MARION A. GIBSON, formerly MARION A. PAYNE, P. C. PARKER for his wife MATILDA M. PARKER, formerly MATILDA M. PAYNE, and R. S. MONTGOMERY for his wife MARY A. MONTGOMERY, formerly MARY A. PAYNE, heirs of the late JAMES S. PAYNE, Appellants, *v.* SAMUEL M. JONES, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Submitted January 8, 1929. Decided January 25, 1929.

1. A Judge of a Circuit Court does not have the duty of disposing of questions of law raised in the pleadings except upon application to the court by one of the parties.
2. In ejectment the plaintiff must show a legal title to the property in dispute to recover it; the weakness of the defendant's title will not of itself enable him to recover.
3. Where the statute of limitations is pleaded by the defendant as a bar against plaintiff's right to recover in an action of ejectment, courts will reckon the time of limitation to begin from the uninterrupted possession of the privies under whom he claims, and not from the time the defendant acquired possession of the property.

In an action of ejectment, judgment was given for defendant, now appellee, in the Circuit Court of the Third Judicial Circuit. On appeal to this Court, *judgment affirmed.*

N. H. Sie Brownell for appellants. *R. E. Dixon* for appellee.

MR. JUSTICE KARNGA delivered the opinion of the Court.

This is a case brought up before this Court upon a bill of exceptions from the Circuit Court of the Third Judicial Circuit, Sinoe County. The exceptions taken by the

plaintiffs in the court below and submitted to this Court for review and final judgment, are as follows:

"1. Because Your Honour did not first dispose of the issues of law raised in the pleadings before the case was submitted to the Jury.

"2. And also because the Court sustained the objection of the Defendant now Appellee and rejected Plaintiffs' now Appellants' Deed when offered to prove their validity of title and allegation laid in their complaint that they are the rightful owners of the property now in dispute and said deed was offered to prove their title. The copy filed with the complaint required by law is only to set forth the description so as to give the Defendant notice what the Plaintiffs intend to prove. (See copy filed and original deed offered as written evidence to prove title. They bear on their face the same boundaries and description.)

"3. And also because at the trial of said case the Plaintiffs now Appellants offered in their favour the said deed of their Father J. S. Payne duly signed, sealed and delivered by J. J. Roberts with his official title showing that the property was theirs by descent but the court refused to admit said written evidence although it was never proven at the trial by evidence that the said J. S. Payne or any of the heirs from his body ever sold or transferred the said Western half of lot Number nine in Greenville, Sinoe County now in dispute. The Statute of Liberia declares that deeds and other writing shall be evidence against all parties to them and shall also be evidence of all title of rights transferable by them against all mankind.

"4. And also because the Court overruled Plaintiffs' now Appellants' objections to the Court admitting Defendant's now Appellee's written evidence marked 'C.,D.,E., and F.' which do not bear any of the boundaries of the half lot number nine in Green-

ville, Sinoe County as is set forth in Plaintiffs' complaint. (See written evidence admitted by the court.)

"5. And also because the ruling and Final Judgment of Your Honour in this case Plaintiffs now Appellants feel that justice has not been done them submit their Bill of Executions to Your Honour Jerry J. Witherspoon for signature that they may have same reviewed by the Honourable Supreme Court as aforesaid."

With reference to count one in the bill of exceptions this Court is of the opinion that the judge in the court below committed no error in not disposing of the issues of law raised in the pleadings before the case was submitted to the jury. It is not the duty of an assigned or even a resident Judge of a Circuit Court to dispose of questions of law raised in the pleadings by parties litigant except upon application made to the court by either party to the case. In section 5 of the acts of the Legislature approved December 7, 1911, it is provided that:

"Each Circuit Court shall be considered always open and the Judges thereof shall hold a session at any time within any term for the disposition of any matter or other business, which may be disposed of without a Jury. Whenever such matter is brought to issue under the laws relating to pleading and practice, and either parties should desire an immediate hearing, or whenever any party has a right to have a matter disposed of under an 'ex-parte' application, the Clerk of the Court shall notify the Judge assigned to such Court for the term, and the Judge shall forthwith hear and determine the matter. . . ." L. 1911–12, 4, § 5.

Nowhere in the record is shown that before the case was submitted to the jury, plaintiffs made any application in keeping with the above cited act.

With reference to counts 2 and 3, the judge of the court below in refusing to admit the deeds of the plaintiffs as written evidence in the case did not err. It was brought

out in evidence that there are three lots in the City of Greenville bearing the number nine. The deed which was offered by the plaintiffs as a species of written evidence to sustain their claim does not show that lot number nine which is occupied by the defendant is that particular lot number nine which is claimed by the plaintiffs in this suit.

It is a well settled principle in law that:

> "Every complaint must contain a distinct and intelligible statement in writing, of a sufficient cause of action within the scope of the form of action chosen, otherwise the action may be dismissed." Old Blue Book, Legal Principles and Rules, ch. 4, § 3.

