Harmon v Taylor [1944] LRSC 29; 8 LLR 416 (1944) (15 December 1944)

H. LAFAYETTE HARMON, Appellant, v. C. FREDERICK TAYLOR, Appellee.
APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued October 23, 25, 26, 30, 31, 1944. Decided December 15, 1944. 1. A deed of **land** from the Government may be either an aborigine deed or a public **land grant. 2. Government land** may not be acquired by preemption except by settlers and, to a limited extent, by aborigines. 3. A mere settler on public lands with a hope of preemption is, until he makes his entry, a tenant at sufferance, and, as such, makes improvements thereon at his own risk. 4. A public **land** grant of 250 acres in consideration of one dollar and certain duties of citizenship to be performed in connection with the **land**, which is below the accepted minimum rate of fifty cents per acre formerly authorized by statute, is valid under the 1940 act of the Legislature authorizing the President to adopt measures which will insure the economic stability of the country. 5. It is not within the competency of a private individual in a public **land** grant to raise the question of insufficiency of monetary consideration as same can never operate in his favor. This is a point that relates to the revenues of the country and thus is properly within the bounds of the proper law officers of the Government to raise and propound.

On appeal from a decision admitting a public **land** grant to probate, judgment affirmed.
H. Lafayette Harmon lor for himself.

for
himself. C. Frederick Taydelivered the opinion of the

MR. Court.

JUSTICE SHANNON

On April 8, 1943 C. Frederick Taylor, appellee, obtained from the Government a deed of grant entitled on its face "Public **Land** Grant" executed by His Excellency Edwin Barclay, then President of Liberia, for a parcel or tract of **land** lying, situated, and being in

Kakata District Number 4 of the Central Province, Liberian Hinterland, for considerations therein stated and, when said deed was offered for admission into probate before the Monthly and Probate Court of Montserrado County, H. Lafayette Harmon, appellant, entered and filed objections

to its admission, which said objections in their final analysis were by His Honor Nugent H. Gibson, Commissioner of Probate, overruled and dismissed with a decree ordering the admission of said deed to probate. To this decree or judgment of His Honor Commissioner Gibson, appellant, then objector, duly excepted and prayed on appeal to this Court. The facts culled from the record of pleadings before us are as follows : Both appellant and appellee desired to farm and each in the same locality, that is, on the KakataGibi motor road in the said Kakata District Number 4, Central Province, Liberian Hinterland. The appellant seeks to show that he made application to His Excellency Edwin Barclay, then President of Liberia, for permission to operate in this area and also asked for an order for the survey of two hundred acres of land; that the President did not grant him permission and did not give him the order for the survey for reasons which will be given later; that he took it upon himself, and gave notice to the President, to commence operations in the locality of the said Kakata-Gibi Road, planting rubber on a large scale; that subsequent to his commencement of operations under the circumstances stated above, appellee took up a surveyor, admittedly with a properly and regularly issued order of survey, and surveyed **land on said KakataGibi Road, which said survey took in all or nearly all of the land** whereon the appellant had commenced operations; and that this survey constitutes the basis of the boundaries indicated on the deed, the subject of these proceedings. The appellee, on the other hand, attempts to show that the facts substantially stated above and as pleaded by the

appellant are of themselves self-serving evidence to show that the appellant has no vestige of legal claim to the land in question, appellant having entered it without the permission of the Government or, better still, against the express will and order of the President who, when appellant approached him for an order of survey for land in the interests of a certain lady who had already occupied same, informed the appellant that he could not then give appellant permission for the lady to operate in that area nor could he give the order for survey applied for because, as the said President told appellant, "her occupancy was contrary to the policy of the Government which required (a) that the Government should say where and when new developments would be opened and (b) a survey and map of the new area should first be made" ; that notwithstanding the above, the appellant persisted in the occupancy and encouraged work to go on, naturally at his own risk. See letter from President Barclay to appellee, infra, p. 42o. It is in relation to these facts that appellant filed his objections. The main points, principally of law, raised in said objections are : I. That the deed from the Government was procured and has been clandestinely obtained under fraud, misrepresentations and prejudicial intrigues contrary to the statute laws of Liberia governing the purchase of public **land, in that said tract of land** which respondent (now appellee) has had surveyed and for which said deed is granted, is land which objector (now appellant) has occupied, operated and improved for nearly two years with the knowledge

and acquiescence of the Government; that because of this, the right of preemption inured to him the said appellant; ,C 2. That because of the foregoing, he, the said appellant, has priority right of title in and to said land; and

If

3.
That said deed as granted carries on its face a dual aspect in character : one as an Aborigine Deed, and the other as a Public Land Grant--in either of which cases, it cannot stand, the appellee not being an aborigine and consequently incapable of enjoying a grant from the Government as such; and the said deed, whilst also purporting to be a Public Land Grant, cannot be correctly taken and accepted as such in that, although it carries a 250 acre grant it also appears to have been issued for a meagre consideration of One Dollar which is contrary to statutes relating to the sale of Public Land."
Respondent, now appellee, answering the said objections, denies that he obtained his deed clandestinely and through fraud, misrepresentations, and prejudicial intrigues. Appellee claims that the transaction was open and in consonance with adopted procedure for the acquisition of such deeds. Appellee also denies that appellant has any prior right of title or even a right of preemption to said land which is covered by the deed. He further denies that the deed as such is an aborigine deed, but insists that it is a **land patent deed or, to use our statutory title for it, a "Public Land** Grant Deed." Appellee contends that although the monetary consideration shown on the face of the deed for two hundred and fifty acres of land is one dollar it is not in conflict with the current laws of the country and the existing policy of the Government, especially since, from an inspection of said deed, there apears to be another consideration for the grant of said land, to wit: "[F]or and in consideration of the sum of one dollar paid the Republic of Liberia and of the various duties of citizenship hereinafter expressly stipulated to be legally performed. The duties of citizenship which the grantee has covenanted with the grantor to perform are : that he will cultivate the land hereby

granted by the planting thereon from time to time of such agricultural products as may be prescribed by Government Regulations ; failing the performance of this obligation this grant shall become null and void otherwise to remain in full force and virtue." Appellee argues that the President having issued the deed as a public land grant in the above manner, it is not within the rights of the courts to inquire into and attempt to pass upon its legality. Correlating these several presentations of issues, it is the opinion of the Court that the decision of this case depends upon four cardinal points, namely: (1) Whether or not said deed was obtained as claimed by appellant, clandestinely and through fraud, misrepresentations, and prejudicial intrigues;

(2) Whether the said deed as granted is an aborigine deed or a public land grant; (3) Whether or not the appellant at the time of the granting of said deed had a priority right of title in and to said land that our statutes can recognize and, incidentally, whether or not our statutes recognize the right of preemption that the appellant can enjoy; and (4) If the deed granted is found to be a public land grant, whether or not it is covered by any statute law or by regulations of this country. Taking up the first point, it is our opinion that there was no fraud, misrepresentation, or prejudicial intrigue used by appellee to procure and to obtain said deed. This is supported by a letter from His Excellency Edwin Barclay, then President of Liberia, to the appellee dated April 15, 1943, which, as said letter indicates, is in the nature of an official statement and which was made profert of in the pleadings, wherefrom the following is drawn: "The deed that was issued by Government in your favour was not influenced by an intrigue, fraud or ;

misrepresentation ; it was a straightforward act on part of Government in accordance with Government policy, and upon a request made to me officially." Coming to the second point, whether the deed as granted is an aborigine deed or a public land deed grant, we do not hesitate to say that there is not the slightest indication in the wording of said deed that it is an aborigine deed or intended as such, barring the citation made therein that it is issued in pursuance of Chapter I, Article z of the Revised Statutes, which said statute obviously relates to aborigine grants. The character of the deed must therefore be determined from its wording, and from this we conclude that it is a public land grant with additional considerations which the previous form of such deeds did not carry and which considerations possibly are inserted to adjust said deed to the present policy of the Government. Now we come to one of the points in the case which we consider salient to the decision of the matter, whether or not the appellant at the time of the granting of said deed had a priority right of title to said land that our statute can recognize because of prior occupancy, and, incidentally, whether or not our statutes recognize the right of preemption that the appellant can enjoy. Appellant claims that he has a priority right of title in and to said land because of prior occupancy and because of extensive and expensive operations and improvements which he has carried on and made on said land, and that his operation was with the knowledge and acquiescence of the Government. In his objections appellant made profert of a letter addressed to His Excellency Edwin Barclay, then President of Liberia, dated February II, 1943, protesting the survey of the appellee. In this letter appellant makes the following declaration : "Some time ago during the early part of last year, I approached and informed you that I was preparing to open a rubber enterprise on the Gibbi Road, on the

other side of the Borlorlah River, and asked you if you would be good enough to give me an order for survey of two hundred (zoo) acres of Public **Land**, which I had selected for this purpose. You informed me at the time that you were not issuing orders for the survey of **land** in that District until you had received the report from the District Commissioner on certain matters which, apparently, you had referred to him; but that as soon as you received such report you would give me the necessary order. In the meantime, I informed you that having selected the site, I would proceed with the felling of the bush and planting of the rubber nursery bed. I proceeded with this understanding, and made other expensive outlay and operation on this spot." Appellee, on the other hand, insists that this claim of appellant to priority right of title because of prior occupancy should not and cannot hold because the manner of occupancy was absolutely and expressly against the will and consent of the Government. Appellee contends further that appellant cannot claim that appellant's occupancy was with the knowledge, acquiescence, and consent of the Government for, besides appellant's own letter to the President, partially quoted above, wherein no mention is made of the President having given permission for appellant to occupy said **land** when approached by appellant, the President tacitly informed the appellant that the permission for occupation asked for was not granted and that an order of survey would not be issued, as will fully appear from the letter of the President to the appellee already referred to and from which the following is quoted : "Mr. Harmon has never had acquiescence from the President of Liberia for his occupancy of said **land**. "Mr. Harmon once came to me and reported that a certain lady had occupied lands across the Borlorlah

River, and in her behalf he requested a deed. I refused to grant the deed for the reason, as I told him, that her occupancy was contrary to the policy of the Government which required (a) that the Government should say where and when new developments would be opened and (b) a survey and map of the new area should first be made. Mr. Harmon nevertheless encouraged this lady to go on with her planting notwithstanding the President's intimation to him of the policy of the Government. The policy of the Government, heretofore referred to, is outlined in Executive Order No. 9-1941, issued August 4, 1941. Attention is directed to the irth section thereof. This was brought to the attention of Mr. Harmon and he was told for that reason no deed would be granted, and if the lady occupied the **land** it was at her own risk. "You will note from Mr. Harmon's alleged letter to the President that he confirms in the first paragraph what I have said, and does not allege therein that I gave consent to this procedure. The letter that he wrote to me was designed, as all his statements about me are usually designed, as propaganda against me. . . . I had already told Mr. Harmon that the **land** could not be allocated until the surveys were made, and I had nothing more to say, and never considered the matter of such importance as to warrant a discussion of this particular claim with anyone. . . .

"The President never promised Mr. Harmon to give him a deed. That statement made in the third paragraph of Mr. Harmon's objections is absolutely false and untrue. . . . "The question of so cents an acre for public land is a very small matter in comparison with the general advantages which will accrue to the citizen from following the development policy of the Government. It appears to me to be questionable whether a person who has no claim of legal right can make objections to

the President of Liberia exercising the power invested in him by law." It is seen, therefore, that notwithstanding that appellant bases his claim to right of title in and to said land upon prior occupancy founded upon the knowledge, acquiescense, and consent of the Government, the President of Liberia, who is the only official of the Government whom, as his objections show, appellant approached on the matter of his land acquisition, emphatically and categorically denies ever giving such consent. The President instead alleges that he refused to give the permission to occupy and to give the order of survey as prayed for by appellant. In view of this, it cannot but be concluded that the occupancy of the land or any portion thereof by the appellant was without the sanction and/or approval of the President or of any other official of the Government connected with disposition of public lands. The attempted invocation of the common law doctrine of the right of preemption or priority right of title must crumble because of the following reasons : (r) As far as our research of our statutes has carried us, we are still without any law whereby lands may be acquired in this way except by settlers, that is, immigrants, and, to a very limited extent, by the aborigines of the country. Art. IV of the Public Domain Act, Old Blue Book, 136; L. 186364, 24 (2d) § 3. (2) Even where this right of preemption could stand under our statutes, the appellant would be without its benefit in that his occupancy was without the bounds of the procedure prescribed and laid down to be followed since he had not even had the consent and/or approval of any land officer of the Government as the common law requires : "While in a sense the right of pre-emption is a bounty extended to settlers and occupants of the public domain and as such cannot be extended to the sacrifice of public establishments, or of great public interests; yet in a larger sense, as advancing such public interests,

is a right secured by the constitution and laws of the United States. A mere settler on public lands, with a hope of pre-emption, is, until he makes his entry, a tenant at sufferance, and, as such, he makes improvements thereon at his own risk. It has been held that the rights of occupants of the public lands are founded on the presumption of a license from the government." 22 R.C.L. Public Lands § 19, at 255 (1918) . In addition,

"The power of regulation and disposition over the lands of the United States, conferred on Congress by the constitution, ceases under the pre-emption laws only when all the preliminary acts prescribed by those laws for the acquisition of the title, including the payment of the price of the land, have been performed by the settler. When these prerequisites have been complied with, the settler for the first time acquires a vested interest in the premises occupied by him, of which he cannot be subsequently deprived. He then is entitled to a certificate of entry from the local **land officer, and ultimately to a patent for the land** from the United States. . . . The United States, by the preemption laws, does not enter into any contract with the settler, nor incur any obligation that the land occupied by him shall ever be put up for sale. . . . Id. § 22, at 258. "Mere settlement on or occupation of the public lands of the United States confers no rights upon the settler as against the government or persons claiming by legal or equitable title under it, although the occupant has made improvements on the land, and his occupation was for the purpose of subsequently acquiring title under the land laws; and so the settler is not entitled to compensation from the United States for losses sustained by reason of his enforced removal from the land. **The settler acquires no vested interest in the land** until he has entered the same at the proper

land office, and obtained a certificate of entry. . . ." 32 Cyc. of Law & Proc. Public Lands 819-20 (1909) . From the foregoing, it is also necessary to find out what constitutes entry under the law and what is the right of preemption. The very same authority sheds light on these questions : "The term 'entry' as used in reference to public lands means, in its technical sense, the filing with the register of the land office of a claim to a portion of the public lands for the purpose of acquiring an inceptive right thereto; but the term is applied somewhat loosely to various proceedings under the land laws, and the courts also use it in its ordinary sense as importing the physical act of entering and settling upon land." Id. at 8o6. "The statutes formerly gave to settlers on public lands who had improved the same a preference right to purchase such lands up to a certain amount, at the minimum price of such lands, upon complying with the statutory requirements, which was termed the right of preemption." Id. at 827-28. It is readily seen, therefore, that since appellant is neither a settler within the meaning of our statutes nor an aborigine of this country, he cannot by any fiction of law enjoy the rights vouchsafed to settlers for occupying and settling upon lands. Furthermore, even where there were statutory provisions governing the right of preemption, appellant could not enjoy this right since he had not availed himself of the opportunity of first obtaining the permission or consent of the Government before occupying the land in question. Therefore, he occupied the land at his own risk. It is to be noted that appellant, in all of his efforts at defeating the title of the appellee, is not in the position to give the metes and bounds of the land to which he is laying claim since he never surveyed same so that the

alleged encroachment of appellee upon his land could be ascertained and determined. Even though appellant's letter to the President, partially quoted supra, applies for the survey of two hundred acres of land, during argument before this Court and in answer to a question from a member of the Bench as to the quantity of land to which he lays claim, appellant replied that he was claiming about three hundred acres. It is obvious, then, that appellant has no vestige of claim to said land which can be a subject of judicial determination in his favor. This brings us to the consideration of the fourth and last point, if the deed granted is found to be a public land grant, whether or not it is covered by any statute law or regulation of this country. Before discussing this question it is necessary to pass upon the submission made by appellant since one of his points of objection is that the deed showing on its face a monetary consideration of one dollar for a two hundred and fifty acre grant is ineffective and illegal, especially since this Court has unreservedly declared that the deed in question is a public land grant and not an aborigine grant. It appears to us that this point of insufficient monetary consideration on the face of the deed is a point not within the appellant's competency to raise since it can never operate in his personal or individual favor. If the point is well founded, it is a point that relates to the revenues of the country and is properly within the bounds of the proper law officers of the government to raise and propound. However, it appears from an inspection of said public land grant in question that in addition to the one dollar monetary consideration there is another consideration stated in the deed which the President states in his letter to appellee, released as an official statement and made prof ert of in the pleadings without a protest against its existence and its efficacy. This second consideration consists of the performance of certain duties of citizenship

which the said letter further declares to be in consonance with the policy of the Government. In this respect Administrative Circular No. 9-1941 is relied upon. It is our opinion that, taking into consideration the enunciated policy of the Government with respect to the public domain as particularly emphasized in said Administrative Circular No. 9-1941, and the act of the Legislature passed in 1940 authorizing the President under existing world conditions to adopt measures to ensure the economic stability of the country, which legislation gave the Executive wide directionary powers (L. 1939-40, ch. III, § 2), the public land grant in question is in harmony with the spirit, meaning, and intention of the said act since grants of such a nature have a tendency to encourage agriculture and to stabilize the economy of the country. Since the Legislature, to whom is given the power of regulation and of disposition over the land of the country, has by this act obviously delegated its power

to the executive head of the Government, we are of the opinion that this public land grant should be upheld and left undisturbed since to do otherwise, besides being an undue questioning of the right of the Executive, would also be questioning the wisdom of the said enactment or legislation, which it is not within the province of the courts to do. On this last point of the legal propriety and sufficiency of the public land grant in question, especially with respect to the monetary consideration shown on the face thereof, which is below the commonly known and accepted minimum rate of fifty cents per acre as per former and existing statutes, our distinguished colleague, the Chief Justice, differs from us in our conclusions and is, therefore, filing a dissenting opinion. It is, however, useful to state that he agrees with our conclusion that appellant has no legally accepted right of preemption to the land by prior right of occupancy and that, as he is not

a settler within the meaning of the statutes or an aborigine, he cannot enjoy the rights and benefits given such classes of citizens under our land laws. Nevertheless, the learned Chief Justice feels that the deed should be denied admission to probate because of the insufficiency of the monetary consideration appearing on its face which monetary consideration, in his opinion, is expressly contrary to existing statutes. Therefore Mr. Chief Justice Grimes feels that the land should revert to the Government. It is also to be observed that, in arriving at the conclusion on the last point on which our learned Chief Justice differs from us and therefore dissents, there is no room for any impression that we have been moved by a notion which would suggest a belief in our acceptance of a position that the President of Liberia can do no wrong, as in the political institution of Great Britain it is said of the King. Any effort to do. this must, besides being uninvited and unwarranted, leave room for multifarious impressions since neither the pleadings in the case make it an issue nor has it ever been insinuated either in the brief of the appellee before us or in the opinion that I am now reading. Every student of the political institution of Liberia knows that it is not said of the President, as it is of the King of England, that he can do no wrong. We are, therefore, of the opinion that because of what has been stated herein, the ruling of His Honor Nugent H. Gibson, Commissioner of Probate, should in principle be, and is, sustained, and that the deed in question should be admitted to probate, and it is hereby so ordered.
Affirmed.
MR. CHIEF JUSTICE GRIMES,

dissenting.

