ELIZA JACKSON, et al., Appellants, *v.* J. BENEDICT MASON, et al., Appellees.

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

Argued April 7, 8, and 9, 1975. Decided May 2, 1975.

1. All issues of law, whether necessary to the manner in which the case is decided or not, must be ruled upon by the trial court.
2. The rendition of a judgment may be an operative fact in a subsequent action by one of the parties to the judgment, although the principle of *res judicata* is not applicable.
3. A person who is not a party but who is in privity with the parties in an action terminating in a valid judgment is bound by and entitled to the application of the principle of *res judicata.*
4. A person who, being under no legal disability at the time, stands by and permits property, which he claims, to pass into the possession of another without objecting thereto is presumed to have assented to the act and is estopped from afterward raising claims thereto.
5. It is incumbent upon the plaintiff in ejectment to show a perfect chain of title before he can attack the weaknesses in the defendant's title.
6. Anything not contained in the trial court's record certified to the Supreme Court will not be considered.
7. An appearance must be made within ten days after service of the summons or resummons.
8. To enable a party to successfully plead the statute of limitations in an action of ejectment he must be able to prove that he, or he and his privies, have been in open and undisturbed possession of the property for at least twenty years consecutively; that such possession was adverse to the title of plaintiff and/or those in privity with him; that neither plaintiff nor anyone under whom he claimed was under any legal disability to bring suit during this period of twenty years.
9. Letters granted to fiduciaries by a court are conclusive evidence, unless vacated, of the authority of such persons.
10. Points not made a part of the bill of exceptions are deemed to have been waived.
11. In actions of ejectment mere relationship by ties of blood cannot confer title to real property.
12. Courts often will refuse to interfere when antiquated demands are presented where gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights is shown.

An action in ejectment was instituted by appellants against appellees, claiming a superior title to the property occupied by appellees. The complaint was dismissed by

the trial judge and the appellants appealed therefrom.

The Supreme Court exhaustively examined the claims to title by the parties and found that appellants presented a very sketchy chain of title. Therefore, the Court *affirmed* the lower court's judgment, pointing out that remand of the case to the lower court for a new trial would serve no useful purpose, since the defects in appellants' case were incurable.

J. Dossen Richards for appellants. *Nete-Sie Brownell, Moses K. Yangbe,* and *Stephen B. Dunbar* for appellees.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

In the complaint which the appellants filed on July 24, 1972, they averred that the late Z. A. Jackson of the City of Monrovia acquired and possessed several pieces of real property, situated at various and different locations in the said City of Monrovia. He died seized of these several pieces of property according to the complaint. In support of the allegation they made profert of a deed describing twenty acres and annexed it to their complaint as exhibit "A". Because of the importance this deed is to play in the determination of this case, it is quoted hereunder word for word.

"Republic of Liberia

"Know all men by these presents: That we, T. N. Watson, J. H. Watson, J. F. Poindexter, heirs of the late Colonel J. Watson of the County of Grand Bassa and Republic of Liberia, and heirs of the President D. B. Warner, and Rachel Warner, late of the City of Monrovia, in the County of Montserrado and Republic of Liberia, for and in consideration of Twelve Hundred Fifty Dollars ($1,250.00) paid to us by Z. A. Jackson of the City of Monrovia, County and Republic aforesaid (the receipt is hereby acknowl-

edged) do hereby give, grant, bargain, sell and convey unto the said Z. A. Jackson, his heirs and assigns all our rights and titles in lots Nos. 15 and 16 in Kroo Town, lot No. R&S on Water Street, two (2) town lots of the late Henry Cooper Farm, lots Nos. 13, 14, and 15 situated on Benson Street, and all other lots situated in the City of Monrovia that we have any right and title to with the buildings thereon and all the rights, privileges and appurtenances to the same belonging, situated in the City of Monrovia, in the County of Montserrado and Republic of Liberia, and bearing in the authentic records of said City the Numbers 15, 16, R&S, 295, 296, 317, and Numbers 13, 14, and 15, and bounded and described as follows:

"Commencing at the junction of Benson and Clay Streets, thence running in a line North 54 degrees, West 715 feet to a point; thence running in a line South 36 degrees West 1220 feet to a point; thence running in a line South 54 degrees East 715 feet to a point; and thence running in a line North 36 degrees East 1220 feet to the place of commencement and containing 20 acres of land and no more or 972,300 sq. ft.

"To have and to hold the above granted premises to the said Z. A. Jackson, his heirs and assigns to his and their use and behoof forever. And we, the said T. N. Watson, J. H. Watson and J. F. Poindexter, heirs of the late Colonel J. Watson and our heirs, executors and administrators do covenant with the said Z. A. Jackson his heirs and assigns that we were fully siezed in fee simple of the aforesaid granted premises, that they are free from all encumbrances; that we have good right to sell and convey the same to the said Z. A. Jackson, his heirs and assigns forever as aforesaid, and that we will and our heirs, executors and administrators shall warrant and defend the same to the said Z. A. Jackson, his heirs and assigns forever against the lawful claims and demands of all persons.

"In Witness whereof we have hereunto set our hands and seals this fourth (4th) day of December, 1908.
"[Sgd.] T. N. WATSON
[Sgd.] J. F. POINDEXTER
[Sgd.] J. H. WATSON

"Signed, sealed and delivered in the presence of:
"[Sgd.] CHAS. INNIS
[Sgd.] W. N. SCOTT
[Sgd.] JOHN A. SIMS"

"ENDORSEMENT

"Warranty Deed from T. N. Watson, J. H. Watson, J. F. Poindexter to Z. A. Jackson, 'let this be registered' R. J. Probated this 8th day of December, 1908.

