

SUSANA A. KING, Appellant, v. MOMORAH
COOPER, BOTE, MARUTU and JANGA, Ap-
pellees.

APPEAL FROM THE CIRCUIT COURT.

Argued April 20, 21, 22, 1937. Decided April 30, 1937.

1. The execution of a deed for real property is one of the most solemn business acts that man can perform; and it is evidence against all parties to it, and of all rights transferrable by it.
2. Hence a party having granted a deed for all her right, interest, and title in an estate with the exception of one lot expressly designated is precluded from averring subsequently that she had made, or intended to make, any other reservation.

In an action of ejectment brought in the Circuit Court, judgment was rendered for defendants upon a jury verdict. On appeal to this Court on bill of exceptions, *reversed*.

Doughba Carmo Caranda for appellant. *S. David Coleman* for appellees.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

The above cause was instituted by appellant in the court below to recover a certain tract of land lying and being in the settlement of Clay-Ashland, Montserrado County, being a portion of 340 acres formerly owned by the late Alfred B. King. The appellant, and also one Mary C. Davis, late of Monrovia, were the heirs of the said Alfred B. King, deceased, they having succeeded to said property through their parents, the father of the appellant and the mother of the late Mary C. Davis. The evidence of appellant in the court below is in chief as follows:

“The property was left by the late Senator King of

Clay-Ashland and he died intestate. The property then descended to my father and Mrs. Davis' mother. I being living in the home in Clay-Ashland all the deeds came into my possession. Mrs. Davis knew nothing of them. She went to America and after the death of Senator King, her uncle, she never asked any questions. They were then in the possession of Mr. King's wife (sic). After the death of Senator King's wife, I being in the home, they came into my possession. When Mrs. Davis returned from America, I, of my own accord took that deed and several others, brought them to Monrovia, took them to her home, called my three children and called her son, and put them on her dining room table and told her to look them over and told her that that was the property left us by her uncle. She said, 'Alright, I thank you, because I knew nothing of this.' "

Later on Mrs. Davis seemed to have had a desire to sell her portion of this estate, and she said to Mrs. King, the appellant: "Cousin Susan, buy my portion of the estate as you have been paying the taxes and caring for the property ever since our uncle died. I don't care for any land in Clay-Ashland. I have enough property in Monrovia and I can hardly pay the taxes on these." Upon this suggestion, one Henry F. Cooper, son of plaintiff (appellant) brought the property in question by paying to Mrs. Davis the sum of four hundred dollars as is evidenced by a document which reads as follows:

"KNOW ALL MEN BY THESE PRESENTS that I Mary C. Davis of the City of Monrovia, one of the heirs of the estate of the late Alfred B. King of the city of Clay-Ashland, County of Montserrado and Republic of Liberia, in consideration of the sum of Four Hundred dollars (\$400.00) to me paid by Henry F. Cooper of the city of Monrovia, County and Republic aforesaid, the receipt whereof is hereby acknowledged, do hereby sell, assign and transfer to the

said Henry F. Cooper, his heirs, executors, administrators and assigns all and whatever interest I may have as an heir to the estate of the aforesaid Alfred B. King, situated and located in the City of Clay-Ashland, *with the exception of one town lot which I hold in reserve for my son William R. Davis.*"

"Signed sealed
and delivered
in the presence
of:

[Sgd.] WM. R. DAVIS
FRANK T. GRIMES."

"In witness whereof I have
hereunto set my hand and seal
this 4th day of June A. D.
1928.

[Sgd.] MARY C. DAVIS"

This document was probated on the 11th day of June, 1928. After the execution of this assignment of interest to Henry F. Cooper, who in turn transferred all his interest to his mother, the appellant, plaintiff in the court below, the said Mary C. Davis contracted with the defendants in this case to sell them one hundred acres of land of this estate in question. To support defendants' title, they make profert of a receipt, exhibit "2," from Mary C. Davis to John W. Cooper on behalf of one native woman named Cargar for the sum of ten pounds sterling, and upon payment of the full contract price for the one hundred acres of land, the said Mary C. Davis duly executed a deed to the defendants for the one hundred acres of land. In this deed it is set out that: "This portion of land was excluded from that sold Henry Cooper as per deed given by me sometime previous to this."

