CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

OCTOBER TERM, 1953.

VICTORIA JOHNSON, BALTHAZARD JOHNSON, CHARLES R. JOHNSON, and JENEVA JOHNSON-DUFF, Heirs of the Late F. E. R. JOHNSON, Grantor, Appellants, *v.* J. D. BEYSOLOW, MARY ANN BEYSOLOW-STEPHANEY, and MARIAMAN BEYSOLOW, Administrators of the Estate of the Late THOMAS E. BEYSOLOW, Appellees.

APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued March 17, 18, 1953. Decided January 22, 1954.

1. Where an interested party promptly asserts his rights he is not estopped from objecting to the probate of a deed.
2. A party is estopped from asserting title to real property when he failed to object at the time the property was being acquired by another, knowing that his rights were invaded.
3. A single man cannot take an immigrant allotment of ten acres.
4. The consideration for the execution of a deed as an immigrant allotment is improvement of the land by the immigrant.
5. Where parties contesting title to real property derive their respective rights from the same source, the party showing the prior deed is entitled to the property.

Appellants, respondents below, offered a quitclaim deed for probate. Appellees, objectors below, objected to the probate of the deed and were sustained by the Monthly

and Probate Court of Montserrado County. On appeal to this Court, *judgment reversed.*

Nete Sie Brownell for appellants. *K. S. Tamba* and *Momolu S. Cooper* for appellees.

MR. JUSTICE DAVIS delivered the opinion of the Court.

This Court previously affirmed denial of a bill in equity to discover the estate of the late Elijah Johnson. *Smith* v. *Faulkner,* 9 L.L.R. 161 (1946). Accordingly the heirs of Gabriel M. Johnson and F. E. R. Johnson commenced the partitioning of the estate of Elijah Johnson so that each set of heirs might ascertain its moiety, and, if need, be quitclaim to the other in order that said property might become transferable.

At the December, 1950, term of the Monthly and Probate Court of Montserrado County a quitclaim deed from the heirs of G. M. Johnson to the heirs of F. E. R. Johnson for lot number 88/A-1, block number 88, in Monrovia, was offered for probate and registration. The following objections were interposed by appellees as administrators of the estate of Thomas E. Beysolow:

"1. The conveyance is illegal because the grantors have no title to said block of land, title thereto having been acquired by Samuel B. A. Campbell in 1923, as will more fully appear from the title deed of the aforesaid Samuel B. A. Campbell in the Bureau of Archives, Department of State, copy whereof is herewith filed, marked Exhibit '1.'

"2. The deed should be denied probate because the grantors-respondents have no legal title to said parcel of land to quitclaim same in favor of the other respondent, Jeneva Johnson-Duff, the said piece of realty having been sold on May 16, 1927, by the aforesaid Samuel B. A. Campbell to the late Thomas E. Beysolow whose administrators

these objectors are. Objectors herewith file copy of warranty deed from the said Samuel B. A. Campbell to the aforesaid Thomas E. Beysolow, marked Exhibit '2.' "

Countering these objections appellants filed an answer in which they contended:

"1. Appellants and their forebears were the legal and bona fide owners in fee of the said tract of land, lot number 88, by virtue of a deed granted to the late Elijah Johnson by Jehudi Ashmun, then Governor of the Colony of Liberia, the deed being dated August 25, 1826, and registered according to law on April 22, 1828; and they proffered a copy of the deed.

"2. Since their deed was anterior by ninety-seven years to that of Samuel B. A. Campbell, privy of the objectors who is alleged to have acquired said property in 1923 as an immigrant allotment, their quitclaim deed gives superior title; their title descended from the sovereign, the State, in an unbroken chain; and the forebears of the respondents-appellants never alienated their title to said property prior to the offering of the quitclaim deed in question.

"3. The title of appellants must supersede the deed executed to Campbell for lot number 88, since said quitclaim deed is based upon the deed executed in 1826 in favor of Elijah Johnson.