"[Sgd.] GEO. H. VAN DIMMERSON,
Clerk, Monthly and Probate Court,
Montserrado County

"Registered according to law,
Vol. 31, page 521
"[Sgd.] R. B. LOGAN,
Registrar, Mo.C. 9/1/08."

It might help to clarify some of the entanglements in this case, if we mention that this deed allegedly executed in 1908, does not seem to have been registered until the late R. B. Logan was in office as Registrar, which was very recently. Therefore, the registration date shown on the endorsement, 9/1/08, could be a mistake, but that is the certified record and it has not been challenged. Elsewhere in the record we have found another endorsement to this deed, and it bears the name of R. S. Wiles as Registrar. So R. B. Logan's name appearing on the endorsement could very well be a mistake also.

Count two of the complaint states that after a diligent

search it was determined that Z. A. Jackson died without leaving a will, and consequently the Probate Court of Monrovia appointed the above named appellants as Administrators and Administratrices to administer his intestate estate. Here again something seems to need untangling, because during argument before us one of the appellees' counsel argued that Z. A. Jackson died in 1918, ten years after his deed had been signed and was probated and registered.

The plaintiffs, who brought this suit in 1972, are comparatively young people when we consider the year 1918 in which Z. A. Jackson is said to have died. Hence, they must have been appointed by the Probate Court in recent years, long after Jackson's death. It is strange, therefore, that they did not annex to their complaint some evidence of their having been appointed to administer this intestate estate. This point was emphasized by the appellees' counsel during argument before us, when capacity to sue became a major issue. But we shall say more about this later.

Count three of the complaint alleges that the plaintiffs in this case are heirs of the late Z. A. Jackson and that as such they are entitled to possession of the parcels of land described in the deed. They claim the right by descent or by inheritance *per stirpes*. Here again there is no semblance of any ground to support the bare allegation of being heirs of the late Z. A. Jackson. This point was also seriously urged at the hearing before us. It was finally contended that the several parcels of property described in the deed have been taken by adverse possession by the plaintiffs without color of right. This is most confusing, but we shall address ourselves to it later. The foregoing, in effect, is the position taken by the appellants in their complaint.

Of the more than twelve defendants, William Philips, represented by Counsellor Stephen Dunbar, and Theresa Eastman-Mason, represented by Counsellor Nete-Sie

Brownell, filed separate answers. Counsellor Moses Yangbe represented the other defendants, the members of the African Methodist Episcopal Church, and Monrovia College. Since these two institutions had not been specifically named as defendants, he moved for and was granted leave to intervene on their behalf. Therefore, three sets of answers were filed, one on behalf of Teresa Eastman-Mason, one on behalf of William Philips, and one on behalf of the other defendants, and the African Methodist Episcopal Church and Monrovia College as intervenors. We shall deal with these three answers separately, and then consolidate them to answer the plaintiffs' complaint made against all of them.

The appellants' counsel has contended that the trial judge failed to pass upon all of the issues raised in the pleadings before she dismissed their case in her ruling on the issues of law. This Court has said on numerous occasions that before dismissing a case, or ruling it to trial by jury, all of the issues of law must be passed upon and decided. As recently as the October 1974 Term, in *Claratown Engineers, Inc.* v. *Tucker,* 23 LLR 211 (1974), the Court emphasized that all issues of law, whether necessary to the manner in which the case is decided or not, must be passed upon by the trial court.

In our review of the judge's ruling on the issues of law, upon which the case was terminated by dismissal, we have observed that many salient and important issues were not decided. We will, therefore, traverse all of the pleadings, and give such judgment as should have been given in the court below.

Defense of Defendant Teresa Eastman-Mason

Appellee Teresa Eastman-Mason is the only surviving child of the late Louise Hood-Adams, daughter of the late Rebecca Warner-Demery, who was one of D. B. Warner's two children. She is, therefore, the great-granddaughter of the late D. B. Warner who acquired lot No. 13 in 1836

by purchase from Jacob and Mary Warner, as we will see later on.

Lot No. 13 is one of the parcels of property which the appellants have claimed ownership of according to their complaint. They say that this parcel of property descended to them as heirs of the late Z. A. Jackson. Besides the fact that they failed to show how this property ever came to be owned by Z. A. Jackson, a requirement in ejectment, they also failed to show how this property could have come to them, even if it had been owned by Z. A. Jackson, also a requirement in ejectment.

Now let us look at No. 13 from the appellee's point of view. In the case of ejectment brought in 1924 by Mary Schweitzer and Rebecca Demery, daughters of the late President D. B. Warner, relating to the same parcel of land, decided by the Supreme Court in 1928, it was established that (a) this property had been owned by President D. B. Warner and had come to him by purchase from his father, Jacob, and mother, Mary Warner, on April 8, 1836; (b) that this property had been known as Farm Lot No. 13 and had contained ten acres of land, or 40 town lots; (c) that of these ten acres one-quarter acre had been reserved as a burial ground, was fenced in and within the fence is the grave of President Warner, to this day. See *Coleman* v. *Schweitzer,* 16 LLR 319. We know that this grave is on Camp Johnson Road in the City of Monrovia; thus, the location of Farm Lot No. 13 on Camp Johnson Road has been established beyond any doubt. The averment in count one of the complaint to the effect that Lot No. 13 is situated on Benson Street in the City of Monrovia, would therefore seem to be in error, since Benson Street is quite many yards away from the Warner property on Camp Johnson Road.

