

Jacob Reichert x ACTION OF EJECTMENT.
vs. : IN THE CIRCUIT COURT OF BALDWIN COUNTY,
Jerome Sheip, et al. x ALABAMA. FALL TERM, 1928.

ORAL CHARGE OF THE COURT:

Gentlemen of the jury, this is a suit brought by J. H. Reichert against Jerome Sheip, a corporation, and Fanny I. Becker for the recovery of certain lands described in plaintiff's complaint. The burden of proof in this case is on the plaintiff to reasonably satisfy you from the evidence adduced on the trial that he is entitled to recover the land sued for and unless he so reasonably satisfies you of that fact then as a matter of law he has not met the burden required of him to recover and his case will fall.

The plaintiff in this instance claims under a patent that was issued to the representatives of Louis Durett and to their heirs, that is, the patent conveyed the title to the representatives of Louis Durett 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 persons who claim to be the heirs at law and representatives of Louis Durett, deceased, or that some one of the persons named in the power of attorney was the legal representative or an heir at law of Louis Durett. The plaintiff further claims that under a deed made to Max Collins that it was made by the heirs at law or representatives of Louis Durett 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. The question for you to determine is whether or not the grantors named in the deed or conveyance of Anna Leland individually and as attorney in fact for the alleged heirs or legal representatives of Louis Durett are the legal heirs of the said Louis Durett. The plaintiff alleges that these parties who signed the power of attorney to Anna Leland and whose names were signed to the power

of attorney to Anna Leland (Strike that out)-- 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 Durett. The question has arisen and it is for your consideration and determination, as to whether or not there has been or was a marriage between Louis Durett and Isabella Durett. Now as to whether or not that marriage was a legal marriage it is for you to determine from the evidence in the case. If the said Isabella Durett and Louis Durett lived together as man and wife, holding themselves out as man and wife and acknowledging each other as man and wife before the public that would be sufficient to constitute what is known as a common law marriage, and a common law marriage, at that time, if such took place, was a legal and lawful marriage. 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 Durett. If you are satisfied from the evidence that they were, or any one of them was the legal heir or representative of Louis Durett 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 to the deed of conveyance which was made by Anna Leland to Max Collins were the heirs or representatives, or one of them was the heir or representative of Louis Durett, then it would follow that the plaintiff would not be entitled to recover, but your verdict would be for the defendant. In other words, gentlemen, the plaintiff must recover in this case on the strength of his title, and unless you are reasonably satisfied from the evidence that one of these parties named in this deed of conveyance were the legal heirs

or representatives of Isadore Durett- Louis Durett, then, gentlemen, your verdict would be for the defendant. In other words it is not a question of trying the title to the property of the defendant.. The burden is upon the plaintiff to show to your reasonable satisfaction that the plaintiff has title to the property described in the complaint upon which he can recover and if you are satisfied from the evidence that the parties named in this power of attorney to Anna Leland and in the deed to Max Collins , or any one of them, are, then gentlemen, your verdict would be for the plaintiff. Now you take the evidence, gentlemen, you are the judges entirely of the evidence, and it is the duty of the plaintiff to furnish such evidence as will reasonably satisfy you that his client is entitled to recover as alleged in his complaint. That burden is upon him and the defendant don't have to do anything or make any step or prove anything until the plaintiff first proves that he is entitled to recover in the manner in which I have explained it to you.

Now as to the question of marriage: At the time that it is alleged in this case that the marriage took place the common law existed in this state and it was not necessary to have a preacher or an officer or anyone else to constitute a marriage, because if two people lived together acknowledging each other as husband and wife and they went by common repute in the neighborhood in which they lived or in the community or in a city, that they were husband and wife, then that would constitute what is known as a common law marriage. If you find from the evidence in the case that there was a common law marriage between these parties and these children were born during the time of the existence of that common law marriage, or any one of them was born during that time, then the plaintiff would be entitled to recover in the case, but unless you are reasonably satisfied from the evidence that some one of these named parties claiming to be an heir and representative of Louis Durett and you further believe that there was a legal marriage between Louis Durett and

Isabella Durett, so as to constitute the heirs as legal, then the plaintiff would not be entitled to recover. Now you take this evidence, you take the facts, what was read to you, and you take these depositions of the witness which was introduced by the plaintiff in the case, and you treat that deposition as you would treat the witness if the witness had been on the stand and testified and on the other hand you take the evidence offered as to what was testified to here by the priest at the last trial of this case, you take that the same as if he had been here and testified to that - treat it the same as if he had testified here. Now, gentlemen, you want to try to get at what is the facts in this case, for that's what we are here for- we want to get at the right thing, and after all, the whole matter is with you, and it is for you to say from what has taken place here before you on the trial whether or not you are convinced- you are reasonably satisfied that the plaintiff is entitled to recover, as I have explained to you in my charge, and if you are reasonably satisfied of that fact then your verdict would be for the plaintiff and the form of your verdict would be: "We, the jury find ^{plaintiff for the} for the/property sued for and described in the complaint" but if after weighing all of the evidence in the case you are not reasonably satisfied of that fact, that this plaintiff should recover this property, then your verdict would be for the defendant and the form of the same would be: "We, the jury, find for the defendant". Whichever form your verdict may take write it on the back of the complaint and let one of your number sign it, and after his name write the word foreman.

(What says the plaintiff?)

MR. SMITH: I have no exception.

What says the defendant?

MR. STEVENS: I have no exceptions.

(After the written charges were read to the jury the court further charged the jury as follows:)

Gentlemen, I give you these written charges at the request of the

plaintiff and defendant and you take them along together with the court's oral charge and the court's oral charge and the written charges constitute the charge of the court.

State of Alabama,

Baldwin County.

I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of the ORAL CHARGE OF THE COURT in the case therein mentioned.

IN TESTIMONY WHEREOF I have hereunto set my hand on this the 7th day of February, 1928.

W. D. Lee

Official Court Reporter,
21st Judicial Circuit of Alabama.