When the above-entitled cause had been submitted to us for our consideration, it was discussed in our Chambers

three distinct times, whereupon it became clear that on one point it was not possible
for the views of the majority and myself to be reconciled. Until July 26, 1847, Liberia was a colony of the American Colonization
Society, which appointed a Governor to direct and control all its affairs. To him, as the representative of the Society about four
thousand miles away, were given powers practically absolute. He was all that there was of executive power, he presided at all meetings
of the Governor and Council to which Council all legislative power had been given, and last but not least he, the said Governor,
was Chief Justice of the highest Court, and by virtue of his office had to preside over all the sessions of said tribunal. The relevant
sections of the laws taken from the Colonial Constitution are : "Art. 2. All legislative powers herein granted, shall be vested in
a Governor and Council of Liberia; but all laws by them enacted shall be subject to the revocation of the American Colonization Society.
"Art. 6. The Governor shall preside at the deliberations of the Council, and shall have a veto on all their acts ; provided nevertheless, that if two-thirds
of all the members elected to serve in the Council shall concur in passing a bill or resolution notwithstanding the veto of the Governor,
the same when so passed shall become a law, and have effect as such. "Art. io. The Executive power shall be vested in a Governor
of Liberia, to be appointed by, and to hold his office during the pleasure of, the American Colonization Society. "Art. is. The judicial
power of the Commonwealth of Liberia shall be vested in one Supreme Court, and in such inferior Courts as the Governor and Council
may, from time to time, ordain and establish. The f Governor shall be, ex oficio, Chief Justice of Liberia, and as such shall preside
in the Supreme Court, which

shall have only appellate jurisdiction. The Judges, both of the Supreme and inferior Courts, except the Chief Justice, shall hold their offices
during good behaviour." Constitution of the Commonwealth of Liberia, i Hub. 650-52, 656. Among the first ordinances passed by the
Colonial Council was the Judiciary Act of the Commonwealth of Liberia, section i i of which provides : "Sec. i r. Be it further enacted
: That there shall be one Supreme Court for the Commonwealth, in which His Excellency the Governor shall preside (he being Ex-officio Chief
Justice of Liberia) , to be held by him at such times, in such manner, and in such places as he shall from time to time direct, to
it shall belong original jurisdiction in all maritime cases, and all cases of suits between citizens and aliens, and of all cases
without or beyond the limits of the colony, and the returns on precepts issued therefrom, shall be made to such courts as may be directed
: and said Court shall have appellate jurisdiction, in all causes originating in the Superior Courts, or carried up by appeal
from the Courts of Pleas and Sessions, or on cases originating in Justices Courts that have travelled up to it by regular course of appeals,
and the judgments and decisions of the tribunal both between man and man and the commonwealth and its citizens, or aliens, in all
manner of cases . shall be final. The Colonial Secretary

shall act as the Clerk in said Court, and shall keep such record of all matters and things connected with the business thereof, as shall seem meet and right to the Justice thereof to have done and made." 2 Hub. 1468. Vested with the above and sundry other powers not relevant to this dissent, to the said Governor was delegated powers well nigh absolute, as the above provisions have been cited to show; but when it came to the disposal of -- ,

the lands of the Colony, his power to dispose of them was hedged in by sundry restrictions which constituted one exception to his absolute power. I quote the pertinent sections from the ordinance relating to lands, reservations, apportionments and improvements : "Be it further enacted: -- That all settlers, on their arrival shall draw town lots or plantations for which the Governor shall give them a certificate specifying their number and the time of drawing. If, within two years from that date two acres of land on the plantation shall have been brought under cultivation, the town lot cleared and enclosed and a substantial house built, the said certificates may be exchanged for title deeds in fee simple. "Be it further enacted: -- 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." 1841 Digest, pt. I, Act Pertaining to Land, §§ 2, 3, 2 Hub. 1463. Concurrent with the publishing of the Declaration of our Independence on July 26, 1847, whereby the Republic came into being, a Constitution was adopted. Article V, section 1 of said Constitution reads as follows : "All laws now in force in the Commonwealth of Liberia and not repugnant to this constitutor [sic], shall be in force as the laws of the Republic of Liberia, unti[1] they shall be repealed by the Legislature." 2 Hub. 86i. By virtue of said constitutional provision the laws already in vogue governing the alienation of public lands automatically became operative save in any respect in which they are repealed or modified by enactment of the newly constituted Legislature. Under the Republic, the Legislature by virtue of the

above-mentioned provision did not find it necessary to prescribe a civil code of laws, as the section of the Constitution above quoted allowed them to copy en bloc all the legal forms and principles and other ordinances in force in the Commonwealth when the Republic came into being. But, as regards the alienation of lands, the Legislature early passed two laws, the relevant portions of which I now proceed to quote : "Each settler on his arrival in this Republic is entitled to draw a town lot or a plantation, for which the President shall give him a certificate specifying the number and the time of drawing. If a town lot be drawn it is required, that a house of sufficient size to accommodate all the family of the proprietor, and built of stone,

brick, or other substantial materials and workmanship, or if frame or logs, weatherboarded and roofed with tile, slate or shingles, be erected thereon, and if completed in two years from the date of the certificate, the drawer will be entitled to a fee simple deed. If a plantation be drawn, and within two years two acres of land on said plantation shall have been brought under cultivation, the certificate may be exchanged for a deed in fee simple. "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. "That women not having husbands, immigrating to this Republic with permission, and attached to no family besides their own shall receive each a town lot, or two acres of farm lands on their own account, and one acre on account of each of their children--and unmarried men of the age of twenty one years arriving in the Republic from abroad, or attaining their majority while resident in the same, and having taken the oath of allegiance, shall be admitted to draw and

hold a building lot or five acres of farm land on the same conditions as married men. . . ." Article IV of the Public Domain Act, Old Blue Book, 136, §§ 1-3. The method of procedure for the sale of public lands is to be found in Article VI of said Public Domain Act. Section 1 of said enactment created the office of Land Commissioner and prescribed his duties. Section 2 prescribed the procedures for the sale of the desired lands, for the disposition of the certificates of survey, and for the payment of the purchase price ; it also set forth the liability of the purchaser to the Land Commissioner for the latter's commissions. Sections 3 and 4 state the following: "All lands surveyed and offered at auction and not sold may be sold by the Land Commissioner at private sale, payment to be made the same as **land sold at auction, provided it is not sold below the minimum prices of land**. The minimum prices [sic] of land lying on the margin of rivers, shall be one dollar an acre, and those lying in the interior of the lands on the rivers Fifty cents. Town lots each shall be Thirty dollars,

except marshy, rocky and barren lots and plots of land which may be sold to the highest bidder. "That it shall be the duty of the Registrar, on receiving the certificate of the Land Commissioner with a copy of the Surveyor's certificate describing the number deed and boundaries of land, annexed, immediately to fill up adeed [sic] with the number of acres, number of lot and boundaries &c, as per Surveyor's certificate, countersigning the same as being executed on the authority of the Land Commissioner's certificate with the day and date so executed, and deliver the same over to the purchaser, he paying for the same. . . . The President is hereby authorized and requested to lodge in the hands of the Register of each County a sufficient number of blank deeds for

lands, to be filled up by the Register according to the 4th, Section of this Act." Article VI of the Public Domain Act, Old Blue Book, 14o, §§ 3, 4. (Emphasis added.) The only methods by which the public lands could legally be alienated up to 1863 were those above cited. In 1863, as an incentive to recruiting men to serve in the militia during the punitive expeditions which were so frequent in those days, the Legislature passed what has been known as the Bounty **Land** Law. According to said law the Legislature specifically prescribed a schedule for the grant by the President of a varying quantity of public lands to men who had served in any of the punitive expeditions, said quantity varying according to the number of days, weeks, or months that they had been in actual service. L. 1862-63, 6, § 1. In the early sixties President Warner became Chief Executive and, in accordance with the ideology of the times which was to build Liberia exclusively by immigration from abroad in addition to encouraging those from the United States, he extended an invitation to the people of the British West Indies to come over and throw in their lot with us. The conditions under which they were to come were carefully examined by a group, at the head of which was Anthony Barclay, the second person of that name, as Mr. Justice Barclay now sitting on my immediate left is the fourth in unbroken succession, although not the immediate son of the Anthony Barclay referred to but that of his youngest brother, Arthur Barclay. Among the unsatisfactory terms offered as an inducement to the prospective immigrants to migrate was the quantity of **land** each might possess, and the President requested the Legislature to consider an amendment to the laws governing the apportionment of lands in that respect. Accordingly, at its session of 1864 the following enactment was passed, viz.: "That as soon after the passage of this Act, as pos-

sible, the President be, and he is hereby authorized and requested to enter into such arrangements as shall, in the most economical manner, in view of our pecuniary embarrassments, increase the population of Liberia, by renewing the invitation extended in 1862 to persons of African Descent in the West India Islands, to Liberia, aiding worthy and industrious persons in the said Islands to emigrate to this Republic. "That as an additional inducement to persons to emigrate to Liberia, from the West Indies a grant of Ten acres of **land** be assigned to each single individual, and of twenty five acres to each family. "That the sum of Four Thousand dollars be appropriated to carry out the provisions of this Act, and the President be, and he is hereby authorized to draw for the same out of any monies in the Public Treasury." L. 1863-64, 24 (2d) §§ 1, 3, 4. Accordingly, immigrants under the leadership of Anthony Barclay sailed from Barbados on the brig Cora on April 5, 1865 and arrived here on May Io, 1865. Note, now, how the Legislature restricted this enlarged

grant of lands only to those persons who should migrate from the West Indies and those who came in that immigration specially arranged for between the President and themselves. But what is even more pertinent to the question now being considered is that although President Warner seemed to have had an abiding conviction that immigrants from the West Indies would powerfully boost and enhance the progress of Liberia, which incidentally it did, he never undertook himself, alone, to give them the additional quantity of land for which they contended without legislative warrant for so doing. This was the fourth means prescribed by which the President could legally alienate any portion of the public domain.
And so the law stood until the eighties.

The fifth means of disposing of the public domain was due to a new orientation of national policy. In the early days of the Republic the policy of the pioneer fathers was as aforementioned to increase our population by immigration of Negroes principally from the United States. Liberia had been founded as an "asylum from the most grinding oppression," and prior to the civil war in the United States and the incorporation into the Constitution of the United States of the fourteenth amendment, the opinion of Chief Justice Taney, in a five to four decision, that the Negro had no right which a white man was bound to respect, had some appearance of truth in spite of the concurrence of four Justices in the three dissenting opinions filed. Dred Scott v. Sandford, 6o U.S. (i9 How.) 393[1856] USSC 9; , 15 L. Ed. 691 (1857). But after the thirteenth, fourteenth, and fifteenth amendments the position of the Negro in the United States began to undergo such a complete change for the better that Negroes became more and more unwilling to abandon their homes for an asylum 4,000 miles across the ocean, preferring to remain in the United States and improve their condition there. Simultaneously, but independently, there was a new force at work in Liberia. Dr. Edward Wilmot Blyden, one of the greatest leaders of thought Liberia has ever had, had begun from the latter sixties to preach that Liberia, as a Negro state, could not be built up wholly by accessions from without. He insisted that we should have to turn our attention to the indigenous people of the country, and by amalgamation, intermarriages, and sundry other inducements cultivate in them a feeling of identity with the settlers. Benjamin Anderson, our greatest mathematician, had then made his visit to, and survey of, the route leading to Musardu, and declared that the best part of Liberia was not on the coast but up in the plains of Musardu and the Vukka hills. He gradually won as converts such extraordinary personalities as the late G. W. Gibson, at one time Secretary of State and President

of Liberia ; the late H. R. W. Johnson promoted from Cabinet rank to that of President; Dr. R. B. Richardson, a President of Liberia College and a former Associate Justice of this Court; Arthur Barclay, who having filled sundry positions up to and including three Cabinet portfolios rose to that of Chief Magistrate ; Thomas Washington Haynes, a man who held two Cabinet positions ; and Daniel Edward Howard, who also went from Cabinet rank to that of Chief Magistrate. These men and others similarly influenced were responsible for the new orientation of policy for Liberia. The first step taken to try and impress upon the aborigines this change of policy was to provide an added inducement to their seeking education and Christianity. Consequently, in January, 1888, during President Johnson's administration, an enactment was passed which provided that all such youths, male and female, should be entitled to draw lands in the same quantity and in like manner as immigrants. L. 1887-88, 3 (2d) § I. In 1905, during the administration of President Arthur Barclay, a step forward in line with this new orientation of policy was made when the Legislature prescribed a law for the government of aboriginal districts. Section two of said enactment specifically authorized the President to grant lands in common within and around each site occupied by an aboriginal tribe in such quantity as to enable each family to have twenty-five acres, with the understanding that if the male members of the family desired to vote they would have to petition the Executive Government and, if the President were satisfied that they were sufficiently intelligent and civilized, he might order a division of the land so as to enable each male to have a tract in fee simple and thereby become a freeholder, one year after which he would be entitled to the suffrage. L. 1904-05, 25 (2d), § 2. My reason for making this historical survey of the laws enabling the President of Liberia to dispose of any part

of the public domain is to show that in each case the deed he has issued must have been authorized by some specific enactment, which enactment must have prescribed the consideration, the method of procedure, and all other details as a prerequisite to, and the authority for, the President signing any such deed. The deed issued by President Edwin Barclay to Mr. C. Frederick Taylor admittedly does not conform to any one of the forms or conditions prescribed by law, and struck me as such an anomaly that I asked both parties in succession, while the argument was pending, upon what authority of law the President had issued and had signed said deed. Mr. Taylor replied with the utmost naivete that it was based upon a statute passed in 1940 authorizing the President, under existing world conditions, to adopt such measures as would ensure the economic stability of the country. Said enactment I now proceed to quote in full:

"JOINT RESOLUTION ENDORSING THE ACTION TAKEN BY THE EXECUTIVE GOVERNMENT REFERABLE TO THE DECLARATION OF NEUTRALITY OF THE GOVERNMENT OF LIBERIA IN THE PRESENT EUROPEAN

CONFLICT AND EMPOWERING THE PRESIDENT TO TAKE SUCH OTHER ACTIONS AS WILL ENSURE INTERNAL ECONOMY AND EXTERNAL INTERESTS DURING THE EXISTENCE OF THE SAID CONFLICT. "WHEREAS, because of the effect of the existing

conflict in Europe on the legal relation of this Government with the Powers now at war, the President of Liberia on September 19, 1939, did declare the Neutrality of this Government in the Conflict,
"It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

"Section I. That the declaration of Neutrality in respect of the present Conflict between the United Kingdom of Great Britain and the French Republic

on one hand and the German Reich on the other proclaimed by the President of the Republic of Liberia be and the same is hereby approved. "Section z. That the President of the Republic of Liberia be and is hereby empowered to take any and all further proper and adequate measures which in his judgment will effectively insure the internal economy and external interests of the Republic during the said Conflict. "This Joint Resolution shall take effect immediately and be published in hand bills. "Any law to the contrary notwithstanding. "Passed by limitation." L. 1939-40, ch. III. I next asked if that enactment were the only authority upon which said deed was granted. Mr. Taylor answered, "Yes," and seemed to have been surprised by the question.'
But, in spite of the above reply and the exhaustive opinion of my learned colleagues, I still maintain that the answer to my question should have been in the negative. In my opinion not only was the deed, the subject of these proceedings, issued by the President without any law to warrant the grant but also said grant was ultra vires. And to seek to justify it upon the enactment of 1940 hereinbefore quoted is, in my opinion, to base same upon a statute wholly irrelevant, giving no authority therefor whatever. When, for example, President Warner was convinced that the West Indian immigration of the sixties would be a great asset to the Republic, both financially and agriculturally, did he himself issue any such deeds or did he not apply to the Legislature for an enactment modifying the conditions up until then prescribed? In what way can a deed to Mr. Taylor of the nature of that in this record contribute towards the solution of the problems of this war? Mark you, I fully agree that our government since the grant of that deed in 1940, because of international corn-

mitments following our change of policy from complete to benevolent neutrality and afterwards
our entry into the war in 1944, is compelled to stimulate agriculture now as never before. But my mind refuses to be converted to
the view that any such commitments would warrant the disposal of our public domain in the manner in which this record shows, without
a specific enactment therefor; nor would any such commitment or any other consideration enable our President to alienate our public
domain save by one of the statutes now in force or by some other enactment to be passed, specifically authorizing him to do so, how
to do so, and upon what considerations such lands might be granted to any person or persons. Moreover, it must not be overlooked
that even in leasing out the public domain, especially to foreigners for long terms, the Legislature has invariably insisted on reserving
to itself the right to approve the terms and conditions of the lease. It is my opinion that, great and extensive as are the powers
undoubtedly given to the President of Liberia, he has not been given the power to dispose of any part of the public domain save as expressly prescribed
by existing laws or as impliedly given by subsequent approval by the Legislature of any grant or demise thereof which he may have
made without having previously obtained a legislative enactment upon which to predicate same. Now the deed, the subject of these
proceedings, does not, in my opinion, conform to either of the two prerequisites above mentioned. It certainly is not a deed of sale
because it is clear, from the fact thereof, that the President avers therein that two hundred and fifty acres of public land were
sold for one dollar only, when the minimum price of public land is fixed by statute at one dollar per acre near the banks of rivers
and at fifty cents per acre for all those lands interior to those on the margins of rivers. In the case under review, these two hundred
and fifty acres of public land were disposed of at four-

tenths of one cent per acre ! Nor is it an
aborigine deed, as the rehearsals in the preamble of the deed itself evince, since indeed Mr. Taylor during his argument at this
Bar admitted that he is not an aboriginal citizen but one who quite recently immigrated into Liberia from the West Indies. See preamble
of deed under review; 1 Rev. Stat. § 298; Art. IV of the Public Domain Law, Old Blue Book, 136, §§ / 2. 2 To say that the President
erred in making the grant which the deed before us evidences is not, in my opinion, to speak derogatively of the President. No President
of Liberia is infallible. Nor, if he attempted to claim he were infallible, would he be able to find anything in our laws to support
such a thesis. Nor does he enjoy even that psuedo-infallibility which a King of England enjoys as seen by the maxim "the King can
do no wrong," since no such fiction has ever been attached to the President's political acts in this country. If, then, in my opinion,

any act of the President can be shown to be contrary to, or in excess of, the powers granted him by statute, I feel it to be the duty of the courts to so declare without any disrespect shown to, or imputation upon, the character of the President. Indeed, I may say emphatically, his duties are so many and so diversified, oftentimes without adequate technical assistance, that it is surprising that his errors are, relatively speaking, so few. For, as has been remarked and quoted with approval by us all from Marbury v. Madison, [1803] USSC 16; 1 Cranch 137, 2 L. Ed. 6o (1803) in the case of Wiles v. Simpson, 8 L.L.R. 365, decided on November 17 during this term : " 'The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. " 'If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case.' " Wiles v. Simpson, at 377.

My own personal opinion is that the deed granted by the President, objections to the probate of which are now under review, should be declared to have been issued ultra vires, and should therefore not only be denied probate but should also be ordered delivered up and cancelled. On the other hand, and in regard to the claim to the land made by H. Lafayette Harmon, I have been converted to and am in full accord with my brethren of the Bench that same cannot be upheld by us, especially after a thorough examination of the statutes with the resultant failure to find therein any recognition of a "squatter's right" accorded to any person other than an immigrant, and the record does not establish that Mr. Harmon immigrated into Liberia. I agree also that the record does not show that he entered into possession with the approval of, but rather in defiance of, constituted authority, and that therefore he is a trespasser ab initio. I further agree that if the President did not give him permission to purchase the land, but rather refused said permission, that was one of the class of acts of the President with which the judiciary has no right to interfere. The conclusions which appear to me to be deducible from the points arising from this case are the following: i. Neither party has acquired any legal title to the premises because the deed in question was not issued in conformity with any existing statute. Hence the deed should not only not be probated but it should also be delivered up and cancelled. 2. This Court should decree that the premises are, and shall remain, a part of the public domain unless and until the President shall issue a deed based upon a statute authorizing him to part therewith for consideration prescribed by statute. Inasmuch as my colleagues see the matter differently I feel it to be my duty to record this dissent.

Kamara et al v Kindi et al [1988] LRSC 18; 34 LLR 732 (1988) (25 February 1988)

ARMAH KAMARA and **HENRY KOLLIE**, Appellants, v. **BINDU KINDI**, **TERM KINDI**, **et. al.**, Heirs of the late FAHN KINDI, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard November 20, 1987. Decided February 25, 1988.

1. Words of perpetuity appearing in deeds signify an intention to create a fee simple conveyance; accordingly, they should be construed strongly against the makers or grantors, and most beneficially in favor of the other parties.

2. Fee simple is the highest possible interest which can be held in real property and it includes all interests, present and future. It is the largest estate in **land and implies absolute dominion over the land**.

3. The words "and his heirs" are prerequisites to creating an estate in fee simple; they are words of limitation and of inheritance.

4. Fee simple estates are held directly from the State. It is one in which the owner is entitled to the entire property with unconditional power of disposition during his life and descending to his heirs and legal representatives upon his death intestate.

5. Family, by designation, is the collective body of persons who live in one house; a father, mother and their children; the children of the same parents; a group of persons related by blood or marriage; those who descend from one common progenitor.

6. Heirs, by definition, is meant those persons appointed by law to succeed to the real estate of a decedent in case of intestacy; all persons who are called to the succession of property.

7. The Supreme Court will not uphold its judgment handed down in a previous term of court if the said judgment did not settle and afford the reliefs sought by the parties and resolve the uncertainties and insecurity of the parties with respect to their rights, status and other legal relations or terminate the controversy giving rise to the proceedings.

8. Nephew and nieces who are collateral relatives of a decedent cannot supersede the lineal heirs.

9. The words "to grantee and his families" refer to the grantee and his immediate family, and therefore under the law of descent only his lineal descendants are lawful owners of the decedent property.

Following a judgment of the Supreme Court interpreting the words "Chief Fahn Kendeh and families of Kindi Town, his heirs, executors, administrators and assigns" to mean all persons who lived in Kindi Town at the time of the conveyance, the petitioners, lineal heirs of Chief Fahn Kendeh, petitioned the Court for reargument.

The facts of the case revealed that in 1916, the Republic of Liberia, acting through President Daniel E. Howard, issued an Aborigine **Land** Grant Deed to "Fahn Kendeh and families of Kindi Town", conveying to them 204 acres of **land**. In 1981, after the death of Fahn Kendeh, the appellant commenced construction of a road through the **land**, of which Chief Fahn Kendeh had died seized. Thereupon a dispute developed between the appellants and the appellees, children of Fahn Kendeh who had been appointed administrators of his intestate estate. The appellees contended that the property was intended for Fahn Kendeh in fee simple, while that appellants, on the other hand, claimed that the property belonged to all those families who at the time of the conveyance, lived in Kindi Town. In order to have the dispute legally settled, the appellees filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, a petition for a declaratory judgment.

The Circuit Court ruled interpreting the words of the deed to mean that the property was conveyed to Fahn Kendeh in fee simple and not to the members or families of Kendeh Town. It therefore held that only the petitioners/appellees, lineal heirs of Fahn Kendeh, were entitled to inherit the said property. The appellants excepted to the said ruling and announced an appeal to the Supreme Court.

The Supreme Court ruled that the words of the deed "To Fahn Kendeh and Families of Kendeh Town" meant and were intended to make a conveyance to all families who at the time resided in Kendeh Town. It therefore reversed the judgment of the trial court and directed the Clerk of the Court to send a mandate to the trial court to the effect that the **land** was communal property and therefore belonged in common to the Kendeh Family in Kendeh Town and to the families who lived in Kendeh Town at the time of the conveyance in 1916; and that persons producing evidence showing that their families were residents of Kendeh Town in 1916 were entitled to share in the common undivided ownership of the said **land**.