Moreover, the description in the plaintiffs' deed made profert with their complaint does not show Lot No. 13 to be on Benson Street; nor is it the description of Lot No.

13; but rather the metes and bounds contained in the deed is supposed to describe about eight separate parcels of property, spread over a large area of the City of Monrovia. They include the following places: Front Street, Benson Street, Henry Cooper's farm, which is in the area of Newport Street and Kroo Town, which is on Water Street. The description begins at the junction of Benson and Clay Streets, which is an area far removed from either of these places. And what is even more confusing, all of these several parcels together amount to only twenty acres of land, situated in different locations in Monrovia, covered by description of a single parcel, but for which of these parcels has not been stated. But such a description would be physically impossible, needing to cover the different parcels situated in different localities. These facts were pleaded by one of the appellees, Teresa Eastman-Mason, and were not denied by the appellants.

On the contrary, the appellants have contended in their reply that (1) the deed on which the said Teresa Mason relies is a mortgage deed from Jacob Warner to D. B. Warner, and since she did not show whether the mortgage was ever redeemed, the deed cannot benefit her; (2) that appellee Teresa Mason should have shown the year in which D. B. Warner immigrated to Liberia from the United States, since he was born there in 1815. They also say that Teresa Mason should have shown whether in 1836 persons were then allowed to purchase and hold land in fee, since independence had not then been declared. (3) It is contended in count seven of the reply that Teresa Mason made no profert of a will to show that D. B. Warner left the property to his two daughters as has been alleged in her answer; nor did she show that D. B. Warner had not disposed of the property prior to his death in 1882.

On these points we would like to say that when the Supreme Court decided the ejectment case brought by Mary Schweitzer and Rebecca Demery against Joanna Coleman

in 1928, as referred to above, these issues were passed upon and decided by a judgment which is, therefore, *stare decisis*. They cannot be raised again, having already been settled. "The rendition of a judgment may be an operative fact in a subsequent action between one of the parties to the judgment and a third person or between persons not parties to the judgment, although the rules of *res judicata* are not applicable." A.L.I., RESTATEMENT OF THE LAW, *Judgment,* § 111. A judgment which finally decides an issue in a court of competent jurisdiction may not be reviewed in a subsequent hearing except by a court of superior jurisdiction. In this case the validity of the deed by which Jacob Warner transferred title of Lot No. 13 to D. B. Warner in 1836, and the issue of D. B. Warner's right to acquire and own property before independence, and the issue of who were D. B. Warner's children, had all been settled by the Supreme Court in its opinion delivered in 1928. See *Coleman* v. *Schweitzer, supra.*

The plaintiffs contended in their reply that they had never been parties to any litigation in which the subject property was in issue and, therefore, no previous judgment relating to said Lot No. 13 can bind them. But count six of Teresa Mason's answer seems to have completely clarified this point.

> "6. And also co-defendant Mason says that the title to the property in question was the subject of litigation between Reginald H. Jackson, Eliza Crayton, Isaac Crayton and Lucretia Herron in the Civil Law Court, Montserrado County, March 1967 Term. That a verdict in favor of defendant Louise Hood was rendered and a judgment thereafter. That said case was appealed to the Supreme Court and dismissed at its March 1972 Term of Court. That the plaintiffs (in this case) are privy to the former plaintiffs and were in knowledge of the litigation but did not intervene. That the present plaintiffs are claiming the same prop-

erty under the same J. T. Watson, purported heir of D. B. Warner. Co-defendant Mason submits that the doctrine of *res judicata* applies to the present plaintiffs since they are the same family or . . . purported heirs united in interest who litigated the case decided by the Supreme Court in its March 1972 Term of Court, and therefore are barred from maintaining an action under different names, although the same purported heirs of J. T. Watson."

This allegation as to the relationship between the plaintiffs in the case brought by Reginald H. Jackson and others against Louise Hood in 1967, and the plaintiffs in this case, was not denied in the appellants' reply. Their only defense against this allegation is contained in count nine of their reply, and they have stated therein that there is no "T. J. Watson" appearing on the face of the deed upon which they relied in the complaint. The deed does name T. N. Watson and J. H. Watson as grantors, but this error in the initials of one of the grantors is merely technical and immaterial. It certainly does not deny the alleged relationship between Eliza Jackson and others in this case, and Reginald Jackson and others in the 1967 case. We might mention in passing that Louise Hood who was sued by Reginald Jackson and other plaintiffs in 1967, is the child of Rebecca Demery, one of D. B. Warner's two daughters.

Plaintiffs' failure to deny a family relationship between themselves and Reginald Jackson and the others named, and that they were privies to the plaintiffs in the 1967 action of ejectment brought against Louise Hood, leaves us to conclude that this allegation is true. Therefore, the judgment which was enforced against Reginald Jackson, et al., binds them also. We have legal support for this position which we have taken:

"Briefly stated the doctrine of *res judicata* is that an existing final judgment rendered upon the merits,

without fraud or collusion, by a court of competent jurisdiction is conclusive of rights, questions, and facts in issue as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." 30 AM. JUR., *Judgments,* § 161 (1940).

"Privies—General Rule: A person who is not a party but who is in privity with the parties in an action terminating in a valid judgment is . . . bound by and entitled to the benefits of the rules of *res judicata.*" A.L.I., RESTATEMENT OF THE LAW, *Judgments,* § 83 (1942).

"Persons Having Future Interests: A person who has a future interest in land or other subject of property is, with reference to his interest therein, bound by and entitled to the benefits of the rules of *res judicata* resulting from a judgment in an action to which he is not a party, in accordance with the rules stated in the Restatement of Property. *Id.* §§ 180–186.

