VENUS DENNIS, et al., Appellants, *v.* JOHN L. DENNIS, et al., Appellees.

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

Argued November 10, 12, 1975. Decided January 2, 1976.

1. The rights of a person shall not be concluded by a judgment rendered in a suit to which he was not a party.
2. When a lessee of land is named as defendant in an ejectment action, the title holder lessor must be joined as co-defendant.
3. A trial judge commits reversible error when he overrules a judge of concurrent jurisdiction.
4. All legal issues must be ruled upon before factual issues can properly be referred to a jury.

The lessor appellees were not made parties to an action of ejectment successfully brought by appellants against the lessee of appellees. The appellees claimed to be owners of the property involved as heirs of their father who had asserted ownership rights over the property. The appellees brought a suit in equity to set aside the judgment previously obtained by appellants. The appellees contended that their rights had not been concluded, by reason of the failure to join them as parties. The lower court granted the relief sought by appellees, set aside the judgment and ordered redocketing of the previously described ejectment action.

The Supreme Court agreed with the appellees about their rights not having been concluded, but because the lower court had failed to pass upon issues of law raised and because the judge had overruled a colleague, the judgment was *reversed* and the case *remanded*.

M. Fahnbulleh Jones, Nathan Ross and D. Caesar Harris for appellants. *Samuel Pelham* for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

According to the record certified to this Court, George C. Dennis, Sr., of Louisiana, Montserrado County, willed to his wife, Julia E. Dennis, for her natural lifetime and after her death, to their son George C. Dennis, Jr., lot No. 109 on Broad Street in Monrovia, on which is constructed the Gabriel Cinema.

George, Jr., predeceased his mother, Julia, leaving two minor children, Venus Dennis and Beatrice Dennis-Webb, who are the appellants in this action. Although she allegedly possessed a life estate in lot No. 109, Julia E. Dennis died purportedly willing it to Gabriel L. Dennis, her sole executor, and father of appellees. In 1954, he leased the property to Liberia Amusements Ltd., one of the appellants, for a period of twenty years. Although Gabriel L. Dennis did not bequeath this property to anyone, after his death it was listed in an inventory as part of his estate. The appellants filed a petition in the Probate Court of Montserrado County to delete lot No. 109 from the inventory. This petition was denied.

In 1974, appellants Venus Dennis and Beatrice Dennis-Webb instituted an action of ejectment against Liberia Amusements, Ltd., lessee of lot No. 109, which was in the process of negotiating a new lease with appellees, heirs of the late Gabriel L. Dennis, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. There is conflicting testimony about whether the appellees were informed of the action brought against their lessee. In any event, they were not party to the ejectment action. The Liberia Amusements, Ltd., defendants in the action, filed its appearance, but failed to file an answer. The trial judge, Hon. Tilman Dunbar, ruled defendant to a bare denial, and after hearing the testimony of the plaintiffs' witnesses, the jury brought in a verdict in favor of the plaintiffs, Venus Dennis and

Beatrice Dennis-Webb. Judgment was rendered and no appeal was taken therefrom. Liberia Amusements, Ltd., paid the court's costs and Venus and Beatrice were put in possession of lot No. 109.

Apparently in order to continue their business operation, Liberia Amusements, Ltd., began negotiations with the "new" owners for a possible leasehold. While these negotiations were going on, the appellees, who were not party to the ejectment suit, filed a "bill in equity to set aside a void judgment and grant relief against fraud for lot No. 109" against Venus Dennis and Beatrice Dennis-Webb and Liberia Amusements, Ltd., parties in the ejectment action, in the Civil Law Court for the Sixth Judicial Circuit. Separate answers, containing altogether 37 counts were filed. The petitioners filed a single reply to the two separate answers and Judge Alfred Flomo ruled on the legal issues raised in the pleadings, heard the factual issues, and rendered a decree dropping Liberia Amusements, Ltd., as a party, and ordering the redocketing of the ejectment action which had been heard and decided by his colleague, Judge Dunbar. It is this decree which is now before this Court for appellate review.

While the ejectment suit is not now the subject of review, because the judgment was never excepted to or appealed from, it is incumbent upon us that some observations be made about the trial of that case, since the instant case grew out of the ejectment action and since several references were made to it during argument before this Court.

Our first observation is that the judgment in the ejectment suit sought to dispossess John and Wilmot Dennis of property they are claiming to be theirs, even though they were never brought under the jurisdiction of the court. The action was brought against their lessee, Liberia Amusements, Ltd., but they themselves were never served with process, nor did they intervene, even though as heirs and privies of the lessor, their father, they are bound to

warrant and defend their lessee against attempts to disturb their peaceful enjoyment of the leased premises.

They claim that they did not know of the pendency of the action until after the judgment had been rendered and their tenant evicted. Giving them the benefit of the doubt, we wonder why their lessee did not file an answer alleging the circumstances under which it was occupying the premises, or why the court itself did not join them as necessary parties.

Our Civil Procedure Law addresses itself to intervention.

> "Upon timely application, any person shall be allowed to intervene in an action when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof." Rev. Code 1:5.61(1c).

Section 5.62 provides for permissive intervention.

> "1. Upon timely application, any person may be allowed to intervene in an action: . . .
>
> "(b) When the applicant's claim or defense and the main action have a question of law or fact in common.
>
> "2. Consideration by court. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Section 5.63(2) of the Civil Procedure Law sets forth procedures in intervention.

> "A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought."

