SALAM I B ROTH ERS, Lebanese Merchants Transact- ing Business in Liberia, by M. SALAM I, General Manager, Appellants, e. HAWAH KIAZOLU WAHAAB, Appellee.

APPEAL FROM THE CIRCUIT CO URT OF THE SIXTH J UDICIAL CIRCUIT, MONTSERRADO COU NTB.

Argued April 3, 4, 1962. Decided June 1, 1962.

1. Dismissal of a defendant's pleadings, restricting the defendant to a bare denial of the facts alleged by the plaintiff, does not deprive the defendant of the right to cross-examine as to proof, and does not shift the burden of proof.
2. A plaintiff in an ejectment action must sustain the burden of proof of title.
3. The law requires that, as far as is humanly possible, a resurvey of land should start at the same point and follow the same course as the original survey, particularly where there is no difhculty in following the original lines of the previous survey.
4. Recognition of, and acquiescence in, a line designated in a survey as a boundary

line, if not induced by mistake, and if continued through a considerable period of time, constitutes strong evidence that the line so recognized is the au- thentic line.

On appeal from a judgment in an action of ejectment,

*)nd gm ent reversed.*

*J. Al. N. Howard* for appellants. M. M. *Perry* for appellee.

MR. JUSTICE PIERRE delivered the opinion of the Court.

# Mme. Hawah Kiazolu Wahaab brought an action of ejectment against Salami Brothers, a Lebanese firm, to eject them from a lot of land which forms part of the property on which the said firm had constructed a gasoline distribution station on Bushrod Island in Monrovia.

Her case was filed in June, '9^ , and the firm through its General Manager, M. Salami, filed answer joining issue. The pleadings progressed as far as the surrejoinder. Be-

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## cause of alleged defects, the answer and all subsequent pleadings of the defendants were dismissed, and they were placed on a bare denial of the facts alleged in the com- plaint. That was the condition in which the case came

on for trial in the September, i96 i, term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, before Judge John A. Dennis, presiding by assignment.

A jury was empanelled, heard evidence, and returned a verdict supporting the claim of the plaintiff. Upon this verdict, judgment was rendered ; and from this judgment the instant appeal has been taken.

The piece of property in dispute was one of two town lots sold to the late B. G. Freeman by one S. B. Nagby in June, '949- In July of the same year, Freeman leased

# these lots to Salami Brothers, the appellants herein. The

property at the time was unimproved ; and it remained unimproved until some time after the year '933. when Salami Brothers built the distribution station. However,

# in i93o, t he year after Freeman had leased to Salami Brothers, Hawah Wahaab, the plaintiff, leased five and

one-half lots of land in the same neighborhood from the people of Via Town who held an aboriginal grant deed for a z3-acre block. Said deed had been executed to them by President Edwin Barclay '9 years before.

## Some contention arose which necessitated a resurvey of

the Nagby land, incl uding the two lots sold to Freeman who, unfortunately, had died before the dispute. The results of the resurvey necessitated a readjustment in '9f3 of the boundaries of property in the area ; and so one of

the lots sold to Freeman, and which he had, in turn, leased to Salami Brothers, fell to the people of Via Town whose z3-acre block was adjoining. This is important in the light of subsequent happenings, and was to play an important part in this case.

The lot which had originally been owned by Freeman, and which he had lost to the people of Via Town in the aforesaid readjustment, was taken possession of by Wil-

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liam R. Tolbert under a lease agreement entered into between himsell and the people of Via Town ; and this lot he again leased to Salami Brothers, who were already occupying it under the Freeman agreement, thus giving Salami Brothers back the two lots they had leased from Freeman, one of which they had lost in the readjustment. The lease agreement between Mr. Tolbert and Salami

Brothers was signed on May i f› 9f 3. I t was probated and registered without objection then, and without any attempts to cancel since. We, therefore, have to assume

that this agreement is regarded as valid by all concerned. However, five days at ter the Tolbert agreement with Salami Brothers had been signed, that is to say, on May

° . 9f 3, the plaintiff-in-ejectment, appellee herein, also entered a lease agreement with the same Salami Brothers,

for one-half lot out of her five and one-half leased I rom the people of Via Town. From the wording of her agreement with Salami B rothers, it is shown that this half lot was adjoining the lot which Mr. Tol bert had leased to the same firm five days before her agreement. The relevant portion of the description of the half lot, as found in her agreement, made profert with the plead ings is in the record before us and reads as follows:

“The lessor hereby leases unto the lessee one-half a

lot in Via Town, Bush rod I sland, bounded and de- scribed as follows: One-half a town lot Hz feet by i 3z feet immed iately adjoining the lot leased by Via Chiefs to H onorable W. R. Tolbert which is adjoining the lot leased to Salami Brothers by B. G. Freeman on the road leading to the Port of Monrovia.”

