

## GREEN v. GARRETT.

5-727

280 S. W. 2d 905

Opinion delivered July 4, 1955.

APPEAL AND ERROR—REVIEW DEPENDENT ON TIMELINESS OF OBJECTIONS OR EXCEPTIONS.—An objection, urged for the first time in appellant's designation of the record for appeal, that since the disputed strip of land lies on appellant's side of an existing fence the plaintiffs were not in possession when the suit was filed and were therefore not entitled to have their title quieted in equity *held* waived on appeal because not timely interposed.

Appeal from Saline Chancery Court; *James A. Rowles*, Chancellor; affirmed.

*McDaniel, Crow & Driver*, for appellant.

*Ben M. McCray*, for appellee.

GEORGE ROSE SMITH, J. This is a suit by the appellees to quiet their title to a strip of land lying along the boundary line between their property and that of the appellant. The chancellor granted the relief sought. It is now contended by the appellant that since the disputed strip lies on the appellant's side of an existing fence the plaintiffs were not in possession when the suit was filed and were therefore not entitled to have their title quieted in equity.

The objection now urged was not made below until after the trial, being mentioned for the first time in the appellant's designation of the record for appeal. The

plaintiffs' lack of possession does not involve a complete absence of judicial power over the subject matter, as would be true if a chancery court attempted to try a criminal case or to probate a will. Instead, the present objection goes merely to the adequacy of the remedy at law and is waived if not timely interposed. *Love v. Bryson*, 57 Ark. 589, 22 S. W. 341; *Reynolds v. Balding*, 183 Ark. 397, 36 S. W. 2d 402. Here the objection is clearly too late.

Affirmed.

---