county, declares that his survey and the survey of his son, another surveyor for Montserrado, of the parcel of land so descended to plaintiffs and bearing on the authentic plot of Monrovia and Sinkor the number 112a, convince him that the parcel of land contains more than so acres of land. That it contains seventy-two acres of land hence he would take away from the Johnson's heirs, plaintiffs herein, twenty-two acres of the parcel purchased by and conveyed to as herein set forth, their ancestor Elijah Johnson and held by him and his heirs as their property for these one hundred and nine years which is not only unjust but to the prejudice and injury of plaintiffs. And this the plaintiffs are ready to prove.

"3. And Plaintiffs further complain that said Joseph F. Dunbar, land Commissioner for Montserrado County and Government Land Surveyor for said county, to further his intention to deprive plaintiffs of their lands and give his acts an official appearance obtained from the Honourable C. Abayomi Cassell, Attorney General of Liberia, an instrument being a communication to the said Joseph F. Dunbar, land Commission[er] and land Surveyor for Montserrado County, dated i3th April 1948 which not only contains his opinion that all the lands in said parcel above so acres should be taken away from plaintiffs but the following peremptory order :

`You are therefore directed to allocate to the heirs of the late Elijah Johnson fifty (so) acres of land in one single block and no more.'

A copy of which instrument is herewith marked 'B' and made a part thereof. This

instrument plaintiffs contend may be and is intended to be vexatiously and injuriously employed against their interest, throw a cloud of suspicion over their title to said property and interest therein will, if allowed to stand, cause plaintiffs to in future suffer injury, and that plaintiffs are without a plain and adequate remedy at law against said instrument. And this the plaintiffs are ready to prove.

"Wherefore, plaintiffs pray that this Honourable Court sitting in Equity in view of the premises above set out will intervene and protect them and remove the cloud of suspicion thus created against their title by directing and ordering that this instrument containing these directions and orders of the Attorney General to the said Joseph F. Dunbar, land Commissioner and land Surveyor for Montserrado County, being both vexatious and injurious to the interest of plaintiffs aforesaid [be] cancelled. That Your Honour may and will grant any other further relief to which you will find plaintiffs in equity and justice entitled. All of which the said plaintiffs are ready to prove."

With this complaint a copy of said deed and instrument was filed.

The defendant appeared by the Attorney General filing its appearance and thereafter an answer, joining issue with said plaintiffs' complaint, eleven counts raising pleas in abatement and traversals, five of which we quote :

Count 7:
"And also because defendant submits that plaintiffs are only entitled to fifty acres of land as allotted to them by the deed which is supported by the Opinion of the Attorney General as shown in Exhibit 'A' and the use of the words 'more or less' does not give them the said plaintiffs the right to any greater quantity of land ; such are words only used to cover mere inaccuracies or discrepancies ; wherefore defendant says or asserts that plaintiffs suit is without legal or equitable foundation and should therefore be dismissed, and defendant so prays with cost against plaintiffs. And this the defendant is ready to prove.

Count 8:
"And also because defendant says and asserts that the quantitative recital or description of the metes and bounds in the title deed of plaintiffs is so vague and uncertain that it became necessary for Joseph F. Dunbar, land Commissioner for Montserrado County, upon instruction of His Excellency the President of Liberia to seek an opinion as to exactly how much land plaintiffs were entitled to by such deed resulting in the exhaustive opinion of the Attorney General, C. Abayomi Cassell, having been given, in which it is most clearly set out that the said quantitative recital

or description of the metes and bounds of the property in said title deed provides no means whereby an exact quantity of land can be considered as being or having been conveyed. Where resort to the quantity therein stated had to be had in keeping with the principles of the law, which are fifty acres to which alone plaintiffs are entitled ; wherefore defendant denies that plaintiffs are entitled under the law to any greater quantity than fifty acres of land stated in their title deed in consideration of which defendant prays the dismissal of this suit with cost against plaintiffs. And this the defendant is ready to prove."

