

JACOB REICHERT

Plaintiff

vs.

JEROME SHEIP, ET AL.

DEFENDANTS

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x

ACTION OF EJECTMENT.

IN THE CIRCUIT COURT OF BALDWIN COUNTY

ALA., SPRING TERM, 1924.

ORAL CHARGE OF THE COURT TO JURY:

Gentlemen, this is a suit brought by J. H. Reichert against Joseph Sheip, a corporation, and Fanny I. Becker for the purpose of recovering certain lands particularly described in the complaint.

The burden of proof in cases of this kind is upon the plaintiff to reasonably satisfy you from the evidence that he is entitled to a recovery of the lands and unless he so reasonably satisfies you of that fact, then as a matter of law his case would fall. The plaintiff, in this instance, claims under a patent that was issued to the representatives of Louis Durette and the property was conveyed under this patent to the representatives of Louis Durette and to their heirs. In order for the plaintiff to recover he must reasonably satisfy you that the parties named in the power of attorney which was executed by certain parties who claimed to be the heirs at law, next of kin and representatives of Louis Durette, deceased, or that some one of the parties named in this power of attorney was a legal representative, heir at law or next of kin to Louis Durette.

To Max Collins
The plaintiff also claims under a deed that was made by the heirs at law of Louis Durette through one Anna LeLand who was given a power of attorney to handle this particular tract of land and was also executed by Anna LeLand individually---

MR. STEVENS: You mean a deed to Max Collins?

(--Yes, sir, under this power of attorney.) The question the court wishes to submit to you for inquiry is whether or not the grantors named in the deed or conveyance by Anna LeLand as power of attorney for the heirs of Louis Durette or his legal representatives are the heirs or legal representatives of the said Louis Durette? The plaintiff claims that this number of parties who signed the power of attorney to Anna LeLand and whose names were afterwards signed to a deed of conveyance by Anna LeLand individually and acting through this power of attorney to Max Collins are the legal representatives or heirs of the said Louis Durette.

The question has arisen as to whether or not there has been or was a marriage between Louis Durette and Isabella Durette. Now as to whether or not that marriage was a legal marriage it is for you to determine from the evidence in this case. If the said Louis Durette and Isabella Durette lived together as man and wife, held themselves out as man and wife, acknowledged that they were man and wife and went, - past as man and wife that in law would constitute a marriage, whether there was any ceremony or not.

Then the question for you to further determine is the fact as to whether or not the plaintiff in this case has reasonably satisfied you from the evidence that the names of the parties who are signed to the power of attorney to Anna Leland and afterwards signed by Anna Leland to the deed to Max Collins were the legal heirs or representatives of Louis Durette? If you are satisfied from the evidence that they were or any one of them was the legal representative or a lawful heir of Louis Durette then and in that event the plaintiff would be entitled to recover but if after weighing all of the evidence in the case you are not reasonably satisfied that the particular parties named in the power of attorney referred to and in the deed of conveyance which was made by Anna Leland acting as attorney for the heirs of Louis Durette and individually, if you do not find that to have been established to your reasonable satisfaction, then your verdict would be for the defendant.

The burden of proof, as I stated, is on the plaintiff to satisfy you from the evidence that the plaintiff is entitled to recover. It matters not whether the defendant has any title to this property because the plaintiff must recover on the strength of the plaintiff's title and failing to make out a title to the property which would satisfy you from the evidence entitled a recovery, then the plaintiff would fail and would not be entitled to recover the property.

X Now you heard the depositions read in evidence and you take those depositions and treat them the same as if the witness had been on the stand and testified. You have also seen the witnesses on the stand and you may look at their demeanor on the witness stand and if there has been any conflict in the evidence you may weigh the conflict in the evidence to determine who has spoken the truth and which one you believe to be the witness entitled to credit in the case to determine the verdict that you may arrive at. You have no right to capriciously reject the testimony of any witness but you give that witness the faith and credit that you think from the evidence in the case that the witness is entitled to.

Now in the event you arrive at the conclusion from the evidence in the case that the plaintiff is entitled to recover the form of your verdict would be: "We, the jury, find for the plaintiff for the property sued for and described in the complaint" If after weighing all of the evidence you are not satisfied that the plaintiff is entitled to recover in the manner which the court has explained to you, then the defendant would be entitled to a verdict and the form of your verdict would be: "We, the jury, find for the defendant".

MR. STEVENS: I would like to suggest one line, that is, to instruct the jury as to the interest of a witness, what the law is on that, I am asking the written charge.

MR. LEIGH: Your Honor charged them that these parties claimed under the heirs of Louis Durette, I presume you mean "the alleged heirs".

MR. CAFFEY: We reserve no exception.

THE COURT: The question is for the jury to determine as to

the question who are the heirs of Louis
Durette or any one of them.

State of Alabama, Conecuh County.