The appellees, not being in agreement with the Court's decision, filed a petition for reargument.

On reargument, the Court reversed itself, holding that in its previous ruling, it had failed to terminate or settle the controversy giving rise to the proceedings. The Court noted that by that failure, it had not afforded the reliefs sought by the parties from the uncertainties and insecurity they were experiencing with respect to their rights, status and other legal relations. The Court therefore proceeded to reinterpret the words "To Fahn Kendeh and Families of Kendeh Town" to mean a fee simple conveyance to Fahn Kendeh. The Court observed that under this new interpretation, only the lineal heirs of Fahn Kendeh were entitled to inherit from Fahn Kendeh's intestate estate, to the exclusion of any other collateral heirs or other persons who may have been in Kendeh Town at the time of the conveyance in 1916.

The Court accordingly *affirmed* the judgment of the trial court granting the petition for declaratory judgment.

M Fahnbulleh Jones appeared for respondents. *Toye C. Barnard*appeared for petitioners.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On March 7, 1916, President Daniel E. Howard issued the below quoted ABORIGINE **LAND** GRANT TO FAHN KINDI AND FAMILIES Of THE COUNTY OF MONTSERRADO, REPUBLIC OF LIBERIA, which was recorded in Volume 94-B pages 108-109 of the records of

Montserrado County, and filed in the archives of the Department of State, now the Ministry of Foreign Affairs:

"TO ALL TO WHOM THESE PRESENTS SHALL COME: Whereas, it is the policy of this government to induce the aborigines of this country to adopt civilization and become loyal citizens of the Republic; and whereas one of the best things thereto is to grant **land** in fee simple to all those to be entrusted with the rights and duties of the full citizenship as voters, Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, Montserrado County, Republic of Liberia, have shown themselves fit to be entrusted with said rights and duties.

Now, therefore, know ye that I, Daniel E. Howard, for and in consideration of the various duties of President to grant, give and confirm unto said Chief Fahn Kendeh and families as aforesaid, his heirs, executors, administrators and assigns forever, the piece or parcel of **land** situated, lying, and being in the Settlement of Paynesville, Montserrado County, and of the Republic aforesaid, the number three (3), 1 st Range, part of, and bearing in the authentic records of said settlement and bounded and described as follows:

Commencing at a point marked by a growing stick and a rock on a little hill North East off a point feet high water mark and running thence on magnetic bearings North 45 degrees West 25 chains, thence running North 45 degrees West 25 chains, North 45 degrees West 29 chains, thence running South 45 degrees West 60 chains, South 62 degrees East 46.5 chains North 45 degrees East 10 chains to the place of commencement and containing 204 acres of **land** and no more.

To have and to hold the above granted premises (farm **land**) together with all and singular the buildings, improvements and appurtenances thereto and thereof belonging to the said Chief Fahn Kendeh and families of Kendeh Town, his heirs, executors, administrators, and assigns as aforesaid forever. And I the said Daniel E. Howard, President as aforesaid, for myself and my successors in office, do covenant to and with the said Chief Fahn Kendeh, his heirs, executors, administrators and assigns that at the ensealing of hereof I, the said Daniel E. Howard, President as aforesaid, and my successors in office, will forever warrant and defend the said Chief Fahn Kendeh and families, legal heirs, executors, administrators and assigns against the lawful claims and demands of all persons to the above granted premises.

IN WITNESS WHEREOF I the said Daniel E. Howard, President as aforesaid, have hereto set my hand and cause the Seal of the Republic of Liberia to be affixed this 7th day of March, A. D. 1916 and of the Republic this 69th year.

Sgd. Daniel E. Howard, President"
ENDORSEMENT

ABORIGINE **LAND** GRANT from Republic of Liberia to Chief Fahn Kendeh and Families, lot no. three (3), 1st Range (Part of) situated at the rear of Paynesville, Montserrado County. Let this be registered. sgd. R. Johnson, Judge of Monthly and Probate Court, Montserrado County, pro-bated this 14th day of March A. D. 1916, .Sgd. R.H. Dennis, Clerk, Monthly and Probate Court, Montserrado County. Registered according to law, Vol. 94--B pages 108-109,' According to the records in the case, Fahn Kendeh was the father of seven children-five (5) girls and two (2) boys—all of whom are the appellees in this case. The issue surrounding the ancestry of the appellees and their father, Fahn Kendeh is fully discussed in an opinion of this Honourable Court in the case *Karpai, et al. v. Sarfloh et al[1977] LRSC 17;* , 26 LLR 3 (1977). We shall treat this later on in this opinion.

Fahn Kendeh died intestate on the 14th day of November 1957, leaving personal as well as real properties in Paynesville, Montserrado County. Later on, two of his children, Bindu Kendeh and Tarni Kendeh were granted letters of administration by the Monthly and Probate Court for Montserrado County to administer the intestate estate of their father.

In 1981, Appellants Armah Kamara and Henry Kollie, commenced constructing a road across a portion of the 204 acres of **land**, of which the late Fahn Kendeh died seized. Armah Kamara, one of the appellants herein, was town chief of Kendeh Town at the time and took advantage of his position to construct the road for the purpose of doing commercial business with the sand on the beach. Co-appellant Kamara lost his port-folio as town chief as a result of this. Based upon the dispute between the appellants and the respondents, the appellees sought relief from the Sixth Judicial Circuit, Montserrado County, sitting in its December Term, A.D. 1981, praying for a DECLARATORY JUDGMENT, wherein they prayed the court to construe the **land** grant from the Republic of Liberia to Fahn Kendeh and families, and to remove any uncertainty as to who were the actual owners under the said **land** grant.

Appellants filed an answer which they subsequently withdrew after petitioners, now appellees, had filed a reply. The appellants subsequently filed an amended answer to which petitioners/appellees filed a reply.

In respondents/appellants' amended answer, they contended that "the **land** was held in common by Chief Fahn Kendeh and the respective families of Kindi Town". They also contended that Fahn Kendeh parted with the said property before his death. In support of this contention, they made profert of a deed which they said Fahn Kendeh had executed in 1958. They contended further that they were joint heirs of Fahn Kendeh, therefore coowners of the two hundred and four (204) acres with the appellees.

The appellees, on the other hand, contended that they, being the natural daughters and sons of Fahn Kendeh and therefore the lineal heirs of Fahn Kendeh, the property, after the death of Fahn Kendeh descended to them and their families. They maintained that the appellants who are not lineal heirs or even collateral relatives of Fahn Kendeh, could not inherit the property,

On August 22, 1983, the case was called and heard without a jury with His Honour Eugene L. Hilton, presiding. Witnesses for both the petitioners/appellees and the respondents/appellants were qualified and they testified. The evidence on both sides having been submitted, counsels for both sides argued and submitted their case to the court. On the 21st day of October A. D. 1983, the trial judge, His Honour Eugene L. Hilton, rendered final judgment, to which exceptions were taken by respondents who also gave notice that they would "take advantage of the statutes controlling in such matters." The court noted the exception and ordered the matter suspended.

An appeal having been perfected, the case was heard and determined by this Court during the March A. D. 1986 Term, presided over by His Honour James N. Nagbe, Chief Justice of Liberia, with Elwood L. Jangaba, J. Patrick Biddle, Frederick K. Tulay and John A. Dennis, Associate Justices of the Supreme
Court of Liberia being present. After hearing the arguments in the case, the Court adjudged inter alia as follows:

"Considering what we have said herein, the judgment of the lower court is hereby reversed, and the Clerk is ordered to send a mandate below, to the effect that the **land** in question is communal property belonging in common to the Kendeh Family of Kindi Town and to the families in Kindi Town in 1916, Settlement of Paynesville and their heirs and successors; and that whoever produces evidence showing that his family was resident in Kindi Town in 1916 at

the time of said grant is entitled to share in the common undivided ownership of said **land** in fee, until otherwise proper petition is made to government to have said communal tribal holding divided into individual family holdings in fee as is required by law. Costs ruled against appellees, " AND IT IS SO ORDERED."

After the above quoted judgment was given, counsel for petitioners/appellees filed a petition for re-argument and argued *inter alia* that:

1. On the 29th day of October A. D. 1973, the Republic of Liberia, by and thru the Ministry of Justice, issued a writ of arrest and subsequently prosecuted co-appellee/copetitioner Bindi Kindeh (Madam Benda Kai Kpale) for the crime of malicious mischief for having up-rooted a cotton tree from a portion of the 204 acres of **land**, the subject of the petition in the declaratory judgment case. That at that time, His Honour Elwood L. Jangaba was Assistant Minister of Justice. Under these circumstances, Justice Jangaba should have recused himself in the determination of the case, since he had something to do with the case and with the prosecution of oral of the petitioners/appellees, who was subsequently acquitted by the court. This salient fact was inadvertently overlooked by Your Honours. Therefore, petitioners/appellees respectfully pray for re-argument. Copies of the writ of arrest as well as the minutes of the trial of the malicious mischief came before the Criminal Law Court for the First Judicial Circuit, Montserrado County, during its February 1974 Term, are hereto attached in bulk and marked exhibit "A", to form part of this petition.

2. That in keeping with page 2 of the opinion of this Honourable Court in the declaratory judgment case, the answer of the appellants has been referred to as saying that "the said piece of property was not only granted by the Republic of Liberia to Chief Fahn Kendeh and his lineal families of Kindi Town, but also to all other families that happened to have lived in Kindi Town, in order to allow them chance to vote and to contest elections under the law. Appellants maintained that had the grant been meant for the one family of Chief Fahn Kendeh, then it would not have exceeded twenty-five (25) acres to which a family plot was limited....

5. And to which argument counsel for petitioners/appellees objected and called the Court's attention thereto on the ground that these issues were not raised in the pleadings and in the bill of exceptions and, that therefore, they could not be legally raised by counsel for appellants for the first time in his argument before this Court. Reference to appellants' counsels argument before this Court which were never raised in the bill of exceptions or in the pleadings appeared in the opinion of this Honourable Court. Therefore, petitioners/appellees pray for re-argument.

6. That the petition for declaratory judgment was to determine the rights of the respondents/appellants and the petitioners/appellees to the 204 acres of **land**. This issue has been inadvertently overlooked in your Honour's judgment and opinion rendered on August 1, A. D. 1986. The purpose of the petition for declaratory judgment was to determine the rights of the respondents/ appellants and the petitioners/ appellees to the 204 acres of **land**. This issue was determined by the trial judge, for which the respondents/appellants appealed, but inadvertently Your Honours overlooked this salient point in your opinion.

7. That in the appellees' brief, they raised the issue as to whether the appellants established any evidence to the effect that they were even lineal heirs or even collateral heirs to the late Fahn Kendeh. This important issue was overlooked by your Honours and therefore petitioners/ appellees pray for re-argument.

8. That the respondents/appellants in the case *Karpai et al. v. Sarfloh et al.*[*[1977] LRSC 17*; , 26 LLR 3 (1977), disavowed any relationship to Chief Fahn Kendeh and to the petitioners/appellees and, therefore, they could not claim family relationship or ties to the same parties in this case. This issue was raised in the petition for declaratory judgment as well as in appellees' brief and strenuously argued by petitioners/appellees' counsel before this Honourable Court. But this vital issue was inadvertently overlooked by Your Honours, for which petitioners/ appellees respectfully pray for re-argument.

9. That this Honourable Court's attention was called during arguments to the fact that only the issues that are tendered in the bill of exceptions should be argued on the merits of the case in keeping with appellate procedure and law, and that therefore, the question of the 25 acres of **land** and the conferring of voting rights, and that of community property should not be entertained, which points your Honours inadvertently did not pass upon in the opinion for which petitioners/appellees respectfully pray for re-argument.

Opposing these arguments, respondents/appellants seriously contended and forensically argued that:

1. It is appellants/respondents considered opinion that the only issue this Court was called upon to review is whether or not the Aborigine **Land** Grant Deed executed by the Government of Liberia was intended solely for Chief Fahn Kendeh, his lineal descendants and collateral relatives to the exclusion of the other families, their lineal descendants and collateral relatives or that Chief Fahn Kendeh and the other families and their lineal descendants and collateral

relatives were entitled to the property. The trial judge ruled that the clause in the **land** grant deed to Chief Fahn Kendeh and families was intended and referred to Chief Fahn Kendeh and his immediate family and therefore the appellees/petitioners, being the lineal descendants, are lawful owners of the property, in keeping with the law governing descend and distribution of intestate estate. It is from this ruling that the appeal was taken and this Court interpreting the wordings of the deed concluded that the **land** in question is communal property belonging in common to the Kendeh families of Kindi Town and the families in Kindi Town in 1916, Settlement of Paynesville, and their heirs and successors.

2. The issue is whether or not this Court is compelled to pass upon all the issues raised in the bill of exceptions and the brief in arriving at a conclusion, and upon failure to do so, a re-hearing must be heard to pass upon the issues which were not passed upon in the opinion for which re-argument is sought. This Court has held that where all the facts presented have in fact being duly considered by the Court, and where the application presents no new fact, but simply reiterate the arguments made on the hearing, and is in effect an appeal to the Court to review its decision or points and authorities already determined, a rehearing will be refused.

Further, a re-hearing will ordinarily be refused where the questions presented by the petition were fully argued and considered by the Court in a formal hearing; and lastly, it was held as to the contention that several issues were raised but not passed upon, it has been the practice of this Court to pass upon issues it deem meritorious or properly presented. It need not pass on every issue in the bill of exceptions or in the brief. . . . there is no need to cite the plethora of cases in which this practice has been followed. It goes without saying then that this Court was correct when it elected to take into consideration the issues which it deemed meritorious in deciding this case, in keeping with the statutes under Aborigines **Land** Grant and the wordings of the deed.

Having recourse to and reflection upon the opinion and judgment of the March A. D. 1986 Term, together with the subject deed in this action and the prayer in the petition for DECLARATORY JUDGMENT, one or two questions are hovering over our minds. (1) What was the intent of the State, Republic of Liberia, did it create a fee simple or absolute fee simple to Chief Fahn Kendeh communal property; (2) Have the judgment and opinion of the March Term, A. D. 1986 settled or declared the legal rights of the contending parties in keeping with the declaratory judgment statute of Liberia and the common law; (3) In order to deny or uphold the opinion and judgment of the 1986 March Term of this Court, is the judgment valid in keeping with law; i.e. what makes a declaratory judgment generally valid; (4) What is the definition of the word, "families", and its connotative and denotative application to the deed and the parties. (5) What are the words and phrases of the words, "heirs", and "assigns", "heirs at law", "heirship". "heirs by blood", "heirs of the body" as are reflected in the original **land** grant. (6) What is collateral consanguinity, and whether or not the heirship mentioned in the deed refers to only the biological heirship or

were words describing the extent of quality of the estate conveyed and not words designating the persons who are to take it; (7) Has the 1986 March Term opinion and judgment placed full legal construction and interpretation on the 1916 deed; (8) What is the traditional chieftaincy concept and what did it involve regarding property acquired; (9) What was the policy and law of the Government of Liberia prior and up to 1916 when the subject **land** grant deed was issued.

We hold the opinion that in order to give some consideration to these issues or questions, it is proper and necessary to have some positive definitions of terms and apply them to the construction and interpretation of the deed before us, so as to arrive at a just determination of the petition for a declaratory judgment and the motion for re-argument.

According to PROPERTY AND LAW (CHARLES M. HAAB, LOUIS D. BRANETS, AND LANCE LEIBRAN treatise) "Property and Law", page 153, estate in fee, an estate in fee is one which, at the death of its owner, if not otherwise. disposed of by him, descends to his heirs; that an estate in fee is the same thing as an estate of inheritance. Where it is created by deeds, the word HEIRS is indispensable, unless otherwise provided by statutes. This is an inflexible rule of the common law, and no words of perpetuity will supply the place of the word "HEIRS", except in the grant to corporations where the word successors, though not essential, is usually substituted. From our view, the words of perpetuity appearing in deeds signified an intention to create a fee. Therefore, it should be construed most strongly against the maker or grantor, and most beneficially for the other party, i.e. Daniel E. Howard, the grantor and most beneficially for the heirs of Fahn Kendeh. Accordingly, the majority opinion and judgment of the March Term, A. D. 1986, of this Court, should have closely inspected and looked at the wording of the deed and so interpret same as to whether or not President Daniel E. Howard intended to create a fee simple, or an absolute or fee conditional. Fee simple is the highest possible interest which man can have in real property, whether corporal or in corporal; it includes all interests, present and future; it forms a unit or whole of which all other estates are but fractions or parts, it comes to the owner with unlimited power of alienation during life, unless he does something to encumber it, and passes in the same absolute character to his heirs. In our opinion, it did not suit the genius of President Daniel E. Howard, or for that matter, Fahn Kendeh, to put the property in question under restrictions with regard to the disposition of the property. Fahn Kendeh preferred to be the absolute master of what he called his own. In other words, Fahn Kezdeh wanted a grant in fee simple absolute, which was of potentially infinite duration and freely alienable, and which could be inherited by any heir of his - a fee that was given without any conditions that might divest him or his heirs of the property later.

The words, "and his heirs" are prerequisite to creating an estate in fee simple. They are words of limitation. Fee simple could be made freely alienable, so long as it is done through substitution. Fee simple, as it was yesterday and today, is held directly from the State, the Republic of Liberia.

It is not likely that "CHIEF FAHN KENDEH" could have acquired property of 204 acres of **land** in his own name and include in the deed other additional families who bore no relation to him. This does not make good sense, though the subject deed may have interlineations, ambiguities, contradictions, and inconsistency which are questionable. However, since the question of fraud has not been raised before us, we will refrain from commenting thereon. Nevertheless, we are not convinced that it was the intention of the State in 1916, having issued the aforesaid deed in favour of "CHIEF FAHN KENDEH", and families as aforesaid, and "his heirs, executors, administrators and assigns forever," etc. to omit "of their heirs". Could it prick the conscience of any body to believe that the Government of Liberia intended to create a fee simple in FAHN KENDEH and include other external families of Kindi Town who had not applied for **land**?

By means of implication, since it would appear that the deed was supported by points intended as compensation for Chief Fahn Kendeh to influence his people or families, as is here interpreted to mean to vote, this act did not confer the right on any other persons who may have been living in the town at the time or for that matter to their heirs. The deed was not intended to create communal **land**, joint tenancy or tenancy in common. It did not create a community comprising a town, a municipality, a district, or a neighborhood. This is an entity composed of a husband, a wife and children, which is quote distinct from that of a town, etc., considered separately and individually. As a community, they held property by a different title from that which they held to their separate property.

We hold that the fee was not intended to be communal and to include the number of heads of the various families who lived in the area at the time in 1916 and to inhabitants of Kindi Town and their heirs as tenants in common forever; otherwise, the Government of Liberia would have issued the deed to Chief Fahn Kendeh and a member of heads of the various families at the time, because this was the policy of Government and Law as far back as 1911 when Arthur Barclay was president. No succeeding president, including President Daniel E. Howard who succeeded him, would have had the legal authority to abrogate the same since it was the law passed at the time by the Legislature and entitled "An Act for the Government of a District in the Republic inhabited by aborigines approved January 25, 1895."

Here is a format of a similar deed:

"WHEREAS in a section of an Act of the Legislature of Liberia entitled, "An Act for the Government of a District in the Republic inhabited by Aborigines, approved January 25, 1895, it was provided that there should be granted to the inhabitants of such town or a district inhabited by aborigines, sufficient **land** around each town for agricultural purposes; and WHEREAS

KENDEH WORREL (in the instant case would have been Fahn Kendeh) Chief of Kindi Town in the county or district and the inhabitants of said town to the number of all heads of FAMILIES, have applied for a grant of **land** in accordance with the provisions of said Act, now therefore I, Arthur Barclay, President of the Republic of Liberia, for myself and my successors in office do give, grant and confirm unto the said KENDEH, CHIEF OF KINDI TOWN and to the inhabitants aforesaid, their heirs as tenants in common forever, all that piece or parcel of **land** situated lying and being in the rear of Paynesville in the County of Montserrado and bearing in the authentic records of raid Settlement the number... (DESCRIPTION HERE)

"TO HAVE AND TO HOLD THE ABOVE GRANTED PREMISES TOGETHER WITH all and singular the buildings, improvements and appurtenances thereof and thereto belonging to the said KENDEH, CHIEF OF IUNDI TOWN AND THE INHABITANTS THEREOF, AND THEIR HEIRS FOREVER, and I, the said Arthur Barclay, President aforesaid, for myself and my successors in office, do covenant to and with the said persons and their heirs, and that at the ensealing hereof, I the said Arthur Barclay, President aforesaid, by virtue of my office and by authority of said Act had good right and authority aforesaid, will forever warrant and defend the said Chief Fahn Kendeh and families, legal heirs, executors, administrators, and assigns against the lawful claims and demands of all persons above granted premises.

THE INHABITANTS THEREOF AS TENANTS IN COMMON; and I, the said Arthur Barclay, President as aforesaid and my successors in office, will forever warrant and defend the said lands to the said Chief Kendeh and INHABITANTS OF IUNDI TOWN, THEIR HEIRS, against the unlawful claim of all persons claiming any part of tile above granted premises."
THE ABOVE TRACT OF **LAND** CANNOT BE SOLD, TRANSFERRED, OR ALIENATED WITH-OUT CONSENT OF TIE GOVERNMENT OF THE REPUBLIC, IN WITNESS WHERE OF .....

