HENRY A. PAGE and **A. L. PAGE**, Appellants, vs. **JACOB HARLAND** and **ABBIE ABIGAIL KING**, Appellees.

[January Term, A. D. 1906.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County. Ejectment—Statute of Limitations.

It is error for a trial court to rule that pleading the Statute of Limitations raises a mixed question of law and fact triable by a jury.

In an action of ejectment, where the declaration sets up a claim to a specific parcel of land and distinctly describes it, a deed, wherein appears none of the boundaries and descriptions mentioned in the declaration, is not admissible as *prima facie* evidence of title.

A widow, who had but a life interest in one third of her deceased husband's estate, in 1863, conveyed the whole of the estate to T, with all the formalities required by law. In 1876, T. conveyed the property to S, in due form, S improved the property and afterwards it was acquired by P, defendant in ejectment, in 1905. *Held,* that the right of action to recover accrued at the time of the original transaction and that simultaneously therewith the Statute of Limitations began to run, and further, no objections having been made to any of the transactions, by claimants or their privies, and it not appearing that they were legally disabled from so doing, that P acquired an absolute fee to the whole estate.

This case was heard and determined at the September term of the Court of Quarter Sessions and Common Pleas for Grand Bassa County, A. D. 1905. From the pleadings filed in the suit we find that the action was brought by appellees, plaintiffs in the court below, to recover possession of a certain parcel of land, the right and title to which they averred had descended to them by descent, and which they alleged was wrongfully withheld from their possession and enjoyment, by the appellants, defendants in the lower court. To this declaration appellants, defendants below, in their answer pleaded, *inter alias,* the Statute of Limitations in bar of the action, and in subsequent

pleadings demurred to the replication of appellees, upon the ground that it did not distinctly reply to their special plea set up in their answer. At the trial of the cause the court below overruled the demurrer and held that the plea of limitation raised by appellants in bar of the suit was a mixed question, triable by a jury. The appellants excepted to this ruling of the lower court, and in their bill of exceptions addressed to the consideration of this tribunal have laid this point as their first exception. The nature and quality of a plea in bar, pleading the Statute of Limitations, is so distinctly understood in law, and the rules have been so uniformly and clearly laid down by this judicature, that it is difficult to understand how the court below could have mistaken the law controling same. In the case of Thomas Cassel against Matilda Richardson, determined by this court in 1876, it was held that "a plea specially pleading the Statute of Limitations in bar to a suit is a question *purely of law,* and under the statutes of this Republic could only be tried and determined by the court." We do not hesitate to uphold this opinion. It was manifest error in the court below to submit a plea of this nature to a jury.

The second exception is taken as follows: "Because on the 3oth day of September, A. D. 19o5, the attorney for the plaintiffs (now appellees) offered as evidence an instrument purporting to be a deed from the Republic of Liberia to Asbury Harland ; the said instrument being objected to by the defendants' attorneys on the ground that the said instrument was irrelevant to the issue, as it did not bear on its face any description of the one third of an acre of land which the plaintiffs were seeking to recover, as laid in their complaint," etc. It is a fixed principle of law that all evidence must be relevant to the issue ; that is, it must be pertinent to the facts it professes to support. It is also a settled rule that the evidence must agree with the essential allegations averred in the declaration, when offered by the plaintiff, and if there appears a material variance between the facts pleaded in the declaration and the evidence offered in support thereof, such variance is held by the leading law authorities to be fatal. It is not difficult to perceive the vast amount of inconvenience and injustice which a defendant would be subjected to if the rule was less inflexible.

Here, in the case under our consideration, the plaintiffs, now appellees, set up a claim to a specific lot or parcel of land, distinctly set forth and described in the declaration. In the deed offered as *prima facie* evidence of said claim,

there appear none of the boundaries and descriptions mentioned in the declaration, which, in our opinion, was absolutely necessary in order to prove that the property claimed in the declaration is identical with that mentioned in the deed offered as evidence, as having been granted unto their ancestors, under whom they claim, by the rule of descent. A disagreement in these very essential points rendered the deed irrelevant to the issue and at variance with the facts laid and pleaded in the declaration.

The seventh, eighth and ninth exceptions, which we deem worthy of consideration, are taken to the court below rejecting as evidence offered on the part of the defendants, now appellants, the *transfer* titles for the property in question, first from Moriah Hatland to Samuel Toliver, and from Samuel and Jane Toliver to Lucinda Scotland, and from E. and John Allen Scotland, heirs of Lucinda Scotland, to appellants.