"4. The deed upon which the objectors based their claims to title to said parcel of land is illegal and must have been fraudulently procured from President C. D. B. King, since, according to the statutes on immigration, an immigrant is only entitled to five acres of land upon coming to Liberia. Samuel B. A. Campbell, from whom the late Thomas E. Beysolow bought this parcel of land, came to Liberia as a pastor or minister of the

African Methodist Church, and not as an immigrant as contemplated by the law. The title of Samuel B. A. Campbell, therefore, as an immigrant allotment, is illegal and without authority; and therefore said deed should be considered null, since it calls for ten acres of land and not five as authorized by the law controlling the grant of land to immigrants coming to Liberia to establish a home.

"5. The deed of Samuel B. A. Campbell was also fraudulent and illegal because there was no consideration for said deed. According to law an immigrant is given land in consideration of the improvement he is supposed to have made on the land prior to the grant of said land; and the said Samuel B. A. Campbell never made any improvement on the land when he induced the President of Liberia to execute a deed in his favor for the land. Instead, after obtaining the land in question as an immigrant allotment, he sold and disposed of it, contrary to the statute controlling the acquisition of public land for the use of immigrants. At the time the land was surveyed it was taken for granted by the President that it was public land, when, in truth and in fact, said land was the property of Elijah Johnson's heirs. Since the President of Liberia acted under a false representation relating to the status and condition of the land in dispute, the deed issued to Samuel B. A. Campbell has no validity and should be held null on the ground that it was procured under a misrepresentation of fact."

In the court below the objectors-appellees filed a reply containing five counts, of which we deem it necessary to consider Counts "1," "2" and "4." In Count "1" they claim that respondents-appellants are estopped from raising the points of law submitted in their answer because

they were in Monrovia and under no legal disability when lot number 88 was conveyed by the Republic of Liberia to Samuel B. A. Campbell in 1923, and they did not object to said deed being registered and probated; nor did they object to Campbell's conveyance to Beysolow of the property in 1927.

In the Count "2" of their reply the objectors-appellees contend that respondents-appellants are guilty of laches because, if the deed in question was fraudulently procured, as contended by respondents-appellants, they should have moved for its cancellation, and should not have permitted a period of over twenty years to elapse, during which time the property in question has considerably changed in condition.

In Count "4" of their reply the objectors-appellees contested the legal soundness of respondents-appellants' plea that, under the immigration statute, Samuel B. A. Campbell was entitled to only five acres of land at the time of his coming to Liberia, and contended that, under the applicable statute, a single family is entitled to a maximum of ten acres. They also insisted that, since Campbell was the head of his family on his arrival as an immigrant, he was entitled to the ten acres of land which the President deeded to him.

The Commissioner of Probate for Montserrado County in deciding these issues made the following very exhaustive ruling:

> "The heirs of the late Thomas E. Beysolow, by way of procuring their interest in and to any intrusion of lot number 88/A-1 out of Block 88, situated in the City of Monrovia, the lot which came to them by inheritance, sought to file in the office of the clerk of this court a caveat to stay the probate of any deed purporting to convey title thereto to any other person or persons.
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> "Subsequent to the filing of said caveat, Counsellor Nete Sie Brownell, in the interest of his clients, the

heirs of the late F. E. R. Johnson, presented for probate a quitclaim deed for lot number 88, the subject of these proceedings, in which the caveators proffered their objections within the period of limitation allowed them by the statutes; and the pleadings reached the rebuttal stage.

"We find, after a careful review of the case as set forth in the pleadings, that, in 1923, one Samuel B. A. Campbell, then of the City of Monrovia, Montserrado County, acquired lots numbers 87, 88, 90 and 91, comprising in all ten acres of land, as an immigrant allotment regularly probated and registered according to law, and after a period of four years, conveyed unmolested possession to Thomas E. Beysolow of lot number 88 in fee simple. After some twenty-three years of occupancy of the said land by the said Thomas E. Beysolow, the respondents in these proceedings through their lawyer, Counsellor Brownell, proffered a quitclaim deed for probate bearing the identical number 88. The heirs of the late Thomas E. Beysolow, the objectors, set up claim to said lot or parcel of land at the time it was offered for probate.

"We are disposed to consider such of the pleadings as are material to the issue, and this brings us to Counts '1' and '2' of the objections thereto.