"Prerequisites for binding effect on living owner or future interest: A judicial proceeding has binding effect as against the future interest of a person who is alive at the time of the commencement of such proceeding when the requirements stated in some one section are satisfied, but not otherwise: . . .

"(c) the proceeding, duly followed, is one binding the affected thing itself, thus binding both present and future interests therein without either joinder or representation of the owners of such interest;

"(d) the proceeding duly followed is one which by statute binds such future interest without either joinder or representation of the owner thereof." A.L.I., RESTATEMENT OF THE LAW, *Property,* § 180 (1936).

Therefore, the fact that the plaintiffs in this case were not named as parties in the case of ejectment involving Lot No. 13, determined in 1967, does not relieve them of

the binding effect of *res judicata,* so long as they have not denied that they were in privity with Reginald Jackson and others, who were plaintiffs in that case.

In count five of her answer, appellee Teresa Mason has pleaded that Mary Warner Schweitzer and Rebecca Warner Demery, adjudged legal heirs of D. B. Warner, lived in open and notorious possession of D. B. Warner's property up to the time of their deaths in 1935 and 1943, respectively; that at their deaths their wills disposing of their property, including Lot No. 13, were probated without objection from any one. One would have thought that this important issue raised in the answer would have been traversed in the reply. But the appellants have made no reference to this important issue in their succeeding pleading. We must, therefore, give full credit to this point raised in the appellee's answer, because if a party who, being under no legal disability at the time, stands by and permits property which he claims, to pass into the possession of another without objecting thereto at the time, such party is presumed to have assented to the transaction and is estopped from afterwards raising claims thereto. *McAuley* v. *Madison,* 1 LLR 287 (1896).

We now shall consider counts three, four, and five of the appellants' reply, which can be set forth succinctly: (1) that Teresa Eastman-Mason's deed is void on its face because it was not probated and registered, and that the said deed made profert with her answer was certified by Arthur Barclay as Secretary of State. They contend that this is false, because Arthur Barclay was not Secretary of State in 1922; (2) that the deed annexed to appellee Mason's answer is further defective because it contains no metes and bounds which would enable someone to locate the ten acres of land to which it is the deed; they also say that although the document refers to the Colonial record for the boundaries (Vol. 4, pp. 170, 171, and 251), they contend that this record should have been made profert, or notice should have been given that it would be pro-

duced at the trial. For these failures they say the deed is defective; (3) that Teresa Eastman-Mason has failed to establish by document or otherwise that she is an heir of D. B. Warner, or of Jacob and Mary Warner; nor has she shown any title or right to enable her to recover in ejectment. For these reasons they contend her answer should be dismissed.

As to the first point, with reference to appellee Mason's deed not being proferted, this raises the question of whether it could have been registered without probation. We know that it was registered, because the Secretary of State certified to that effect, as has been stated in the plaintiffs' reply. The absence of endorsement showing that it was probated does not necessarily mean that it was not. The State Department certificate endorsed on the deed is set forth.

> "This is to certify that within document is in Volume 11, pages 137–38 of the records Montserrado County, filed in Archives of this Department.
>
> Given under my hand and seal of Department of State, this 14th day of November, 1922.
>
> "[Sgd.] ARTHUR BARCLAY
> *Acting Secretary of State.*"

It is not true, therefore, that Arthur Barclay had been shown to be the Secretary of State but that he was acting for the Secretary of State in 1922. This was a common occurrence in the lifetime of President Arthur Barclay after he left the Mansion. He acted in almost every cabinet post when its incumbent was absent from the country.

As to the second point, that Mason's deed contains no description of the land by metes and bounds except the Colonial record which it refers to, as compared to the plaintiffs' deed, which contains one description covering eight separate pieces of property in several different locations in Monrovia, one must wonder which of these two

documents is better than the other. But we shall come to this later in this opinion.

The third point is that Teresa Mason has failed to show any title in herself, to enable her to recover in ejectment. This Court has said over and again, that "in ejectment, the plaintiff must recover unaided by any defects or mistakes of the defendant; and proof of the plaintiff's title must be beyond questions." *Cooper-King* v. *Cooper-Scott,* 15 LLR 390, 404 (1963). Therefore, it is incumbent upon the plaintiff to show a perfect chain of title in him before he can begin to attack the weaknesses in the defendant's title. *Gibson* v. *Jones,* 3 LLR 78 (1929); *Williams* v. *Karnga,* 3 LLR 234 (1931); *Miller* v. *McClain* 12 LLR 3 (1954); *Yamma* v. *Street,* 12 LLR 356 (1956).

In count four of Mason's answer, she has denied that J. Watson is the heir of D. B. Warner, deceased, and she has emphasized that in 1928 the Supreme Court adjudged that there were only two heirs of D. B. Warner: Mary Schweitzer and Rebecca Demery; no mention was made of any Watson, nor did the Watsons intervene to assert any rights they might have had. She claims that the decision of the Supreme Court is *stare decisis* and should not be disturbed. Strangely, the appellants' reply did not challenge this point.

Defense of Defendant William Philips

Before going into the contents of defendant Philips' answer, we would like to observe that the reply has indicted the answer for having been filed three days beyond the statutory time allowed for filing. The reply alleges that whereas the complaint with a writ of summons and other documents were served on each of the defendants some time between July 24 and 29, Philips' answer was not filed until August 11. We, therefore, checked the writ to see what return the Sheriff did make, and to our surprise we found that there is no return endorsed on the back of that certified document found in the record. The parties must have taxed the record before they were sent

up by the clerk of the trial court; and if they did, it must have been observed that no return had been made by the Sheriff. We are controlled by the certified record in all matters on appeal from the Circuit Court.