I HEREBY CERTIFY That the above and foregoing is a true
and correct transcript of the oral charge of the court to the
jury in the case therein mentioned.

IN TESTIMONY WHEREOF I have hereunto set my hand on this
the 25th day of July, 1924.

W. D. Luford

Official Court Reporter
21st Judicial Circuit of Ala.

J. H. REICHERT,
Plaintiff,

-VS-

JEROME H. SHEIP, Inc.,
and FANNIE I. BECKER,
Defendants.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY.

AT LAW.

Now comes the plaintiff in the above entitled cause and propounds the following interrogatories to the defendant in said cause.

1. You will please give the name of each of the grantor under whom you claim title to each portion of the property which is sued for in this case. At the same time, set forth the date of each conveyance under which you claim title, and the place where it is recorded.
2. You will please set forth the chain of title under which you claim the property which is the subject matter of this suit, giving the date of each conveyance referred to in the chain, and the place of its record.
3. You will please give a list of all payments of taxes upon the property in question which you have paid, giving the date and the amount of each payment, and the name of the officer to whom the payment was made.
4. You will please state whether or not you claim title under any patent that has been issued by the United States Government, either to you or any other person under whom you claim, and if you do claim title under such a patent, you will then please attach to your answers a copy of the patent under which you claim, and if you do not do this, give the date of the patent, the name of the patentee, and the place where it is recorded.
5. Do you claim to have acquired title to the property in question, or any part thereof, by adverse possession, if so,

give the name of each of the parties under whose possession you claim, and state exactly what portion of the property each of such persons actually occupied, and of what such occupation consisted, and state in detail as far as you are able to do so, every act of possession by such party and the date thereof.

6. Have you ever had the land in question, or any part of it, surveyed, and if so, when and by whom.

Harry T Smith & Coffey
Attorneys for Plaintiff.

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me, Lillie A. Booth, a Notary Public, in and for said County in said State, Harry T. Smith, who upon oath deposes and says that he is one of the attorneys for the plaintiff in the above entitled cause, and that the answers to the above and foregoing interrogatories, if truthfully made, will be material evidence for the plaintiff in said cause.

Harry T. Smith

Subscribed and sworn to before
me this 6th day of Nov, 1918.

Lillie A Booth,
NOTARY PUBLIC, STATE OF ALABAMA, MOBILE COUNTY.

J. H. Reichert,
Plaintiff,

-vs-

Jerome H. Shelp, Inc., and
Fannie I. Becker,
Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA.

AT LAW.

Come the above named defendants and move the Court to suppress
the deposition of Mary O. Thomas, a witness on behalf of plaintiff,
whose deposition heretofore has been taken and filed in the said
cause, this motion being upon each of the following separate grounds:-

1. Said deposition was taken upon written interrogatories
under a commission ordering the taking of the same upon interrogatories,
and the affidavit filed shows as the only ground or reason for taking
the deposition that the said witness is a woman.

2. The affidavit filed in said cause shows as the only reason
for taking the deposition of the said witness that she is a woman and a
material witness for plaintiff. The affidavit was accompanied by
written interrogatories on behalf of the plaintiff to the said witness.
The notice given to the defendants was merely a notice of the filing of
interrogatories and the commission issued to the Commissioner who took
the said deposition instructed and authorized the taking of the said
deposition upon interrogatories.

3. Said deposition was taken under Sub-division 1 of Section
4030 of the Code of Alabama, and not under Sub-division 3 of said
Section, and it was taken under written interrogatories and the com-
mission authorized the taking of the same upon written interrogatories
and the affidavit filed to support the issuance of the commission gave
no reason for the taking of the deposition other than that the witness
was a woman and that she was a material witness.

4. Under the laws of Alabama a deposition in a case at law cannot
be taken upon written interrogatories under Sub-division 1 of Section
4030 of the Code of Alabama.

Stewart McCaskey W. L. L. L.
J. H. L. L.
ATTORNEYS FOR DEFENDANTS.

Baldwin
State of Alabama--~~Mobile~~ County

CIRCUIT COURT

November Term, 19*18*

J. H. Reichert

Bay Minneter
Mobile, Ala. *Nov 18th* 19*18*

VS.

*Fannie Becker &
Jesse H. Sharp
Inc.*

WE

appear for

Defendant S

in the above entitled cause

and for answer to the

Complaint plead "Not guilty."

and defendants demand a trial by jury

Stuart McGorry & Co.

Walter W. Wapner & Co.

Attorneys for Defendants

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No. _____

APPEARANCE

J. S. Reichert

VS.

Franklin D. Bunker

Junior & Ship Inc

Filed in Office

J. V. 18 191*8*

J. M. Richardson
Clerk.

*as Replied to Complaint
as Amended this the
28th day of May 1927*
W. B. [unclear]
Clerk

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