"The law that gives us authority to take jurisdiction in matters of objections to disputed title does not go beyond finding the legality or illegality of the grounds of objections against the instrument for probate. If they appear to be well founded, it is our duty under the circumstance to suspend probate until the question shall have been decided by the court of competent jurisdiction. The Registration Act of 1861 provides:

> 'That in order to make a deed, mortgage, or other conveyance of Real Estate valid and probatable, said deed, mortgage or other conveyance shall be witnessed by at least two witnesses: and the Chair-

man of the Probate Court shall cause the ministerial officer of said Court to give notice, *viva voce,* at the door, that the Court is about to probate said deed, mortgage or other conveyance; and should any person or persons object to the probation of any deed, mortgage or other conveyance pending before the Court, it shall be the duty of the Court to inquire into the objections; and if said objections are well-founded, the Court shall refuse to probate said deed, mortgage or other conveyance, until such objections are removed. . . .' L. 1961, p. 81, sec. 2.

"The above-quoted statute, requiring all deeds, mortgages, or other conveyances of real estate to be probated and registered, is clearly intended to give notice so as to allow objections to be made.

"We observe upon the face of the immigrant allotment deed in favor of Samuel B. A. Campbell that same was probated and registered on July 8, 1924, over the signatures of Judge E. W. Williams and J. W. Flowers for A. D. Moulten, then Judge and Clerk of the Probate Court. We gather that all of its legal requirements have been fully met and respondents, or their forebears, had knowledge of the probation of said instrument. We are therefore of the opinion that respondents constructively had legal notice under our statute.

"Respondents contend that their deed was anterior by ninety-seven years to that of Samuel B. A. Campbell. But since respondents have allowed the said property to be held by Beysolow and his heirs for about twenty-three years up to the filing of these objections, we say that, apart from laches they are barred by statutory limitations, especially if respondents were not out of the country during such period. Respondents' pleadings not having mentioned any such absence, we find it impossible to consider this point in our ruling.

"The relevant portion of our statute on government grants allotted to immigrants, found in the Old Blue Book, Article IV, section 2, page 136, reads as follows:

> 'That every married man shall have for himself a town lot, or five acres of farm land, together with two more for his wife and one for each child that may be with him provided always that no single family shall have more than ten acres.'

"By giving Campbell ten acres instead of five, the President of Liberia has not gone beyond the scope of his authority; for he had a discretionary limitation of from five to ten acres under the law. Certainly, therefore, the allotment of ten acres to Campbell can create no imputation of fraud as contended by respondents herein. From an equitable standpoint we are thus of the opinion that, even if respondents' contention that Campbell never made any improvement on said land is correct, we must overrule Count '4' of respondents' answer on the points of estoppel and assent.

"Count '2' of objectors' reply, objecting to the statutory limitation, tacitly concedes the propriety thereof, but inconsistently pleads, *inter alia,* as follows:

> 'Respondents submit that, immediately the information was imparted to them as to the status of this parcel of land, they issued to grantee the quitclaim deed which is the subject of this suit to test the title of any and all claimants.'

"We consider respondents' contentions in this particular respect to be sound.

"When the respondents argued this case before us we propounded the following question: 'Do you consider us to have jurisdiction to determine the title in dispute?' Counsel's reply was: 'Your Honor, I do not think a question of this nature should come from the court; for you are to determine who is entitled to the possession of the land in question, which is why the law gave you jurisdiction over the probate of in-

struments that convey title.' Our conception of the law is adverse.

"The President of Liberia, in our opinion, rightly considered the land which is the subject of these proceedings public property; for, if, during ninety-seven years, the respondents and their forebears made no improvement to the said property, our statute will not support their contention.

"This court consequently has no alternative but to refuse the probate of the quitclaim deed from Victoria Johnson-Balthazard and Charles R. Johnson, heirs of the late F. E. R. Johnson to Jeneva Johnson-Duff of part of farm block number 88/A-1, Halfway Farms section of the city of Monrovia, until the doubt of ownership in and to said lot, the subject of these proceedings, is removed by judgment of a court of competent jurisdiction. The Monthly and Probate Court cannot try title to real estate. The objections and all subsequent pleadings of the objectors are sustained by this court, which overrules the answer and the entire pleadings of respondents with costs against them; and it is so ordered."