As far back as 1946, in *Johns* v. *Witherspoon,* 9 LLR 152 (1946), this Court held that under certain circumstances a third party may be permitted to intervene in a

case pending in a court prior to the rendition of the judgment where his rights and interests are or will be materially affected; and that the rights of no one shall be concluded by a judgment rendered in a suit to which he is not a party. Again, in *Gaddini* v. *Iskander,* 19 LLR 490 (1970), we held that the right to intervention should be asserted within a reasonable time after knowledge of the pending action. Since the appellees in this case contend that they did not intervene because they did not know of the pendency of the ejectment suit, recourse to the Civil Procedure Law shows that another method could have been used to bring them in. They could have been joined as defendants in the action in accordance with section 5.51.

> "1. Parties who should be joined. Persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitably affected by a judgment in such action shall be made plaintiffs or defendants therein.
>
> "2. Compulsory joinder. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff. When a person who should be joined according to the provision of paragraph 1 has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned to appear in the action."

On motion of any party, or on its own initiative, the court itself may order that additional parties be brought in at any stage of the action or on any terms that are just. Rev. Code 1:5.54. See also *Lartey* v. *Community Funeral Home Service, Inc.,* 19 LLR 447 (1970); *Franco-Liberian Transport Co.* v. *Republic,* 13 LLR 541 (1960).

We have made observations on the questions of intervention and joinder of parties in order that we may state clearly again that one who is not a party to an action can-

not be concluded by a judgment arising therefrom; and that a court's judgment is not binding upon one over whom it had no jurisdiction either by service of process or by his voluntary appearance and submission to the court's jurisdiction. *Tubman* v. *Murdoch,* 4 LLR 179 (1934); *Gbae* v. *Geeby,* 14 LLR 147 (1960); and *Schilling & Co.* v. *Tirait,* 16 LLR 164 (1965). Where a lessee of land is named as defendant in an ejectment action, the titleholding lessor must be joined as co-defendant. *Liberian Trading Corporation, Ltd.,* v. *Cole,* 15 LLR 61 (1962). This not having been done, and appellees' not having intervened, the judgment in the ejectment suit cannot affect the rights of the appellees and, therefore, they are at liberty to pursue the appropriate remedy to establish their purported ownership to lot No. 109, if they so desire.

During argument before us, it was brought to our attention that no deed was ever introduced into evidence in the ejectment suit. This seems very strange, for in *Cess-Pelham* v. *Pelham,* 4 LLR 54 (1934), we held that whenever a complaint is filed in which the plaintiff claims title to real property, a copy of the document upon which title is based should be filed therewith. In *Duncan* v. *Perry,* 13 LLR 510 (1960), we declared that a plaintiff in an ejectment action must furnish clear and convincing proof of title, and in *Dundas* v. *Botoe,* 17 LLR 457 (1966), we held that in ejectment, a deed must be alleged in or proferted with the pleadings. We mention this only in passing.

Turning to the case at bar, we find that the appellants filed a ten-count bill of exceptions, but we are of the opinion that only two basic points warrant our consideration at this time, and they are (1) that the judge did not pass upon all of the legal issues raised in the pleading and; (2) that the trial judge erred in ordering the redocketing of the ejectment action which had been disposed of earlier by a judge with concurrent jurisdiction.

Taking the latter issue first, we must reiterate here that Judge Flomo committed reversible error when he ordered the redocketing of the ejectment action for a new trial, for judges in courts of concurrent jurisdiction have no power to overrule each other. *Republic* v. *Aggrey,* 13 LLR 469 (1960); *Kanawaty* v. *King,* 14 LLR 241 (1960); and *Kaizolu* v. *Corneh,* 18 LLR 369 (1968). Therefore, however sound Judge Flomo's ruling might seem to be in substance, it cannot be upheld by any legal authority; and however erroneous or sound might be the ruling of Judge Dunbar in the ejectment action, the only judicial tribunal clothed with legal authority to have reviewed it is the Supreme Court. Judge Flomo, presiding over the December 1974 Term of the court, exercising concurrent jurisdiction with Judge Dunbar who presided over the September 1974 Term, had no authority to review his acts.

With respect to the question of the disposal of the issues of law, it is an elementary principle of law that all legal issues must be ruled upon before factual issues may properly be referred to the jury. *Reeves* v. *Knowlden,* 11 LLR 199 (1952). The appellants contend that the trial judge did not rule upon many issues of law. The judge, in ruling upon the issues, said: "Although there are many issues raised in the petition and the answers of the respondents, as well as the reply of the petitioners, we are of the opinion that those issues are not pertinent to this petition because they are cognizable in an action of ejectment, and, therefore, the court disregards and overrules those issues. The only issue which is germane to the just determination of the petition is whether or not the petitioners were informed of the institution of the action of ejectment from which this petition has grown, and if so, what step have they taken to protect and defend their title."

It is our opinion that the issues were worthy of consideration and the ruling of the trial judge did not meet

the requirement set in several recent opinions of this Court with respect to ruling upon legal issues. These issues, as all issues of law raised in the pleadings, should have been passed upon in a comprehensive manner, and where this is not done, the case will be remanded for proper disposition in the lower court. *Zakaria Bros.* v. *Pierson,* 19 LLR 170 (1969); *Claratown Engineers, Inc.* v. *Tucker,* 23 LLR 211 (1974).

Under the circumstances and the law, the decree is reversed and the case is remanded for a new trial, beginning with the proper disposition of the issues of law. Costs to abide final determination. It is so ordered.

Reversed and remanded.