This deed to defendants is dated October 2, 1928, and was probated October 4, 1928 or two days after its execution.

On the 13th day of September, 1932, at the call of the case for hearing, the presiding judge made the following ruling:

“Count one of the answer over-ruled and that both parties bear the expense of a surveyor to survey the tract of land in question and obtain a certificate of two competent surveyors to be produced in Court. Parties to select their own surveyors. The object of the survey being to ascertain if the one hundred (100) acres of land are or are not in the three hundred and forty (340) acres of land laid down in the complaint. Case to go to the trial docket with the facts ascertained by the surveyors.”

The case was not taken up again until July 14, 1936, with His Honor Nete-Sie Brownell, Judge, presiding. At this stage of the case counsel for both the parties agreed that a “survey was unnecessary in view of the certificate of Surveyor S. T. Nimmo filed in this case showing that one hundred acres which formed the landed estate of the late Alfred B. King in question.” Both counsel agreed that the following proposition should form the issue to go to the jury: “Did Mrs. Mary C. Davis in assigning all of her interest in the estate of A. B. King to Henry F. Cooper and the latter to S. A. King, appellant, intend to include or exclude in the assignment of her said interest the one hundred (100) acres deeded to defendants (appellees), and for which she had received money after the assignment of her interest in A. B. King’s estate?” Upon this issue so accepted, the case went to the jury on July 21, 1936.

The jury, after hearing all the evidence in the case, came to the conclusion that the defendants (appellees) were not guilty of withholding land from plaintiff, but that said defendants were entitled to the possession of “their one hundred (100) acres of land, according to the evidence.” Upon this verdict of the petit jury, the court below accordingly entered judgment, from which verdict

and judgment plaintiff, now appellant, prayed an appeal to this Court on a bill of exceptions of twenty counts.

In our opinion, the trial was regular, and no question of law raised in the bill of exceptions can have any weight with us in the decision of this case. The question that claims our attention is whether the late Mary C. Davis had the right to transfer the one hundred acres of land in question to the defendants, now appellees, in this case, after she transferred all her right and interest in the estate of the late A. B. King to Henry F. Cooper, who afterwards transferred his said rights and interest to his mother, the appellant in this case.

In the assignment of the aforesaid interest of the late Mary C. Davis to Henry F. Cooper, she made only one exception in said instrument of assignment, and it is in these words:

“With the exception of one town lot, which I hold in reserve for my son William R. Davis.”

But in the deed to the defendants, now appellees, the late Mrs. Davis expressly stated:

“this portion of land was excluded from that sold to Henry F. Cooper as per deed given by me some time previous to this.”

Upon this question of fact we do not see our way clear to come to the same conclusion as the jury and the court below, for in the case *Smith v. Hill*, this Court said:

“. . . For the execution of a deed for real property is one of the most solemn acts that mankind can perform in the way of a business transaction; therefore, when it is properly and lawfully executed, it is evidence against all parties to it, and it is evidence of all title or rights transferable by it to all mankind. It is also the best evidence of its own terms and character, when fraud was not used as one of the ingredients to procure the same.” 1 L.L.R. 157, 159 (1882).

Inasmuch as there was but one town lot excepted in

the deed of assignment to Henry F. Cooper, which antedated the deed to appellees, we are of opinion that after the late Mrs. Mary C. Davis had transferred all her interests and rights in the estate of the late A. B. King to the said Henry F. Cooper, there was no other part or portion of said estate reserved except the said "one town lot" situated in the City of Clay-Ashland, for her son William F. Davis. Therefore, her subsequent act in settling the one hundred acres in question to the appellees, out of the three hundred forty acres of the estate of the late A. B. King, was illegal. The judgment of the court should therefore be reversed, and the case remanded with instructions to the court below to resume jurisdiction and give effect to the opinion herein expressed, and appellees should be ruled to pay all costs; and it is hereby so ordered.

Reversed.