Additionally, President Daniel E. Howard would have declared to all mankind that this parcel of **land** was not to descend to the lineal heirs of Fahn Kendeh, Chief of Kindi Town, and to collateral relations, according to the rules of descent, upon their death and according to the policy of Government at the time.

In the habendum clause, President Daniel E. Howard would have repeated the same character of persons designated as inhabitants or tenants in common as grantees, as set forth in the premises, and described the estate conveyed to them and for what use, as was the intent and spirit of the law referred to *supra.* This practice never degenerated into a mere useless form. If the Deed now in question was issued in recent past, there would be no need for the practice because the

premises would contain the names of parties and specifications of the **land** granted and the deed would be effectual without the habendum. 8 R.C.L. 922.

On the contrary, the very fact that the deed reads *inter alia:*

"And whereas one of the best things thereto is to grant **land** in FEE SIMPLE to all those, themselves to be entrusted with the rights and duties of the full citizenship as voters, Chief Fahn Kendeh and FAMILIES of Kindi Town, Settlement of Paynesville, Montserrado, Republic of Liberia . . . various duties of President to grant, give and confirm unto said Chief Fahn Kendeh and FAMILIES as aforesaid, his heirs executors, administrators and assigns forever that piece or parcel of **land** situated, lying and being in the rear Settlement of Paynesville, Montserrado County...To have and to hold the above granted premises (Farm **Land**) together with all and singular the buildings, improvements and appurtenances thereto and thereof belonging to the said Chief Fahn Kendeh and Families of Kindi Town, his heirs, executors, administrators and assigns as aforesaid forever"

clearly indicates that FAHN KENDEH was to possess and enjoy the premises without interruption and his descendants were to succeed to the enjoyment of this property.

The argument of counsel for respondent that the **land** -204 acres belong to all of them, the contending parties, it being of communal **land** cannot hold. Wordings of the deed could not be contradictory or inconsistent, especially so when there is nothing in the subject deed which indicates that FAHN KENDEH, CHIEF OF KINDI TOWN AND THE INHABITANTS THEREOF AND THEIR HEIRS, FOREVER, shall have and hold the premises together with all others belonging to Kindi Town. Nowhere is it indicated in the deed that the government of Liberia covenanted with Chief Fahn Kendeh and inhabitants of Kindi Town and "their heirs", as tenants in common, that it will forever warrant to defend the said Chief Fahn Kendeh and INHABITANTS OF KINDI TOWN, "their heirs", against the unlawful claim of all persons claiming any part of the above granted premises. Nowhere also in the subject deed is it indicated that "the above tract of **land** cannot be sold, transferred or alienated without consent of the Government of the Republic of Liberia, it being communal property."

On the contrary, President Daniel E. Howard emphatically declared as follows:

"I, the said Daniel E. Howard, President as aforesaid, for myself and my successors in office, do covenant to and with the **land**."

Furthermore, nowhere from the face of the deed is it indicated, in words or by implication, that it was intended by the Republic of Liberia, in keeping with universal fundamental rules that one tenant in common or inhabitant could not maintain trespass against another, so long as both retain possession of the 204 acres of **land**; that the possession of one inhabitant was presumed not to be adverse to but was held to be for the benefit of other inhabitants; or that he could not convey his interest in any particular portion of the estate described by the metes and bounds, as such a conveyance would injure the rights of his cotenant or other inhabitants in case of partition; and that therefore, one of several tenant in common could not dedicate a portion of the **land** to the public.

Nowhere is it indicated from the face of the subject deed, in words or by implication, that all the inhabitants of the 204 acres were co-tenants and common holders or had entire possession of the whole property, and that there was a fiduciary relation among them which imposes on their mutual rights to protection, so that any act which any tenant or inhabitant did for the benefit of the property was presumed to be for the benefit of the property, and that no one inhabitant would be permitted to prejudice the rights of the other tenants. Nowhere on the face of the subject deed is it indicated, in words or by implication, that there was any fiduciary relation between the inhabitants such that one could not buy an outstanding encumbrance against the property for his own benefit, but that any purchase of whatsoever nature would inure to the benefit of all the inhabitants, although the purchaser may be entitled to receive contributions from the other inhabitants for their share of the purchase. Nowhere on the face of the subject deed are there words inserted to include any person making any portion of the 204 acres of **land** his principal seat of residence or business or intending to make it his or her home, or one who came to Kindi Town to contribute to the welfare of the people, or that it meant dwellers or householders, including holders in fee simple for life, years, or at will and those having interest in the **land**.

Apparently, the majority opinion and judgment in the March Term, 1986, seems to have been persuaded or influenced by the phrase "CHIEF FAHN KENDEH AND FAMILIES" or Kindi Town, when our distinguished colleagues then arrived at the conclusion which they did. That conclusion did not fully consider the construction and interpretation of the deed and the ruling of His Honour Eugene Hilton, which was read out of context. Instead, the Court laid greater emphasis on the word "FAMILIES".

By definition, "families" is the plural of "family". It refers to servants in a household, household from the Latin word FAMILIA; it is the collective body of persons who live in one house; a father, mother and their children; the children of the same parents; one's husband or wife and children; a group of persons related by blood or marriage, relatives; those who descend from one common progenitor; descent, lineage; honorable descent; a collection or union of things having common source or similar features; family circle(s), a group consisting of the members of a family and intimate friends; family tree(s) chart showing the relationship of all the ancestors and descendants in a given family; all the ancestors and descendants in a given family. WEBSTER INTERNATIONAL DICTIONARY 82.

By further definition, a family, in its origin, is meant servants or slaves; but now it embraces a collective body of persons living together in one house, under the same management and head, subsisting in common and directing their attention to a common object; the promotion of their mutual interests and social happiness; a collective body of persons living together under one head or manager. All these persons who constitute the members of the same household. As used in statutes of descent, the word is usually construed to mean those who have the blood of the ancestors. BALLENTINE'S LAW DICTIONARY 456-457; 13 R. C. L. 552; 28 R. C. L. 256. And by other definition, the word "heir" is meant those persons appointed by law to succeed to the real estate of a decedent in case of intestacy. . . But in modern usage, the term as implied come in any manner to the ownership of any property by reason of the death of an owner, and may therefore include next-of-kin and legatees, as well as those who take by descent. By civil law, the term applies to all persons who are called to the succession. 9 R. C. L. 23.

The weight of authority holds that the word "HEIRS", when used in any instrument to designate the persons to whom personal property is thereby transferred, given, or bequeathed, and when not explained by the context, means those who would, under the statute of distribution be entitled to the personal estate of the persons of whom they are mentioned as heirs in the event of death and intestacy. But when used without explanatory context, the word should be understood in its legal and technical sense. It may, however, be construed to mean children, when it clearly appears from the other parts of the deed that it is not used by the grantor in its technical meanings. 8 R. C. L. 1036. It means persons entitled by law to succeed to the real estate of a descendant, namely those persons who are related by blood and who would take his real estate if he died intestate. In civil law, the word applies to all those who succeed to such property, whether by will or by operation of law. 28 R. C. L. 287.

Now, reading the deed in its full context it is not difficult to concede that the Republic of Liberia, in granting FAHN KENDEH and families the 204 acres of **land**, did not intend to create a communal estate, it intended to create an estate in absolute fee simple to Fahn Kendeh, to be enjoyed by his families, heirs, executors and administrators forever, and not "TO THE FAMILIES IN KINDI TOWN IN 1916, SETTLEMENT OF PAYNESVILLE AND THEIR

HEIRS AND SUCCESSORS: AND THAT WHOEVER PRODUCE evidence showing that his family was residence in Kindi Town in 1916 at the time of said grant is entitled to share in the common undivided ownership of said **land** in fee until otherwise proper petition is made to government to have said communal tribal holding divided into individual family holdings in fee as is required by law."

When used in a deed, the word "heirs" is a word of limitation and will be so taken in the absence of anything to indicate that it was used in a contrary sense; but it may be construed to mean children when it clearly appears from the other parts of the deed that it is not used by the grantor in its technical meanings. 8 R. C. L. 1036. It means persons entitled by law to succeed to the real estate of a decedent, namely those persons who are related by blood and who would take his real estate if he died intestate. In civil law, the word applies to all those who succeed to such property whether by will or by operation of law. 28 R. C. L. 287.

Further, according to authorities, the term "fee simple" defines the largest estate in **land** known to the law and necessarily implies absolute dominion over the **land**. There can be only one estate in fee simple to a particular tract of **land**. It is an estate of inheritance, unlimited in duration, descendible to all the heirs of the owner alike to the remotest generation, and aside from the fact that it may be created so as to be defensible and subject to executory limitations or granted or devised subject to a condition subsequent. . . . It has also been defined as an estate of perpetuity, conferring an unlimited power of alienation and which no person is capable of having a greater interest. An absolute or fee simple estate is one in which the owner is entitled to the entire property with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. 28 AM. JUR. 2d., *Estate, § 10,* at 81.

Again, it is a well established common law rule that words of inheritance such as the word "heir" or its equivalent, were necessary in a deed in order to convey an estate in fee simple to the grantees. 28 AM. JUR. 2d., *Estate, §* 14, p. 87.

The *habendum* CLAUSE IN A DEED, "to have and to hold", defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee. The office of the *habendum* is properly to determine what estate or interest is granted by the deed, though office may be performed by the premises, in which case the *habendum* may lessen, enlarge, explain or qualify but not totally contradict or be repugnant to estate granted in the premises. BLACKS LAW DICTIONARY 639 (5th ed.).

Because we are of the considered opinion that the opinion and judgment of the March Term of 1986 (1) did not settle and afford the reliefs sought by the parties from uncertainty and insecurity with respect to their rights, status and other legal relation, in that the judgment did not terminate the controversy or remove the uncertainty; did not liberally construe the deed of President Daniel E. Howard was not affirmative or negative in form and effect of a FINAL JUDGMENT; did not fully determine the question of the construction and validity of the DEED arising under the statutes, contract or franchise of the portion and obtain a declaration of the rights, statutes or other legal relation thereunder, did not adjudicate the rights of the executors, administrators, heirs, and next-of-kin who are all members of the Fahn Kendeh's families; did not ascertain and determine the class of heirs, and next-of-kin or other fiduciaries to the estate; did not determine question arising in the administration of the estate; failed to state that it had refused to render or entered a declaratory judgment where such judgment, if rendered, would not have terminated the controversy giving rise to the proceedings; did not review the judgment of His Honour Eugene Hilton in the same way as other judgments; did not reflect by evidence the relationship of the contending parties to FAHN KENDEH AND FAMILIES and to distinguish between FAHN KENDEH AND FAMILIES AND FAHN KENDEH; and the families; and did not reflect by evidence or otherwise the relationship of the contending parties to Fahn Kendeh, either as heir, heirs, collateral heirs, conventional heirs, heir legal, heir of provisions, heir and assigns, heir by blood, heir of the body, collateral consanguinity and collateral descent, so as to determine who is actually entitled to the parcel of **land** as grantees, thus rendering a declaratory judgment construing the **land** grant from the Republic of Liberia to Fahn Kendeh and families, and ascertaining and removing the uncertainties, we find it very difficult to uphold the opinion and judgment of the March Term, A. D. 1986.

Therefore, in view of all that we have observed both in term of law, facts and circumstances, as are brought out in the briefs and arguments of the parties, and because the A. D. 1986 March Term opinion and judgment of this Court had patently overlooked the enumerated decisive issues which were raised in the petition and prayer of the petitioner in the Civil Law Court for the Sixth Judicial Circuit, during its September Term 1983, and argued before this Bench, it is our considered opinion that the opinion and judgment of His Honour Eugene Hilton, quoted herein below word for word is correct:

"The petitioners who are lineal heirs of the late Fahn Kendeh as well as administratrix and administrator respectively, of his intestate estate, have prayed this Court to render a declaratory judgment construing the Aborigine **Land** Grant to Fahn Kendeh and families from the Republic of Liberia and thus ascertain and remove uncertainties as to who are the actual grantees under the said **land** grant.

The petitioners contend that they are daughters and sons of Chief Fahn Kendeh and that since the 204 acres of **land** was granted to their father "Chief Fahn Kendeh and families", the

property after his death, descended to them and their families; and that the respondents, who are not lineal heirs of the late Fahn Kendeh, cannot have superior rights to the property.

The respondents alleged in essence that they are lineal heirs of the late Kema Kpendi, purported sister of Chief Fahn Kendeh; that the phrase "Chief Fahn Kendeh and families of Kindi Towns, in the deed does not refer to Chief Fahn Kendeh and his immediate family, but to the respective families of Kindi Town which, according to respondents, include petitioners, on the one side, and respondents on the other, thus making them joint owners of the property; that the late Chief Fahn Kendeh parted with the property before his death by executing a guaranty deed on January 10, 1958 in favour of Bindu Safrua, Kaial, Dongo, et. al.; that as joint owners of the property, they and petitioners sold a portion of the property to Rev. Lartey and others; and that the deed conveying the type **land** speaks for itself and therefore there was no uncertainty as to the ownership of the said property.

The evidence adduced at the trial shows that the late Fahn Kendeh died on November 14, 1957, leaving seven children: Bindu Kendeh, Treni Kendeh, Gama Kendeh, Gbessie Kendeh, Kula Kendeh, Lami Kendeh and Gboto Kendeh and that Fahn Kendeh was the only surviving child of the late Kendeh Worrel.

Co-respondent Armah Kamara produced two witnesses, his sister Saulla Kamara and Mr. Bai T. Moore, who testified that Kema Kpeno, mother of Armah and Safula Kamara, were John Kendeh' s sister; but on cross examination, it was revealed that in an ejectment suit between Bindu Kendeh and Safula et. al., lineal heirs of Kema Kpene, decided by the Supreme Court on April 29, 1977, the same Safula testified that she did not know Fahn Kendeh and that she bore no relationship to Fahn Kendeh. The relevant part of that opinion, at page 14, is as follows:

"She also testified that she did not know anyone called by the name of Fahn Kendeh but she knew someone that Fahn Karpai and that was Bendu's's father. That Kahn Kendeh alias Fahn Karpai bore no relationship to Kindi Worrell. He was a Gbandi man who lived in Kindi Town like the others as Fahn Karpai and Bendu Karpai. When asked where did Fahn Karpai come from to be in Kindi Town, she replied that he came from Grand Cape Mount County, but firstly lived at Ziamah, but later migrated to Kindi Town under unpleasant circumstances.

She could not reconcile her testimony in this case with her testimony in the previous case, thus creating a doubt as to the relationship between her mother Kema Kpene and Fahn Kendeh. On

the cross, Bai T. Moore admitted that he did not know the real relationship between Fahn Kendeh and Kema Kpena, but that he was testifying as to what was told to him.

Except that co-respondent Henry Kollie is an uncle of co-respondent Armah Kamara, his relationship to petitioner or to Fahn Kendeh was not established.

In the face of the evidence showing that Fahn Kendeh, died on November 14, 1957, a doubt is raised with respect to the deed, Kema Kpana and Jartu Kedeh whose names do not appear anywhere in the deed.

The deed presented by respondents evidencing a conveyance of **land** to Rev. Lartey does not show that the **land** was disposed of jointly, only that it was witnessed by respondents. But even if the deed were signed jointly, that in itself does not make respondents owners of the parcel of **land**.

It having been established from the evidence that petitioners are the lineal heirs of Chief Fahn Kendeh, the important issue is whether the grant is to Chief John Kendeh and the families of his lineal heir, of Kindi Town as petitioners contend, or whether it is to Chief Kendeh and the other families of Kindi Town as averred by respondent. We do not agree with respondents that there is no uncertainty as to ownership of the said property because if this were true, a dispute as to whom the **land** was conveyed would not arise. Clearly, there is a need to declare the fights, status and other legal relations of the contending parties in the proceedings; equally so there is a need to have determined a question of construction arising under the **land** grant. *See* Civil Procedure Law, Rev. Code 1: 45.1- 43.3 and 43.10.

Among the rules for the construction of deeds, there is a requirement that deeds should be construed favorably and as near the intention of the parties as possible, consistent with the rules of the law. The construction ought to be put on the entire deed; and the whole deed ought to stand together, if practical."

In reviewing the aborigines **land** grant admitted into evidence, it is observed that the granting and habendum clearly reads as follows:

`Now therefore, know ye that I, Daniel E. Howard for and in consideration of the various duties of President to grant, give and confirm unto said Chief Fahn Kendeh and families as aforesaid, his heirs, executors, administrators and assigns forever that piece or parcel of **land** situated lying and being in the rear Settlement of Paynesville, Montserrado County, and of the Republic aforesaid. . . .

To hove and to hold the above granted premises (farm **land**) together with all and singular the buildings improvements and appurtenances thereto and thereof belonging to the said Chief Fahn Kendeh and families of Kindi Town, his heirs, executors, administrators and assigns as aforesaid forever. And I, the said Daniel E. Howard, President as aforesaid, for myself and my successors in office do covenant to and with the said Chief Fahn Kendeh, his heirs, executors, administrators and assigns that at the ensealing hereof, I, the said Daniel E. Howard, President as aforesaid, and my successors in office, will forever warrant and defend the said Chief Fahn Kendeh and families, legal heirs, executors, administrators and assigns against the lawful claims and demands of all persons above granted premises.'

It is our opinion that the intent of the grantor is that the property would be conveyed to Chief Kendeh, and there-after it would descend to his heirs and their families. If it were intended otherwise, then the word "their" instead of "his" would have been used in referring to heirs, administrators, etc.

This being so, the petitioners who are lineal heirs have a superior right to the property. Both Safula and respondent Armah Kamara admitted that petitioners are the children of Fahn Kendeh. The respondents, according to the evidence, bear no relationship to Chief Fahn Kendeh, and therefore, they are not entitled to inherit from him. Even if they claim that they are nephews and nieces of Chief Kendeh, they would be morally collateral relatives who cannot supersede the lineal heirs. *See* Decedents' Estate Law, Rev. Code. 8:3.2 (b) which reads:

"If the decedent leaves surviving one or more lineal decadents but no spouse, the entire estate to the children and to the issue of any deceased child in accordance with the provisions of section 3.41." *See* also *Cole v. William*, [1950] LRSC 11; 10 LLR 370 (1950).

Credence cannot be given to the deed allegedly executed by Frank Kendeh in 1958, in view of the evidence adduced showing that the said Fahn Kendeh died in 1957 - a fact which respondents have not denied.

We therefore rule that the clause in the **land** grant "to Chief Fahn Kendeh and families", refer to Chief Kendeh and his immediately family, and therefore the Petitioners, being lineal descendant of Chief Kendeh are the lawful owners of the property in keeping with tine law governing descent and distribution of the intestate estate.

Given under my signature and seal of court
this 21st day of October, A. D. 1958. Eugene L. Hilton
ASSIGNED CIRCUIT JUDGE PRESIDING"

The same is sound in law and therefore affirmed and confirmed to all intents and purposes. The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment, with instructions that it resumes jurisdiction of the cause of this action and enforce its judgment. And it is hereby so ordered.

Judgment affirmed.

MR. JUSTICE KPOMAKPOR *dissents.*
Although I agree with some of the conclusions reached today by the Court, I have found myself unable to harmonize my legal convictions with those of the rest of my colleagues in their opinion arrived at as regards the motion for reargument. Hence, I did not sign the opinion of the Court on said motion; and therefore this dissenting opinion on said motion.

The above entitled cause was disposed of during the March Term, A. D. 1986, of this Court, in which judgment was rendered in favour of the respondents/appellants, referred to hereinafter as appellants. The essence of the Court's opinion, delivered through our former colleague, Mr. Justice Jangaba, was that the **land** grant was a special fee simple communal property which vested title in Chief Fahn Kendeh, his family and other families in Kendeh Town at the time the grant was made in 1916. I am convinced that this was the only possible result given the facts and circumstances and the deed involved.

The present petitioners/appellees, referred to hereinafter as appellees, were petitioners in proceedings for a declaratory judgment in the trial court. Feeling that some vital points of facts and law had been inadvertently overlooked by this Court in its 1986 opinion, the petitioners filed a nine-count petition in the office of the Clerk of this Court for a reargument of the case. Of the nine counts, count one was withdrawn by the appellees. The remaining points, stressed by them in their brief and argued before us, are these:

1. That this Court overlooked and failed to decide or determine the all-important issue regarding the rights of the parties to the 204 acres of **land**.

2. That the opinion of the court inadvertently referred to the answer and amended answer in the court below as having stated that had the grant been meant for Chief Fahn Kendeh and his immediate family, it would have been limited to 25 acres and not 204 acres; when indeed this issue was never pleaded by the appellants.

3. That this Court overlooked the issue of whether the appellants established any evidence as to their being either lineal or collateral heirs of Chief Fahn Kendeh.

4. That the Court overlooked the fact that in the case of *Karpai, et al v. Sartlor, et al*[*[1976] LRSC 23*; , 25 LLR 3 (1977), the appellants disavowed any relationship to either Chief Fahn Kendeh or the appellees; said issue having been raised in the petition and brief of petitioners and argued before this Court.

In resisting the petition for reargument, the appellants filed a three-count brief, in which the following points were emphasized:

1. That the Court did not overlook any important point; in that the Court decided the main issue raised by the pleadings; that is, the Court construed the instrument of grant to be communal property to chief Fahn Kendeh, his family and other families of Kendeh Town.

2. That. the Court was legally correct when it elected to consider only issues it deemed meritorious in determining the case, and that its failure to pass upon all issues raised by a party is not necessarily a ground for which reargument will be granted.

In my opinion, the issues raised by the motion for reargument and the resistance thereto are as follows:

1. Whether or not the allegation of the appellees that this Court inadvertently overlooked and failed to decide the central issue regarding the rights of the parties to the 204 acres of **land** is supported by the records and the 1986 opinion of this Court?

