HENRIETTE M. WILLIAMS-BAGURI, W. O. DESHIELD, JAMES H. DESHIELD, JR., HENRY DESHIELD, and JOHN HILARY COOPER, Plaintiffs, *v.* THOMAS R. COOPER, JOSEPH SHERMAN, and DENNIS JULU, Defendants.

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

Argued March 16, 1960. Decided May 6, 1960.

In an action of ejectment, where the defendant has alleged adverse possession, a plea of lack of knowledge by the plaintiff must be alleged and proved with particularity.

On appeal from a judgment dismissing an action of ejectment, *judgment affirmed.*

D. B. Cooper for appellants. *Lawrence A. Morgan* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Appellants in the above-entitled cause instituted an action of ejectment as plaintiffs in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, against appellees herein, for recovery of a portion of Block Number 9, Long Beach Settlement, Monrovia, claiming that the said parcel of land had come to the said plaintiffs-appellants, who at the time of the suit were the owners in fee simple, by the right of descent from their ancestor, John Shavers. Defendants-appellees, having been summoned, appeared and filed an answer containing one count in which they expressly denied the right of the plaintiffs-appellants to recover on the ground that, since said defendants-appellees had held the parcel of land in ques-

tion in adverse possession for a period of more than twenty years, plaintiffs-appellants were thereby barred from recovery. The pleadings progressed as far as the surrejoinder. On December 13, 1956, the trial judge heard arguments *pro et con* on the law issues involved in the case, and on the following day, December 14, 1956, gave a ruling in which he sustained the allegations of defendants-appellees and dismissed the case; to which ruling plaintiffs-appellants took exceptions and prayed an appeal to this Court of last resort for review. Accordingly we have for our judicial consideration appellants' bill of exceptions, which in its body reads as follows:

"1. The above-mentioned cause of action was commenced by filing the plaintiffs' written directions and complaint in the above-mentioned court on May 15, 1956, in the office of the clerk of said court, and a writ of summons was duly issued against the said defendants who appeared and filed their answer and other subsequent pleadings. The plaintiffs also filed their pleadings.

"2. On December 15, 1956, the trial court heard the law issues raised in the pleadings duly filed by the plaintiffs and the defendants, and made the following ruling thereon, as attached hereto and marked Exhibit 'A' and made a part of this bill of exceptions, to which the said plaintiffs then and there took exceptions and prayed an appeal to the Supreme Court of Liberia, at its March, 1957, term.

Appellants having incorporated the trial judge's ruling as a part of their bill of exceptions in these proceedings, we deem it expedient, for the benefit of this opinion, to include certain excerpts from the said ruling, which we quote hereunder, as follows:

"Plaintiffs allege in their complaint:

"1. That they are the heirs of the late John Shavers.

"2. That they are descendents of the late John Shavers, deceased, who died possessed and owned in fee simple fifteen acres of land.

"3. That the said property has come to the said plaintiffs by descent from their ancestor, John Shavers.

"4. That, notwithstanding the fact of the said land having come to them as stated above, the defendants aforesaid are presently in illegal and unlawful possession of a portion of said lands and are unlawfully withholding same from them."

"Defendants in their said answer plead the statute of limitations in bar by alleging: 'Plaintiffs are estopped and forever barred by reason of the fact that the defendant held the property subject to this action in adverse possession for a period of twenty years; that is to say, from June 20, 1928, up to and including May 11, 1956, the day on which they were sued by plaintiffs, as appears more fully by copy of defendants' deed from the Republic of Liberia.'

"Plaintiffs have countered this issue by the filing of a reply, submitting the following:

"1. That the statute of limitations could not run against them because they were minors and did not know the whereabouts of the property, and did not have a deed, nor did anyone put them in knowledge that they owned the property.

"2. That the Supreme Court of Liberia, during its March 1954, term turned over to the heirs of John Shavers all of his property.

"3. That the statutory plea of limitation could not run against them because they just luckily found out the whereabouts of said deed for said property, and hence could not have filed an action of ejectment previously.

"4. That a plaintiff in an ejectment action who pleads the statute of limitations admits the title right of the defendant.

"Defendants in their rejoinder allege the following:

"1. That the reply of the plaintiffs is inconsistent and contradictory, in that they contend that they were minors without a showing of when they reached their majority; that they did not know the whereabouts of the property; that they had nobody to put them in knowledge that they owned the property; and that they have been granted the said property by the Supreme Court of Liberia, which was in an action instituted in the year 1930 against the late Abayomi Karnga.

"2. That, from the year 1930, when the Supreme Court of Liberia turned over the said property to present time is a period of twenty-six years, or beyond the statutory period of limitation.

"3. That sufficient notice has not been afforded defendants, by omitting to show the period in which the said deed got into their possession, so as to be able to reckon time; the mere averment of 'just luckily' is legally insufficient.

"Plaintiffs surrejoined the said defendants and raised one new issue, which is that the rejoinder of the defendants was filed out of statutory time; that is to say, plaintiffs' reply was filed on May 30, 1956, in the office of the clerk of court; and a copy was furnished them; nevertheless, their said rejoinder was not filed in the office of the clerk of court until June 11, 1956, quite eleven days thereafter.