A study of the pleadings in this case indicates that the following questions must be answered by this Court:

1. At the time when the land in question was conveyed by President C. D. B. King to Samuel B. A. Campbell as an immigrant allotment, was it a portion of the public domain or was it private land belonging to Elijah Johnson?
2. Who is an immigrant under our law?
3. To how many acres of land is an immigrant entitled as allotment?
4. Did Campbell bring along a family with him when he came to Liberia?
5. Were appellants estopped from raising the issues they submitted in their answer because, as appellees contend, they were in Monrovia when the convey-

ance from President C. D. B. King of Liberia to Samuel B. A. Campbell was made, and offered no objections to the registration and probate of the deed executed in Campbell's favor?

6. Are respondents-appellants barred by the applicable statute of limitation?

In passing upon these questions we shall proceed in reverse order, taking the sixth question first. Upon this question we rule in the negative. The mere probate and registration of a deed, in our opinion, without the knowledge of would-be objectors, does not work an estoppel unless it is shown that the party whose interest is at issue knew of the transaction and supinely acquiesced. On the other hand, if the transaction is brought to the attention of the interested party, and he promptly asserts his rights, the doctrine of estoppel will not and cannot operate against him. Respondents alleged in their rejoinder that, until very recently when a general survey was made, neither they nor their forebears had any knowledge that a portion of their estate had been conveyed by the Republic of Liberia to S. B. A. Campbell, who had, in turn, conveyed same to Thomas E. Beysolow. Moreover, since estoppel can only arise out of matters of fact, it was incumbent upon objectors-appellees to prove that respondents' forebears, and/or themselves, had knowledge of the fact that a portion of the Elijah Johnson estate had been conveyed to Samuel B. A. Campbell as an immigrant allotment, the grantor believing it to belong to the public domain.

It is a settled principle of law that, when a party has notice of the probate and registration of a deed for property belonging to him and conveyed or sought to be conveyed by another, and he sits supinely and does not speak or react in any way to the adverse possession, an estoppel can operate against him in favor of subsequent claimants. It follows that, when he does not have notice, or is not aware of any conveyance or attempt to convey property

belonging to him (as was alleged by respondents-appellants in this case and not controverted by objectors-appellees) the doctrine of estoppel cannot and will not operate against him. This principle is not contrary to the decision rendered by this Court in *Blunt* v. *Barbour,* 1 L.L.R. 58, 59 (1872), where, in expatiating upon the doctrine of estoppel, this Court said:

> "The said appellee, as is disclosed by the testimony, attempted to buy back said premises from J. H. Lynch, and also from J. M. Moore, to whom Lynch sold the property. Even if appellee had a legal right to said premises, he did not, as was his bounden duty, assert his claim promptly; but on the contrary he intentionally and quietly stood by and allowed Lynch to transfer said premises to Moore, then Moore to Witherspoon, then by the High Sheriff, Fuller to Payne, then Payne to Blunt, the appellant in this case. During this lapse of time the appellee made no attempt to assert his title. . . . The appellee *knowingly* and of his own will neglected to avail himself of the benefit of the law, either to assert or establish his claim. . . .
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> "It is contrary to equity and good conscience that a man should stand by and allow his neighbor to expend money for the purchase and *improvement* of property, and conceal the fact that he is the owner and thus entrap his neighbor, then come forward and take advantage of his laches. . . ." (Emphasis added.)

From this decision it is clear that the indispensable factors in determining whether a party is estopped from asserting his claim because he made no objections at the time property was being acquired by another are:

1. Knowledge by the party that his property rights were being invaded. He must know that some other person is attempting to convey and has conveyed property belonging to him; for without such knowledge it is folly to expect that he would raise any issue.

2. The party acquiring the property must have made some improvement, in which case it would be unfair to him to have expended money upon the land while the original owner stands by, planning to reap what he has not sown. Moreover, improvement upon the land serves as notice to the real owner that a trespasser has invaded his property rights and he is then expected to invoke the aid of the law immediately.

