

CASES ADJUDGED  
IN THE  
SUPREME COURT OF THE  
REPUBLIC OF LIBERIA  
AT  
APRIL TERM, 1929.

---

NANCY J. CLARK, AARON A. CLARK, JAS. A.  
R. CLARK and MARGARETTE CLARK, Plaintiffs-  
in-Error, v. THOMAS H. LEWIS, Defendant-in-  
Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE SECOND JUDICIAL  
CIRCUIT, GRAND BASSA COUNTY.

Decided May 8, 1929.

1. Ejectment supports the idea of adverse possession in the defendant.
2. The plea of estoppel is a good plea, and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a party to disclaim his acts. The same rule applies to privies.
3. When a man stands by and allows another to act without objecting, when, from the usage of trade or otherwise, there is a duty to speak, his silence would preclude him as much as if he proposed the act himself.
4. Acquiescence, or standing by, where there is a duty on the part of the person acquiescing to speak or assert a right, amounts to a representation by him.
5. Negligence may, under certain circumstances, amount to a representation.
6. An estoppel might be raised in the pleadings, either by means of a special plea, or by general demurrer; but now by the new rules demurrers are abolished, and any party shall be entitled to raise by his pleading any point of law. The defendant or plaintiff, as the case may be, must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in the point of law.
7. Whatever hath been made a derelict by the owner will become the property of the first occupant.

In an action of ejectment, judgment was given for defendant in the Circuit Court. On the writ of error from this Court, *reversed*.

*R. Emmons Dixon* for plaintiffs-in-error. *H. Lafayette Harmon* for defendant-in-error.

MR. JUSTICE KARNGA delivered the opinion of the Court.

This case was brought by the heirs of John N. Clark, a resident in Central Buchanan, Grand Bassa County, against Thomas Lewis, who is also a resident in the same County, in the Circuit Court of the Second Judicial Circuit, in the May term, 1927. From the records in the case, it appears that in the year 1896, John N. Clark, the father of the plaintiffs-in-error, began operations on a certain parcel of land situated in Central Buchanan. In 1896 he built a house and made other improvements on the said land. From this time he and his family lived uninterruptedly on the said premises until his death. After his death, in the year 1918, Addie J. A. Beck, the wife of L. A. Beck, an heir of Jas. S. Smith, came across an old deed in favor of the said Jas. S. Smith for a certain block of land, No. 38, containing thirty acres.

Thomas H. Lewis, the defendant-in-error, in locating the land thus purchased from Addie J. A. Beck, the heir of Jas. S. Smith, took the premises of John H. Clark, the subject of this suit. The action of ejectment was subsequently brought by the heirs of John Clark against Thomas H. Lewis.

Judgment was given in favor of the defendant in the court below; the plaintiffs took exceptions thereto and upon a writ of error the case is now before this Court for review.

From the records in the case it was conclusively proven in the court below, by the plaintiffs-in-error, that their

father, John H. Clark, occupied the land, the subject of this suit, over thirty years, uninterrupted by the privies of the defendant-in-error.

Witness Thomas Moore, government surveyor, on the stand testified as follows:

Ques. "What is your name and where do you live?"

Ans. "Thomas Medly Moore; I live in Edina, Grand Bassa County.

Ques. "Are you one of the licensed government surveyors of this County?"

Ans. "I am a commissioned government surveyor of this County.

Ques. "Mr. Witness, will you kindly inspect this document and say whether or not you recognize having seen the same and as government surveyor made a certain survey of a portion of said land?"

Ans. "Yes; according to my signature on this document I have seen it.

Ques. "Mr. Witness, kindly inspect this document marked by the Court No. 5-A-28 and say whether or not that was a certificate for a survey by you issued upon the order of the Superintendent which you have just identified, that it is your signature?"

Ans. "Yes, it is."

Upon cross-examination, the same witness was asked:

Ques. "To the best of your knowledge, can you say whether the 1½ acres of land you surveyed according to the certificate is included in the 30 acre block of land owned by Thomas H. Lewis according to the plot of Lower Buchanan?"

