

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} 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 to whether or not the plaintiff in this case has reasonably satisfied you from the evidence that the names of the parties who signed to the power of attorney to Anna Leland and afterwards 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 the evidence in the case you are not reasonably satisfied that particular parties named in the power of attorney referred to 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 the property. 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, the plaintiff would fail and would not be entitled to recover the property.

Now you heard the depositions read in evidence and you treat those depositions and treat them the same as if the witnesses 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 weigh the conflict in the evidence to determine who has spoken the truth and which one you believe to be the witness entitled 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 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 property, the form of your verdict would be: "We, the jury, find for the plaintiff for the property sued for and described in the complaint after weighing all of the evidence you are not satisfied that the plaintiff is entitled to recover in the manner which the plaintiff explained to you, then the defendant would be entitled to the property 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 I instruct the jury as to the witness, what the law is on that, I am written charge.

MR. LEIGH:

Your Honor charged them that these claimed under the heirs of Louis Durette, I presume you mean the alleged heir.

MR. CAFFEY:

We reserve no exception.

THE COURT:

The question is for the jury to decide.

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 the 25th day of July, 1924.

W.D. Lee Ford
Official Court Reporter
21st Judicial Circuit of Ala.

J. H. Reichert, plaintiff,

IN THE CIRCUIT COURT OF BALDWIN COUNTY
ALABAMA.

-75-

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

AT LAW.

Come the above named defendants and move the Court to ~~set~~
the deposition of Mary O. Thomas, a witness on behalf of plaintiff,
whose deposition heretofore has been taken and filed in the 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
the deposition that the said witness is a woman.

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

3. Said deposition was taken under Sub-division 1
4030 of the Code of Alabama, and not under Sub-division 2
Section, and it was taken under written interrogatories
mission authorized the taking of the same upon written
and the affidavit filed to support the issuance of the same
no reason for the taking of the deposition other than that
was a woman and that she was a material witness.

4. Under the laws of Alabama a deposition in a
case taken upon written interrogatories under Sub-division
4030 of the Code of Alabama.

John W. McCon...
J. H. Sheip
ATTORNEYS FOR

Baldwin
State of Alabama--Mobile County

CIRCUIT COURT *November* Term, 19 *18*

J. H. Reichert

Bayminn
Mobile, Ala. *Nov 18th* 19 *18*

Fannie Becker &
vs.
James H. Sharp
Inc.

W. L. appear for

Defendant *S*

in the above entitled cause and for answer to the
complaint plead "Not guilty."
the defendants demand a trial by jury

N.

APPEARA

J. S. Reich

VS.

Francis S. B.

Jimmie + Sh

Filed in Off

Nov 19

T. M. Rice

*Refiled
as Amended
25th day of*

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