ABRAHAM S. SALIFU, Appellant, *v.* DUARBOR LASSANNAH, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 8, 9, 13, 1936. Decided April 24, 1936.

1. In an action of ejectment the plaintiff shall recover, if at all, upon the strength of his own title, and not upon the weakness of defendant's.
2. Plaintiff is precluded from insisting that his adversary cannot set up an outstanding title, or that defendant is a mere trespasser; and if neither party has any legal title plaintiff cannot recover.
3. If any person shall fail to have any instrument relating to real estate probated and registered within four months after its execution, his title to such real estate shall be null and void against any party holding a subsequent deed for property which was probated and registered within four months.
4. Probation is a legal prerequisite to registration of title to real estate, and a deed which is registered without having been probated is voidable.

The appellant herein, plaintiff below, filed a complaint in ejectment in the Circuit Court of the First Judicial Circuit, Montserrado County, against the appellee. Judgment was rendered for the defendant, and plaintiff has appealed to this Court. *Judgment affirmed.*

A. B. Ricks, M. Dukuly, and *Anthony Barclay* for appellant. *P. Gbe Wolo* for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

This cause comes up on appeal to this Court from the Circuit Court of the First Judicial Circuit, Montserrado County.

From the records filed here this Court makes the following discovery, to wit: That there lives in the settlement of Caldwell, Montserrado County, one J. H. Lynch who claimed a certain tract of land which he said was situated in the settlement of Caldwell, Montserrado County. The records show that he "pawned" this piece of land to some

natives against a loan of three pounds to be paid within a given time, but that at the expiration of said time, Lynch failed to refund said loan, whereupon a dispute arose between him and these people. Duarbor Lassannah, the defendant, in the court below, now appellee, who is related to the said natives who were the pawnees, arrived in the town just at the time of the dispute between Mr. Lynch and the said natives, and through his influence and by his advice, he succeeded in harmonizing the matter between Mr. Lynch and his people, by having the said Lynch agree to sell the said natives a portion of said land. Inasmuch as said natives were not able to give said Lynch the purchase money of twelve pounds which he had charged for one half of the block of land claimed by him, Lynch became displeased, and threatened their removal therefrom; but Duarbor Lassannah, nephew of the parties who were purchasing the land, again happened to be present on that occasion and paid the sum of ten shillings to Mr. Lynch as a "good best" on behalf of his relatives, which amount Lynch accepted, and he then promised to pay the difference within a month. When the month had expired, the balance against the land had not been paid by these folks; they thereupon appealed to Duarbor Lassannah, their nephew, the appellee, to buy the land for them. To this arrangement Lynch agreed, and allowed Duarbor Lassannah three months within which to pay the balance of the purchase money for one half of said block of land. Before the expiration of the three months within which Duarbor Lassannah was to pay the balance of nine pounds, Lynch having given them credit for the three pounds he had borrowed from them, Lynch offered Duarbor Lassannah the remaining half of the block, whereupon Duarbor Lassannah paid Lynch the full sum of twenty-one pounds sterling for the whole parcel of land. From time to time Duarbor Lassannah would ask Lynch for the deed, but Lynch would always put him off. However Duarbor Lassannah continued to improve

the property to the extent of planting a large cane farm thereon.

On one occasion after this transaction between Duarbor Lassannah and Lynch, Sarmuka alias Selifu, the plaintiff, met Lassannah, defendant, and said to him that the land on which he was operating had been sold to him, Sarmuka, by James Lynch. Duarbor Lassannah then made Sarmuka to understand that inasmuch as he had paid Lynch for the land, and Lynch had not been able to give, or would not give him a deed, he had been to the Land Commissioner and obtained an order, and had had a surveyor to survey the land for which he then held a deed from President C. D. B. King for the tract of sixty acres of land, for him and his people, which land was situated in Barnersville, and not in Caldwell, as claimed by Lynch. Thereafter, on April 18th, 1934, Abraham S. Selifu alias Sarmuka, plaintiff, filed a complaint in the Circuit Court of the First Judicial Circuit, Montserrado County, against Duarbor Lassannah, defendant, praying the court to eject the said Duarbor Lassannah, defendant, from a forty-five acre block of land to which he was entitled by purchase in manner following: Five acres from J. B. Wilson and wife who claimed same under the transfer of James H. Lynch, and forty acres from James H. Lynch himself who claimed to have inherited said parcel of land from his late father Robert Lynch, which the said defendant, he therein alleged, detains from him.

