

LIBERIA TRADING COMPANY, by its Manager,  
the Widow and Heirs of DAVID S. COLEMAN  
represented by ETTA COLEMAN and OTHELO  
COLEMAN, Appellants, v. SAMUEL B. COLE,  
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
MONTERRADO COUNTY.

Argued April 25, 1967. Decided June 16, 1967.

1. When the record on appeal of a cause before the Supreme Court is inconclusive, making it impossible for the Court to arrive at a determination of the issues, the case will be remanded for retrial of the issues.

The record of proceedings, in an action of ejectment decided in favor of the plaintiff, was confusing and inconsistent. In view of the foregoing, the *judgment* was *reversed* and the *case remanded* to clarify the issues.

*Morgan, Grimes and Harmon* for appellants. Appellee *pro se*.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

During the September 1964 Term of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, an action of ejectment was filed in that court by Samuel B. Cole, of the City of Monrovia, against the Liberia Trading Company and the widow and heirs of the late David S. Coleman. The complaint substantially alleged that the plaintiff therein, now appellee in these proceedings, was the bona-fide owner, and entitled to possession of two lots situated and lying in Sinkor, in the Commonwealth District of Monrovia, Republic of Liberia.

The complaint alleged that the above-referred-to lots

were acquired by him from one Christiana C. Burke, of Clayashland, Montserrado County, by a warranty deed, dated 1950. The complaint went on to state that irrespective of his ownership and right to possession, the appellants herein, defendants in the court below, were illegally and unlawfully detaining and holding appellee's property from him.

In answer to the complaint as filed, appellants held that the deed of plaintiff was fraudulent and worthless because at the time of its registration the said deed carried no date, as evidenced by a certified copy of the same received from the Bureau of Archives, of the Department of State. This and other legal and factual issues were raised in the answer and subsequent pleadings. After ruling on the law issues, a determination was made by the court to the effect that a board of arbitrators be established to determine whether or not encroachments were being made and by whom. In pursuance thereof, a board of arbitrators, consisting of three surveyors, namely, J. K. T. Scotland, William J. Macborrough, and J. Pleh Reeves, was appointed.

On October 19, 1965, this board submitted its findings to Hon. Joseph P. Findley, the judge presiding by assignment. This document has been marked P/1. Accompanying this survey report was a plot of the area that was marked P/2. After this report was submitted on October 25, of this same year, the defendants filed objections to this report. These objections were sustained by the court and a new survey ordered made by the same board that had previously been constituted by the court. According to the minutes of the proceedings in the court below, a second survey was made, at which time the deed of appellee, together with two deeds of appellants were submitted to the arbitrators. It is interesting to note here that both parties claimed a common grantor as a source of their respective titles. According to the testimony of the chairman of the board of arbitrators, he and

the other members of the board visited the property, at which time the contesting parties were present. Furthermore, each party indicated the area claimed in accordance with their respective deeds. Continuing, chairman Reeves stated:

“We did the work and found out that the area in dispute corresponded with the deed of Mr. Samuel B. Cole. The defendants did not show us any deed for this area. So we made our report to the court.”

At this stage of the trial, on January 6, 1966, the second surveyors' report and corresponding plot were given the court's identifying marks C/1 and C/2, and admitted into evidence. At this same time the deed of appellee was marked P/3 for identification.

After chairman Reeves left the stand, board member William J. Macborrough took the witness stand, and stated, *inter alia*, that he served on the said board, representing the defendants. His testimony also revealed that the defendants had one deed for three and three-quarter acres of land and that the area described in that deed was verified at the premises. Continuing his testimony the witness said that there was another deed of defendants for one acre of land. However, this land could not be verified at the premises. In concluding, Mr. Macborrough testified that appellee had presented a deed for two lots and that the descriptions in these two lots were also verified at the time of the survey. But the appellants could produce no deed for these two lots.

At this particular juncture of the trial, Macborrough was asked to identify the documents marked P/1 and P/2, which were the plot and report of October 19, 1965. These documents were thereafter confirmed by the court. After this was done, the document marked P/3, the deed of appellee, was then confirmed by the court.

The minutes, as made a part of the record in these proceedings and certified to this Court, showed, further, that on January 13, 1966, plaintiff asked for admission into

evidence of the documents marked P/1, P/2, and P/3. No objections in respect to the admissibility of these documents having been made, they were admitted into evidence by the court.

At a subsequent point in the trial, by way of a subpoena *duces tecum*, the survey report of October 19, 1965, was produced in court by the clerk of the Circuit Court, after it had been identified as P/6. However, at the time it was offered into evidence, objection in respect to its admissibility was interposed by appellee and sustained by the court. The ground was that this document constituted the rejected survey report and, therefore, was not then relevant to the case at trial. The confusing thing here is that the self-same appellee had, as previously stated herein, requested the admission of the same document into evidence, bearing the mark P/1, and it had been so admitted. In other words, what appellee had objected to here was previously requested by him of the court and had been granted. A further recourse to the minutes shows that the later survey report which had not been objected to and its accompanying plot which had been marked C/1 and C/2, were in point of fact never offered, nor admitted, into evidence. When this case was being argued before the court and the issue of the missing documents was raised, these were presented in the appellate court by appellee, and it could be seen that they had at all times remained in his possession since the commencement of the trial in the court below and had never been entered into evidence.

In view of the above inconsistencies in the court below in respect to the admissibility, and admission into evidence, of the two survey reports and their respective plots representing schematics of what had been included in the reports, this Court finds that the record before it is inconclusive and, therefore, makes it impossible to arrive at a proper determination of the issues presented. In the circumstances, we find ourselves compelled to remand

this case for a new trial of the issues. The Clerk of this Court is hereby ordered to send a mandate to the lower court ordering a new trial forthwith, costs in these proceedings to abide final determination of the case. And it is hereby so ordered.

*Reversed and remanded.*