

R. M. PHELPS, Plaintiff-in-Error, v. E. W. WILLIAMS, Defendant-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTERRADO COUNTY.

Decided May 2, 1928.

1. Where a matter has been decided by the Supreme Court, it becomes *res judicata* if there is a concurrence of the following conditions, viz.: Identity in the thing sued for; identity of the cause of action; and identity of persons and of parties to the action.
2. It does not matter whether or not the judgment is pleaded. Every court is bound to take judicial cognizance of its own records; and no evidence of any fact of which the court will take such notice need be given by the party alleging its existence.
3. The decisions of this Court are binding upon all other courts within this Republic.

In action of ejectment in the Circuit Court below, judgment was given for plaintiff, now defendant-in-error. This Court granted writ of error. On motion to set aside proceedings in court below, judgment of Circuit Court *reversed*.

*R. E. Dixon* for plaintiff-in-error. *E. W. Williams* and *G. H. Dimmerson* for defendant-in-error.

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the Court.

This was an action of ejectment brought in the Circuit Court of the First Judicial Circuit, Monterrado County by E. W. Williams, plaintiff in the court below against R. M. Phelps, defendant in said action, for the recovery of two pieces of land in the settlement of Brewerville in Monterrado County, numbered respectively one and twelve, which plaintiff claims defendant unlawfully detains from him. The case was heard and determined in said Circuit Court at its February term, 1927, and re-

sulted in a verdict and judgment in favor of said plaintiff, whereupon defendant prayed for and obtained a writ of error from this Court assigning as error, *inter alia*, that the matter being *res judicata* and recently decided by this Court, the court below should have refused jurisdiction in the premises.

Before the calling of the case for trial in this Court, counsel for plaintiff-in-error offered a motion praying the Court to set aside the proceedings in the action in the court below, because: 1. This court having adjudged that the said pieces of property were a part of the estate of H. R. Phelps deceased and that Leah H. Williams, formerly L. A. Phelps, had no title to same, the subject became *res judicata* and as such no further action could be instituted for the recovery of said property by the said L. A. Williams or her husband; 2. And also because the Supreme Court being the highest judicature of this Republic, its judgments cannot be reversed or disturbed by the Circuit Courts; there being no appeal from the judgment of said Supreme Court, its rulings become final and conclusive against all persons.

The history of the case is as follows: Sometime in the year 1912, one Henry R. Phelps died, leaving a widow, Leah A. Phelps, and one son, R. M. Phelps, plaintiff-in-error in this case. At the time of his death, he was possessed of certain pieces of property in said settlement, to wit: Lot No. 1 containing fifteen acres of land where his dwelling house was situated, and Lot No. 12, containing twenty-five acres of land. Subsequently, to wit, in the year of our Lord 1913, the said Leah A. Phelps, then married to said defendant-in-error, laid claim to said property and prayed the judge of the Monthly and Probate Court, Montserrado County, to strike same from the inventory of the estate of the said Henry R. Phelps. The Probate Court having failed or refused to strike said property from the inventory, the case was taken on appeal to this Court where it was decided that the above

mentioned pieces of property were the property of the said estate. *Phelps v. Williams*, 2 L.L.R. 621. Notwithstanding this ruling, the said Leah A. Williams continued to press her claim to said property. The matter was finally settled in 1923, at which time this Court gave judgment as follows: "That the judgment handed down at its November Term, A. D. 1923, is hereby reaffirmed and that the administrator is hereby ordered to allow R. M. Phelps ninety days to settle the claims of said estate, after which the administrator is to turn the property over to the said R. M. Phelps otherwise the said administrator will have full power to sell said property to settle the claims against said estate."

In the month of May, 1924, plaintiff-in-error having filed a certificate from the administrator that the said plaintiff-in-error had settled in full the claims against the estate, he was, by order of this Court, placed in possession of the property hereinbefore mentioned.

In the month of November, 1927, upon some irregular proceedings in an action of injunction brought by defendant-in-error against the said plaintiff-in-error, before Judge E. J. Worrell, Judge of the Circuit Court, First Judicial Circuit, Montserrado County by assignment, to restrain the said defendant from taking possession of said property, the latter was ousted from the premises and committed to prison for contempt. The matter having been brought up to this Court by a mandate, Judge Worrell admitted that he had acted erroneously, whereupon this Court vacated the proceedings in said Circuit Court, and ordered His Honor Nugent H. Gibson, Resident Judge of the First Judicial Circuit, to again put plaintiff-in-error in possession of the said premises.

When the case at bar was called for hearing, the attention of counsel for defendant-in-error was called to the several judgments and rulings of this Court in favor of the said plaintiff-in-error whereupon he abandoned the case, saying that he had been misled by his client. We

deem it necessary, however, to give such a ruling as will put an end to these harassing actions which have been repeatedly brought by E. W. Williams and his wife Leah A. Williams against the said R. M. Phelps for the said pieces of property in contempt of the judgments and ruling of this Court.

And just here we will premise that where a matter has been decided by this Court it becomes *res judicata*, if there is a concurrence of the following conditions, viz.: Identity in the thing sued for; identity of the cause of action; and identity of persons and of parties to the action. Such judgments are conclusive upon the parties, and no party can recover in a subsequent suit. It does not matter whether or not the judgment is pleaded.

Every court is bound to take judicial cognizance of its own records; and no evidence of a fact of which the court will take such notice need be given by the party alleging its existence. The decisions of this Court are binding upon all other courts within this Republic.

It is obvious from the above recital of facts that this case falls under the rule of *res judicata*.

The proceedings in the court below were irregularly conducted. Oral evidence was admitted to prove facts which were matter of record. The court and jury were misled by the plaintiff in the case and his witnesses. The following question was put by a juryman to plaintiff who was called as a witness:—"Mr. Witness, by what authority did the defendant break into this house and detain it from you?" Answer: "He said that his lawyer told him to do so." Question: "Was it upon the decision of the Supreme Court?" Answer: "No."

In view of the foregoing, we are of the opinion that the judgment of the court below should be reversed with costs against defendant-in-error; and that a mandate be sent down to the Judge of the First Judicial Circuit ordering him to again put plaintiff-in-error in possession of said premises. And it is so ordered.

*Reversed.*