"These are the issues for resolution in this cause, which the court will proceed to pass upon commencing with the surrejoinder of the plaintiffs. All subsequent pleadings by a defendant after the answer are governed by those which, by statute, the answer is subject to. *Williams* v. *Lewis* & Co., 1 L.L.R. 229 (1890). It is the time the notice was served and not when the complaint was filed, that governs the answer in this respect. *Green* v. *Turner,* 1 L.L.R. 276 (1895). So it is at the time when a copy of the adverse party's

pleading is served upon him that time commences to run.

"The plaintiffs herein aver that the defendants filed their rejoinder out of statutory time. To the mind of the court, this allegation recorded in their surrejoinder is not legally convincing; for mere allegation is not proof. Some evidence, that is to say, some certificate from the officer serving the said reply upon the defendants was necessary; at least some showing other than the mere allegation of the same, since the statute quoted above provides for the time to commence to run as from the time notice of the filing of the same is served, and not when filed in the office of the clerk of the court.

"This count, therefore, of the surrejoinder of the plaintiffs herein is therefore overruled.

"Culled from the records there is only one major issue upon which a resolution of this matter depends; and that is whether the plea of statutory limitation, as raised by the defendants herein, is a bar to an action. The statutory period of limitation applicable to an action of ejectment is twenty years. 1956 Code, tit. 6, § 50(a).

"An inspection of the answer of the defendants shows that this is expressly raised as a defense.

"The plaintiffs, in an effort to defeat this plea, aver that they were minors, without making a clear-cut issue by stating the time they reached their maturity; especially so when they have elected to plead the same in bar. Notice should be given the adverse party of such an issue. Failure to give such notice renders the action dismissible. *Clark* v. *Barbour,* 2 L.L.R. 15 (1909).

"An inspection of the reply of the plaintiffs shows inconsistent, evasive and contradictory pleas in one and the same count—not permissible.

"It is to be remembered that, as soon as plaintiff and

defendant are available in any given suit, the period of statutory limitation commences to run, which the more goes to show that it is necessary for a party resisting the plea of statutory limitation to show when the said minor reached maturity so as to reckon the time, failing which bars an action in keeping with the statutes. The Supreme Court of Liberia has held that the statutes commence to run against a party when he has failed to use his legal advantages to the security of his interest. *Hilton* v. *Sherman,* 1 L.L.R. 43 (1867).

"In view of the foregoing facts and circumstances and the law controlling, cited above, the action of the plaintiffs is dismissed with costs against them. And it is hereby so ordered."

In countering the plea of statute of limitations, time is an essential factor which should be stated with the view of serving notice on the adverse party, which alone could be the means of determining whether statute of limitations as a plea in bar would be tenable in law. Plaintiffs-appellants in Counts "1" and "3" of their reply, alleged as follows:

"1. Because plaintiffs say that the whole answer of defendants should be dismissed, and they so pray for that the alleged statute of limitations as pleaded by defendants cannot run against plaintiffs, for that plaintiffs were minors or under-age and did not know the whereabouts of the property, neither did they have the deed, nor anyone to put them in knowledge that they owned the property.

"3. And also because plaintiffs further say that the statute of limitations cannot run against plaintiffs, for they just luckily found out the whereabouts of said deeds for said property, and hence they could not have filed an action of ejectment before obtaining the original deed to said property."

It is legally incumbent on plaintiffs-appellants to indicate the time when they reached their majority, as also the

time of the discovery of the deeds, so as to justify their neglect in seeking recovery of the property in question, subject to these proceedings, before the institution of the suit now under review. It should be remembered that our statute mandatorily provides:

> "The fundamental principle on which all pleading shall be based shall be that of giving notice to the other parties of all facts it is intended to prove." 1956 Code, tit. 6, § 252.

The failure of plaintiffs-appellants to meet this requirement is an incurable legal blunder.

> "Title to land by adverse enjoyment owes its origin to and is predicated upon the statute of limitations, and although the state does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant who proves that he has actually occupied the premises under a color of right peaceably and quietly for the period prescribed by law. The statute of limitations thereupon may be properly referred to as a source of title and is really and truly as valid and effectual a title as a grant from the sovereign power of the state. *Thorne* v. *Thomson,* 3 L.L.R. 193 (1930), Syllabus 1.
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> "Nothing can be more ignoble and contemptible in posterity, than the wanton disregard and indifference in defending and protecting at the proper time, the estate which by the honest industry of the ancestor was acquired and left to be enjoyed by those who should represent and come after him. And when an heir stands by and from sheer neglect and carelessness permits a stranger to enter upon and take adverse possession of property which he knows was his ancestor's and to continue such adverse possession uninterruptedly for twenty consecutive years (without being under any legal disability to bring action), the law will look with disfavor upon his attempts thereafter to

assert his rights and will bar forever his action and right of recovery, both in law and equity." *Page* v. *Harland,* 1 L.L.R. 463, 471 (1906).

In view of the foregoing surrounding circumstances and the law cited, *supra,* the ruling of the trial judge is hereby upheld and sustained with costs against the appellants. And it is hereby so ordered.

Affirmed.