Beyond a doubt the lower court committed a gross error in rejecting as evidence the above mentioned conveyances, beginning with Moriah Harland to Samuel Toliver, and by a long line of transfers down to appellants, by virtue of which succession of titles made from time to time and openly held and enjoyed by the privies of appellants for more than forty years, which appellants sought to establish as their special plea in bar of the appellees' claim. It was imperative for the appellants in support of their plea, to prove that the property in dispute had been openly held and enjoyed either by themselves or their privies, under a color of right and adverse to the title of appellees, for a period of time not under twenty years, agreeable with the Statute of Limitations of this Republic ; and having inspected the deeds ruled out by the learned judge below, we do not hesitate to pronounce them as evidence of the highest grade in this relation, and we are unable to find the authority, either in law or equity, upon which the court below predicated its ruling on this point.

Having considered specifically those exceptions in the bill, which we regard important to pass upon separately, we proceed to take up the last two points, involving the verdict and the final judgment pronounced thereupon. We would just here remark, that this court has spared itself no pains in diving deeply into the intricacies, and to some extent, perplexities of law surrounding this case. Not only does the law bearing on it afford the means for interesting study and

research, but the vital issues which it raises are so very important to the peace, happiness and security of society that we have approached the case with all the legal skill and scrutiny at our command.

From the record we find that in 1851, the original grant for the property in question was made to Asbury Harland, the ancestor of the appellees, by President Roberts, by virtue of an act passed December 30th, 1850. There is also evidence to show that he had actual possession of it. Subsequently, Harland died, and in 1863, Moriah Harland, widow of Asbury Harland, not as widow or representative of Asbury Harland, but under a color of right in and to said property, conveyed it unto Samuel Toliver, with all the formalities required by law; thereby giving notice to all mankind that she had set up adverse title to said land. To this act of Moriah Harland it does not appear from the record that appellees, or their privies, objected, nor does it appear that they were legally disabled from doing so.

The property was again transferred in 1876, by Toliver and wife to Scotland, and the transfer probated and registered, and as far as can be inferred from the evidence, the appellees stood by and permitted these titles to be probated and registered, and thereby perfected, without raising their voice against it. Scotland, it was given in evidence, built a house upon the premises, which was an overt act of adverse possession. It was intimated by the learned counsel for the appellees in their arguments that at this juncture appellees sued out an action of ejectment against Scotland which was afterwards abandoned, but nowhere in the record is this statement verified. But suppose we admit its accuracy; if the suit was voluntarily abandoned, it would not supply an excuse for appellees, but, rather, it might be construed with considerable degree of legal weight that the voluntary abandonment of the suit was a tacit acknowledgment of the weakness of the appellees' title. The appellees' right of action accrued the moment the original transaction took place between Moriah Harland and Samuel Toliver in 1863, and it is the opinion of this court that simultaneously with this transaction the Statute of Limitations began to run.

But Moriah Harland, who never had a seizing in fee in said estate, but only a life interest in one third thereof, as widow of Asbury Harland,—let us see what

legal effect her act of adverse title carried with it, and whether or not a title deducible from this original and unwarranted act of hers is upheld by sound principles and doctrines of the law of real estate. We propose, in this connection, to consider the following doctrines, which, we are of opinion, expound the law governing this case on this point of adverse title and possession; to wit: (1) The doctrine of adverse possession and enjoyment; (2) The doctrine of seizin and disseizin, and (3) The doctrine of limitations.

And firstly, as to the doctrine of adverse possession and enjoyment.

"It has been held," says Mr. Tyler in his treatise on Ejectment, "that the claimant in an action of ejectment must have not only a legal right to the land in dispute, but he must also have a right of entry or a right to the possession of the premises in controversy." "Title to land by adverse enjoyment owes its origin to and is predicated upon the Statute of Limitations, and although the statute does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant, who proves that he has actually occupied the premises under a color of right, peaceably and quietly for the period prescribed by law." "The. Statute of Limitations, therefore, may properly be referred to as a source of title, and is really and truly as valid and effectual as a grant from the sovereign power of the State." (Tyler on Ejectment and Adverse Enjoyment, PP. 87, 88.)

We would here observe that the subject of adverse enjoyment of real estate has always been one of considerable interest. In large countries possessing vast territories and great commercial and manufacturing interests, as, for instance, the United States of America, the subject has been one of very great importance, and one which has elicited much legal discussion and judicial decision. But we feel absolutely safe to affirm as a general rule, that quiet and peaceable possession of real property is *prima facie* evidence of the highest estate in the property, that is to say, a seizin in fee; and if such possession is continued without interruption for the whole period prescribed by the Statute of Limitations, which in Liberia is twenty years, the title becomes positive and conclusive, if the possession be adverse, as in the case under our consideration.