Ans. "Yes; I surveyed that lot for the Clarks, then it was supposed to be government land occupied by the Clarks. I told them that according to my plot it was government land."

Peter Minor, one of plaintiff's witnesses on the land, testified as follows:

Ques. "What is your name and where do you live?"

Ans. "Peter Minor. I live in Central Buchanan, Bassa County.

Ques. "Are you acquainted with Nancy J. Clark, *et al.*, heirs of the late John H. Clark, plaintiffs in this suit?"

Ans. "Yes.

Ques. "Can you say to the best of your knowledge where the said John H. Clark possessed and lived with his family?"

Ans. "Yes; in Central Buchanan, at a place across the creek where he made a farm at first.

Ques. "Were you acquainted with the late John H. Clark?"

Ans. "Yes.

Ques. "Can you say how long he lived with his family on said place before his death?"

Ans. "To the best of my knowledge he built on the place in 1896.

Ques. "As far as your information goes, can you say whether or not this is the same place that is now the subject of this action?"

Ans. "Yes."

From the evidence quoted above, the father of plaintiffs-in-error occupied and made improvements on the land in question, the subject of this suit, in the year 1896 and lived on the said premises without any objections by the privies of the defendant-in-error.

It is a settled principle in law that where a man stands by and allows another to act without objecting, when, from the usage of trade or otherwise, there is a duty to speak, his silence precludes him as much as if he proposed the act himself. Acquiescence, or standing by, where there is a duty on the part of a person acquiescing, to speak or assert a right, amounts to a representation by him. Negligence may, under certain circumstances, amount to a representation also. Everest, *Law of Estoppel* (1884), ch. X.

The privies of Thomas H. Lewis, defendant-in-error, having failed or neglected to assert their rights to the property occupied by John H. Clark, the father of the plaintiffs-in-error, during his lifetime, without any disability on their part, they are presumed in law to represent to the plaintiffs-in-error that they had no claim to the land occupied by their father.

Having voluntarily made such representation, the defendant-in-error is thereby estopped from further asserting any claim to the said premises.

It was contended by the counsel for the defendant-in-error in his argument, that the plea of estoppel can be made only by a defendant and not by a plaintiff. On this point this Court differs with the position taken by the defense.

Lancelot Everest in his *Law of Estoppel* declares:

“An estoppel might be raised on the pleadings, either by means of a special plea, or by special or general demurrer. . . . But now by the new rules demurrers are abolished, and any party shall be entitled to raise by his pleading any point of law. And the defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, statute of limitations, release, payment, performance, facts showing illegality either by statute or common law, or statute of frauds.” Everest, *Law of Estoppel* (1884), ch. XI, p. 391.

It has been held by this Court, in the case *Gibson v. Jones*, 3 L.L.R. 78 (1929) that:

“In an action of ejectment mere paper title to land without proof of occupancy is insufficient to dispossess an industrious and productive occupant.”

The fact that John H. Clark, the father of the plaintiffs-in-error, had occupied the land between Central and Lower Buchanan, the subject of this suit, uninterruptedly for over a period of thirty years, and made tangible improvements thereon, is prima facie evidence of the highest estate in the property, that is to say, a *seizin in fee*, and by the statute of limitation defendant-in-error is forever barred from asserting his rights to the said property.

Justinian, the learned Roman jurist, states as a principle of law:

“It also sometimes happens that the property of a thing is transferred by the master of it to an uncertain person. Thus, for instance, when the praetors and consuls cast their *Missillia* or any liberalities, among the people, he knows not what any particular man will receive. And yet because it is their will and desire that what every man then receives shall be his own, it therefore instantly becomes his property. By a parity of reasoning it appears true, that a thing which hath been made derelict by the owner will become the property of the first occupant.” The Institutes of Justinian, Book II, §§ 45-46.

It is therefore the opinion of this Court that the judgment of the court below be reversed, and that by the force of the doctrine of the law governing this case, the said plaintiffs-in-error have acquired and do now hold a *seizin in fee* in, and to, the said estate.

The defendant-in-error is therefore ruled to pay all costs in this action, and it is hereby so ordered.

*Reversed.*