J. LAFAYETTE TOLES, Appellant, *v.* C. L. WILLIAMS, Appellee.

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

Argued April 12, 1961. Decided May 19, 1961.

1. In a jury trial in an action of ejectment it is error for the judge to charge the jury: "You will agree with me that the plaintiff does not have a better title than the defendant."
2. A new trial should be granted on a showing of newly discovered evidence which, by due diligence, could not have been discovered in time for introduction at the previous trial. 1956 Code, tit. 6, § 820.

On appeal from a judgment on a jury verdict in an action of ejectment, *reversed and remanded.*

Simpson Law Firm for appellant. *Barclay and Witherspoon Law Firm* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

The records certified to us in this case show that C. L. Williams of Montserrado County sued out an action of ejectment against J. Lafayette Toles of the same county on August 29, 1959 for the recovery of a certain parcel of land situated on Broad Street in the City of Monrovia, Republic of Liberia, described as Lot Number 349.

The said records further show the following facts. Plaintiff, C. L. Williams, bought half of Lot Number 349 on October 4, 1904, from Gabriel D. Potter and Caddie Potter, his wife, and thereby from that time became the sole owner and possessor of title thereto. In 1915, C. L. Williams left Liberia, and thereafter resided in foreign countries until 1947, when he returned to Monrovia, being still possessed of title to the aforesaid piece of property. Defendant J. Lafayette Toles detained the said

tract of land from the plaintiff, and refused to release ownership thereof to him on the ground that the said defendant had bought the said piece of property in fee and had thereby acquired ownership thereto in preference to the plaintiff's title. The pleadings in the case progressed as far as the surrejoinder and rested. The law issues controlling were heard and disposed of on June 10, 1960, and thereafter the case found its way for trial on the facts before a jury who heard the evidence and submitted a verdict in favor of the plaintiff on July 4, 1960.

Subsequently, the defendant filed his motion for new trial, which motion was heard by the court and denied. For the purpose of enjoying the benefit of a review of his cause on appeal, the defendant later filed a motion in arrest of judgment, which motion was also denied. The motion for new trial is herein quoted below for the purpose of laying some of the groundwork of this appeal.

"1. Because defendant avers that the verdict of the jury was patently against the weight of the evidence, in that plaintiff did not establish by preponderance a better title in and to said parcel of land over and above the defendant's, in that defendant submits that plaintiff should have proved his title to said parcel of land by at least two witnesses. He not having done so, the jury was without authority to bring the verdict they brought.

"2. And also because defendant avers that the verdict of the jury was manifestly contrary to the charge of the court, in that the judge, in charging said jury, instructed them, *inter alia,* that under our law, when the owner of a parcel of land sits down supinely and permits another to take possession of his land and improve it and notoriously occupy it for a period of over twenty years, his title is as good as though it emanated from the State, and the court will not oust an industrious occupant.

"3. And also because defendant avers that he has recently come in knowledge of the fact that, apart from plaintiff leaving W. H. Ketter to take over his property in Liberia, plaintiff also did return to Liberia before the year 1947."

To this motion for new trial, plaintiff's counsel made strong resistance in five counts, and the court in a very elaborate ruling, denied the motion. Although the motion was denied, Counts "2" and "3" have attracted our attention. We would like to take recourse to the complete records brought before us. It is quite difficult for us to understand why the court below refused to entertain the aforesaid motion.

The defendant, being dissatisfied with the verdict of the jury and the rulings and the final judgment made in the court below, excepted to them all and brought his appeal before this Court for further adjudication on a bill of exceptions of five counts. Of these five counts, for the purpose of concentrating attention on the actual merits of the case, we will hereunder quote and consider Counts "2," "4," and "5" thereof.

"2. And also because defendant avers that Your Honor in charging the jury made the following statement: 'You ladies and gentlemen will agree with me that plaintiff does have better title than defendant,' which was tantamount to a directed verdict. Defendant submits that the law controlling and the facts adduced at the trial of the aforesaid cause were not sufficiently clear and convincing in favor of plaintiff for Your Honor to have so instructed the jury, which charge amounts to a directed verdict, and which charge defendant contends did influence the minds of the jury to have arrived at the verdict it did.

"4. And also because defendant avers that Your Honor ought not to have entered final judgment on said verdict for the reason that the verdict of

the jury should be governed by the facts adduced at the trial. Defendant submits that a plaintiff must prove his case by preponderance of evidence; and although such evidence may be credible and convincing to the mind, yet a jury cannot properly act upon the weight of the evidence in favor of one having the burden of proof, unless it overbears in some degree the weight upon the other side. The evidence adduced by the plaintiff at the trial did not overweigh the evidence of the defendant, and Your Honor therefore should not have entered final judgment on the verdict.

"5. And also because defendant avers that the jury returned a verdict in favor of the plaintiff, to which the defendant excepted and filed a motion for new trial. Your Honor overruled said motion, and on the 20th day of July, 1960, entered a final judgment on the verdict of the jury and the defendant excepted and prayed an appeal to the Supreme Court, sitting in its October, 1960, term."