I t is of significance to note that, in '9f 3, the plaintiff admitted Mr. Tolbert’s righ tf u1 and legal tenancy of the lot in dispute, and seven years later, at ter the property

had been improved, has brought action to evict Mr. Tolbert’s subtenants, even though none of the circum- stances relating to the several agreements controlling property in the area have changed ; nor has there been

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any readjustment since her recognition of the Tolbert leasehold rights to the property ; nor has there been any physical alterations to lands in that area. Our law makes it binding upon all parties to respect admissions which they voluntarily make, if and when it can be shown that there was no evidence of coercion, intimidation or force which occasioned the admission.

“All admissions made by a party himself or by his agent acting within the scope of his authority are com- petent evidence.” '9s 6 Code, tit. 6, 1 9-\*

“An admission, whether of law or of fact, which has

been acted upon by another is conclusive against the party making it in all cases between him and the person whose conduct he has thus influenced. It is immaterial whether the thing admitted was true or false.” *Smith* v. *Barb our,* 8 L.L.R. 229 ( 1944 ) , Syl- labus 4. Accord : *Dennis* v. *Den nts,* 3 L.L.R. 4$

1928) ; *B/c/inrdJ* v. *Coleman,* 6 L.L.R. 28 ( 1 3 )-

## The appellee’s recognition in i 9s3 of Mr. Tolbert’s

leasehold rights to the lot in dispute bound her to that

position for all future time during the pendency of the life of the Tolbert agreement with Salami Brothers, and of her agreement which gave Salami Brothers the half lot which she admitted adjoins the one they had leased from Mr. Tolbert.

When Hawah Wahaab leased the five and one-half lots in '9s°, t he lease agreement which was signed between herself and the people of Via Town carried a complete

description of the quantity of the land showing the metes and bounds of the survey ; and the agreement shows those metes and bounds to have been as follows:

“Commencing at the southwest corner of said block marked by a concrete monument on the western side of the new road, and running North s3 degrees West

134 f e et, thence running North 3y degrees East Who feet, thence running South s3 degrees EaSt 134 feet,

## thence running South 3› degrees West Who feet parallel

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# with the new Bushrod Island Motor Road to the place of beginning and containing 3 lots.”

For ten years she held the property covered by this description under leasehold. There is no evidence of another deed for any additional property leased or sold

to her in the area during this period ; yet in 196 . when she decided to bring this action against Salami Brothers, claiming the lot which they had taken by lease from Mr.

Tolbert to be part of her five and one-half lots, her property had increased by more than one lot. It would appear that, because of the contentions which arose at the time, the people of Via Town, as lessors to her, as well as to Mr. Tolbert, had her five and one-half lots resur- veyed. When this was done, it was discovered that, although she had leased only five and one-half lots from them in **1 930,** she was now laying claim to six and 64 I OO

lots in 19 I ll other words, her property had increased

in ten years by a little more than one town lot. How this could have been possible was never explained, even though we made every effort during the arguments to have her counsel give us some light on this problem.

Moreover, in I 9f . when she surveyed the five and one- half lots for the purpose of concluding the contract of

lease with her lessors, the survey of her property had commenced at one starting point, as can be seen from the metes and bounds quoted above ; whereas, when this action

was filed ten years later in 19\* , she elected to commence the survey at another starting point, different from that used for the first survey. This was another point which

we could not get her counsel to explain during the argu- ments. The appellants have not only questioned the regularity of this procedure, but have alleged that, had

the I 9\*o survey commenced at the same starting point she had used in '9f O, the one extra lot she now laid claim to, and which she had previously recognized as Mr. Tolbert’s, could not have fallen within the boundaries of her leased property. They contend that proof of this is

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shown in the Iact that, whereas, in i pro, she had con- cluded a lease agreement which gave her only five and one-half lots, her lessors have discovered by resurvey that she now claims more than one lot over and above what she is entitled to under the terms of the contract.

Considering the question of the change in starting point of the i p6o survey of the appellee’s five and one-half lots, we have held that it was irregular for her to have begun at a different point from the original starting point unless she could have shown that point to have been lost. She has not made this contention, but has argued that she could have started at any point so long as she took in the quantity of land in the area covered by her lease agreement. This contention crumbles when we consider that the resurvey reveals that she now claims more land than was leased to her. The law requires that, as Iar as is humanly possible, a resurvey of land shou ld start at the same point and follow the same course as the original survey ; that is to say, where there is no difficulty in following the original lines of the previous survey.

