

HENRIETTA M. WILLIAMS, LYDIA DESHIELD, JAMES DESHIELD, W. O. DESHIELD, heirs of the late JOHN SHAVERS, Plaintiffs-in-Error, v. A. KARNGA, and his Honor AARON J. GEORGE, Judge of the First Judicial Circuit Court, Defendants-in-Error.

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

Decided May 15, 1931.

1. In action of ejectment parties should recover upon the strength of their own title and not upon the weakness of their adversaries'.
2. As a general rule written instruments cannot be proved by copies; they are merely secondary evidence, and are inadmissible, and can only be accepted after proper foundation has been made showing the impossibility of producing the original.
3. In an appeal it is essential and indispensable that the records should contain the evidence submitted in the court below.

In an action of ejectment, judgment was given for defendants in the Circuit Court. On writ of error, this Court *dismissed*.

A. B. Ricks for plaintiffs-in-error. *A. Karna* for defendant-in-error.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This action was brought by the plaintiffs-in-error who were plaintiffs in the court below to recover the possession of farm lot No. 23, Monrovia, of the following description: Commencing at the South angle of a marked corner by a plum tree on the left side going to the Barracks, running north 38 degrees east, 16 half chains, thence running south 30 degrees west 16 half chains; then running north 52 degrees west 20 half chains, thence run-

ning north 38 degrees east 16 half chains to the place of commencement and containing 8 (eight) acres of land and no more, by virtue of the substituted deed, the original to which has been misplaced whilst in the custody of President C. D. B. King, and the records of its registration have been accidentally mutilated and destroyed in the Department of State of Liberia, said deed having been issued and registered in the Colonial days of Liberia, but a copy of which is filed in the records of this litigation as emanating from Charles D. B. King, President of Liberia to the plaintiffs-in-error, heirs of John Shavers, the title of John Shavers having come to them by descent. From the records of this case a trial was had at the November term of the Circuit Court for the First Judicial Circuit, Montserrado County, 1930. At said trial, the defendant below obtained a judgment against plaintiffs from which they excepted and bring the same before this Court by a writ of error.

The defendant, answering, said that the original owners of the parcel of land Nos. 22 and 23 in the records of the Colony were Robert White and John Gibson and in the year 1843, the said two blocks of land were sold to Hall Anderson who together with his wife in the year 1851 before their death, willed both of said parcels of land to Amos Anderson, their grandson who died intestate in January, 1866; both tracts of land were sold by order of the Probate Court, Montserrado County, at public auction to one John F. Dennis of Monrovia, the highest bidder, and that the said John F. Dennis in the same year, 1866, sold said land to Ann Louise Worrell, the wife of Moore T. Worrell of Monrovia, and that he, the defendant, is the lawful owner of the said tract of land Nos. 22 and 23 situated in halfway farm land near the city of Monrovia, having purchased said land from Augustas B. Pardmore and her husband J. R. D. Pardmore of this City in the year 1914 and that Robert White, John Gibson, Hall Anderson, Cherry Anderson, Amos Anderson,

John F. Dennis, and Ann Worrell are the ancestors and the privies of the defendant; and that said deed granted to the plaintiff in this case by C. D. B. King, President of Liberia, is illegal and void in that the President of Liberia has no power under the Constitution to grant a deed for private land, as such an act would constitute a usurpation of power and would be oppression and tyranny and deprivation of property without due process of law.

The cause or right of action which is set forth in the foregoing allegation by the plaintiffs-in-error and strongly contested by defendants-in-error, brings this Court to consider the weight and strength of the evidence upon which the plaintiffs have founded their complaint. Following the dictum of this Judicature, parties shall recover upon the strength of their own title and not upon the weakness of their adversaries'; this suit is predicated upon a copy of a substituted deed granted the heirs of John Shavers, plaintiffs-in-error. At the call of the case but before this Court was permitted to go into the merits, the plaintiffs-in-error informed the Court that the original deed, which was reported lost, had been found and they presented same for the benefit of the Court. This led the Court to view the deed in the records as secondary evidence, and to state that no evidence is accepted which supposes the existence of better evidence. It was greatly stressed in the court below that the original deed was misplaced by President King, and that no traces of it could be made in the archives of the Republic and that the plaintiffs felt themselves justified to secure their interest by a substitute deed as appears in the records, yet, to the mind of the Court this crumbles and falls particularly so when there appears a material variance between the substitute and the original as appears in the discovery of the lost deed. It is hardly necessary to cite authorities to the proposition that as a rule, written instruments cannot be proved by copies; they are mere secondary evidence and are inadmissible under the general rule, and can only

be accepted after proper foundation has been made by showing the impossibility of producing the original. The statute law in support of this doctrine plainly states that the best evidence which the case admits of must always be produced. That no evidence is sufficient which supposes the existence of better evidence. A copy is not evidence unless the original is proven to be lost or to be in the possession of the opposite party who has received notice to produce it, unless it be a copy of some record or other public document. Lib. Statutes (Old Blue Book), 52, ch. X, §§ 8, 9.

The Court feels itself unwarranted under the circumstances and in fairness to the parties litigant to accept and consider any evidence not submitted to the court below and transmitted in the records of the case to this Court.

It is indispensable that the records in an appeal contain the evidence submitted in the court below. *Johnson, Turpin and Dunbar v. Roberts*, 1 L.L.R. 8 (1861).

Therefore this Court dismisses this case leaving the right if any to any of the aggrieved parties to a renewal of their action in the court if so desired, and it is so ordered.

Dismissed.

MR. JUSTICE KARNGA, being a party litigant, took no part in the consideration or decision of the case by the Court.