But in addition to our inspection of the certified writ found in the record, we also looked up the trial judge's ruling on the pleadings, the only reference made by Judge Walser to defendant Philips' side of the case.

"The Court: Counsellor S. B. Dunbar made application to this court for the opportunity to be heard on the legal issues raised in the answer on behalf of co-defendant William Philips. Such a record will reveal that two notices of assignment were sent to Counsellor Dunbar; his first appearance was rather tardy, the court informed him that because of the fact that several issues or answers were filed, the plaintiffs had been given the opportunity to argue with the individual lawyers and therefore he could be excused for that date. The second assignment was returned stating that he was busy in the First Judicial Circuit Court. Knowing the status of the case Counsellor Dunbar was obligated to check and find out whether the case was still being heard after he left the First Judicial Circuit Court; the case was continued until the next day, and Counsellor S. B. Dunbar did not make an appearance although the records of the First Judicial Circuit will show that no session was held that particular afternoon. Counsellor Dunbar further made the plea that no summons had been served on his client, co-defendant William Philips, yet. The court's record shows that not one but two appearances were filed on behalf of co-defendant Philips, the first signed by the defendant was filed August 2, 1972, the second appearance was signed by Counsellor Dunbar and co-defendant William Philips, and dated August 11th, 1972, nine days after the first appearance.

"Section 3.63 of our Civil Procedure Law, as to the

effect of appearance on personal jurisdiction. An appearance of the defendant is equivalent to personal service of the summons upon him, unless an objection to jurisdiction of the person is asserted by motion under section 11.2(1)(b) or in the answer and is upheld by the court. In view of the foregoing Counsellor Dunbar's application is hereby denied. And it is so ordered."

Nowhere in this ruling has any mention been made of the lateness of Philips' answer; in fact, nowhere in the minutes is it shown that the point was ever raised, so the judge could not have passed upon it. "And an appearance shall be made within ten days after service of the summons or resummons." Rev. Code 1:3.62.

There is no way of knowing whether or not Defendant Philips' appearance and answer were filed within the ten days allowed by statute, especially in view of the fact that two appearances were filed, one on August 2, 1972, and the other on August 11. In fairness, therefore, we give the benefit of the doubt to the defendant. Although Counsellor Dunbar took exception to this ruling of the judge, and announced that he would apply for a writ of certiorari, he has failed to do so and, therefore, his client maintains his status in the case as one of the successful defendants.

William Philips' answer raised two points: the statute of limitations and laches. He pleaded affirmatively that he concedes to the plaintiffs' ownership of the property in question, but they are barred by the statute of limitations, since he and his father before him had been in open and notorious possession of the property for more than seventy years. Over the years they had improved the property, without challenges from any source whatever. He contended that during this period plaintiffs suffered no legal disability which prevented them from asserting their rights in and to the property.

In count two of the answer it is alleged that about twenty years ago a portion of the property was leased by Philips to Jerry Williams, and later another portion was also leased to a Lebanese trader; both documents were probated without objections from the plaintiffs, or from any other persons. Philips finally contended that the plaintiffs were guilty of laches for not having brought their suit of ejectment within the statutory time and for not having objected to probation of the two lease agreements which he concluded with his two lessors.

Plaintiffs filed a reply, and in that responsive pleading they claimed that the defendant's answer had been filed late; we have already passed upon this issue earlier in this opinion. Their next challenge to the answer was to the effect that the two lease agreements made profert with the answer were concluded less than twenty years ago, and because of this the entire answer should be dismissed. We have not been able to understand what difference it would have made even if objections had been filed to the lease agreement, the older of which was concluded in 1953. At that time Philips and his father had already been in adverse possession of the property for more than fifty years.

In *Couwenhoven* v. *Beck,* 2 LLR 364 (1920) this Court said that to enable one to successfully plead the statute of limitations in bar of an action of ejectment, he must be able to prove: (1) that he, or he and his privies, have had open and undisturbed possession of the said property for at least twenty years consecutively; (2) that said possession was adverse to the title of plaintiff and/or those in privity with him; (3) that neither plaintiff nor anyone under whom he claimed was under any legal disability to bring suit during this period of twenty years. Our Civil Procedure Law provides that "an action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years." Rev. Code 1:2.12(2).

Unfortunately, the judge did not pass on either of these issues raised in the answer of William Philips, which has compelled our having to do so in this opinion.

Defenses of Other Defendants and Intervenors

In the first two counts and in count five of the defendants' amended answer, they have alleged that the present case of ejectment was filed in 1972, while a similar case of ejectment involving the same parties and the same subject matter, filed in the June 1971 Term, was still pending in court. They have alleged that pleading in the present case progressed as far as the reply of the plaintiffs; and the case was ready for hearing of the issues of law when plaintiffs filed a notice of withdrawal of the second case without leave of court and without paying the costs.

In *Thomas* v. *Dennis,* 5 LLR 92 (1936), this Court said that when a party intends either to withdraw a case with the express reservation to renew it, or to amend a previous pleading duly filed, the costs incurred by his opponent in the case to be renewed, or in the pleading to be amended, should be first paid before the case is either renewed or the pleading amended. In *Davies* v. *Yancy,* 10 LLR 89 (1949), the Court held that a plaintiff may amend his complaint once, or withdraw it and file a new one; but if he withdraws his complaint he must pay the costs of the action up to the time of such withdrawal.

