

C. F. WILHELM JANTZEN, by and through his
Agent, W. FRITZ, Appellants, v. FRANK N. WIL-
LIAMS, Appellee.

APPEAL FROM CIRCUIT COURT, FIRST JUDICIAL CIRCUIT,
MONTERRADO COUNTY.

Argued on the facts * January 21, 1935. Decided February 1, 1935.

1. All contracts conveying real estate must be probated and registered within four months from the date of execution or they are voidable.
2. But there is no such legal obligation upon a party to have probated a contract of employment.
3. Hence, section 1305 of the Revised Statutes is to be construed as permissive insofar as contracts other than conveyances of real estate are concerned, and not compulsory.
4. When a party shall have excepted to a verdict, and given notice that he would file the necessary papers, the trial judge should not enter final judgment until at least four days shall have elapsed.

On argument on the merits of appeal from judgment in action for damages for breach of contract, *judgment reversed* and *case remanded* for new trial.

Barclay & Barclay for appellants. *Abayomi Karnga* for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

This case comes up to this Court from the Circuit Court of the First Judicial Circuit, Monterrado County, on a bill of exceptions containing seven counts.

On the reading of the bill of exceptions it was discovered by this Court that counts one and seven thereof were of such great importance to the issue involved, that we could not properly proceed further with the hearing of the case without first passing on those two counts of the bill of exceptions.

* See opinion on the motion to dismiss, p. 231, *supra*.

Count one reads as follows:

“Because Your Honor sustained the objection made by the defense counsel to the admissibility of the document marked ‘Exhibit A’ on the ground that said document being the employment contract has never been probated and registered within four months in keeping with the law of 1862-3.”

During the argument at this bar counsel for appellee contended that concurrently with the law of 1862-63 should be read section 1305 of the Revised Statutes dealing with the duties of the Registrar; and so the Court has considered the arguments made on the two citations together.

1. The law on probate and registration from the Acts of 1861, page 90, section 1 reads in part:

“ . . . all persons purchasing Real Estate, or to whom Real Estate shall be mortgaged, shall, at the next ensuing meeting of the Probate Court, appear, either in person or by proxy, and then and there have said deed, mortgage or other conveyance publicly probated.”

And 2 Revised Statutes, section 1302, reads:

“If any person shall fail to have any instrument relating to *real estate* * probated and registered, as herein provided, within four months after its execution, his title to such real property shall be null and void as against any party holding a subsequent instrument relating to such property, which is duly probated and registered.”

2. The law dealing with the duties of the Registrar reads:

“1. He shall record all instruments relating to real estate upon the probate of the same, and all other instruments under seal, such as assignments for the benefit of creditors, bills of sale, partnership deeds, articles of incorporation of domestic companies and

* Italics added.

associations, and such other agreements between two or more parties as they may desire to have recorded. . . ." * 2 Rev. Stat. § 1305(1).

The first law thus quoted makes no mention of contracts of employment, but such contracts and conveyances only as relate to real property.

This requirement of the law is in order that the public may have notice of the conveyance intended by the parties to the contract to be made, and that an opportunity may be afforded them for offering any objection to such transaction if they so desire. In the case of a contract where there is no conveyance of real property in question, the probation and registration of such a contract of employment is not intended to be included in the requirement of the law on probation and registration of contracts, conveyances, etc.

When it comes to the effort of Mr. Karnga to read into the law governing conveyances, that in prescribing that "the Registrar shall record . . . such other agreements between two or more parties as they may desire to have recorded," we have to say that, that provision is not only not compulsory, but is permissive; and unlike the previous section requiring conveyances of real estate to be recorded, has no vindicatory clause such as in section 1302 of the Revised Statutes hereinbefore quoted, and the Act of 1861. *West v. Republic*, 1 L.L.R. 410, 412 (1903).

The appellants further contend in count seven of their bill of exceptions that:

"Your Honour rendered final judgment in said case on the 12th day of July A.D. 1934 which was the second day after rendition of verdict; . . ."

The record discloses that the plaintiffs excepted to the verdict, and gave notice that in due time they would file the necessary papers. In the face of such a notice by plaintiffs, this Court cannot support the court below in

* Italics were added by the Court.

handing down its judgment within two days after the verdict.

For:

“Every motion for a New Trial must be made within four days after verdict, or if on the ground of the verdict’s being against evidence, law, or instructions of the court or of a mistake in the amount of damages, within two days.”

Wherefore, in consequence of these errors committed by the court below, this Court says that the judgment should be reversed, the case remanded for a new trial; and the costs of the appeal proceedings to be paid by appellee, and the other costs to abide final judgment; and it is so ordered.

Judgment reversed.