In reviewing this case, we may here observe that nowhere in the records is shown where plaintiffs offered to prove by preponderance of evidence that they are the legal heirs of James S. Payne, the original owner of the property, the subject of this suit. This fact was necessary to have been established by the plantiffs in the court below.

As to the fourth count in plaintiffs' bill of exceptions, it is the opinion of this Court that the judge of the court below in overruling plaintiffs' objection, and admitting the written evidence of the defendant to prove his claim to lot number nine situate on Mississippi Avenue in the City of Greenville, did not err.

It is clear to the mind of the Court that lot number nine on Mississippi Avenue, in the City of Greenville, Sinoe County, which is now occupied by the defendant was never possessed by the ancestors of the plaintiffs. Witness Henry C. Birch, in behalf of the defendant, upon oath stated, to wit:

> Ques: "Mr. Witness, do you know of any of the Paynes owning lot number nine in Greenville?"
>
> Ans: "If the lot commences on Johnson Street and running back to J. C. Minor's corner is Number nine then it is Berverly Payne's lot, and if the lot of which

Mr. J. C. Mitchell is now on is Number nine then it belongs to Payne also. The place where Mr. J. C. Minor's house is now, a fine building on it in which old man Peal and his two children Allen and Julia lived during the whole while I was living there, I never saw Berverly Payne nor any of his boys (for he had many) coming or worrying at that place. On asking one day who were the rightful owners of the place, I was told the owner lived on the Kru Coast. This information was given me about the year 1856. After that time I know of one Martha Spellman to live there for years and since then one Delphi Leggins, but I have never known that particular spot to be owned by the Paynes. James Payne has never lived here in Sinoe. I know him at one time to come down for the purpose of receiving over the estate of Berverly Payne; but have not known him personally to own property in Sinoe. He had a son by the name of David Payne who lived here until he wiped up everything of Berverly Payne's that was left by James Payne. I never heard of James Payne owning any property in Sinoe, until hearing the reading of this deed in court today which I could never believe even if I was on my way to heaven."

According to the statement of Witness C. O. Tuning, it appears that lot number nine situate on Mississippi Avenue in the City of Greenville was possessed adversely by one Harriet F. Numbar, who, about the year 1890, sold the same to one Solomon Spellman. Mr. Spellman built a house on the said lot and occupied it for several years; after his death the said property descended to his cousin Solomon Brooklin, who in turn sold it to Samuel M. Jones, the defendant in this suit.

From the evidence submitted by both parties in this action, it is clear to this Court that: 1. There is no evidence to show that lot number nine lying and situate on Mississippi Avenue is the property of the plaintiffs;

2. That there is no evidence to show that for the past thirty-eight years, beginning from 1890, the time which H. F. Numbar is alleged to have sold the said property to Solomon Spellman, the plaintiffs have exercised any right of ownership over the said lot number nine the subject of this suit; 3. That according to the evidence of Witness Tuning a house was built by the said Solomon Spellman on the premises, which was an overt act of adverse possession; 4. That during the whole period of thirty-eight years, Solomon Spellman and Solomon Brooklin, the privies of Samuel M. Jones, possessed the said property without any interruption by the said plaintiffs.

In view of the facts herein stated the plaintiffs in the court below are by statute of limitations barred from setting up any legal claims to the said premises. It is a sound principle of law that if a piece of land in dispute is claimed by A by virtue of an ancient but antiquated deed which dates as far back as 100 years and occupied by B through purchase from C, who held the property in possession uninterruptedly more than thirty years previous to the purchase by B, in an action where the question of limitation is raised by the defendant against the plaintiffs, the limitation shall always begin from the time C, the privy of B, came into possession of the property, and not from the time B, the defendant, came into possession thereof. So also where E, who possessed a piece of property uninterruptedly for 18 years and then sold the same to C, in an action of ejectment brought by D after three years from date of purchase by C. Where the statute of limitations is invoked by the defendant, courts will also reckon the time from E's uninterrupted possession and not from the occupancy by C, although D may have possessed the property by deed for over fifty years. In an action of ejectment, mere paper title to land without proof of occupancy is insufficient to dispossess an industrious and productive occupant.

In the case *Page* v. *Harland and King,* 1 L.L.R. 463, an action of ejectment brought for review before the Supreme Court at its January term, 1906, it was held:

"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 [*sic*] 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 [*sic*], 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; 1 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 of 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." 1 L.L.R. 463,467.

This Court is of the opinion that the appellee, Samuel M. Jones, claiming under his privies, by force of the doctrine of law governing this case, has acquired and does

hold a seizin in fee in and to said estate, which is as valid, absolute and conclusive as a grant from the sovereign ruler of this State.

The judgment of the court below be therefore affirmed and appellants ruled to pay all cost in this action, and it is so ordered. The clerk of this Court will notify the court below as to the effect of this judgment.

Affirmed.