

MERCY B. NEUFVILLE and WLEH NEUFVILLE
heir and nephew, respectively, of JOHN WA
NEUFVILLE, deceased, and NYEBA KLA
NEUFVILLE, Appellants, v. SAMUEL KLA
SETON, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
MARYLAND COUNTY.

Argued March 14, 1968. Decided June 14, 1968.

1. In an action of ejectment, a plaintiff may not recover upon the weakness of the defendant's title, but upon the strength of his own.
2. Where good cause is shown, the Supreme Court will grant the joint request of counsel for a remand sought in the interest of justice.

In an action of ejectment, judgment was rendered against plaintiffs after trial by jury, from which the appeal was taken. When the cause was called for argument, counsel for both parties joined in requesting a remand of the case, agreeing that the plaintiffs, in their pleadings, had not proferted an instrument proving their title. The *judgment* of the lower court was *reversed* and a *remand ordered*.

G. P. Conger Thompson for appellants. *O. Natty B. Davis* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the court.

During the February 1964 Term of the Fourth Judicial Circuit Court, Maryland County, an action of ejectment was filed by Mercy B. Neufville and Wleh Neufville, heir and nephew, respectively, of the late John Wa Neufville, and Nyeba Neufville, against Samuel Seton, for the recovery of lot number 80, situate on the corner of March and Center Streets, in the City of Harper, Maryland

County. The complaint also called for damages in the amount of \$500.00.

At the termination of count one of the aforesaid complaint, profert was made of a copy of a public land sale deed from the Republic to John Wa Neufville, which deed was executed in the year 1928 by C. D. B. King, the then President of Liberia.

The appellee, defendant in the court below, thereupon filed a formal appearance and subsequent thereto an answer, consisting of nine counts. In count three of the answer, defendant averred that the plaintiffs had failed to show title in themselves and, therefore, were unable to recover against him. Additionally, count five of the answer held that the feoffee of the original grant from the State had died intestate and no document had been proferted showing that title had been transferred to any or all of the plaintiffs, who were suing in their own capacities and not by virtue of any legal relationship established by the Probate Division of the court.

After the answer, a reply was filed by the plaintiffs, who also filed a motion to dismiss the answer of the defendant. Of course, to this an opposing affidavit was filed, and upon argument the motion was denied. The trial of the cause was thereafter held, the jury returning a verdict in favor of the plaintiffs. A new trial was prayed for by defendant through a regular motion, but was denied. Thereupon, an appeal was perfected to this Court for final review of the several rulings and judgment of the court below.

When this case was called for hearing before this Court, counsel for both appellant and appellee appeared and, speaking for both, counsel for appellee requested that the case be remanded for a new trial for, after a perusal of the records, it had been discovered by both of them, who were not in court during the trial in the lower court, that several irregularities had been permitted in the lower court.

To begin with, a review of the pleadings clearly shows that the plaintiffs never proferted any instrument that would show the court that the fee was theirs. It is a cardinal principle in actions of ejectment that a plaintiff may not recover from a defendant in possession merely upon the weakness of the defendant's title. The recovery must be had upon the strength of the plaintiff's own title. It is evident that this did not prevail in the present cause.

In the circumstances, and by virtue of the joint request made by the parties hereto to have a remand of the case, this Court will permit a remand so that the issues of law may be determined anew and, thereafter, a trial of the facts held. Costs are ruled against appellant. And it is hereby so ordered.

Reversed and remanded.