2. Whether or not this Court inadvertently overlooked the issue as to whether the appellants established any evidence to the effect that they are lineal or collateral heirs to the late chief Fahn Kendeh, which issue was raised in the appellees' brief.

3. Whether or not the contention of the appellees that the 1986 opinion of the Court inadvertently referred to the answer and amended answer in the court below as having stated that had the 204 acres grant been meant for Chief Fahn Kendeh and his immediate family, it would have been limited to only 25 acres?

4. Whether or not this Court inadvertently overlooked and failed to pass upon the issue of appellants disavowing any relationship to Chief Fahn Kendeh as reported in the case of *Karpai et. al. v. Sarfloh et. al.[1977] LRSC 17;* , 26 LLR 3 (1977), which issue was raised in the court below as in appellees' brief and argued before this Court?

This briefly is the synopsis of the thrust of the arguments of the parties before this Court. I shall resolve these issues in the reverse order.

In Rule 9, Part 1, of the Supreme Court Rules, it is stated:

"Permission for - For good cause shown to the court by petition, a reargument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some facts, or points of law."

The Liberian Law Reports are replete with opinions of this Court which hold that: "A petition for reargument is not granted to challenge the opinion and judgment of the Supreme Court on points

of law and facts raised and already decided by the Court simply because the petitioner is of the opinion that the Court is wrong in its conclusion on the law and facts. Reargument is intended to call the Court's attention to the points of law and fact previously raised in the argument and which the Court inadvertently overlooked to pass upon . . . ." *American Underwriters Inc. v. Fares Import-Export*, 30 LLR (1982); also cited was the *case; Intrusco Corp., et al v. Tulay, et al*, 32 LLR 35(1984).

Reargument is for the "purpose of demonstrating to the court that there is some decision or principle of law which would have controlling effect and which has been overlooked, or that there has been a misapprehension of facts." BLACK'S LAW DICTIONARY (4th ed.).

Since I am passing upon a motion for reargument, I am limited to the issues raised in the pleadings and argued before this Court, but which, according to the appellees, were inadvertently overlooked by this Court. Before going any further, I would like to point out that the Revised Civil Procedure Law mandates the courts to render declaratory judgments which will terminate the uncertainty or controversy giving rise to the proceeding. The courts are also commanded to construe and administer chapter 43, declaratory judgments, liberally. Civil Procedure Law, Rev. Code 1: 43.5 and 43.10.

With respect to the fourth issue, the appellees contended that they raised in their petition, their brief to this Court, and in the court below the fact that in an earlier *case Karpai, et. al. v. Sarfloh et. al.[1977] LRSC 17; ,* 26 LLR 3 (1977), the appellants had disavowed, when that case was being tried, having any relationship or ties to Chief Kahn Kendeh and to the appellees. This point, appellees argued, was overlooked by this Court in its March Term opinion, handed down during the 1986 Term. See count 8 of the petition for reargument.

In resisting the said point, the appellants contended in their amended answer, at count 7, that the issues in the case of *Karpai, et. al., supra,* was not relevant to the case at bar. They noted that the **land** referred to therein is not one and the same as that in the instant case. I am in accord with the appellants' position on this issue. While it is true that Justice Jangaba made no mention of the *Karpai, et. al.* case in the 1986 opinion of the Court, this Court held in *Lamco J. V Operating Company (LAMCO) v. Verdier*, [1978] LRSC 9; 26 LLR 445 (1978), that the Court need not pass on every issue raised in the bill of exceptions or in the brief. The practice in this jurisdiction has been for the Court to pass upon those issues it deems meritorious and properly presented. Therefore, in my opinion, the failure of Justice Jangaba in not traversing this issue did not in any way prejudice the interest of the appellees so as to warrant a reargument. Argument need not be made in support of the fact that the instrument before the Court for construction was

the one under which the parties had based their claims and not the one in the case of *Karpai, et. aL case, supra.*

With respect to the third issue, the appellees have averred in count two of their petition for reargument that the Court, speaking through our former colleague, Mr. Justice Jangaba, had made a mistake in suggesting that the appellants had raised in their answer and amended answer the issues that the aborigines **land grant in the case at bar was not limited to 25 acres of land** for each family, as had been the case in the past, but that this particular grant was 204 acres because the intent of the grantor, the Republic of Liberia, was to create a community grant in exchange for the votes of the grantees, chief Fahn Kendeh and families of Kendeh Town. This contention of appellees, that is, that these issues were not mentioned in the answer and amended answer of the appellants is correct, even though the said issues were raised in the brief, at count 2, on page 2, and argued by the appellants in 1986. I do concede, therefore, that the Court inadvertently stated that the appellants had contended in the court below that the huge size of the grant, 204 acres, instead of the normal 25 acres for a family, was an indication that the grantor had intended to convey the **land** to other grantees than to only Chief Fahn Kendeh and his immediate family.

This brings us to the consideration of the point whether or not this inadvertency on the part of the Court was relevant and cogently in favour of the appellees to the extent that they should be awarded a reargument? Considering the facts and circumstances in the case at bar, I am not in accord with the view of the appellees that this inadvertence constitutes a palpable mistake for which reargument will lie. A careful reading of the Court's opinion of 1986 will reveal that the size of the grant involved was not the only overriding factor. There were other relevant factors which were obviously taken into consideration by the Court. For instance, Justice Jangaba said on page 2 of the Court's opinion: "As evidence of said community ownership, they proferted two warranty deeds showing how both parties had jointly issued the same as point owners over these years . . .." It is my opinion that rather than size, it has also the manner in which the parties have used the **land** over the years that influenced the opinion of the Court. I will say more about the effect of custom and usage on property of this kind by the grantees later in this dissenting opinion.

Although the size of the grant was not raised as an issue by the appellants, as the Court had inadvertently stated, the issue was, however, indirectly raised in count 2 of the amended answer;

"2. Respondents say that the allegation contained in counts 2 and 3 of petitioners' petition that the subject property consisting of204 acres of **land**, petitioners' exhibit 'n', aborigines **land** grant from the Republic of Liberia, was executed in favour of the late Chief Fahn Kendeh and his

immediate family, is false and misleading. The aborigines **land** grant was in fact executed in favour of 'Chief Farm Kendeh and the families of Kendeh Town, quoting the words of the deed, clearly showing that the **land** was to be held in common by Chief Fahn Kendeh and the respective families of Kendeh Town . . . .

As can be seen from this count of the amended answer, the issue of the size of the grant and the intended purpose or use was mentioned in the pleadings by the appellants, though not squarely raised. I will show later in this dissent that the basis of the 1986 opinion was the deed itself. In fact, both parties requested this Court, during the argument before us, to take keen judicial notice of the instrument, and I have done just that.

This brings us to the second issue raised by the appellees, stated in count 7 of the petition, wherein it was said that the Court overlooked the issue as to whether the appellants established any evidence to the effect that they were lineal heirs or even collateral heirs of the late Fahn Kendeh. This issue was also raised in the brief of the appellees, but I disagree with their contention that it was overlooked by the Court, especially since the Court held in 1986 that the grant was intended to and did vest title to the 204 acres in the families of Kendeh Town and not only the immediate family of Chief Palm Kendeh.

Rather than being overlooked, the Court dealt directly with the question of lineal and/or collateral heirs of the late Chief Palm Kendeh. On this issue, a construction of the **land** grant deed should not, in my opinion, permit the kind of interpretation urged upon this Court by the appellees. For instance, had the deed read, and could have so read, "to Chief Falm Kendeh and his family, an interpretation that ownership of the 204 acres were limited to Chief Fahn Kendeh and his immediate family alone, would have been plausible or reasonable. In my view, the words "to Chief Fahn Kendeh and families of Kendeh Town" conveys not only to Chief Fahn Kendeh and his immediate family, but also to other families of Kendeh Town in 1916.

I cannot join the opinion of the Court which holds that the appellants "bare no relationship to Chief Palm Kendeh and, therefore, they are not entitled to inherit from him. Even if they claim that they are nephews and nieces of Chief Fahn Kendeh, they would be morally collateral relatives who cannot supersede the lineal heirs"

In the 1986 opinion of the Court, Justice Jangaba observed:

"In the promises of the said aborigines **land** grant deed cited *supra,* reference is made of the policy of the Liberian Government at the said time to induce the aborigines of this country to adopt civilization and become loyal citizens of the Republic . . . and it is pointed out that the government considered it best to grant all said aborigines **land**, who are to be entrusted with citizenship rights to allow them to exercise the franchise"

Justice Jangaba interpreted the grant as that of community holding in fee and as tenants in common, to allow each and every family in Kendeh Town the right to vote which was only conferred at that time, 1916, on an aborigine who held **land** in fee simple.

The majority held that the grant of 204 acres was a fee simple one to the grantees. The 1986 opinion of this Court also held that it was. However, Justice Jangaba, who spoke for the. Court, was rather ambivalent on this issue. For example, while holding that the grant vested fee simple title in the grantees, our former colleague also held that all families residing in Kendeh Town in 1916 were entitled to share in the common undivided ownership of said **land** in fee, until otherwise Drover petition is made to government to have said communal tribal holding divided into individual family holdings in fee as is required by law." Emphasis supplied.

With respect to the first and basic issue, the appellees have contended that this Court overlooked and failed to decide or determine the pivotal issue with respect to the rights of the parties to the 204 acres of **land**, even though said issue was determined by the trial judge. *(See* count three of the petition for reargument). A recourse to the opinion of the Court shows that Justice Jangaba did in fact address this issue, the basis of the suit. Stated briefly, the principal question before the Court is simply who were the intended grantees of the 1916 deed?

In the Court's opinion, Mr. Justice Jangaba had this to say regarding the ruling of Judge Hilton:

"It is the two clauses cited above that the learned judge referred to as conferring an absolute fee simple estate on Chief Fahn Kendeh and his lineal heirs alone, to the exclusion of any and all other families of Kendeh Town."

We, of this Bench, unanimously hold otherwise, and do hereby rule that the said instrument conferred a communal **land** grant on all the families that had settled in Kendeh Town at the time, including the family of Chief Fahn Kendeh who, in our opinion, was father and

representative or agent of all the other families settled in Kendeh Town at that time. Hence, apparently there were no quarrels over said piece of property from 1916 when it was granted, and at that time when chiefs merely obtained such grants in order to acquire civil status for their followers, until 1918.

The question of reargument is not new in this jurisdiction. However, in *West African Trading Corporation v. Alrine (Liberia)Ltd.*, [1976] LRSC 23; 25 LLR 3, 10 (1976), this Court said: "A rehearing will ordinarily be refused where the questions presented by the petition were argued and considered by the Court in the former hearing."

This Court has also held that a rehearing of a motion is not a matter of right; it is a question addressed to the sound discretion of the Court. *West African Trading Corporation, supra,* at p. 10.

The appellees have contended that several issues were raised in their petition, and which they say the Court failed to pass upon in its 1986 opinion. On this point, the majority is apparently in accord with the appellees. It is my opinion, however, that the appellees have not raised any pertinent issue or issues of fact and law which Justice Jangaba overlooked. However, even assuming that this allegation was true, this Court held in *Lamco J. V Operating Company v. Verdier,* [1978] LRSC 9; 26 LLR 445 (1978), that the Court need not pass on every issue raised in the bill of exceptions or in the brief. The practice in this jurisdiction has been for the Court to pass upon those issues it deems meritorious or properly presented.

In *Nurse v. Republic,* [1972] LRSC 45; 21 LLR 326 (1972), at page 327, it was held that reargument of a cause may be allowed by petition when some palpable mistake has been made by the Court inadvertently overlooking some fact or point of law. See also *Bracewell v. Coleman,* [1938] LRSC 5; 6 LLR 206 (1938) and *Webster v. Freeman,* [1965] LRSC 5; 16 LLR 209 (1965).

A reading of the Court's opinion of 1986 shows that the Court not only discussed lengthily the glaring irregularities committed by the trial judge in respect to the construction placed on the **land** grant deed executed in 1916, but in doing so, it condemned in the strongest possible terms the trial court's various interpretations of the premises and habendum clauses of the deed. In my view, there was nothing more that Justice Jangaba, who spoke for the Court, could have said, so as to leave no doubt as to the ownership of the 204 acres of **land**. This issue, in my opinion, was the salient point in the court below and which was decided in 1986. The nub of the

petition for reargument is that this issue was not determined by Justice Jangaba who spoke for the Court. I disagree.

This Court has held repeatedly that reargument is a legal right to which a party appearing before it is entitled, provided it appears that an important issue or issues had been inadvertently overlooked or omitted from the opinion when the appeal was first heard and determined. *Bryant v. Harmon,* 12 LLR 405 (1957). There are other opinions of this Court which we cannot afford to ignore. However, reargument is not an absolute right, but will only be granted where the appellant has fulfilled all the requirements incident to appellate review, and where he shows that the opinion omitted certain contentions raised by him, the omission of which has prejudiced his cause, and was detrimental to his interest. In this respect, appellees failed to sustain the burden. The rationale behind granting reargument is simple; judges being human, they are not infallible; mistakes are bound to be made now and then. However, this Court has observed over the years that petitions for re-argument have mushroomed, most of them without a scintilla of merit. The petition at bar is no exception.

This Court has held that: "It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to the securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves." *Gaiguae v. Jallah et. al.[1971] LRSC 3;* , 20 LLR 163 (1971). In the case at bar, the cases cited by the appellees in apparent support of their claim are diametrically opposed to the results desired. In support of their petition for reargument, for example, appellees cited several cases, the first being, *King v. Cole, et al.[1962] LRSC 3;* , 15 LLR 15,16 (1952), where a rehearing was refused because, as is true with the appellees herein, there were no new facts presented in the application, and all the facts shown had in fact been duly considered by the Court.

In *Richardson v. Gabbidon,* 16 LLR 282 (1965), which appellees also cited and relied upon, the petitioner filed an application requesting an interpretation and construction of a judgment previously rendered by the Supreme Court in *Richardson v. Gabbidon,* [1963] LRSC 44; 15 LLR 434 (1963). This court refused to entertain the application and ordered the same denied.

Webster v. Freeman, [1965] LRSC 5; 16 LLR 209 (1965), was the third case appellees relied upon in filing their petition for reargument. As in the first two cases, the Court also denied the request for reargument in the *Freeman* case, noting as ground for the denial that the petitioner had failed to establish sufficiently that any issue of law or fact was omitted in the Court's consideration of the issues advanced at the trial and review of the ruling of the Chambers Justice.

Still another case cited by the appellees was *Mark-Reeves v. Republic, [1963] LRSC 33; 15* LLR 343 (1963). Be it civil or criminal, the rule is consistent. In denying the motion for reargument in this case, the Court stated; "Reargument of a criminal appeal will be denied where no material point of fact or law is inadvertently overlooked on the original hearing."

I have reviewed these cases, cited and relied upon by the appellees, for the purpose of indicating in this dissenting opinion the paradox which revealed that the petition for reargument as filed by appellees is not supported by appellees own authorities. Of course, the cases are vocal on the issue involved; however, they are against the appellees. Consequently, a rehearing of the argument in this case is without justification. The only logical conclusion to be drawn as to why the petition for reargument was filed is that the appellees, like my colleagues, saw nothing basically wrong with the opinion of 1986 except that they did not like it.

Reargument should be granted where the Court has made a palpable mistake, or inadvertently overlooked an important point of law . . . and not because, as in the instant case, the petitioner is not successful, or is dissatisfied with the opinion of the Court.

In count 6 of the petition for reargument, the petitioners said therein:

"6. That the petition for declaratory judgment was to determine the rights of the respondents/appellants and the petitioners/appellees to the 204 acres of **land**. This issue has been inadvertently overlooked in your Honour's judgment and opinion rendered on August A. D. 1986. The purpose of the petition for declaratory judgment was to determine the rights of the respondents/appellants and the petitioners/appellees to the 204 acres of **land**. This issue was determined by the trial judge, for which the respondent/appellants appealed, but inadvertently your Honours overlooked this salient point in your opinion." Emphasis supplied

While I am in complete agreement with the contention of the appellees that this point was the salient issue, I hold the view that the said point was determined and not overlooked by Justice Jangaba.

Firstly, here is what the trial judge said on this point:

"It is our opinion that the intent of the grantor is that the property would be conveyed to Chief Kendeh, and thereafter it would decent to his heirs and their. families. If it were intended that the property would be granted to Chief Kendeh and the other families, the word 'their' instead of 'his' would have been used in referring to heirs, administrators, etc."

In concluding his ruling, Judge Eugene L. Hilton said:

"We therefore rule that the clause in **land** grant to Chief Fahn Kendeh and Families' refer to Chief Kendeh and his immediate family, and therefore the petitioners being lineal decedents of Chief Kendeh, are the lawful owners of the property in keeping with the law governing decent and distribution of intestate estate."

One does not have to be a legal scholar to formulate the correct theory as to why a declaratory judgment was sought by the appellees and not an action of ejectment. In an action of ejectment, "the plaintiff must recover upon the strength of his own title and not on the weakness of his adversary . . . ." *Salami Brothers v. Wahaab*, *[1962] LRSC 6*; *15* LLR 32, 39 (1962), and *Cooper-King v. Cooper-Scott*, *[1963] LRSC 38*; *15* LLR 390, 404 (1963). In an action of ejectment the essential issue is not ties of blood, but title. *See Cooper-King v. Cooper Scott, supra.* Under these circumstances, the question presented is why declaratory judgment and not ejectment? The answer to this question is clear and obvious.

Appellees are not sure of their claim and right to the 204 acres. Count 4 of appellees' amended reply supports my position:

"4. And also because further to count 2 and as to count 8, petitioners asserted that an uncertainty does exist as to who are the actual grantee that is to say whether that grant is to `Fahn Kendeh and his families' or to him and their families. Petitioners request this court to take particular judicial notice of the other portions of the deed, such as the habendum clause, where reference is made to Chief Fahn Kendeh and families of Kendeh Town, his heirs, executors . . . ." Emphases supplied.

Now, coming back to the specific question, whether or not Justice Jangaba overlooked the question as to whether the **Land** grant deed vested title to the 204 acres in only Chief Kahn Kendeh and his immediate family of Kendeh Town, or whether title vested in Chief Fahn Kendeh, his family and other families of Kendeh Town as well, I maintain that this question was not overlooked. Rather, it was determined by the Court in 1986. Apparently the appellees and the majority of my colleagues dislike the outcome of the result. Of course, reargument will not be granted simply because the petitioner was disappointed with the holding in the opinion.

On page 3 of the opinion, Justice Jangaba wrote for the Court:

"From what we gather from this matter, there is only one issue for our determination here; Whether or not the aborigines **land** grant deed issued by President Daniel E. Howard in 1916 to Chief Fahn Kendeh and Families of Kendeh Town, Settlement of Paynesville, was in fact a community grant in fee or a mere individual family grant to said chief and his family?

It is obvious that the contention that this issue was inadvertently overlooked by Justice Jangaba is not supported by the opinion and the pleadings. On page 3 of the opinion, Justice Jangaba also said that this issue was the "identical issue confronting the trial judge in the trial court, and he ruled that in fact the deed in question was an individual family plot to Chief Fahn Kendeh and his heirs . . . His Honour therefore ruled that the plot of 204 acres in Kendeh Town, the subject of this litigation, is properly the property of the lineal heirs and administrators of the intestate estate of the late Chief Fahn Kendeh of Kendeh Town." Justice Jangaba then went on: "Hence, this appeal on which appellants still maintain their position; that the said property in which all families of Kendeh Town equally shared."

Contrary to the conclusion reached by the appellees in the petition for reargument, that the opinion of Justice Jangaba overlooked and failed to determine this decisive issue regarding . the rights of the parties to the 204 acres of **land**, he did resolve said issue.

For their part, the appellants contended in their resistance to the petition for reargument, at count two, that the Court did decide the issue in 1986 when it construed the deed to confer a communal grant upon Chief Kahn Kendeh and the families of Kendeh Town.

On page 4 of the opinion, Justice Jangaba said: for the determination of this appeal and this issue is limited to the authority of the aborigines **land** grant issued by president Daniel E. Howard in 1916, and we believe this authority will be further properly augmented by our notice of historical circumstances of the said **land** grant." The issue herein referred to is "whether or not the aborigines **land** grant deed issued . . . to Chief Fahn Kendeh and families of Kendeh Town . . . was in fact a community grant in fee or a mere individual family grant to the said Chief and his family?" In other words, our colleague saw the main issue on appeal before the court as being whether the **land** granted vested title in Chief Fahn Kendeh and his family only, or, in the alternative, whether, by the terms and language of the deed, title to the **land** was vested not only in Chief Fahn Kendeh and his immediate family, but in other families as well.

In answering this question, Justice Jangaba had recourse to the deed and what he referred to as "historical circumstances of the said **land** grant." During the argument of the motion for reargument, both parties requested this Court to take keen judicial notice of the aborigines **land** grant deed, the subject of these proceedings.

When it comes to the construction of deeds, one of the fundamental principles of law generally observed is that the intention of the parties is paramount when ascertainable.

The formal parts of a deed are the premises which designate the caption and embrace the recitals of the grantor's intention and motives; the description of the parties; and the consideration received in exchange for the property conveyed. The premises clause precedes the habendum clause. It is upon the premises of the deed that the property is really granted. The premises of the deed in question read as follows:

"TO ALL TO WHOM THESE PRESENTS SHALL COME: Whereas, it is the policy of this Government to induce the aborigines of this country to adopt civilization and become loyal citizens of the Republic, and whereas one of the best things thereto to grant **land** in fee simple to all those themselves to be entrusted with the rights and duties of full citizenship as voters, Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, Montserrado County, Republic of Liberia, have shown themselves fit to be entrusted with said rights and duties."