Duarbor Lassannah on the 17th day of April, 1934, filed an answer to the above complaint in which he contends, among other pleas which are not enumerated herein, as they do not seem to this Court to deserve serious consideration:

"1. That the deed from President W. D. Coleman to Robert Lynch dated 20th February, 1897, copy of which is filed in these proceedings and made exhibit 'A,' has never been probated but simply shows that it was registered by one F. James Bull

of recent tenure of office as Registrar for the County of Montserrado.

"2. That he, defendant, does not detain any land, the property of plaintiff, but that the land defendant occupies is a *bona fide* property of himself and his people under law by which lands are granted to natives for native reserve and that as such he holds for himself and his people an authentic deed from the President of Liberia under date February 22nd A.D., 1923 for sixty acres of land in the Settlement of Barnersville in the county and Republic aforesaid, copy of which is herewith filed and made exhibit 'I' and forms a part of this answer.

"3. That the land which he and his people occupy being in the Settlement of Barnersville and the land for which this suit is brought being in the Settlement of Caldwell there is no identity of the property in dispute."

The plaintiff in his reply sets up that the defendant's answer should be expunged from these proceedings since upon inspection of the copy of the deed filed by defendant in this suit, there appears to be no lot number in exhibit marked by defendant "1" bearing on the authentic records of Barnersville or any other settlement in the Republic.

The cause was tried and determined at the February term of the said court, and a verdict and judgment were rendered for the defendant; to which verdict and judgment the plaintiff in the court below having taken exceptions has brought the proceedings before this Court for review. The bill of exceptions submitted contains five counts as follows:

"1. Because, when during the trial of said cause the plaintiff proved his case by submitting in evidence the original deed signed by President Coleman for the forty-five acres of land situated at Cald-

well, from which deed transfers were duly executed and admitted in evidence in this case, marked by the Court A, B, C, and D; still the Petit Jury brought in a verdict to the effect that plaintiff cannot recover the land in question, upon which Your Honour rendered final judgment (see final judgment), to which the said plaintiff excepts.

"2. And also because, when during the trial of said cause, Your Honour absolutely overruled all questions put to the witnesses in reference to boundary delimitation existing between the two settlements, Caldwell and Barnersville, which, if put, would have had the tendency to clarify the minds of the jury as a matter of fact, in ascertaining that the land in dispute is situated at Caldwell and not Barnersville; to which final judgment plaintiff excepts.

"3. And also because, when during the trial of said cause defendant exhibited a deed from the Republic of Liberia which though registered and probated yet, did not have number nor the correct and proper descriptions so as to fully convince the court and jury as to better title, yet Your Honour permitted same to be submitted as evidence in the case upon which the jury brought in a verdict that plaintiff cannot recover the land in dispute, upon which Your Honour tendered final judgment; to which plaintiff excepts.

"4. And also because, when during the trial of said cause, Your Honour in charging the jury said *inter alia,* 'where the rights and wrongs of both plaintiff and defendant are equal, the benefit of any doubt operates in favour of the defendant,' which as a matter of fact does not apply in this case, it being one of ejectment to be proven by title deeds; this oral charge of Your Honour

being misdirected, prejudiced the minds of the jury in the case who brought in a verdict to the effect that plaintiff cannot recover; upon which Your Honour rendered final judgment, to which plaintiff excepts.

"5. And also because, when during the trial of said cause, plaintiff filed a motion for New Trial, setting forth the legal reasons why said motion should be granted (*see* motion for New Trial) yet Your Honour overruled said motion and rendered final judgment in the case; to which plaintiff excepts."

This Court having carefully studied the issues raised in each count of the bill of exceptions finds it necessary to pass only upon count three which contains an issue singularly important to the decision of this case.

It is contended in said count that "during the trial the defendant exhibited a deed from the Republic of Liberia which though registered and probated, yet it did not have a lot number nor the correct and proper description so as to fully convince the court and jury as to better title; yet Your Honour permitted same to be submitted as evidence in the case upon which the jury brought a verdict that plaintiff cannot recover the land in dispute, upon which Your Honour rendered final judgment against him."

The decision of the trial court in this respect was, in our opinion, in accordance with the facts brought out during the trial, and in harmony with the principle of the law in ejectment. For, so long ago as in 1871, our Supreme Court decided in the case *Savage* v. *Dennis* that:

"In an action of ejectment the plaintiff shall recover upon the strength of his own title and not upon the weakness of the defendant's title." 1 L.L.R. 51 (1871).

