Ex parte E. W. WILLIAMS.

PETITION FOR THE RESTORATION OF REAL ESTATE.

Argued November 27, 1934. Decided December 7, 1934.

1. The papers filed in every action should all be properly entitled of the cause, and of the name of the parties in the character in which they appear, whether as plaintiffs or defendants &c.
2. An action is a proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right.
3. This Supreme Court can only exercise original jurisdiction in cases affecting ambassadors, public ministers and consuls, and those to which a county is a party. Its jurisdiction in all other cases is appellate.

On application for the restoration of certain real property to the petitioner, *application denied.*

E. W. Williams for petitioner.

MR. JUSTICE DIXON delivered the opinion of the Court.

This matter is before this Court by means of a petition filed in this Court by Counsellor E. W. Williams for himself, in which he recites to this Honorable Court: a) that he is the *de facto* and *de jure* owner of three pieces of real property; b) that at the April term of this Court, 1933, in consequence of a judgment rendered in his favor supporting that of His Honor M. N. Russell, the Judge of the Circuit Court presiding in the First Judicial Circuit, in an ejectment proceeding, he was put in possession of said three pieces of property by means of an order issued out of this Court, which possession he did enjoy for some months; c) that sometime thereafter, for reasons unknown to him, the Marshal of this Court proceeded to Brewerville, where said pieces of property are presumably situated (he having failed to set this fact out in his petition), and thereupon ousted and ejected him from said premises, wherefore he now comes to this Court and prays

that he be again restored to the possession of said pieces of property.

This Court, taking judicial notice of its records, observes that the question of these three pieces of property was adjudicated by this Court in the year 1913 and at some other subsequent time, and as the trial of the facts has already been elaborated upon in said trials, a recapitulation in this opinion is unnecessary.

With reference to the petition which is the subject of these proceedings, this Court will remark that said document cannot be considered by it as a legal instrument to be dealt with by this Court, in that there is no title of the cause nor anyone named as respondent.

The statute defines an action to be "an ordinary proceeding in a court of justice by which one party prosecutes another party for the enforcement or protection of a right, or the redress or prevention of a wrong. The party complaining shall be known as the plaintiff, and the adverse party as the defendant." 1 Rev. Stat., § 252.

The Court regrets to have to observe that the document filed by Mr. Williams contains none of these legal requisites.

The next issue that claims the attention of this Court with respect to said document as filed by Mr. Williams is that the purported petition bears on its face an issue which involves the necessity for the production of evidence to establish the truthfulness or falsehood of the allegations set forth, in which instance the jurisdiction of this Supreme Court is incompetent.

The Constitution gives the Supreme Court original jurisdiction only in all cases affecting Ambassadors or other public Ministers, and Consuls, and those to which a County shall be a party. In all other cases this Court has appellate jurisdiction both as to law and fact with such exceptions and under such regulations as the Legislature shall from time to time make. Lib. Const., art. IV, sec. 2.

There is no Legislative enactment existing whereby this Court can exercise original jurisdiction in settling questions in which property is involved, nor can the Legislature legally make any such enactment, as it would be contrary to the express provisions of the Constitution. This Court can be applied to to review the judgment of subordinate courts, and of such courts only; but not decisions already given by itself, except in another trial where the principle enunciated can be found not to be tenable in law, and therefore a necessity should arise for overruling the former opinion. This Court has already laid down the principle that the fact that a change in the membership of the Court is about to take place or has already occurred is not in itself sufficient for granting a rehearing; nor will a re-argument be ordered should the decision of one general term not meet the approval of the Judges composing a second general term. 18 Ency. of Pl. & Practice 50, and n. 1; *Daniel and George* v. *Comp. Trasmed.*, 4 L.L.R. 97, 1 Lib. New Ann. Ser. 99 (1934).

The question concerning the ownership of the property which is the subject matter of the said petition, having been finally adjudicated by this Court at its November term, 1932, affirming a previous decision at its April term, 1928, and thereby permitting enforcement, by the Marshal of this Court, of said decisions to put Mr. R. M. Phelps in possession of the property in question, this Court finds itself incompetent to review said decisions referred to and therefore is of opinion that said petition should be denied with costs against petitioner; and it is so ordered.

Application denied.