From the premises clause just quoted, the grantor desired that the grantees adopt "civilization" and become loyal citizens of this country. The consideration for the grantees' loyalty to the state

and their adoption of civilization was the granting to them of 204 acres of **land** in fee simple. This clause also shows, at least by implication, that the grantor intended the grantees to exercise their right to vote, which they could not do without first owning real property in fee simple.

In the motion for reargument, the appellees argued that according to the deed, the Republic of Liberia, the grantor, intended to convey the parcel of **land** to Chief Fahn Kendeh and his immediate family, to the exclusion of other families living in Kendeh Town at the time, 1916. If we accept this line of argument and reasoning, then we must hold that the grantor was only interested in Chief Fahn Kendeh and his immediate family adopting civilization and voting, since it would be absurd to imagine that the chief had more than one family which excluded the appellants, although they were also part of a family residing in Kendeh Town. As to who the grantees are, the deed speaks for itself. In the premises clause, the grantor unequivocally identified the grantees as Chief Fahn Kendeh and Families of Kendeh Town. I repeat: Chief Fahn Kendeh and Families of Kendeh Town. How is it possible to interpret this phrase to mean Chief Fahn Kendeh and his immediate family? Since the **land** granted was for the purpose of inducing the grantees to adopt civilized ways of life and qualify them as voters, apparently for the benefit of the grantor, thereby making them eligible as full fledged citizens, the obvious question is whether or not this tract of **land** was intended for the benefit of Chief Fahn Kendeh and what the appellees and the majority have referred to as his immediate family? By what rule of grammar my colleagues have read the words immediate family into the deed in place of "families of Kendeh Town" remains a mystery to me.

The other main part of the deed is the habendum clause; it usually follows that of the premises and sets forth the estate and how it is to be held and enjoyed by the grantees. The habendum clause herein involved states:

"To have and to hold the above granted premises (farm **land**) together with all end singular the buildings, improvements and appurtenances thereto and thereof belonging to the said Chief Fahn Kendeh and families of Kendeh Town, his heirs, executors, administrators and assigns as aforesaid, forever. And I, the said Daniel E. Howard, President as aforesaid, for myself and my successors in office, do covenant to and with the said Chief Fahn Kendeh, his heirs, executors, administrators and assigns that at the ensealing hereof I, the said Daniel E. Howard, President as aforesaid, and my successors in office, will forever warrant and defend the said Chief Fahn Kendeh and families, legal heirs, executors, administrators and assigns against the lawful claims and demands of all persons above granted premises."

From the above quoted *habendum* clause, it is indicated that the parties intended that the **land** be used for farming purposes, among others. This clause also stated that the grant was to Chief Fahn Kendeh and Families of Kendeh Town. The argument was advanced before us by the appellees that the addition of such words as "his heirs, executors, administrators and assigns" after the grantees, "Chief Fahn Kendeh and families", in the *habendum* clause, by the grantor, is an indication that the conveyance was to Chief Fahn Kendeh and his immediate family. My colleagues have also adopted this illogical interpretation. Incidentally, the words, "his heirs, executors", etc. are missing in the premises clause.

In the construction of deeds, the Court is often called upon to determine whether the deed passes or conveys or merely confers an easement on the grantee. I am in accord with the majority in their holding that the grant here is a fee simple one. In those cases in which this Court held that the grant was a "communal holding", such **land** was surveyed upon application made to the government, at the expense of the tribe, and that the holding is vested in the members of the tribal authority, as trustees for the tribe. In such cases, the tract of **land** cannot be sold, transferred or alienated without the consent of the Government of Liberia. *Karpai, et al. v. Sarfloh, et. aL[1977] LRSC 17;* , 26 LLR 3, 5-7 (1977). As I have stated earlier, the Court held in 1986 that the 1916 conveyance was in fee but then concluded that it was necessary for a petition to be made to the government to have the communal holding divided into family holdings. Obviously, the Court was confused as to communal holding in the *Karpai case, supra,* where the fee remained with the grantor and where, as in the instant case, the fee is vested in the grantee upon the execution of the deed.

In the case at bar, the issue for determination was simply this; who are the grantees in the instrument involved? The appellees contended that from the language of the deed, the intended grantees were only Chief Fahn Kendeh and his immediate family, and that is all. This is the construction reached by the trial judge, Eugene L. Hilton, and, unfortunately, my colleagues. On the other hand, the appellants, for their part, strongly contended that the grantees intended were Chief Fahn Kendeh and other families of Kendeh Town. In order to determine the grantee or grantees in a deed, it is sometime necessary to resort to the rules of construction.

Specifically, the question at this stage is whether or not the meaning of the deed is clear or unambiguous as to who were the parties intended as grantees? I am of the opinion that the language of the deed could have certainly been clearer with respect to the intention of the parties regarding the grantees. The general rule is that the real intention of the parties, particularly that of the grantors, is to be sought and carried out whenever possible, when contrary to no settled rule of property which specifically ingrafts a particular meaning upon certain language, or when not contrary to, or violative of settled principles of law or statutory provision. 23 AM. JUR. 2d., *Deeds, §* 159. In doing so, the modern tendency is to disregard technicalities in a conveyance as ambiguities to be clarified by resort to the intention of the parties, gathered from the instrument

itself, the circumstances attending and leading up to its execution, the subject matter and the situation of the parties at that time. As expressed by some courts, the "Polar Star" rule of construction is that the intent of the grantor, as gathered from the four corners of the deed shall prevail unless such intent conflicts with some statutory provision or is against public policy. Would it have been a sound public policy to grant 204 acres of **land** to Chief Fahn Kendeh and his immediate family for the consideration mentioned in the deed, to the exclusion of other families living in the same Kendeh Town? I say no.

Again, in the deed, the grantees designated are Chief Fahn Kendeh and families of Kendeh Town. In construing deeds, it is generally assumed that the parties to it intended each of its provisions to have some effect, from the very fact that they inserted it into the instrument. Hence, a deed will be construed as to make it operative and effective in all its provisions, if susceptible of such construction without violation of some positive rule of law. Every word, if possible, is to have effect, and a construction which requires rejection of some relevant portions is not to be admitted, except in cases of unavoidable necessity. Indeed, it has been said that the deed, as the contract between the parties, should speak the truth, the whole truth, and nothing but tune truth. 23 AM. JUR. 2d., *Deeds, §* 163.

I feel that if these principles are applied in the instant case, the contention of the appellees, Judge Hilton, and now my colleagues, that the grantor of the 204 acres of **land** intended to vest title only to Chief Fahn Kendeh and his immediate family, cannot be sustained. Had the Republic of Liberia intended to convey this parcel of **land** to Fahn Kendeh and his immediate family, the deed would have been so worded. This is a simple expression which the grantor could have employed. Instead, the grantor chose to convey to "Chief Fahn Kendeh and Families", not family, "of Kendeh Town". Of course, the grantor used the additional words, "his heirs and assigns" in the *habendum* clause, but one of the rules of construction is that where certain words used in a deed are found to be repugnant to other portion thereof and the general intention of the parties, such words should be rejected. Also, the rule states that where subsequent words used in a deed are of doubtful import, such as "his heirs, assigns, executor," etc., as used in the Aborigines **Land** Grant involved in this case, they cannot and should not be used for the purpose of contradicting those which are certain and preceding them.

From the above analysis, I am of the opinion that there are two repugnant phrases which need to be construed so as to give effect to the intention of the grantor and grantees. These phrases are; "Chief Fahn Kendeh and families of Kendeh Town" and the subsequent one, "Chief Fahn Kendeh and Families, his heirs" added in the habendum clause. The word "and" preceding the word "families" in the habendum clause implies the conjunctive. It has been defined to mean "along with", "also", "as well as", "besides", etc. BLACK'S LAW DICTIONARY, Rev. 4th ed. Still another method used in construing instruments having two clauses or phrases which are totally repugnant to each other, is that the first shall be received and the second rejected.

Another rule of construction often resorted to by courts, when faced with a problem such as the one in the instant case, is called the practical construction of the instrument by the parties themselves. In other words, courts generally give great weight to the construction pit upon an ambiguous or uncertain deed by the parties, especially in the case of doubtful questions which must be presumed to be within their knowledge, and such practical interpretation of the parties themselves by their acts under the deed is entitled to great influence. 23 AM. JUR. 2d., *Deeds, §* 171. Applying this principle to the instant case, I observe that the deed was executed as far back as 1916 to Chief Fahn Kendeh and Families of Kendeh Town, that the appellees and the appellants with all of their relatives (families), have continuously occupied and enjoyed the grant, 204 acres from 1916 up to 1985 or 1958, when Chief Fahn Kendeh apparently predeceased them. Both parties were born on this property, have houses on it and have always lived thereon. Another practical act of the parties worthy of note in this regard is the fact that at some time back, both parties, believing at the time that they were owners of the **land**, executed a warranty deed or deeds in favour of third parties. This custom and usage of the **land** in the past by both the appellants and the appellees, in my opinion, deserve great weight. After all, the custom or usage of the place where the property is located must be seriously considered in construing a deed such as the one before us.

The appellees strenuously contended that had the grantor intended to include families other than the immediate family of Chief Fahn Kendeh, the words "their heirs" and not "his heirs" would have been employed. The rule is that where "his heirs" or "her heirs" instead of "their heirs" are used in such a deed, it should be regarded as clerical errors or mistakes and the conveyance should be construed such as to permit the heirs of both grantees to take an equal share in the property, and this is my view. In applying this rule, grammatical sense is to be ignored where, as in the instant case, a contrary intent is apparent. 23 AM. JUR. 2d, *Deeds, §* 210.

I am convinced that all of the points raised in the petition were raised in the lower court and argued before this Court during its March Term, 1986, and therefore, the contention that this Court failed to pass upon them is not supported by the 1986 opinion.

While the opinion thus commands my respect, I find myself nonetheless in fundamental disagreement with that portion of it which converted the phrase, Chief Fahn Kendeh and families of Kendeh Town" into "Chief Fahn Kendeh and his immediate family", for in so doing, this Court awarded the 204 acres of **land** to appellees and excluded the appellants who, like the appellees, have their dwelling houses on the premises and have lived there all their lives. I therefore dissent.

Dasusea et al v Coleman [1989] LRSC 3; 36 LLR 102 (1989) (14 July 1989)

JOSEPH K. DASUSEA and **LOUSEAG D. KARGOU** (to be identified), Appellants, v. **GERALD BENETT COLEMAN,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 16, 20, 1989. Decided: July 14, 1989.

1. The plaintiff in ejectment must recover only on the strength of his own title and not on the weakness of the title of his adversary.

2. While generally whatever shows that a plaintiff is not entitled to immediate possession of the premises constitutes a good defense in an action of ejectment, if a recovery may be had on the strength of his own title and not from the weakness or one of title of his adversary, the right of possession under color of claim of title by the plaintiff may nevertheless be *prima facie* evidence of title against a mere intruder.

3. In a case of ejectment which depends upon legal title, the defendant must show an outstanding title in some third person.

4. A mere intruder or trespasser will not be allowed to protect himself in the possession of property by setting up an outstanding title in a stranger where the plaintiff relies on prior possession.

5. Possession, no matter how long, is no bar to recovery by the true owner, if the party in possession entered upon the **land** without any claim of title, and did not acquire or assert title to the **land** at any time, or claim to hold it adversely to the true owner.

6. To necessitate an arbitration, there must be a written agreement or stipulation to submit to arbitration the controversy existing at the time of making the agreement or any controversy thereafter arising, without regard to the justiciable character of the controversy. Such agreement is valid, enforceable and irrevocable except upon such grounds as exist for revocation of the contract.

7. To bar a plaintiff in ejectment who has title, by possession in defendant, strict proof is necessary not only that possession was taken under a claim hostile to that of the real owner, but that it continue for the period of limitation provided by the statute.

8. In cases of ejectment, the older and superior title is the controlling principle.

9. A naked possession of **land** by an intruder cannot prevail against a paper title.

10. In a complaint in an action of ejectment, a plaintiff may demand damages for wrongful detention of the real property as well as delivery of possession of the property.

11. The instructions of a trial judge to the jury, whether right or wrong, constitutes the law of the case, and it is the duty of the jury to follow such instructions.

12. As the assessment of damages is peculiarly the province of the jury, courts should be cautious in overturning a verdict, especially when it appears that the verdict is clear, not exorbitant, and the case has been tried in a fair and impartial manner.

13. When a trial involves mixed issues of law and fact, it is not an error for the court to refuse to instruct the jury on any point in such trial.

14. Damages in action of ejectment is not based on specific damages, rather it is contingent upon general damages.

15. A new trial cannot be granted merely to obtain a slight reduction in damages, little more than nominal, when the plaintiff is entitled to nominal damages at least.

16. The denial of a motion Tor new trial rests within the sound discretion of the trial judge; and the exercise of that discretion does not constitute an error where the verdict of the jury is based on the evidence and the law as instructed by the court.

17. The City Corporation of Monrovia has no authority under its charter to bargain for, sell, grant and convey to any person or persons part or portion of the public **land** within the city bounds.

Appellee Gerald Bennett Coleman instituted an action of ejectment against Appellants Joseph K. Dasusea and Lansea D. Kardon on January 26, 1983, for a parcel of **land** known as lot no. 3 in Block L-14, situated and lying in Sinkor, Monrovia, Liberia. With his complaint, he proffered a chain of titles including (a) warranty deed from Georgia B. Coleman to Gerald Bennett Coleman, Lot #1 in Block L-14; (b) warranty deed from Georgia B. Coleman to Gerald Bennett Coleman, Lot #3 in Block L-14; (c) Public **Land** Grant Deed from the Republic of Liberia to R.H. Hill; and (d) Quit Claim Deed from Diana Louisa Coleman to Georgia Henrietta Beatrice Philips for Lot #9. Against this chain of title, appellants proferted a squatter rights document issued and signed by Major Gaynor Y. Johnson, Mayor of the City of Monrovia.

The case was ruled to trial by a jury under the direction of the court. During the trial and while appellee's first witness was on the cross-examination, the appellants applied for the setting up of a board of arbitration to determine whether or not the **land** in question was owned by appellee. The application was resisted and denied.

At the conclusion of the hearing of the facts, the trial judge charged the jury and they returned a verdict in favor of appellee, finding appellants liable to appellee and awarding appellee the sum of $2,000.00 as general damages.

Based upon this verdict, judgment was entered by the trial judge. From this judgment and the several rulings made by the trial judge, the appellants excepted and appealed to the Supreme Court for a final determination of the controversy.

The Supreme Court rejected the contention of the appellants and confirmed and affirmed the judgment of the lower court. The Court noted that the appellants were mere intruders and that as such their claim to the property by a mere possession thereof, no matter how long, could not prevail against a title deed, especially where there was no claim of an adverse possession. The Court also noted that the Monrovia City Corporation had no authority under its charter to bargain for, sell, grant, or convey any public **land** to any person, and that any person receiving such grant held a defective title as opposed to a person whose title was derived from the Republic.

On the question of the damages awarded by the jury, the Court observed that not only had the plaintiff prayed for such damages, but that it was legally permissible for a plaintiff in ejectment to pray for both possession and for damages for the wrongful detention of his property by the defendants. The Court opined that the jury, under such circumstances, had the discretion of awarding such damages as they deemed fit, and it held that such award would not be disturbed or set aside in the absence of a showing that the award was exorbitant or against the weight of the evidence. The trial court, it said, had therefore not erred in confirming the award.

Moreover, the Court rejected the appellants' claim that the trial judge had erred in stating that the appellee had a title deed to the property while the appellants did not. The Court held that this fact was evidenced by the records and that the judge acted properly in instructing the jury thereof. Accordingly, the court affirmed the judgment of the trial court.

Toye C. Bernard appeared for the appellants. *Alfred B. Flomo* appeared for the appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court:

Certain principles of law and facts set the basis for every ejectment proceeding. "Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof, and such an action may be brought when the title to real property as well as the right to possession thereof is disputed ...." Civil Procedure Law, Rev. Code 1: 62.1. In a complaint in an action of ejectment, the plaintiff may demand damages for wrongful detention of the real property as well as delivery of possession. *Ibid., §* 62.3. To recover the possession of real property by means of an action of ejectment, the plaintiff must have either a title to the property with a present or continued possession or have had actual *bona fide* possession of the property and a present right to the possession when the action was begun. Although the action may, and frequently does, become the means of trying title, it is essentially a possessory action, and is ordinarily confined to cases where the claimant has possessory title, and it is a well established principle, which has acquired the force of a maxim, that the plaintiff in ejectment can recover only on the strength of his own

title, and not on the weakness of his adversary ... In any case, a plaintiff in ejectment cannot recover as against one without title unless he proves title or prior possession in himself; and if he recovers by virtue of prior possession, he may be said to recover as much upon the strength of his own title as if he had shown a good title to the premises.

On the 26th day of January A. D. 1983, plaintiff/appellee instituted an action of ejectment against defendants/appellants on the basis that he was the owner of a parcel of **land** located in the City of Monrovia, County of Montserrado, Republic of Liberia, known as Lot #3, in Block L-14, which he bought from Mrs. Georgia B. Coleman, who had acquired the said parcel of **land** through a Quit Claim Deed from her sister, Diana Louisa Coleman, they being the surviving heirs of their late mother, Mrs. Hannah Hill-Philips, who in turn was the surviving heir of the late Robert H. Hill, the original owner of the said parcel of **land**. These allegations were supported by the following deeds:

1. Warranty Deed from Georgia B. Coleman to Gerald Bennett Coleman, Lot #1 in Block L-14, situated at Sinkor, Montserrado County "Let this be registered" Gladys K. Johnson, Acting Commissioner of Monthly and Probate Court, Montserrado County. Probated this 8t h day of August, A. D. 1977/Susanna E. Williams, Clerk of Monthly & Probate Court, Montserrado County, Vol. 264-77 pages 480 - 581, with the following contents:

`KNOW ALL MEN BY THESE PRESENTS, that I/we Georgia B. Coleman of Monrovia in the County of Montserrado, Republic of Liberia for and in consideration of the sum of seven hundred ($700.00) dollars paid to me by Gerald Bennett Coleman of the City of Monrovia, in the County of Montserrado, the Republic of Liberia (the receipt whereof is hereby acknowledged) do hereby give, grant, bargain, sell and convey unto the said Gerald Bennett Coleman his/her/their heirs and assigns a certain lot or parcel of **land**, with the building(s) thereon and all privilege and appurtenances to the same belonging, situated in Sinkor, Monrovia, County of Montserrado, Republic of Liberia, and bearing in the authentic records of said County of Montserrado and Republic of Liberia, the #3 in Block L14 and bounded and described as follows:

Commencing at the Southeastern corner of Lot # 5 in Block L-14, marked by a concrete monument, thence running North 54 degrees West 82.5 feet parallel with Gibson Avenue; thence running North 36 degrees East 132 feet parallel with 14th Street; thence running South 54 degrees East 82.5 feet parallel with a 16 foot alley; thence running South 36 degrees West 132 feet parallel with lot # 3 in Block L-14 to the place of commencement and containing one (1) lot or 1/4 acre of **land** and no more.

TO HAVE AND TO HOLD the above granted premises to the said Gerald Bennett Coleman, his/her/their heirs and assigns, and to his/her/them and their use and behoof forever.

And I/we, the said Georgia D. Coleman for me/us and my/our heirs, executors, administrators, and assigns do covenant with the said Gerald Bennett Coleman, his/her/ their heirs and assigns that at and until the ensealing of these presents, I/we/ was/were lawfully seized in fee simple of the aforesaid granted premises, that they are free from incumbrances, that I/we have good right to sell and convey unto the said Gerald Bennett Coleman his/her/their heirs and assigns forever,

as aforesaid; and that I/we and our/my heirs, executors and administrators, and assigns shall WARRANT AND DEFEND the same to the said Gerald Bennett Coleman his/her/heirs and assigns forever against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, I/we Georgia B. Coleman have hereunto set my/our hands and seal this 23rd day of June in the year of our Lord One Thousand Nine Hundred and Seventy-Seven (A.D. 1977)".

Sgd. Georgia B. Coleman

Georgia B. Coleman"

2. Warranty Deed from Georgia B. Coleman to Gerald Bennett Coleman, Lot #3 in Block L-14, situated at Sinkor, Montserrado County "Let this be registered" Gladys K. Johnson, Acting Commissioner of Monthly and Probate Court, Montserrado County. Probated this 8th day of August A.D. 1977, Susanna E. Williams, Clerk of Monthly and Probate Court, Montserrado County. Registered according to Law, Vol. 264-77, pages 478-479, with the following content: "

KNOW ALL MEN BY THESE PRESENTS, that I/we Georgia B. Coleman of Monrovia, in the County of Montserrado, Republic of Liberia, for and in consideration of the sum of seven hundred ($700.00) dollars paid to me by Gerald Bennett Coleman of the City of Monrovia, in the County of Montserrado, Republic of Liberia (the receipt whereof is hereby acknowledged) do hereby give, grant, bargain, sell, and convey unto the said Gerald B. Coleman his/her/their heirs and assigns a certain lot or parcel of **land**, with the building(s) thereon, and all privileges and appurtenances to the same belonging, situated in Sinkor, Monrovia, County of Montserrado, Republic of Liberia, and bearing in the authentic records of said County of Montserrado the number 3 in Block L-14 and bounded and described as follows:

Commencing at the Southeastern corner of lot #5 in Block L-14, marked by a concrete monument; thence running North 54 degrees West 82.5 feet parallel with Gibson Avenue; thence running North 361 degrees East 132 feet parallel with lot #1 in Block L-14; thence running North 54 degrees East 82.5 feet parallel with a 15 foot alley; thence running South 36 degrees West 132 foot parallel with lot #5 in Block L-14 to the place of commencement and containing one (1) lot or 1/4 acre of **land** and no more.