“Where the lines of a survey have been run, and can be found, they constitute the true boundaries which must not be departed from or made to yield to any less certain and definite matter of description or identity.” CYC. Q it *Boundaries.*

“Recognition of, and acquiescence in, a line as the true boundary line of one's land, not induced by mis- take, and continued through a considerable period of time, affords strong, if not conclusive, evidence that the line so recognized is in Iact the true line, but a mere license or passive acquiescence on the part of a land- owner in an encroachment by his adjoiner will not conclude him ; and where a line is recognized and acquiesced in though a mutual mistake the parties will not be esto pped to assert the true division line.” CYC. 9W-94 i *Donndari es.*

## “The courts are divided in their opinions as to the

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necessity of continued acquiescence of both parties following the execution of the agreement, some with apparent logic, denying the necessity, but the majority directly or impliedly requiring such acquiescence.

. Just how long a period of acquiescence is n eces- sary to conclude the parties when the statutory period is not required is a question which cannot be answered with exactness. Possession for the statutory period is, of course, sufficient, whatever this may be, and periods of eighteen to twenty years, fif teen years, ten years, and even six months ha Are been held sufficient to establish a boundary by acquiescence. On the other hand, it has been held that acquiescence for only four or five years is insufficient for such purpose.” 8 AM. JUR. 799- oo *Bo undari es* § / .

In this case, not only is there acquiescence, but there is

also a written agreement recognizing the Tolbert bound- ary line. And if, by mere acquiescence, seven years were not sufficient to establish the appellants’ rights under the Tolbert agreement, then certainly the appellee’s written recognition must be admitted as being superior to any mere implied acquiescence.

On argument before us, it was contended that most of issues raised in the appellants’ brief should have been con- sidered under the pleadings which had been dismissed by the judge who passed upon the points of’law. We would like to remark that, although the dismissal of a defen d- ant’s plead in gs places him on a bare d enial of the facts alleged in the complaint, it does not deprive him of the right to cross-examine as to all egations contained in his adversary’s pleadings, or as to documents filed with those pleadings ; nor does it give the plaintiff exemption from proving all the essential allegations set forth in the com- plaint. The defendant’s restriction to a bare denial does not necessarily decide a civil case in favor of the plaintiff. In this case, the documents which were put in evidence, and which have shown the difference in the metes and

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bounds of the two surveys of the appellee’s five and one- half lots, as well as showing the increase within ten years of appellee’s leased property, and which acknowledged M r. Tolbert’s right and recognized his one lot leased to the appellants, were all brought into the case by the ap- pellee herself. We are, therefore, of the opinion that the appellants, though on bare denial, had every right to cross-examine as to those documents, and to refer to tes- timony elicited in said cross-examination on the hearing. We would hold this view even if the documents had been brought into the record over the appellants’ objections ; but such was not the case.

In ejectment, the pla intiff must prove his ownership or right of possession so conclusively as to leave no doubt of the superiority of his rights over his adversary’s. In

# Gemma v. *Street,* i 2 L.L.R 3f . 3f9 ( '9s 6) , Mr. Justice

Shannon, speaking for this Court, said:

“It is a principle in trials for ejectment, which has been often enunciated by this Court, that plaintiff must recover upon the strength of his own title and not on the weakness of his adversary. ”

Not only has it been established that the plaintiff rec- ognized and acknowledged Mr. Tolbert’s leasehold right to the lot of land in dispute by concluding an agreement with Tolbert's lessees which referred to the Tolbert boundary line as the beginning of the half lot which she also leased to the same lessees, but she has not been able to explain how her five and one-half lots which adjoined M r. Tolbert’s one lot in i s3 had, in i q6o, increased and

taken in the one lot which she had previously recognized

as M r. Tolbert’s. She made no effort to explain the absence of any deed which might have given her more land in the area during the period the increase was taking place. In view of these strange and unexplained ci rcum- stances, we are unable to say that appellee has, by any stretch of the imagination, proved her right to the lot in dispute; and also, according to the evidence we have in

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this case, she has Iailed to show an older or better right to the lot in dispute. Unless she is able to recover on the strength of her legi timate ownership or right of posses- sion, an action of ejectment cannot afford her relief.

I t is, therefore, our considered opinion that the appel- lants’ leasehold rights, supported by the agreement of lease concluded between themselves and Mr. Tolbert in I 9f3. shoul d not be disturbed, and that the judgment of the

## court below should therefore be reversed ; and the same is so ordered.

*R ezersed.*