In count four of the answer the defendant and intervenors have questioned the authority of Edwin L. Morgan to sue on behalf of Eliza Jackson, Edith Herron, Netty Bates, Richard Hoff, and T. A. Capehart. They contend that Edwin Morgan cannot show any legal authority for him to act in their behalf, nor has he shown that they were incapacitated to sue for themselves. We will consider this count later.

Count six states that there is no showing that Z. A. Jackson, under whom the plaintiffs claim on the strength of the deed made profert with their complaint, did not by sale or otherwise, dispose of Lots Nos. 14 and 15 prior to

his death; nor have they shown, this count charges, any executors' or administrators' deed to support their claim to ownership of the subject property. They say also that proof of heritable blood is insufficient to warrant recovery in ejectment. *Cooper-King* v. *Cooper-Scott, supra.*

In count seven the defendants and intervenors have challenged the correctness of the plaintiffs' allegation that application was made to the Probate Court in Montserrado County, and that said court appointed plaintiffs, who have filed this suit, as administrators and administratrices of Z. A. Jackson's intestate estate, no evidence thereof having been made profert with their complaint.

Count eight of this answer alleges that the action of ejectment should have been brought within twenty years after the death of Z. A. Jackson, and that his estate should have been closed within one year, as the law requires. They say that Z. A. Jackson died in 1918, and the application by the plaintiffs to administer his estate was made after more than twenty years following his death. They contend that plaintiffs' appointments and functions as administrators of the estate after so long a period of time is void *ab initio.*

In *Nungbor* v. *Fiske,* 13 LLR 304, 308 (1958), this Court said that "the law controlling intestate estates makes it mandatory for all such estates to be closed within a limited period unless foreign claims are involved; and even in that instance, no intestate estate should remain open for more than eighteen months." That was the law which governed intestate estates when this case was filed in 1972.

Count nine of this answer calls attention to the unintelligibility of count three of the plaintiffs' complaint. Recourse to the document shows that although the complaint has named several defendants, this count accuses one group of the plaintiffs of holding the property in adverse possession from the others without color of right. No-

where in the complaint has it been charged that defendants were withholding the property illegally, as is usual in actions of ejectment. From this count of the complaint it appears that one group of plaintiffs is accusing other plaintiffs of illegally withholding the property; a very novel manner of pleading in ejectment. Actions for recovery of real property are usually brought in ejectment, and recovery is usually sought by plaintiffs against defendants; this action seems to be different, when it claims that one group of plaintiffs is withholding the property, but in the prayer for relief asks that the defendants be ousted.

In count ten of the answer defendants have pleaded that they came into possession of Lots Nos. 14 and 15 in 1922 and 1924, respectively, and that they acquired the property by purchase from F. E. R. Johnson, and others, as well as E. A. Snetter, as is evidenced by deeds made profert with their amended answer. They say that from the time of their purchase to the filing of the plaintiffs' case is more than twenty-five years, and they have been in continuous and notorious possession of these tracts of land undisturbed for all these years. They say further that their deeds were probated without any objections.

Count eleven asserts that in addition to their ownership of Lots Nos. 14 and 15, they also own and are in possession of Lots Nos. 19, 19B, 20, and 21 respectively; they made profert of deeds for these tracts.

Count twelve of the amended answer of the intervenors asserts that their tenants to whom they have leased portions of their property, and who have been named co-defendants in this action, do not have the necessary deeds to protect themselves, but that the intervenors hold themselves responsible to protect their tenants. These counts represent the position taken by these defendants and the intervenors in their amended answer.

The plaintiffs filed an amended reply, and in count one they have attacked the caption of the intervenors' amended

answer, contending that the caption has denominated the plaintiffs as respondents, and for this reason they prayed that the pleading be stricken. We feel that this is a mere technicality, because the intervenors' motion to be allowed to intervene carries the same caption, and was not resisted by plaintiffs; nor was exception taken to the court's granting of the motion with the caption as it is. We do not think that such a technical issue alters the position of the parties, nor does it affect the merits of the issues involved in the ejectment suit. We, therefore, overrule count one.

Plaintiffs' count five of their reply calls attention to the fact that the intervenors have not contended for Lot No. 13 on Benson Street in their amended answer and, therefore, ask the court to take notice of this fact. This fact is well taken, because in counts ten and eleven of the intervenors' amended answer, they made it clear that they were laying claim to only Lots Nos. 14, 16, 19, 19b, 20, and 21. They have never contended for Lot 13. On the other hand, defendant Teresa Eastman-Mason in her answer claimed ownership of Lot No. 13. We have already commented on this lot in this opinion. We should like to observe that there seem to be two No. 15 lots according to the deed made profert with the complaint, one in Kroo Town and one on Benson Street. It is difficult to say which of the two lots is referred to at any stage of this case. But this is only one of the many ambiguities in this deed.

In count six the plaintiffs have asserted that they brought this action to recover Lots Nos. 13, 14, and 15 on Benson Street, supporting the claim by their exhibit "A". They have, therefore, asked the court to take no notice of Nos. 21, 20, 19, and 19b. This is a strange position, considering that in their exhibit "A" not only are Nos. 13, 14, and 15 mentioned, but 19, 19b, 20, 21 and several other numbers, such as 16 R&S, 317, 295, 296. We are of the

opinion that all of the lot numbers mentioned in the deed call for property which must be regarded as relevant to this case. Therefore, we cannot sustain count six.