Let us take up next the doctrine of disseizin. As to what will amount in law to a disseizin, and when and in what manner it may be held to apply, and as to the title which the Act of Disseizin is presumed in law to convey to the wrongdoer, when this title is allowed to ripen by the lapse of years, the opinions of the most eminent English and American law writers are unanimous. Let us quote the rule *verbatim et literatim* as laid down by Mr. Washburn in his law on real property: "Disseizin," says this eminent writer, "is the privation of seizin. It is the commencement of a *new title,* producting that change by which the estate is taken from the *rightful* owner and placed in the wrongdoer. It is the ouster of the rightful owner of the seizin. To constitute an actual disseizin, there must not only be an unlawful entry upon lands, or in technical words, an entry not congeable, but it must be made with an intention to dispossess the owner, as the act otherwise would be a mere trespass." (3 Wash. on Real Property, p. 131, sec. 486; i Bouv. Law Dict.: "Disseizin.") But to render a title founded upon the doctrine of adverse enjoyment and disseizin conclusive and absolute, it must appear that the parties and their privies who claim by this right have not only had open and notorious possession of the property claimed, but that this possession has continued uninterruptedly for the space of time which, from the *lex loci,* is required before the rule can apply; and this brings us to consider the doctrine of limitation.

We would remark that the doctrine of title by limitation is of ancient origin. It is analogous in some respects to the doctrine of prescription found in the Roman civil law. The Statute of Limitations was first introduced into English law during the reign of James I. Since that time, by numerous statutory enactments, it has become law in the United States. States have by their own statutes attached such definitions and laid down such principles with respect thereto, as the requirements of the country and wisdom of its Legislature have dictated. In this country the Statute of Limitations dates from the very commencement of our laws, and it is worthy of note that while, in the process of time, statutes have been repealed, amended and modified, the Statute of Limitations has been sustained by the united concurrence and approbation of all succeeding legislators and jurists to the present time. No one who has reflected upon the subject, and whose observation and experience qualify him to judge, will but sanction and applaud the wisdom and policy of a statute the object and obvious tendency of which is to promote the peace and good order of society by quieting possessions and estates and avoiding litigation. But for

the intervention of the statute there would be no end to the renewal of dormant and antiquated titles, and many an honest citizen who now, by its beneficent operation, enjoys in security the estate his industry and thrift have acquired, and which has been improved by his labor and enriched by the sweat of his brow, would be driven from his home by an enemy more insidious and more destructive to the peace of the community than an invading army.

Let us imagine the property of some of the thrifty, industrious citizens of this community, upon which palatial homes have been built and valuable farms reared, and which have been quietly held by them and their privies for a space of time sufficiently long for them to reasonably suppose that they held an unassailable title therein, suddenly claimed by one who had all the while stood by and allowed the person in actual possession to spend his means and time to improve what he deemed to be his conclusively, without asserting his better rights or giving legal notice that he is the heir. Is it difficult to perceive the unsettled state in which property would be held, and the contingencies that might at any moment eject the honest landholder from his possession? But such distressing possibilities are, happily, arrested by the genius and wisdom of the Statute of Limitations, which, taking its grounds upon natural law, presumes that no man will permit a stranger to take and hold adverse possession of property which he knows to be his, for twenty consecutive years (which is the limit in Liberia), without asserting his rights thereto, and ejecting the wrongdoer.

Nothing can be more ignoble and contemptible in posterity, than the wanton disregard and indifference in defending and protecting at the proper time, the estate which by the honest industry of the ancestor was acquired and left to be enjoyed by those who should represent and come after him. And when an heir stands by and from sheer neglect and carelessness permits a stranger to enter upon and take adverse possession of property which he knows was his ancestor's and to continue such adverse possession uninterruptedly for twenty consecutive years (without being under any legal disability to bring action), the law will look with disfavor upon his attempts thereafter to assert his rights and will bar forever his action and right of recovery, both in law and equity.

After a careful analysis of the facts surrounding this case and the law

applicable, this court is of opinion that the appellees, Abbie Abigail King and Jacob Harland, are forever estopped from raising, either in law or equity, any title to the premises in litigation. And we further hold that the appellants, Henry A. Page and A. L. Joanna Page, claiming under their privies, by force of the doctrines of law governing this case, have acquired and do hold a seizin in fee in and to said estate, which is as valid, absolute and conclusive as a grant froth the sovereign ruler of a State.

The judgment of the court below is hereby reversed and made null and void, and appellees ruled to pay costs. The clerk of this court is authorized to issue a mandate to the judge of the lower court, informing him of this decision.