But, when these factors are absent, and when the real owner obtains knowledge of the unauthorized and unwarranted transaction, and promptly asserts his right and title to the land, the doctrine of estoppel cannot and will not operate against him.

Since the foregoing covers both the fifth and sixth questions we shall proceed to pass upon the fourth question which involves an issue of fact. In our opinion the court below should have heard evidence to ascertain whether S. B. A. Campbell had a family when the immigrant allotment was granted him by the President. This is necessary because, under the applicable provision of our statute, the quantity of acres allotted is determined by marital status and by the number of persons in a family. Therefore, we do not understand how the Commissioner of Probate could conclude that the allotment of ten acres of land to S. B. A. Campbell as head of a family conformed with the law controlling immigrant allotments, absent proof that Campbell had a family when he acquired the land. We therefore declare the ruling on this point erroneous.

We proceed to consider the third question. In the statute, cited, *supra,* controlling immigrant allotments it is provided: "That every married man shall have for himself a town lot, or five acres of farm land, together with two more for his wife and one for each child that may be with him—*provided always* that no single family shall have more than ten acres." Under this statutory provision, a man may be granted five acres of land for him-

self, and additional acres for his wife and children, but under no condition may the allotment to any single family exceed ten acres. When Campbell alone received a grant of ten acres as his allotment, he was receiving more than he was entitled to under the statute, especially since he was not an immigrant from the West Indian Islands; for the only exception to the statute cited, *supra,* is in the act specially passed to encourage immigration from the British West Indies, predicated upon an invitation extended in 1862 to persons of African descent in the West Indian Islands, L. 1863–64, 24. Since Campbell did not fall within the foregoing exception, his immigrant allotment, if any, could not properly have exceeded five acres.

We need not long consider the question of who is an immigrant under our law. Unquestionably an immigrant is a person who quits his country for any lawful reason with a design to settle elsewhere, taking his family and property with him.

The last and the most important question is whether, at the time the land in question was conveyed by President C. D. B. King to Samuel B. A. Campbell as an immigrant allotment, it was a portion of the public domain or was private land belonging to Elijah Johnson. The answer to this question can readily be deduced from the records filed in this case, especially the deeds. The deed proffered by respondents-appellants gives them a stronger and older claim to the land in question than the deed proffered by objectors-appellees. An inspection of the deed proffered by respondents-appellants discloses that it was executed by the Republic of Liberia, passing title to the land in question to Elijah Johnson, ninety-seven years before the immigrant allotment deed of S. B. A. Campbell was executed by the Republic for the same piece of land. It is evident, therefore, that the President of Liberia executed the subsequent deed to objectors-appellees without being aware that the property in question was no longer a portion of the public domain, since title had vested in Elijah

Johnson by virtue of the deed issued in his favor by Jehudi Ashmun.

We also deem it necessary to state that the point raised in respondents-appellants' answer respecting deception on the part of objectors-appellees' privy is well taken, since the consideration for conveyance of an immigrant allotment is improvement on the land by the grantee. There is no evidence that Campbell ever improved any of the land which he claimed as his immigrant allotment, and for which he inveigled the Government into executing a deed which recites:

> "[T]hat for and in consideration of the said Samuel B. Campbell having made the improvement upon ten acres of land assigned him agreeably to the laws of the Republic of Liberia, I, the said C. D. B. King, for myself and my successors in office, have granted, and by these presents do give, grant, and confirm unto the said Samuel B. Campbell, his heirs and assigns forever, plot of land numbers 87, 88, 89 and 90. . . ."

Under the statute controlling immigrant allotment the land is first assigned; and it is only after the immigrant has improved it that a deed may properly be executed. There is no evidence that S. B. Campbell ever improved the land. Instead, after he had received a deed, he proceeded to sell the property. This certainly savored of deception.

We have numerous citations of law in support of the principle that, in a controversy over land, where both parties have derived their title from the same source, the party possessing the prior deed should prevail. We are therefore of the opinion that the judgment rendered by the Commissioner of Probate should be reversed, and the deed in question be admitted to probate; and it is hereby so ordered. Costs of these proceedings are to be paid by objectors-appellees.

Reversed.