

M. YUNIS and **FLORENCE HOWARD**, Petitioners, v. **WILLIAM R. DAVIS**,
ANNETTE POTTER, by her Husband **URIAS A. POTTER**, **J. E. CRUSOE**,
ELLA FINDLEY, Heirs and Next of Kin of the Late **WILLIAM A. JOHNSON**,
and **G. C. N. TECQUAH**, Justice of the Peace, Montserrado County, Respondents.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE REEVES.

Argued April 20, 21, 1953. Decided May 29, 1953.

1. A Justice of the Peace is without jurisdiction to try a summary ejectment action wherein title to real property is at issue.
2. Prohibition will lie against a Justice of the Peace to prevent usurpation of jurisdiction.

Plaintiffs, respondents-appellants herein, instituted an action of summary ejectment against defendants, petitioners-appellees herein, in the Justice of the Peace Court of the Commonwealth District of Monrovia. Defendants contested the jurisdiction of the trial court over an action involving title to real property, and applied for a writ of prohibition in the chambers of Mr. Justice Reeves, who issued the writ after a hearing. On appeal to this Court, *en banc*, from the issuance of the writ of prohibition, *order affirmed*.

D. Bartholomew Cooper and *Richard A. Henries* for respondents-appellants. *T. Gyibli Collins* for petitioners-appellees.

MR. JUSTICE SHANNON delivered the opinion of the Court.

Petitioners applied for a writ of prohibition in the chambers of Mr. Justice Reeves who, upon hearing said cause, granted the writ. It is from this ruling that an appeal is before us.

A motion was filed to dismiss the petition on the ground that the trial judge, Justice of the Peace G. C. N. Tecquah, had lost jurisdiction because of an executive order which abrogated the functions of the said Justice of the Peace within the territorial limits of the Commonwealth District of Monrovia. This motion was, however, rightly denied on the ground that, even though the said justice of the peace was disabled from functioning as such, nevertheless, with respect to actions previously instituted before him, according to the said executive order:

"All matters pending before Justices of the Peace that may not be disposed of shall be turned in by them to the Department of Justice who will pass them on to the Magisterial Court of the City of Monrovia for disposal."

This created a succession and :

"As the general rule, an action for a writ of prohibition is not abated by the fact that the Respondent has gone out of office and been succeeded by another." 50 C. J. 706, *Prohibition*, § 133.

The following facts have been culled from the pleadings. William R. Davis and co-plaintiffs, petitioners herein, instituted an action of summary ejection against M. Yunis and Florence Howard before Justice of the Peace G. C. M. Tecquah, specifically for the purpose of ousting M. Yunis and Florence Howard from occupancy of lot number 305 in the City of Monrovia, to which the plaintiffs claimed ownership, alleging same to have descended to them from their ancestor William A. Johnson.

Defendants, respondents herein, contended that the said Justice of the Peace was without jurisdiction to try the said case by reason of the fact that they were erecting their shop under a lease by the Commissioner of the Commonwealth District of Monrovia to Florence Howard, one of the defendants, who, in turn, demised the said premises to M. Yunis. In support of this contention the defendants proffered copies of a rent receipt from the Commissioner of the Commonwealth District to Florence Howard, and a lease agreement between the said Florence Howard and M. Yunis, the other defendant.

When the defendants took such a position an issue of title arose, and the said Justice of the Peace had no jurisdiction to hear or determine same. Although the summary ejection statute confers upon Justices of the Peace jurisdiction to try and determine summary ejection matters, as soon as an issue of title was presented the following statutory provision applied :

"That nothing in Section 3 of this Act shall be construed to give to Justices of the Peace or Magistrates the right to determine an action of Ejection where title to real property is involved, they shall be tried and determined by the Circuit Courts of the Republic, or where the damages claimed exceed the sum of three hundred dollars such an issue together with that of the right of possession shall be determined by

aforesaid Circuit Courts." L. 1945-46, ch. VIII, § 4.

The above-quoted statutory provision clearly demonstrates the intention of the Legislature to deny jurisdiction to Justices of the Peace in ejectment actions where title is involved. Furthermore, the statute in question is concerned with tenants who, even though they have overstayed their tenure, refuse to vacate the premises. It can not be presumed that the Legislature would enact a law giving a Justice of the Peace a right which it expressly withholds from a superior court—the right of independently deciding title to land without the aid of a jury.

Consequently, for the respondent Justice of the Peace to try an action of summary ejectment wherein title is involved would constitute usurpation of jurisdiction; and prohibition would lie. *Vide: so C.J. 663, Prohibition, §20; 22 R.C.L. 19-22, Prohibition, §§18-20; 42 Am. Jur. 156-57, Prohibition, §§ 18-20.*

The ruling of Mr. Justice Reeves, granting the writ of prohibition, is therefore affirmed, with costs against respondents-appellants, but without prejudice to further proceedings in the proper forum for the redress of the wrong they claim to have suffered; and it is hereby so ordered.

Order affirmed.