Count 9:

"And also because defendant says and asserts that plaintiffs' claim and pretensions to title to and in a greater quantity of land is without foundation in fact, for plaintiffs themselves by their own admissions, that is in their complaint do not assert title to any quantity of land greater than fifty acres of land, for if they desire or desired to do so they have not stated same in their complaint; wherefore for their failure or neglect to assert title to any specific quantity of land other than the fifty acres shown in their deed defendant prays dismissal of this suit with costs against plaintiffs. And this defendant is ready to prove."

Count 10:

"And also because defendant says and asserts that the desire of plaintiffs to assert title over a parcel of land over and above their fifty acres of land conveyed by their title deed said surplus land cannot be taken to be conveyed by said deed because the additional portion of land is unreasonably great being approximately seventeen acres of land in excess of that conveyed and is not a discrepancy cured by the use of the words 'more or less' as sought to be asserted by plaintiffs as a sale in gross, for the quantitative recital or description of the metes and bounds of said land do not make clear that such unreasonably great portion of land was conveyed. Wherefore defendant prays the dismissal of this suit with costs against plaintiffs. And this the defendant is ready to prove."

Count 11:

"And also because defendant says and asserts that plaintiffs have illegally and unwarrantedly exceeded the rights conveyed to them by their title deed having failed to determine by survey the exact metes and bounds of their land until the said Joseph F. Dunbar, land Commissioner for Montserrado County, called their attention to their encroachment upon the public domain when a joint survey was undertaken which clearly disclosed that the land over which they were asserting title was far in excess to which they were entitled and an unreasonably greater quantity than their deed called

for, upon the survey of the area over which plaintiffs sought to assert title their own surveyor in person of one Adolphus N. Ajavon, one of the plaintiffs herein, it was found by his survey that a surplus might exist as shown by his letter to plaintiffs dated November 15, 1947 in which he states :—

`if there should be a surplus it should be on one side or the other along the bank of the river or the sea beach, but not in the middle of the parcel of land now in question,'

which clearly supports the position of the land Commissioner Joseph F. Dunbar : vide exhibit a hereto annexed and made a part hereof; wherefore defendant prays the dismissal of the suit with costs against plaintiffs. And this the defendant is ready to prove."

To this answer plaintiffs filed a reply and the pleadings rested.

According to the minutes of the court of Monday, February 7, 1949, the court met and when Judge King observed that counsel for both parties concerned were present he ordered the case called ; but said minutes omit to state the purpose of the call showing that thereafter "by orders of the Judge, matter was suspended." It appears further, according to the minutes of Wednesday, February 9, 1949, that the court met again, to wit:

"By orders of the Judge this court sitting in its Equity Division stands open for the transaction of business. The minutes of yesterday's session stand approved with the necessary corrections.

Trial case resumes : Case, Rachel Massaquoi, et al— Petitioners versus the Government of Liberia etc —Respondents—Bill in Equity to remove cloud of title called.

"At this stage of the case, the Attorney General of Liberia excepted] to the ruling of His Honour the Judge and prayed an appeal to the Honourable Supreme Court of Liberia. Matter suspended."

Strange to say that these minutes of the court omit to show that the court considered the pleadings in said case and ruled thereon. Courts are masters of their records and such careless and indifferent keeping of their minutes should be discountenanced, for as guardians of their records they should be correctly and intelligently kept, especially

for the benefit of appellate courts.

In the records certified to this Court, we find listed therein the court's ruling on the pleadings. Certainly the judge must have heard arguments by counsel thereon before making said ruling, yet no mention is made in said minutes of them, or of the court's ruling. This is indeed negligent, and to make it more confounding, the minutes of February 9 state that the Attorney General excepted to the court's ruling and announced an appeal to this Court. This is a strange happening. We must here again sound a note of warning to judges and counsel not to expect this Court to do for them what they should do for themselves. As an appellate court, we must be guided by the records of the court below certified to us in considering appeals. Therefore it is essential that such omission not occur.

An inspection of the ruling of the court below impresses us that the minutes it permitted to be kept omitting mention of the making of said ruling was predictive, for said ruling, though lengthy, only dealt with the answer, dismissed same, and took no further action in the matter.

Appellant in the fourteenth count of her brief, which is very pertinent and explicit, simplifies the position :

"Appellant respectfully submits that the ruling handed down by the learned trial Judge is a nullity and of no legal effect whatsoever since it does not determine the case one way or the other merely stating erroneous conclusions of law and assumption of facts, and finally only dismissing the answer of your appellant without giving any relief to appellees whatsoever or even purporting to do so.