"In actions of ejectment it has been laid down as a rule, both by ancient and modern law writers, that it is necessary in ejectment for the plaintiff to show in

himself legal proof; *i.e.,* a good and sufficient title to the land in dispute, against the whole world. He must not only have a title, but he must be clothed with the legal title to such lands; an equitable title, as a general rule, will not answer; he must recover, if at all, on the strength of his own title and not on the defects in that of his adversary's. This is an elementary principle in actions of ejectment and it has been reiterated over and again by this court, as possession only gives a right against every person who cannot establish a better right." *Birch* v. *Quinn,* 1 L.L.R. 309, 310 (1897).

More recently these principles have been so enlarged upon that we find in *Ruling Case Law* the following:

"Generally speaking, whatever shows that the plaintiff is not entitled to the immediate possession of the premises claimed constitutes a good and valid defense in an action to recover the possession. Since, as already seen, the plaintiff in an action of ejectment must as a general rule recover, if a recovery may be had, on the strength of his own title and not from the weakness or want of title of his adversary, the defendant, unless estopped from controverting the plaintiff's title, may rest on his possession, and attack the title under which the plaintiff claims." 9 R.C.L. 868, § 35.

"Plaintiff must recover, if at all, on the strength of his own title, and not because of the weakness or want of title in defendant. Plaintiff is also precluded from insisting that his adversary cannot set up an outstanding title or that defendant is a trespasser; and if neither party has any legal title plaintiff cannot recover." 15 Cyc. 20, subsec. c.

The deed from the Republic of Liberia to Robert Lynch was not probated at all, nor was it registered within four months; hence the basis of the action was unfounded. Another element which apparently supports conclusively the dismissal of the action was that the plain-

tiff's deed called for forty-five acres of land in the settlement of Caldwell while the defendant's apparently calls for sixty acres of land in Barnesville, each, with different corners and with a different description. The action should have been dismissed without reference to the jury.

> "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 Rev. Stat. 196, § 1302.

The said deed was further voidable in that it was registered without having been probated. It is a legal requirement that all deeds, conveyances, etc. should be probated previous to registration, and the Registrar is subject to a fine in the event he should register such a document before it has been probated.

> "The Registrar shall perform the following duties:
> "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. . . . Any Registrar who shall register any instrument relating to real estate before the probate of the same shall be liable to be dismissed from office and to pay a fine of not less than ten nor more than one hundred dollars, recoverable before any Court of competent jurisdiction." 2 Rev. Stat. § 1305, subsec. 1.

As to the locality of the land in dispute, there was a preponderance of evidence on the part of the defendant, for there testified on behalf of the defense three witnesses who had lived in Barnersville for over forty years, and during said period this place had been known to be Barnersville and that it was situated between two properties in Barnersville. The natives living on the place had been responsible to work the public roads of Barners-

ville, not Caldwell. Another witness, William Dunson, who lives in Caldwell, testified to the fact that he knew the place to be located in Barnersville.

The plaintiff introduced one witness by the name of T. F. Gibson, who testified that when he was a tax collector for Caldwell he collected taxes from Mr. Lynch. This statement, however, was not corroborated by anyone except Mr. Lynch himself.

Keeping the above enunciated principles in mind we desire to say by way of summing up: (1) Lynch, the privy of appellant, having accepted from appellees £21 as payment in full for the land appellant now claims that he himself subsequently purchased from Lynch, he the said appellant, as a privy of the said Lynch, would seem to be estopped from raising the point that his privy, the said Lynch, did not convey the title to the land of appellee, but to appellant, from whom he also received money in payment for said land, as:

> "It is well settled that where a person is responsible over to another, either by operation of law or express contract, and he is duly notified of the pendency of the suit against the person to whom he is liable over, and full opportunity is afforded him to defend the action, the judgment, if obtained without fraud or collusion, will be conclusive against him, whether he appeared or not. . . ." 15 R.C.L. 1017, § 489.

and (2) Inasmuch as both appellant through his privy, the said Lynch, claims title from the Republic of Liberia by virtue of a deed from said Republic to Robert Lynch, and appellee also claims title from the Republic by a direct grant to himself and his people, and the deed of the former was never probated nor was it registered within the time prescribed by law, his deed, though of prior date, was correctly considered void in accordance with the 5th section of the enactment of our Legislature above quoted which provides:

". . . and should such estate or estates, in conse-

quence of the non-probation or registration of any deeds, mortgages or other conveyances appertaining thereto, be brought into litigation thereafter, such prior claim or ownership shall be null and void." Laws 1861, 90, § 5.

The jury was therefore by the evidence justified in the verdict they returned, and the judge could not but affirm said verdict with the corresponding judgment, which judgment this Court is of opinion should be affirmed with costs against appellant; and it is so ordered.

Affirmed.