"TO HAVE AND TO HOLD the above granted premises to the said Gerald Bennett Coleman his/heir/their heirs and assigns and to his/her/them and their use and behoof forever.

"And I/we the said Georgia B. Coleman for me/us and my/our heirs, executors, administrators and assigns do covenant with the said Gerald Bennett Coleman, his/her/ their heirs and assigns that at and until the ensealing of these presents, I/we/was/were lawfully seized in fee simple of the aforesaid granted premises; that they are free from incumbrances; that I have good right to sell and convey unto the said Gerald Bennett Coleman, his/her/ their heirs and assigns forever, as aforesaid; and that I/we and our/my heirs, executors and administrators, and assigns shall WARRANT AND DEFEND the same to the said Gerald Bennett Coleman his/her heirs and assigns forever against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, I Georgia B. Coleman have hereunto set my hands and seal this 23' day of June in the year of our Lord One Thousand Nine Hundred and Seventy-Seven (A.D. 1977).

Sgd. Georgia B. Coleman

Georgia B. Coleman"

3. PUBLIC **LAND** GRANT DEED from the Republic of Liberia to R. H. Hill, of Monrovia, County of Montserrado, Republic of Liberia, as recorded in Volume 27, page 22 of the Records of Montserrado County; filed in the Archives of the Department of State, with the following contents:

"TO ALL TO WHICH THESE PRESENTS shall come, know ye, that in consideration of R. H. Hill of Monrovia, in the County of Montserrado, Republic of Liberia, having performed thirty (30) days military service as volunteer in the campaign against Buyer under the command of Col. B. P. Yates, A.D. 1853 and a bounty **land** certificate having been legally issued for said service in conformity to an Act of the Legislature entitled "An Act Pertaining to Bounty **Land** ", approved January 13, 1863, and the right title and interest to R. H. Hill as is evidenced by said certificate filed in the office of the Commissioner of Public **Land** for Montserrado County in accordance with said Act; therefore, I, W.D. Coleman, President of the Republic of Liberia, for myself and my successors in office in pursuance of the Act cited above, have given, granted, and confirmed and by these presents do give, grant, and confirm unto the said R.H. Hill, his heirs, executors, administrators or assigns all the piece or parcel of **land** situated, lying and being in the city of Monrovia, South Beach, County of Montserrado, and Republic aforesaid and bearing in the authentic records of said City the number 9 on South East Beach and bounded and described as follows:

COMMENCING at the South East angle of adjoining lot # 8 South East of Monrovia, owned by Alex Jordan's estate and running down the beach of Monrovia South, 52 degrees East 40 chains, North 32 degrees West 7 chains, South 38 degrees West 40 chains to the place of commencement and containing thirty (30) acres of **land** and no more.

TO HAVE AND TO HOLD the above granted premises together with all and singular the buildings, improvements and appurtenances thereof and thereto belonging to the said R. H Hill, his heirs, executors, administrators, or assigns, and I, the said W.D. Coleman, President as aforesaid for myself and my successors in office do covenant to and with the said R.H. Hill, his heirs, executors, administrators or assigns that at and until the ensealing hereof, I, the said W. D. Coleman, President aforesaid, by virtue of my office, have good right and lawful authority to convey the aforesaid premises in fee simple. And I, the said W.D. Coleman, President as aforesaid and my successors in office will forever warrant and defend the said R. H. Hill his heirs, executors, administrators and assigns against the claims of any person or persons.
IN WITNESS WHEREOF, I, the said W. D. Coleman, have hereunto set my hand and caused the seal of this Republic to be affixed this 7th day of

February, A.D. 1898 the Republic this 51'
Sgd. W. D. Coleman
W. D. Coleman PRESIDENT"
S. L. Watson
LAND COMMISSIONER, MONTSERRADO COUNTY
ENDORSEMENT PUBLIC **LAND** GRANT DEED
from the Republic to R. H. Hill as recorded in Volume 27, page 222, Montserrado County.

4. QUIT CLAIM DEED from Diana Louisa Coleman to Georgia Henriette Beatrice-Philips, all of the City of Monrovia, Republic of Liberia, as recorded in Volume 58 pages 358-369 of the Records of Montserrado County, filed in the Archives of the Ministry of Foreign Affairs with the following contents:

"KNOW ALL MEN BY THESE PRESENTS, that I, Diana Louisa Coleman of Monrovia, in the County of Montserrado and Republic of Liberia for and in consideration of the exchange of mutual interest and relinquishment of corresponding rights reserved to me in the within described property being a cognisance to Georgia Henrietta Beatrice Coleman-Philips, our mother, the execution and receipt of this deed being hereby acknowledged, do hereby demise, release, convey and forever quit claim and by these presents have demised released, conveyed and forever quit claim, for me and my heirs, executors, administrators, or assigns, unto the said Georgia Henrietta Beatrice Coleman-Philips, her heirs and assigns, a certain lot or parcel of **land**, with the building thereon and all the privileges and appurtenances of the same belonging, situated, lying and being in the City of Monrovia, County of Montserrado, Republic of Liberia, and bearing in the authentic records of said City the number 9, and bounded and described as follows:

"Commencing 3 3/4 chains South 32 degrees East from the growing stick shown by the Horace's man named Joseph, bordering onto the South side of the motor road, and running South 38 degrees West 22 chains; to a point near the sea beach, thence South 52 degrees East parallel with the beach 33/4 chains; thence North 38 degrees East 40 chains crossing the motor road and allowing chains for width of the road; thence North 52 degree West 3 1/4, chains thence South 38 degrees West 18 chains to the place of commencement and contains 15 acres of **land** and no more."

TO HAVE AND TO HOLD the said premises, unto the said Georgia Henrietta Beatrice Coleman-Philips, her heirs and assigns to her and their only proper use and behoof forever; so that neither I, the said Diana Louisa Coleman, or any other person in my name and or my behalf shall or will hereafter claim or demand any right or title in and to the within described premises or any part thereof, but that they and every one of these shall these presents be excluded and forever barred.

IN WITNESS WHEREOF, I, Diana Louisa Coleman, have hereunto set my hand and Seal this 7' day of August in the year of our Lord One Thousand Nine Hundred and Forty-Six (A.D. 1946)"
t/Diana L. Coleman

s/Diana L. Coleman"
-ENDORSEMENT-

QUIT CLAIM DEED from Diana Louisa Coleman to Georgia Henrietta Beatrice Philips for lot 9, City of Monrovia." "Let this be registered" Doughba C. Caranda, Judge of Monthly and Probate Court, Montserrado County, Republic of Liberia, Commissioner of Probate. Probated this 6 th day of December, A. D. 1946. J. Everett Bull, Clerk of said Court. Registered in Vol. 58 pages 368-369 this 10th day of December A.D. 1946. Reuben B. Logan, Registrar, Montserrado County."

Based on these four (4) deeds, plaintiff/appellee, by and through his legal counsel, requested the defendants/appellants to vacate his property. The letters written to the defendants/ appellants are as follows:

LETTER DATED DECEMBER 7, 1982 FROM COUNSELLOR TOYE C. BERNARD TO MR. JOSEPH K. DUSUSEA OF SINKOR, MONROVIA.
"December 7, 1982
Mr. Joseph K. Dausea
Sinkor, Monrovia,
LIBERIA.

Dear Sir:

Our client, Mr. Gerald Bennett Coleman, has informed us that you are illegally occupying his property located in Sinkor, Monrovia, Liberia and that despite several warnings to you to vacate said property; you have refused and neglected to move therefrom.

This letter is therefore to request you to vacate our client's property not later than December 15, 1982. Upon your failure so to do, we shall have no other alternative but to have you evicted through court.
With kindest regards,
Very truly yours,
t/Toye C. Bernard
s/Toye C. Bernard
COUNSELLOR-AT-LAW" TCB/jd
CC: Mr. Gerald B.Coleman

LETTER DATED DECEMBER 7, 1982 FROM COUNSELLOR TOYE C. BERNARD TO MR. LOUSEAG D. KARGOU OF SINKOR MONROVIA.
December 7, 1982
Mr. Louseag D. Kargou
Sinkor, Monrovia,
LIBERIA.

Dear Sir:

Our client, Mr. Gerald Bennett Coleman, has informed me that you are illegally occupying his property located in Sinkor, Monrovia, Liberia and that despite several warnings to you to vacate said property, you have refused and neglected to move therefrom.

This letter is therefore to request you to vacate our client's property not later than December 15, 1982. Upon your failure to do, we shall have no other alternative but to have you evicted through court.
With kindest regards,
Very truly yours,
t/Toye C. Bernard
s/Toye C. Bernard"
TCB/jd.
CC: Mr. Gerald B. Coleman

In his complaint, appellee also demanded compensation as damages in an amount to be determined by the jury for the illegal occupation of appellee's property by the defendants, and to grant unto plaintiff such other relief as the court deemed just and equitable.

Defendants/appellants appeared and denied the legal right of plaintiff/appellee to recover in the action and therefore moved the court to dismiss the said complaint on the following grounds:

1. That plaintiff has woefully failed and neglected to proffer or annex any genuine evidence of his title to the lot claimed by him or to show any right of possession whatsoever, in that, plaintiff alleged in his purported complaint that he..."is the owner of a parcel of **land** located in the City of Monrovia, County of Montserrado, Republic of Liberia, known as lot #3 in Block L-14, which he bought from Mrs. Georgia B. Coleman...." Yet plaintiff failed to proffer the title deed for lot #3, Block L-14, but instead proffered copy of a purported warranty deed for lot #1, in Block L-14, which, according to its description, commenced at the south western corner of lot #3 in Block L-14 and "parallel with lot #3 in Block L-14 to the place of commencement". Defendants most respectfully maintained that under our law, "when a pleading refers to a written instrument, a copy of the instrument must be annexed to the written instrument, and made a part of the pleading". Therefore, plaintiffs failure to annex copy of his title deed, if any, to lot #3 renders the entire complaint incurable, bad, defective, and a fit subject for dismissal, and defendants so pray.

2. That they are not occupying **land** belonging to plaintiff, neither does the Quit Claim Deed from Diana Louisa Coleman to Georgia Henrietta Beatrice-Philips of 1946, proffered with plaintiffs complaint, extend as far as the swamp **land** situated between 14th to 15th streets at Gibson Avenue in Sinkor, which defendants reclaimed by permission of the City Corporation of Monrovia as having been declared a public **land** for a number of years, without objection from plaintiff's grantor or anyone else. The claim of plaintiff is therefore an attempt to cheat, defraud and wickedly harass the defendants and this should not be condoned or countenanced by

a court of justice. Defendants attach hereto a copy of squatter's rights note granted to them by the Monrovia City Authority, dated March 16, 1982, to form a part of this answer and marked exhibit "A".

3. That the Quit Claim Deed proffered and relied upon by plaintiff is bad, defective, and indefensible, in that although the Government of Liberia allegedly granted R.H. Hill, the supposed original owner of the thirty (30) acres of **land**, which measured "52 degrees East 7 2/3. chains ....north 38 degrees east, 40 chains, north 52 degrees west 71 chains, south 38 degrees west 40 chains to the place of commencement", yet in the said quit claim deed, the thirty(30) acres were increased by a half (1/2) chain, thereby changing the bearings from 40 chains. Defendant strongly maintained that in the absence of any evidence showing additional grant by the government or a court proceeding ordering an amendment or correction of the original deed, the said quit claim deed is a legal nullity and was drawn purposely to deprive other citizens of their *bona fide* properties, which act is indeed criminal and punishable under our penal laws.

To this answer, plaintiff/appellee replied as follows:

"1. That as to count one (1) of defendants' answer, plaintiff says that he alleged ownership to the parcel of **land** which is being illegally occupied by defendants, and that as proof of his ownership he proffered copy of his deed to the said property, thus giving defendants sufficient evidence of plaintiffs ownership to the property as well as notice of what he intends to prove. Having satisfied the statute governing pleadings, the said count, and with it the entire answer, should be dismissed.

2. That as to count two (2) of the answer, plaintiff says that defendants' exhibit "A", squatter's rights grant, issued by the City Corporation of Monrovia, does not convey to defendants title to plaintiff's **land**; nor is it superior to plaintiffs deed which predates the squatter's rights grant by five (5) years. Moreover, a squatter's right is not evidence of title under the law in the face of a valid title deed. Count two (2) of the answer should therefore be overruled and together with it the entire answer.

3. That plaintiff's **land was never declared public land**, and defendants have not shown when such declaration was made or that the area in the squatter's right grant does not fall within the metes and bounds of plaintiffs **land**. Therefore, count two (2) of the answer should be overruled.

4. And also because as to count three (3) of the answer, plaintiff denies changing the bearings in the quit claim deed since the **land** in the quit claim deed was carved out of the public **land** grant, and hence the description of the two pieces of property would naturally be different. Moreover, defendants have not shown any evidence of title to the property and cannot, therefore, recover on the alleged defect in this quit claim deed. Therefore count three (3) should be overruled."

The records reveal that appellants submitted what they called a squatter's right grant from the Commonwealth District of Monrovia giving them authority to own the **land** in question. It reads as follows:

"By virtue of the power in me vested, I Major Gayflor Y. Johnson, Mayor of the City of Monrovia, do hereby grant squatter rights to Messrs. Joseph N. Dasusea and Louseag D. Kargou to occupy an area measuring 75x98, 75' = 7,425 sq. ft. in Sinkor between 14t h and 15th Streets on Gibson Avenue (SWAMP **LAND**).

To construct a house, Mr/Miss/Mrs is empowered to occupy this area until such time when Government finds it necessary to use the **land**, in which case, one month notice will be given to the squatters.

His/Her rental fee shall be five ($5.00) dollars monthly, payable in advance, on an annual basis, to the Monrovia City Corporation.

It is also understood that Messrs. Joseph K. Dausea and Louseag V. Kargou will conform to the building code as it exists within the law.

DONE AT THE MONROVIA CITY HALL AND SEALED THIS_ DAY OF MARCH, A.D. 1982.
Sgd: t/Gayflor Y . Johnson
s/Gayflor Y. Johnson
CITY MAYOR:"

The first question which comes to one's mind is whether a squatter's right is applicable in the face of a claim of title based on a warranty deed? The next inquiry is whether the squatter's right is not vague, indistinct, indefinite and mathematically inaccurate so as to render it worthless and meaningless? These first two questions are based on the contents of the squatter's right grant, which states as follows:

"I Major, Gayflor Y. Johnson of the City of Monrovia do hereby grant Squatter's Right to Messrs. Joseph K. Dasusea and Louseag D. Kargou to occupy an area measuring 75 feet X 98 feet = 7,425 sq. ft. in Sinkor between 14th and 15th Streets on Gibson Avenue."

Another question which comes to mind is whether Mayor Gayflor Johnson had the legal authority to issue squatter's right certificate for public or private **land** without investigation?

The said squatter's right has no legal standing in a court of law. There is no written evidence, receipt or otherwise, showing that appellants ever deposited the rental fee of five ($5.00) dollars monthly in the Republic of Liberia revenue, commencing March 16, 1982 up to and including the 21th day of January, A.D. 1983, when this action was instituted, or for that matter, up to and including the present status of the case, in the amount of sixty ($60.00) dollars or more a year or in the amount of seven hundred twenty ($720.00) dollars from 1983 - 1989.

The Act of Legislature repealing The Act Creating The Commonwealth District of Monrovia and to Create In Lieu Thereof the City of Monrovia, County of Montserrado and to Grant it a Charter, states, as follows:

"SECTION 1. The Act approved February 8, 1982 entitled An Act To Create The Area Known As The City of Monrovia A Commonwealth District be and the same is hereby repealed.

"SECTION 2. From and immediately after the passage of this Act, the Commonwealth District of Monrovia, within Montserrado County; Republic of Liberia, be and is hereby created a body politic and corporate under the name and style of the City of Monrovia, and in such name it may sue and be sued, plead and be impleaded, and do all other acts that are usually done by similar bodies corporate.

"SECTION 3. The chartered officers of the Municipal Government shall consist of a Mayor and a Common Council composed of eleven (11) members, one of whom shall be elected by the said Council as its Chairman. The chartered officers must be citizens of Liberia not less than eighteen (18) years old and must be residents of said City for at least one (1) calendar year and must own real property to the value of not less than one thousand ($1,000.00) dollars within the City.

SECTION 4: The City of Monrovia shall have jurisdiction within its corporate bounds; the corporate bounds shall be the same area which comprised the bounds of the Commonwealth District, and in case it should be necessary to execute lawful process without the bounds of the said City, then and in that case, any justice of the peace within the county may issue judicial process on representation of any city officer being made to him, and the same may be executed by any constable of the said county.

SECTION 5. The City of Monrovia shall have full power and authority to make and fulfill contracts, take and hold real and personal estate to the value of ten million ($10,000,000.00) dollars. Subject to the approval of the President, it shall pass all necessary municipal laws and ordinances and levy all such taxes as may be necessary for city purposes; and shall perform all other necessary acts not incompatible with the general laws of this Republic.

SECTION 6: The Mayor and Councilmen shall hold their offices for a period of four (4) years and their election shall be held quadrennial on the third Tuesday in October. The inauguration of the Mayor-Elect shall be held on the third Monday in February of the year following the election.

SECTION 7. Vacancies in the Common Council shall be filled by special or by-election to be called by the President in the case of death, removal or resignation of the Mayor or a Councilman; and in the case of death, removal or resignation of the Mayor, the Chairman of the Common Council shall take over as Acting Mayor until a new Mayor has been duly elected and inaugurated.

SECTION 8. There shall be a City Court which shall be composed of a magistrate, a clerk and a seal and two (2) associate magistrates to serve in cases of venue and petty larceny and shall try and determine all cases in keeping with statute. The jurisdiction of the City Court shall be limited to that of a magisterial court. The magistrate shall, within the precinct of the City, exercise the functions of a magistrate in all offenses occurring in the jurisdiction of the City, and, appeal from the said court shall be to the circuit court of Montserrado County. The said court shall, by its clerk, keep detailed reports of all matters and things which shall come before it in book or record provided for that purpose.

SECTION 9. The fiscal year for the administration of the City of Monrovia shall run from January to December of each year.

SECTION 10. This Act shall take effect immediately upon publication in hand bills.

Any law to the contrary notwithstanding.

Approved July 19, 197

PUBLISHED BY AUTHORITY

GOVERNMENT PRINTING OFFICE OF THE MINISTRY OF FOREIGN AFFAIRS, MONROVIA, LIBERIA AUGUST 16, 1973"

Closely examining the Act referred to *supra*, we have been unable to find the authority given by the Legislature of the Republic of Liberia to the Commonwealth District of the City of Monrovia to bargain for, sell, grant, and convey to any person or persons part or portion of public **land** within the Commonwealth District of Monrovia, much more to even grant a squatter's right. Nevertheless, appellants have vehemently argued and contended that their right to occupy the **land** in question is based upon a squatter's right.

Let us define the terminology of what is a squatter's right is as against a valid title, and what is its effect. "Squatter", according to Black Law Dictionary, is:

"A term of American origin applied to settlers on public lands of the United States who have not complied with the regulations of the **land** office." BLACK'S LAW DICTIONARY 1226.

In this context, therefore, it is inconceivable that the Legislature of the Republic of Liberia would have empowered the Commonwealth District of Monrovia, through its mayor, to grant squatter's right to a citizen (presumably) who is not a settler but capable of acquiring and possessing **land** in his own right, with the provision that he complies with the law in such cases made and provided without molestation from any quarter. The alleged declaration made by Mayor Gayflor Y. Johnson to the effect that "by virtue of the power in him vested", he had the right to grant squatter's right to Messrs. Joseph K. Dausea and Louseag D. Kargou to occupy an area measuring 75 X 98' 75" = 425 sq. ft. area in Sinkor between 14th and 15th Streets on Gibson Avenue (swamp)" appears to us not only nebulous, spurious and indistinct, but was unauthorized as against a valid title deed. In other words, the phrase "and to do all other acts that are usually done by similar bodies Corporate" should never be construed as vesting in the City Corporation the right or power to give title to private **land**, for it was never intended by the Legislature that the City Corporation be given this right. On the contrary, the act the of City Mayor, Major Johnson, was incompatible with the general laws of Liberia concerning acquisition of lands in the Republic of Liberia.

Notwithstanding the legal consideration mentioned above, since the modern tendency of trial procedure is to dispense with legal technicalities and afford substantial justice to party litigants by the simplest and most direct means, this Court notes that law issues having been disposed of,

a trial of the factual issues was conducted in the court below. Appellee testified in his own behalf, essentially confirming and affirming his complaint, was cross examined by appellants' counsel, and thereafter prayed to be admitted into evidence documents marked by Court, P/1, P/2, P/3, P/4, P/5 and P/6 which were his title deeds and letters, which had been identified, confirmed and affirmed by a preponderance of evidence, without any objections from appellants' counsel.