This case, having been assigned for hearing, was called with both parties represented. Appellant's counsel, in his argument, strongly stressed the question of his motion for new trial, and stated in the course of the said argument that, although it was alleged in his aforesaid motion and brought to the notice of the court below that the newly discovered facts referred to in this motion had not come to their knowledge until after the trial was concluded, and which motion they felt was sound ground legally for the setting aside of the verdict of the petty jury and the awarding of a new trial, yet the court in an arbitrary manner denied this right. Appellant also argued that it is against our court practice and the law controlling for the judge to tell the jury in his charge to them: "You will agree with me that the plaintiff does have a better title than the defendant," because such a statement, coming from the trial judge, by all indications must influence the verdict of the

jury and motivate and activate it against the interest of the defendant, which did happen in this case in the court below.

For the benefit of this opinion, let us first ascertain what authority our law confers upon a judge in this respect.

> "It is the function of the court to decide upon the competence of witnesses and the competence and admissibility of evidence. It shall expound to the jury all written evidence produced at the trial. . . ." 1956 Code, tit. 6, § 626.
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> "The court shall instruct the jury after the parties' arguments have been made. The court may summarize the evidence, but it shall limit its instructions to points of law which have a bearing on the case." 1956 Code, tit. 6, § 627.

In view of these statutory provisions, we are satisfied that the functions of the judge in charging a jury have been sufficiently made clear. Only where a motion is made during the trial for dismissal of the cause, or where the facts adduced at the trial warrant a general verdict, will the law permit a directed verdict; and not unless these conditions prevail would a judge have the sanction of the law to do this.

In the instant case the statement made by the trial judge in his charge to the jury was clearly improper and constituted reversible error. No judge has the right to state in his charge to a jury what may or may not be his personal opinion of the facts submitted in any given case. The moment he exceeds his authority in this respect, or attempts to do so, he shows himself partial or biased; hence, any verdict arrived at after such a violation should be set aside and a new trial ordered. The more so is this principle applicable, when the party against whom the verdict is brought asserts the right under the law.

> "The principles of impartiality, disinterestedness and fairness on the part of the judge are as old as the history of courts of justice, and it is those three cardinal

principles supposed to exist which give credit and tolerance to the decrees of judicial tribunals." *Republic* v. *Harmon,* 5 L.L.R. 300 (1936), Syllabus 5.

Now then, considering Count "4" of appellant's bill of exceptions, we regard it worthy to note that we have not been sufficiently convinced by any legal authority to warrant our agreement with the court below. Our statutes, as well as the common law, are agreed that newly discovered evidence constitutes good ground for a new trial, since such evidence might well have a tendency to cause a change in result of the termination of the case if a new trial were granted, and should have the consideration of the court as material evidence discovered by all diligence before the trial ended.

In this appeal, it is shown that the defendant was seeking to have the case tried anew so that he would have the privilege to introduce new evidence for the purpose of proving a very pertinent and important question in issue. The denial of that right by the trial court was inconsistent with law and our court practice.

Appellee's counsel argued that, since appellant's own witness had testified in the court below and put into evidence the fact that the appellee had not returned to Liberia or from the time he left for foreign parts in the year 1915 until he returned in the year 1947, this was sufficient proof; that it would have been against practice and law for the trial judge to have permitted the defendant below to introduce other evidence which he purported to be newly discovered to discredit the testimony of his said witness, and that, therefore, the trial court did not err in denying the aforesaid motion for a new trial. Arguing further, he stated that the facts adduced at the trial below were sufficiently clear and convincing to have warranted the trial judge in charging the jury as he did; hence, the verdict and the judgment thereupon were legally right and should be upheld by this Court. Finally, appellee's counsel contended that the verdict ar-

rived at by the petty jury was not a directed verdict because the statement of the judge, which is made a part of the appellant's bill of exceptions, could have had no influence on the minds of the jury, who were judges of the facts, and who arrived at their verdict exclusively upon the facts submitted to them.

In our codified statutes the following are enumerated as grounds for new trial:

> "When an action has been tried by jury, a new trial may be granted to any or all of the parties on all or part of the issues on any or all of the following grounds:
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> . . .
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> (b) If the verdict is manifestly against the evidence, the law, or the instructions of the court; or
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> . . .
>
> (d) On the basis of newly discovered evidence which by due diligence could not have been discovered in time for introduction at the trial." 1956 Code, tit. 6, § 820.

We are of the opinion that the statement made by the trial judge in his charge to the jury did have a tendency to influence their minds; moreover, the denial of appellant's motion for new trial which embraced other legal grounds, was reversible error; hence, we have no alternative than to reverse the judgment of the court below and remand the case for a new trial with costs to abide the final determination thereof. And it is hereby so ordered.

Reversed and remanded.