A. C. SM ITH, Appellant, r. WILMOT D. STUB B LE- FIELD and Associate Stipendiary Magistrate, JACK ES

W. BROWN, Appellees.

**APPEAL FROM** TH E **CI RCU IT COURT OF THE SIXTH** ,}**UDICIAL CIRCUIT,**

MO NTSE R RADO COU NTY.

Argued April 22, 1963. Decided May 9, 1963.

1. In a summary ejectment action where no issue of fact is raised, no affidavits are required.
2. Title to real property cannot be determined in a summary ejectment action before a magistrate.
3. A plaintiff in a summary ejectment action before a magistrate need not neces- sarily show title to the property in question.
4. A magisterial court may entertain and deny a demurrer in a summary ej ect- ment action.
5. Dismissal of a demurrer in a summary ejectment action is not a ground for summary investigation of the magistrate who dismissed the demurrer.
6. Summary investigation is a remedial process whereby circuit courts may review irregularities of magisterial courts and j ustice of the peace courts. Absent such irregularities, a summary ejectment action cannot be maintained.

On appeal from a judgment of the circuit court dis- missing a judgment in a summary investigation of a summary ejectment action in a stipendiary magistrate’s court, *)ud gm ent a frm ed.*

*lose p h F. Den nis* for appellant. *lsamu el Gole* for

appellees.

MR. JUSTICE W ARDSWORTH delivered the opinion of the Court.

This case is on appeal from a judgement of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, in a matter of summary investigation growing out of a summary ejectment action filed by one of the parties in the magistrate’s court in Monrovia. The summary ejectment action is still pending before the stipendiary

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magistrate’s court, to be heard and determined after our decision in the summary investigation matter.

It would appear that Wilmot D. Stubblefield brought a summary e jectment action to evict A. D. Smith from property alleged to be Stubblefield’s. When the de- fendant appeared in the magistrate’s court, he filed a demurrer to the writ, and contended, in substance, that:.

I. Plaintiff in summary ejectment had Iailed to file his title with his complaint, or to give defendant notice that he was legal owner of the land on which de- fendant was residing.

2. Defendant was attempting to get a deed from the Republic of Liberia for the lot of land, but had not succeeded, and as far as he knew, no one had ever surveyed the land, or obtained a deed therefor.

3 In reference to some documents exchanged be- tween the Department of Justice and Mr. Stubble- field, said department was not a proper forum

before which summary ejectment matters could be determined.

The magistrate denied the demurrer, and ordered the case assigned to be heard on December 28, 9^-

Instead of appearing for hearing of the case in keeping

with assignment, defendant filed a complaint in summary ' investigation against the magistrate for having dismissed the demurrer. The complaint was filed in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, and contains four counts, three of which restate the same grounds laid in the demurrer before the magis- trate, and concludes that the magistrate should have dismissed the complaint on those grounds. The fourth count of the complaint in summary investigation is im- portant to the determination of this matter on appeal. It reads as follows:

“And said petitioner further complains that al- though, under the law, he would have a right to' regular appeal upon judgment in the said action, yet

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it must be realized that, by such irregular ruling of the magistrate, should the case be permitted to pro- ceed up to the stage of judgment in face of his appeal, he would be ejected and be out of the legal possession of his property during the pendency of the appeal, to his injury and damage ; and this is the intention of the plaintiff, now one of the respondents. Petitioner, therefore, is compelled to resort to these proceedings to avert further injury should the cause proceed to the stage of judgment, and has no other adequate remedy under the circumstances.”

We have given special attention to the ground for summary investigation laid in this count of the complaint ; and we wish to observe that counsel, by his own admission in the said count, has recognized the irregularity of his procedure in attempting to question the magistrate’s right to deny his demurrer. IVe note that he claims that his reason for taking the position is to avert judgment in summary ejectment, which would be enforced without regard for the announcement of appeal. In other words, he has recognized the irregularity of his complaint in summary investigation growing out of a matter which had not yet been heard, but in which he must have been aware that his defense was groundless and that judgment was bound to be rendered against him ; therefore, in an effort to have the circuit court assist him in his irregu- larity, he has sought shelter behind a judicial proceed- ing. Such procedure, when adopted by a counsellor of this bar, gives us great alarm ; and our concern increases when counsel attempts to defend such an irregular practice.

The plaintiff in summary ejectment filed answer to the complaint in summary investigation. Judge D. B. Morris heard and denied the complaint, and ordered the matter sent back to the magistrate’s court to be heard on its merits. Because we are in accord with said ruling, we are quoting it in this opinion, word for word. It reads:

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“While the court was about to consider the sub- mission in summary proceedings and the resistance as filed, the petitioner filed an answering affidavit this morning, attacking the affidavi t of respondent’s re- turns, which respondent resisted on the records.

“The summary proceedings, as filed, and all the relevant motions and resistance, raised a legal ques- tion as to the authority, under the law, of the magis- trate’s assuming jurisdiction and trying said summary ejectment. In the arguments on both sides, it was agreed that the question raised is a purely legal one. This being true, the court feels that an affidavit was not necessary on either side ; for such an affidavit only verifies factual or mixed causes.

“As to the merits of the submission made by peti- tioner against the magistrate, he has not supported said submission by any citation of law to convince the court that the plaintiff in summary ejectment before the magisterial court must produce title deed to estab- lish his rights to the property in question. It is the opinion of the court that, if summary ejectment were based on title deed on both or either sides, only courts of record would have jurisdiction.

“The court feels that the magistrate was correct in requiring evidence on aspects of the matter other than title covered by deed to the property in question ; and it was within his authority to do so in summary pro- ceedings. The submission is therefore dismissed and the parties ordered to return to the magisterial court for the purpose of hearing the matter as the magistrate has ruled it to trial. The clerk of this court is ordered to send down a copy of this ruling with the court’s order ; costs to abide final determination of the matter.

[Sgd.j “D. W. B. MORRIS,

*Asstgned Circuit Judge.”*

A stipendiary magistrate has jurisdiction over summary proceedings to obtain possession of real property. ( See iQ 6 Code, tit. i8, § s77 tg j.) Therefore, it was within

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the proper jurisdiction of the magistrate to hear the demurrer growing out of the case filed before him. Dis- missal of a demurrer leaves the case in *status quo ,-* hence a ruling dismissing the same is not final, nor is it so irregu- lar as to form the basis of complaint in summary in- vestigation. Summary investigation is a remedial process whereby the circuit court reviews alleged irregularities of the magisterial and justice of the peace courts ; and unless there is irregularity, there is no basis for maintaining it before the circuit judge. Hence we are in agreement with the position taken by the trial judge in dismissing the summary investigation, and ordering the summary eject- ment resumed by the magistrate’s court for hearing and determination. The ruling of Judge Morris is therefore affirmed with costs against the appellant. And it is hereby so ordered.

*A firm ed.*