R. R. SAVAGE, Appellant, vs. H. W. DENNIS, Administrator de bonis non, Appellee.

LRSC 1; 1 LLR 51 (1871) (1 January 1871)

[January Term, A. D. 1871.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Ejectment.

1. A plaintiff in ejectment must recover upon the strength of his own title and not upon the weakness of his adversary's title

2. An administrator cannot lawfully convey to himself any portion of the estate over which he has been granted letters testamentary. An administrator is in the stead of the intestator, and as such cannot contract with himself; such contracts are void in law.

The court is of the opinion that for the Supreme (hurt of the Republic of Liberia to overthrow this well-founded principle of law, which declares that ' 'in an action of ejectment the plaintiff shall recover upon the strength of his own title and not upon the weakness of the defendant's title," would not only bring reproach upon it, but it would be the source of endless litigations, it would disturb the quietude of communities and families, it would obstruct the progress of improvement and enterprise, and give encouragement to oppression, fraud and injustice.

It is very obvious that the title under which the appellee claims, is defective in point of law, because an administrator of an estate cannot transfer property of the estate to himself. And the reason is because an administrator, while acting under the authority with which he is vested by his letter testamentary, is legally the person represented under such letter testamentary and is therefore incapable of purchasing, transacting or transferring any property of the estate to himself. And the reason for this is, the moment the administrator attempts to purchase property of the estate for himself, he renders himself legally incapable (by the very same act) of acting for and in behalf of the intestator. Therefore there would be no one legally authorized to transfer the property of the estate to him, the administrator. It is very clear that to constitute a purchase of property claimed, there must be two contracting parties, one of which must be capable of alienating such property, otherwise the possession of such property is a proof of the unlawful taking of the same. A second party is indispensable to a contract. A deed is unquestionably a contract, and, I may add, one of the highest character, because by the warranty the grantor is put under a perpetual obligation to defend the grantee against any one disturbing the grantee's peaceful possession, or claiming any part of the premises so conveyed. And for the nonperformance of the contract, the grantee may recover at law damages from the grantor.

Now upon this principle, if this deed was valid, would not Johnston's heirs, executors, and administrators have a remedy against James Thomas' estate? Certainly they would. But I would ask by what method of reasoning could Daniel Johnston, as administrator, by this act bind the estate of James Thomas to him made by a contract made with himself, by himself, and for himself? No human being possesses the extraordinary ability to act in two distinct capacities which are adverse to each other at the same time. It shows very clearly that a contract of the kind is founded in absurdity and therefore it is void in law and equity so far as it relates to Daniel Johnston, his heirs, executors, administrators or

assigns, but good for the whole of the lands expressed in the deed to James Thomas, and all who may claim under him.

With regard to the effect of estoppels, let it be remembered that a grantor cannot estop the effect of his own act against himself, but a grantee can estop the effect of the act of grantor against him, the grantee.

The court adjudges, therefore, that the judgment of the lower court is erroneous, and that the same is hereby reversed, and that the appellant recover all costs incurred in this action since the appeal has been taken to this court.