"Appellant submits that the said ruling does nothing but seek to condemn the opinion of the Attorney General whilst it is supposed to cancel the same in order to remove a cloud from over the title of appellees, a legal impossibility, and that where a fair and legal trial had been had of the premises of this suit it would have been completely and absolutely dismissed because of this fact alone.

"Appellant further submits that where the learned trial Judge intended in any way to fully follow through to the end, the objective of the suit he should have not only dismissed the answer but have either proceeded to hear evidence or to render a final decree of some sort whereby the suit would have come to an end."

The submissions of appellant quoted above are supported by legal authority. In

American Jurisprudence this is recorded :

"The rule is that equity will not enter a partial or incomplete decree. Having taken cognizance of a cause for any purpose, a court of equity will ordinarily retain jurisdiction for all purposes; decide all issues which are involved by the subject matter of the dispute between the litigants; award relief which is complete and finally dispose of the litigation so as to make performance of the court's decree perfectly safe to those who may be compelled to obey it; accomplish full justice between the parties litigant; and prevent future litigation. All persons who are interested in the subject matter of dispute will be brought before the court in order that there may be entered and enforced a complete and effective decree which will finally adjust the rights of all concerned. . . ." 19 *Id.* 126 (1939).

"It is a fundamental principle of chancery courts finally to dispose of litigation, making as complete a decision on all the points embraced in a cause as the nature of the case will admit, so as to preclude not only all further litigation between the same parties, but also the possibility that the parties may at any future period be disturbed or harassed by the claim of any other person, as well as the possibility of any danger of injustice being done to other persons who are not before the court in the present proceedings. Acting pursuant to this principle, courts of equity require not only that the pleadings shall so present all the matters in controversy that they may be properly adjudicated, but also that, so far as practicable, all persons having any interest in the subject matter of the controversy be made parties, to the end that their rights may be ascertained, their claims adjudged, or their titles bound. The extent of the relief that the court will grant is therefore commensurate with the rights, duties, claims, and titles of all the parties to the suit, so far as those rights, duties, claims and titles appear in the pleadings and are established by the proof.

"The decree should be adapted to the circumstances and necessities of each case and should be so designed as to put an end to the litigation, and not to foster it. A final decree which undertakes to dispose of the whole cause should include a disposition of issues which are raised by a cross bill and answer as well as those which are presented by the pleadings in chief.

"Where several parties, being all those interested in a legal controversy, are before the court asking that their respective rights be determined, and such rights are capable of ascertainment, a decree, based upon indefinite findings, which does not determine the essential rights of all the parties and leaves a material part of the controversy undetermined, is insufficient and will not be upheld on appeal. *Id.* at 281.

From the above cited conclusions of authorities on the law of equity, it can clearly be seen that the judge of the court below erred when he ruled out the answer of appellant and took no further action in the premises, for that was not in conformity with the requirements of equity principles.

The parties had gone into equity seeking relief but unfortunately obtained none. The purported cancellation of the opinion of the Attorney General in such a manner could not remove the cloud from appellees' title. If there is a cloud over appellees' title, it came into existence at the time of execution of the deed of title, one hundred and eleven years ago, and the proper procedure to adopt would be to go into the court sitting in equity and pray for the removal of said cloud by rescission or reformation. The court of equity is the only forum authorized by law to say whether or not a deed of such metes or description with the words "more or less" calling for fifty acres of land could entitle appellees to the remaining acres of land discovered to be in said tract or block of land; and until this is finally adjusted by said court, it is apparent that said cloud will ever remain over said title.

It is the duty of the Attorney General to advise in the public interest when requested to do so, and when he does conscientiously give his views on the law, that is his official prerogative ; but these views are not conclusive and binding upon third parties. It is the equity court's decree in the premises that is conclusive, final, and binding, unless reversed by this Court of *dernier ressort.*

In view of the principles of equity that control the case, we find ourselves compelled to reverse the ruling of the judge in the court below and remand the case with instructions that the trial judge resume jurisdiction and hear and determine the case as the principles of equity law require ; and it is hereby so ordered.

Reversed.