Counts seven and eight of the reply traverse intervenors' count ten, which refers to property purchased in 1922 and 1924 from grantors F. E. R. Johnson and others, as well as E. A. Snetter. Plaintiffs claim that these parcels were purchased by Z. A. Jackson in 1908, and, therefore, the sales to intervenors in 1922 and 1924 were fraudulent transactions. They contend that since Z. A. Jackson died in 1918, he could not have objected to probation of the deeds, but that had he been alive he certainly would have. They have not explained why they, his privies, did not assert their rights when the deeds were offered for probation. The plaintiff's contention is, therefore, unmeritorious, and is overruled.

Counts nine and ten allege that intervenors' deeds executed in 1922 and 1924 are illegal and fraudulent, because the 1924 deed was probated the same day of the sale of the property, February 6, 1924, contrary to the probate laws which prescribe time in which to give notice to the public. They say the 1922 deed was not probated until two years after it had been executed, which is also contrary to the law relating to the probation of instruments. Plaintiffs must have known that in such circumstances there was adequate legal remedy available to them; they have not explained why they could not have availed themselves of it. If they claim fraud, why didn't they move to cancel the deeds for fraud? This count is, therefore, also overruled.

Counts eleven and fourteen indict intervenors' count four, with reference to Edwin Morgan's capacity to sue on behalf of the heirs of the late Z. A. Jackson. Plaintiffs contend that under our present Civil Procedure Law it is not necessary to aver the capacity or the authority of a party to sue. "It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to

sue or be sued in a representative capacity. . . . When a party desires to raise an issue as to the . . . capacity of a party to sue or be sued or the authority of a party to sue in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge." Rev. Code 1:9.5(1). Now let us look at the intervenors' count four and see how lack of capacity to sue was pleaded.

> "4. And also because Edwin L. Morgan has no legal authority to file this case on behalf of Eliza Jackson, Edith Herron, Netty Bates, Richard Hoff and T. A. Capehart, because there is no power of attorney proferted to show Edwin L. Morgan's legal authority in keeping with law and practice, or the averment of any reason which incapacitated them to sue in their own names and to represent themselves."

We hold that in this case it was not a power of attorney that was necessary, but rather letters of administration which should have been annexed to the complaint, since Edwin Morgan had held himself out as an administrator of Z. A. Jackson's estate. We also hold that insofar as pleading a specific negative averment as to Morgan's capacity or authority to sue, this was adequately done in count four quoted.

In *McCauley* v. *Doe,* 22 LLR 310 (1973), an action of ejectment, this Court relied upon section 107.3 of the Decedents Estate Law in passing upon the executor's authority to represent the estate, and we also rely upon it in this case. "Letters granted to fiduciaries by the court are conclusive evidence of the authority of the persons to whom they are granted until the decree granting them is reversed or modified upon appeal or the letters are suspended, modified or revoked by the court granting them." Rev. Code 9:107.3. The Court also said in *McCauley* v. *Doe, supra,* that "it is in the best interest of legatees and creditors that evidence of the appointment of executors

and administrators be produced in court, and thereby protect estates from fraud and interference by unauthorized persons." We, therefore, hold that the intervenors had a legal right to demand that the administrators of Z. A. Jackson's estate show evidence of their appointment as such. Count eleven of the amended reply is, therefore, overruled.

Plaintiffs' count twelve questions the manner in which the intervenors have sought to plead the statute of limitations in count ten of the amended answer. They claim that the intervenors pleaded the statute of limitations by implication, instead of doing so affirmatively as the law requires. This position is well taken and so we uphold count twelve.

Plaintiffs' count thirteen has sought to correct the third count in their complaint, which had been challenged in count nine of the intervenors' amended answer. They ask that the portion of that count in the complaint be corrected to read: "The defendants have taken adverse possession of the said premises when they under the law have no color of right to said parcels of land." They claim that the error was a clerical error. This count is, therefore, sustained. This concludes the position taken in the amended reply.

After pleadings had been rested on both sides, the case came up for a hearing before the Sixth Judicial Circuit Court, and the judge dismissed it on the issue of law. Exceptions were taken and an appeal from the ruling was announced, and is now before us.

In dealing with the capacity to sue, the plaintiffs in their bill of exceptions have accused the judge of having ruled on that issue of law out of context. In the judge's ruling thereon it appears that she relied upon the Court's position taken in *Saleeby Bros., Inc.* v. *Barclay Export Finance Company Ltd.*, 20 LLR 520 (1971), an action of debt decided in the October 1971 Term. The principle established in that case is entirely different from

what appears in this case; although in both cases a representative capacity to sue is involved. The case alluded to concerned a foreign company suing in Liberian court through an attorney-in-fact, which required him to be possessed of a power of attorney. This differs from a lawyer appearing for his client in a professional capacity, who would not need any special authority besides his license to do so. In this case the question at issue is not the necessity for a power of attorney to empower a party to sue in a representative capacity, but revolves about letters of administration, in keeping with the Decedents Estate Law. Two entirely different propositions are posed.

The judge felt that the Court in its opinion in the *Saleeby* case ignored section 9.5 of the Civil Procedure Law, and that the Court by that opinion invalidated subparagraph 4 of that section. Rev. Code 1:9.5(4). This is also an erroneous interpretation of the *Saleeby* opinion. Because the issues raised in the *Saleeby* case could be resolved without reference to this particular section, it did not mean that the Court had thereby invalidated the section. A Court is not compelled to use all of the law relevant, in disposing of an issue in a case; and the law not used although relevant, is not invalidated by its not having been used.

The appellants' counsel argued before us that the judge in the court below had not passed upon all of the issues of law contained in the pleadings. We have already said that this is a mandatory requirement. But the intervenors' counsel objected to the point being raised in his argument when he had failed to make it a part of his bill of exceptions. This Court has confirmed the rule many times, that points not made a part of the bill of exceptions are deemed to have been waived. *Torkor* v. *Republic,* 6 LLR 88 (1937); *Richards* v. *Coleman,* 6 LLR 285 (1938).

It is usual that in cases where issues of law were not properly passed upon before trial or dismissal of the case,

the case is remanded for a new trial with instructions. But in this case a new trial could serve no useful purpose. The deed made profert with plaintiffs' complaint would have to be used in another trial, and the many defects appearing therein could not be cured by another trial.

The metes and bounds appearing on the face of the deed make it so uncertain as to which of the eight pieces of property is being described that no jury could with any fairness or certainty decide. Does that description belong to Lots Nos. 15 and 16 in Kroo Town, or to No. R&S on Water Street, or to the two town lots of the late Henry Cooper's Farm; or to Nos. 13, 14, and 15 on Benson Street? Or could it belong to either of the following lots: Nos. 295, 296, or 317? Or does it belong to "all other lots situated in the City of Monrovia," which the deed calls for?

How would a new trial dispose of appellee William Philips' affirmative plea of the statute of limitations? He has pleaded that he and his father before him had been in continuous and notorious possession of a portion of the property for more than seventy years; and this fact was not denied by plaintiffs.

Appellee Teresa Eastman-Mason, sole surviving heir of Louise Hood-Adams, who was the niece of Mary Warner Schweitzer and the daughter of Rebecca Warner Demery, has pleaded the doctrine of *stare decisis* in respect of Lot No. 13, one of the pieces named in plaintiffs' deed. She has contended that her grandmother's and grand-aunt's ownership of this property was adjudicated by the Supreme Court in 1928; and that it had been in her family before and ever since that time. She has also pleaded the doctrine of *res judicata* in respect of the said lot, and she has said in count six of her answer that this property was the subject of litigation between Reginald Jackson, Eliza Crayton, Isaac Crayton, and Lucretia Herron, against her mother in 1967. She contends that *res judicata* should bar the present plaintiffs who are rela-

tives of the plaintiffs who sued in 1967, from bringing this suit. How could a new trial overcome her argument presented by these two doctrines, in view of the fact that this count of her answer was never traversed or denied?

How could a new trial resolve the issue of the lack of plaintiffs' capacity to sue, raised in the amended answer of the intervenors, especially when the plaintiffs have failed to show any evidence of ever having been appointed administrator and administratrices of Z. A. Jackson's estate, as they have alleged in their complaint? Could a new trial supply the missing link in their chain of title, even if we were to accept the deed made profert with their complaint as a valid instrument, when there is no showing as to how this property of Z. A. Jackson came to be owned by them. There is a principle in ejectment, that mere relationship by ties of blood cannot confer title to real property. *Cooper-King* v. *Cooper-Scott, supra.*

How could a new trial provide the missing link in the plaintiffs' chain of title to show how Z. A. Jackson's grantors, who took Lot No. 13 from the late Col. J. Watson, according to the deed made profert with the plaintiffs' complaint, came to be in possession of this lot when, according to the Supreme Court's decision of 1928, this property was shown to have been purchased in 1836 by D. B. Warner from Jacob and Mary Warner? This fact plaintiffs have not denied, although Teresa Mason had pleaded it in her answer. As it is, there is no showing in the pleadings to connect Lot No. 13 purchased by D. B. Warner in 1836, with Col. J. Watson, whose heirs are supposed to have sold it to Z. A. Jackson in 1908. No new trial can supply this important missing link, and unless it is supplied the plaintiffs have a defective chain of title. Compared with appellee Mason's deed, which is claimed to contain no proper metes and bounds, it must crumble. This point was also raised by the intervenors.

It is an acknowledged principle in ejectment that, where a plaintiff seeks to recover on a record or paper

title he must show a regular chain of title from the Government or from some other grantor in possession. Some grantor must be shown to have been in possession claiming title to the premises at or about the time his deed in the chain of title was made. It follows, therefore, that if the person from whom plaintiff claims never entered on or claimed the land, and no other person in plaintiff's chain of title ever had any title or possession, plaintiff cannot recover. In this case plaintiffs' only deed filed with their complaint was allegedly executed in 1908 in favor of Z. A. Jackson by grantors T. N. Watson, J. H. Watson and J. F. Poindexter. There is no showing from whom the grantors took their title, nor has it been shown that these grantors were ever in possession of this property. On the other hand, defendant Mason, as well as the intervenors, claim that their chain of title began in the deed of D. B. Warner executed in 1836 and that they and their privies before them have been in continuous possession from that time up to the filing of this case in 1972. In the circumstances it is difficult to imagine how appellants could ever hope to recover in ejectment.

In *Smith* v. *Faulkner,* 9 LLR 161, 175 (1946), this Court said: "Courts often act upon their own inherent doctrines of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights." In *Cooper-King* v. *Cooper-Scott, supra,* the Court also held that "there would be untold disturbance to society if unduly belated demands were allowed to defeat long-established vested titles to real property, especially where the silence of claimants for long periods of time could be presumed as acquiescence in the previous disposition of the property, and where the *status quo,* having been long-established, could not be disturbed without hurt to the rights of innocent parties."

In view of the foregoing, we find ourselves unable to

recognize any ground upon which we might have been legally authorized to reverse the judgment dismissing this case. We, therefore, affirm it with costs against the appellants.

Affirmed.