We wish to observe from the records of the court below that after the cross examination of the first witness for plaintiff, appellants' counsel applied for a board of arbitration to be appointed to determine whether or not the **land** in question was owned by the appellee in the proceedings. The application was resisted by appellee's counsel on the ground that the court had empaneled a jury, who were the trial of the facts, and as that the case had been ruled to trial without any issue as to the location and identification of the property, there was no need for a board of arbitration. The court ruled as follows:

"This case has been ruled to trial since 1983, and the issue ruled to trial did not invoke and cannot invoke any proceedings for arbitration. If the case had not already been set for jury trial, which jury is now on panel and the case on trial, maybe consideration could have been given to the application of defendants' counsel for arbitration; but at this stage, where a jury has been empaneled, counsel for defendant suffers waiver. Therefore, we shall proceed with the trial. And it is so ordered."

After appellants' counsel's notation of exceptions to the ruling, the trial continued with the second witness of plaintiff/ appellee. Here is a portion of the testimony culled from the records, which we believe is pertinent to the determination of the case at bar:

PLAINTIFF'S FIRST WITNESS ON THE STAND

"Q. Please state your name and place of residence?

"A. My name is Georgia Coleman and I live on Coleman Avenue between 15 th and 16th Streets, Sinkor, Monrovia, Liberia.

"Q. Are you acquainted with the plaintiff in this case and if so, do you have any relationship to him?

"A. Yes. The plaintiff in this case is Gerald Coleman, who is my son.

"Q. Are you also acquainted with the defendants in this case?

"A. Not personally. But I know them to be occupying the plaintiffs premises, and I have talked with them.

"Q. The plaintiff has filed an action of ejectment against the defendants, and you have taken the stand to testify on behalf of the plaintiff. Please tell this court and jury all facts and circumstances in your certain knowledge touching the subject matter of the case?

A.. "From my window, you can look at the property in question. I noticed one day that somebody was constructing a building on the plaintiffs **land**. I went there and I asked the man whom I met there if he knew that he was building on somebody's property? He answered "yes", and later said to me that if the owner of the **land** come I will move. And when my son came back to Liberia, I called his attention to the fact that somebody was building on his premises. I asked my son if he is the one who gave them permission. He replied "no", and that he was going there to talk with whomever was building on his **land**. From then on, when we came back to the man who was building on the **land**, he said that the property was his and told us that City Hall gave him squatter's right. I know that I have deeds for the property that I have inherited from my mother who inherited them from her father. My mother was Hanna Hill Philips, who inherited the property from her father, Robert Hill, and he, Robert Hill, got this property from the Republic of Liberia. I have several deeds to show as proof. I rest.

"Q. You have referred to the deeds relating to the property. Were you to see them, will you be able to recognize them?

"A. Yes.

"Q. I pass you these instruments, look at them and say what you recognize each to be, and whose signature appear on each of them?

"A. P/1 is a deed from me, Georgia Coleman, to my son Gerald Bennett Coleman, Block #1 and block #14 and is signed by me, Georgia B. Coleman; "P/2 is Warranty Deed from me to Gerald Bemett Coleman signed by me; P/3 is a Quit Claim Deed to me, Georgia B. Coleman from my sister, Diana L. Coleman, signed by Christopher Minikon, Deputy Minister of Foreign Affairs and also signed by Augustine Jallah, Director of Archives; P/6 is a certified copy of the deed from the Republic of Liberia to Robert Hill, signed by President Coleman. The certified copy is signed by the Secretary of State, Gabriel L. Dennis, and the Chief of the Bureau of Archives, Edward King.

"Q. Please say where is the whereabout of the original of P/6 if you know?

"A. The original of P/6 was misplaced during the coup of 1980.

"Q. Refresh your memory and say whether you recall any communication to the defendants in this case, and if so whether you can identify it?

"A. Yes, Counsellor Bernard wrote them with regards to occupying the place

"Q. If you saw said instruments, will you be able to recognize it?

"A. Yes.

"Q. I pass you these instruments; please look at them and say what you recognize them to be?

"A. P/3 and P/4 are letters written to the defendants by Counsellor Toye C. Bernard."

On the cross examination, defendants/appellants propounded a question to plaintiff/appellee, but it was objected to by plaintiffs counsel on the grounds of (1) irrelevancy, (2) immateriality, and (3) that the documents spoke for themselves, and hence the said documents were the best evidence in the case. Here is the question:

"Q. Madam witness, you have testified and identified documents marked by court P/6. You have also mentioned in your testimony in chief, among other things, that the defendants contended and maintained that they obtained certificate of squatter's right from the City Corporation, declaring the portion of the parcel of **land the plaintiff is claiming as free government land**. Will you mind telling the court and jury whether or not the place was surveyed ascertaining that the particular portion of **land** falls within the property you sold to your son, plaintiff in this proceeding?

The objection was sustained and exception was noted to the judge's ruling. Appellants' counsel then rested with witness Georgia Coleman. Counsel for appellee rested oral testimony and offered into evidence documents marked by court P/1 through P/6, which were testified to, identified, marked by court, confirmed and affirmed to form a part of the appellee's written evidence in the case. Thereafter, counsel for appellants made the following submission:

"Counsel for defendants says that he interposes no objection to the application made by plaintiff's counsel, praying for the admission into evidence documents marked by court P/l through P/6."

Accordingly, the judge ordered the documents admitted into evidence. Thereafter, counsel for the appellants requested the court to suspend the case to the following day.

The first witness for the appellants was one of the appellants, in person of Joseph K. Dasusea, whose testimony was substantially as follows:

1. That the Lands & Mines sent him (Joseph K. Dasusea) to Public Works and the Public Works referred him to the City Corporation and the City Corporation measured the place and gave him paper, meaning the Certificate of squatter's rights.

2. That they, the defendants, did not have deeds for the property on which they were squatting and which the plaintiff was claiming.

3. That he paid sixty ($60.00) dollars to Major Gayflor Johnson, the Mayor of the City Corporation, but was not given a Revenue receipt by the City Hall.

4. That he knew Plaintiff Gerald Coleman and his mother.

5. That he came to know them when his uncle was working with the mother.

When asked whether or not he ever talked with Gerald Coleman and his mother, he answered as follows:

"Mr. Gerald Coleman said that his ma said I have two (2) lots behind your house and when he said that, I told him that this place was given to us by the government. All I know government gave us this place. I do not know you".

Co-appellant Joseph K. Dausea testified to and identified his squatter's right certificate and it was marked by the court. Thereafter, he was cross-examined by appellee's Counsel. Pertinent parts of the cross-examination are as follows:

Q. Mr. witness, we want to know how you got to know this **land** before going to Lands & Mines and City Hall and before you were told that it was for government?

(a) I saw people building there and I went there and the people told me that the **land** was for government. The old man who gave me the information is now dead.

Q. Mr. Witness, please tell this Honourable court and the empaneled jury as to whether besides the paper under question, you have any other document to prove that this **land** is yours?

A. No.

Q. Mr. witness, did you complete your house before Mr. Gerald Coleman informed you that this **land** was his?

A. I completed my building before he informed me.

After the cross-examination, the jury asked questions but the judge waived all questions. The appellants then called Mr. Edwin Soumie to the stand as their next witness. Here are the pertinent parts of Witness Edwin Soumie's testimony:

Q. Mr. witness, please state your name and place of residence?

A. My name is Edwin Soumie, and I live on Camp Johnson Road, Monrovia, Liberia.

Q. Are you acquainted with plaintiff and the defendants in these proceedings?

A. Yes, I am.

Q. The plaintiff has filed an action of ejectment against the defendants. You have been cited before this Honorable Court as witness for the defendants. You will now state briefly all that lie within your certain knowledge touching all facts and circumstances in this case?

A. Sometime ago in 1982, Mr. Joseph Dausea asked me to help him to carry him to the Ministry of Public Works, and we went there. Later on, we were sent to Lands & Mines. From Lands & Mines we went to City Hall, and there we talked with the City Mayor, Mr. Johnson; at which time he asked us to give him Sixty ($60.00) dollars for a piece of **land** located on 14t h Street, Sinkor. He received the sixty dollars and he gave us receipt, and gave us squatter's right to go ahead. That's all I know. I rest.

Q. In your statement in chief, you made mention among other things that a certificate of squatter's right was issued by the Commissioner of City Corporation, Mr. Johnson. Were you to see said document, will you be able to identify and recognize same?

A. Yes.

Q. I pass you the document in my hand, look at it and say what you recognize it to be?

A. Yes, I recognize this to be the squatter's right I made mention of in my general statement.

At that stage, counsel for appellants requested the court for a mark of identification to be placed on the document that had been testified to and identified by the witness. Application granted"

The document marked by the court D/1 was confirmed. Whereupon, counsel for the appellants rested with the witness with the usual reservation. The witness was then cross-examined as follows:

-CROSS EXAMINATION -

Q. Mr. witness, please say whether the Sixty ($60.00) dollars you say you paid was paid in the Bureau of Revenues and if you have any receipt for it?

A. I do not know whether it was paid in revenue, but he gave us receipt.

Q. Did you ever meet the plaintiff in this case, Mr. Gerald Coleman?

A. Yes, I have seen him, but I never met with him.

Q. You said that you know the plaintiff and the defendants, now you are saying you have seen the Plaintiff but you do not know him. Which of the two statements do you want us to accept as the true one?

A. Seeing is different, and knowing is different.

Q. When asked by your lawyer whether you are acquainted with the plaintiff and the defendants in this proceeding, your answer was: "Yes", I am". Please explain what you mean by being acquainted with the plaintiff and the defendants?

A. I simply mean that I have seen him before.

Q. Please say what you mean by "him" since I am referring to both the plaintiff and the defendants?

A. To him, the plaintiff.

Q. Please say whether you accompanied the defendants to City Hall when they paid the Sixty ($60.00) dollars which you have referred to, or how do you come to know about it?

A. The defendants asked me to go with them.

Appellee then rested with the witness. Redirect was waived, as was the re-cross. But the jury asked several questions.

"JURY QUESTIONS

Q. Mr. witness, in your testimony, you mentioned that you and Mr. Joseph went to the Public Works Ministry. Who sent you to Lands & Mines, from the Public Works Ministry?

A. Joseph and I went to Public Works and he asked me to wait for him when he went to his house and when he came back, he asked me to follow him to Lands & Mines; then later, he and I went to City Hall.

Q. You did mention in your testimony that you people were given a squatter's right. In measuring this squatter's rights, did you find or see any sign of ownership on said **land**?

A. I did not see any sign of ownership, government gave us the go ahead.

The jurors rest questions, witness discharged".

Counsel for appellants at that stage rested oral evidence and offered for the court's admissibility into evidence document marked by court D/1 and confirmed to form part of appellants' evidence in the proceedings:

The application was granted and document marked by court D/1 was admitted into evidence. Whereupon counsel for appellants rested evidence in toto.

The records reveal that after both parties had rested evidence in the case, arguments were entertained and the jurors charged by the trial judge. The charge was concluded with these words:

"Therefore, Mr. Foreman, ladies and gentlemen of the empaneled jury, we consider you to be sound men and women, and you have sat here for about three (3) consecutive days, listening to the facts in this cause, the right of ownership and the legal issues explained to you. You are therefore charged to retire into your room of deliberation and bring a verdict of not liable in favor of the defendants according to your understanding of the facts and the law explained to you. You may bring down a verdict of liable against the defendants and that the plaintiff should have his **land**; and within your own conscience, you may award damages to the plaintiff. And you are so ordered".

There was no exception taken to this charge of the trial judge, and this Court has held on many such occasions that unless the party aggrieved by or dissatisfied with a ruling or order or actions of a lower court excepts, the ruling or order or action is not subject to review by this Court.

After deliberations by the jurors, on the 26' day of January, A. D.1985, they returned with a verdict unanimously agreeing that the defendants were liable to the plaintiff and obligated to pay the sums of Two Thousand ($2,000, 00) dollars for general damages.

A four-count motion for new trial was filed, resisted, heard, and denied. it might be of interest to mention in passing that the main issues raised in the said motion for new trial essentially embraced the following: (1) Appellee's failure to offer into evidence any title deed to Lot #3, and that instead he offered title deed to Lot # 1 in Block L-14 claimed by him; (2) that the title deed from the Government of Liberia to R. H. Hill for thirty (30) acres or 40 chains was altered and changed to 40'/2 chains or 31 1/3 acres of **land**, thereby encroaching on other lands not belonging to R. H. Hill nor granted by the Government of Liberia to appellee nor his grantor; (3) that appellee refused to submit to an arbitration or a resurvey of the parcel of **land** claimed by him to determine whether or not the spot which appellants erected their dwelling houses fell within his deed; and that this was a clear proof that appellee had no legal right nor title the parcel of **land** upon which appellants resided, and therefore any verdict in favour of appellee was a legal nullity and founded upon no legal evidence; (4) that it was not enough to merely claim a parcel of **land** under a purported deed and recover, but it was mandatorily required by law that proof be presented that the appellants were occupying the same parcel of **land** covered by such deed, which proof must be adduced in evidence at the trial; (5) that the instructions of the judge to the jury to the effect that in ejectment, title deed is the main issue, and the fact that appellee had title deed and appellants did not have title deed, inflamed the minds of the juror and, therefore, was prejudicial to the appellants.

We have found nothing in the records that the appellants challenged the ambiguity or the vagueness of the verdict to the effect that the appellants were liable to the appellee and is obligated to pay the sum of Two Thousand ($2,000.00) dollars for general damages so as to have given the trial judge an opportunity to pass upon same. We are of the opinion that said issue was therefore waived and ought not be raised and considered at this appellate level. In the trial judge's final judgment, he concluded as follows:

"Therefore, in view of the foregoing, the unanimous verdict of liable against the defendants in this case is hereby confirmed and affirmed and the defendants are hereby adjudged liable and they are to pay to the plaintiff as general damages, the sum of Two Thousand ($2,000,00) dollars. The clerk of court is hereby ordered to issue a writ of possession in favor of the plaintiff, evicting and ousting the defendants from the said premises and turning the same over to the plaintiff herein, and the defendants are hereby ruled to costs. And it is so ordered".

GIVEN UNDER OUR HANDS IN OPEN COURT THIS 20th DAY OF FEBRUARY, A.D. 1985
Sgd. Eugene L. Hilton
Eugene L. Hilton"

Appellants, being dissatisfied with this judgment and several rulings of the trial judge, appealed to this forum for final review and adjudication.

In arguing before us, appellants have submitted a bill of exceptions containing five (5) counts.

In count one (1) of the bill of exceptions, appellants contended:

That in their defense to the plaintiffs complaint, defendants filed a four-count answer raising pertinent legal and factual issues to the effect that the deed proffered with the complaint does not correspond with plaintiffs allegations in claiming ownership to lot # 3, but that plaintiff proffered a deed for Lot # 1; that the quit claim deed from Diana Louisa Coleman to Georgia H. B. Philips does not extend to 14th and 15th streets, Gibson Avenue in Sinkor; that the said quit claim deed is bad and defective because the original metes and bounds of the **land, thirty (30) acres of land**, have been unauthorizedly changed (increased), thereby taking in part of the public domain of the **land** and other people's property; and that the lot occupied by defendants is not part of plaintiffs **land** but a public property controlled by the City Corporation of Monrovia. These salient issues, according to the defendants, the trial judge prejudicially ignored and dismissed defendants' answer and ruled them to a bare denial of the facts.

In passing upon this count, we hold the view that whilst we are in agreement that generally speaking, whatever shows that the plaintiff is not entitled to the immediate possession of the premises claimed constitutes a good and valid defense in an action of ejectment; if a recovery may be had on the strength of his own title and not from the weakness or want of title of his adversary, the right of possession under color of claim of title by the plaintiff may nevertheless be *prima facie* evidence of title against a mere intruder. In effect, a defendant who has no title to the premises may not contest the plaintiffs title thereto where the latter has shown *a prima facie* right to the premises. 25 AM JUR 2d., *Ejectment, §* 57.

Furthermore, since it is a general rule of law that the plaintiff in ejectment must recover upon the strength of his own title, and may not rely upon the weakness of the defendant's claim, it is well settled that if the case depends upon the legal title, the defendant should show an outstanding title in some third person, which defendants have not done. A mere intruder or trespasser will not, however, be allowed to protect himself in the possession by setting up an outstanding title in a stranger where the plaintiff relies on prior possession.

Continuing, we further hold the view that in keeping with general principles of law, possession, no matter how long continued, is no bar to recovery by the true owner, if the party in possession entered upon the **land** without any claim of title, and did not acquire or assert title to the **land** at any time or claim to hold it adversely to the true owner. To bar a plaintiff in ejectment, who has title, by possession in the defendant, strict proof is necessary not only that possession was taken under a claim hostile to that of the real owner, but that it continued for the period of limitation provided by the statute. In the instant case, the records reveal that appellee proffered a title deed to lot #3, which was admitted into evidence without any objection, together with other deeds. Also from the evidence adduced at the trial, it is clear that the appellants failed to show that appellee was not entitled to the immediate possession of the premises in question. The records show that appellee relied upon the strength of his own title deed for lot #3, supported by

a chain of titles from the Republic of Liberia to R. H. Philips, then to Hannah Philips, and a quit claim deed from Georgia Coleman to Diana Coleman who, by inheritance, acquired their property from their mother, Hannah Philips. Appellee's right of possession under color or claim of title therefore is *prima facie* evidence against the appellants who were intruders merely relying upon a paper entitled "squatter's right". The contention of appellants that appellee had failed to annex copy of his title deed to lot #3 to his complaint is hereby overruled, since for the records show that a warranty deed for lot #3 was annexed to the complaint. In other words, appellants having failed to set up a legal title as against the title of appellee, the trial judge did not commit any reversible error in dismissing their answer and ruling them to a bare denial of the facts in the complaint, for there was no title deed to be matched against appellee's title for the jury to pass upon.

Appellants contended that they were on the premises long before appellee claimed possession of the said premises. Although there was no evidence to this effect, because the evidence adduced showed that they were occupying the premises upon authority of the City Corporation of Monrovia, nevertheless, in keeping with universal law extant, no matter how long defendants continued to live on a premises, it is no bar to recovery by the true owner of the **land**, if the party in possession entered upon the **land** without any claim of title and did not acquire or assert title to the **land** at any time or claim to hold it adverse to the true owner of the **land**. Strict proof was necessary given appellants' notion that possession was taken under a claim hostile to that of the real owner. Furthermore, there are no records before us showing that the appellants fully acquired and perfected a title deed for the parcel of **land** or a portion thereof, under which they claimed title by adverse possession, to have necessitated a joint survey made under warrant of the court by means of arbitration proceeding.

On the question of arbitration, the law is that to necessitate an arbitration, there must be a written agreement or stipulation to submit to arbitration the controversy existing at the time of the making of the agreement or any controversy thereafter arising, without regard to the justiciable character of the controversy. Such agreement is valid, enforceable and irrevocable except upon such grounds as exist for revocation of a contract.

The records before us reveal that there was no application before court giving information about (1) the existence of an agreement between the parties to submit to arbitration the controversy or the facts of the ejectment proceedings, (2) that appellants were parties to such an agreement, (3) that the matter in controversy be referred to arbitration, (4) and that there was a refusal by the appellee as party to such agreement to submit to arbitration. It is only upon such application, supported by the agreement to arbitrate, that would compel this Court to further investigate the claim of arbitration. And if through the inquiry it is found that (1) there was an agreement as referred to in this opinion; (2) plaintiff was a party to the agreement; (3) the controversy was referable to arbitration; (4) the right to proceed to arbitration had not been waived by the adverse party; and (5)that the agreement has not been revoked by either party and yet the determination was made in favor of the adverse party, this Court would then order the parties to arbitrate. In the absence of fulfilment of these statutory requirements, we hold the view that the judge did not err when he refused to submit the parties to arbitration. Civil Procedure Law, Rev. Code 1:64.1, 64.2 and 64.3.

As to count two (2) of the bill of exception, appellants have contended and argued that the instructions of the trial judge were prejudicial to them and constituted a reversible error. The portion of the instructions complained of was as follows:

"Plaintiff has title deed, the defendants did not have title deed. . . a person who holds a title deed has right of ownership to that property and prevails over one who does not have a deed."

These instructions, the appellants say, were contrary to the principle of law laid down by this Court in the case *Duncan v. Lewis*, 13 LLR 510 (1960); that the same were prejudicial and inflamed the minds of the jury to return the adverse verdict against appellants. This, they said, necessitated appellant moving for a new trial, which motion the trial judge erroneously and prejudicially denied, and affirmed the erroneous and prejudicial verdict. To these rulings appellants excepted.

In the first instance, we strongly feel that the holding of the *Duncan* case supports the position we assume in the instant case. We therefore deem it lawful and fair to the parties in this case to quote the relevant parts of the opinion in the *Duncan* case:

(1) Priority of claim to title is a material element in an action of ejectment; and

(2) A plaintiff in an ejectment action must rely upon proof of title in himself, and cannot prevail merely by reason of defects in the defendant's title.

Some authorities hold that a recovery of plaintiff in ejectment may be defeated by the defendant showing title in himself, and that this is so, although he acquired the same subsequent to the commencement of the suit. 28 C.J.S., *Ejectment, §* 35. In Liberia, the older and superior title has always been controlling principles in cases of ejectment, and we know of no time that this principle did not control decisions in cases of ejectment in the courts of Liberia. Furthermore, the primary objective in suits of ejectment is to test the strength of the titles of the parties and to award possession of the property in dispute to that party, whose claim of title is so strong as to effectively negate his adversary's right of recovery.

Our position would have been different in this opinion if appellants had proffered a warranty deed covering the area which they claim and had filed such warranty deed with their answer, in which transfer of title to the disputed **land** was made to them in fee simple. If it appeared from the deed presented by appellee and the deed presented by appellants that they described two different pieces of property, one would think that it was then and only then that a board of arbitration would have resolved the issue. Appellee has claimed title to lots #1 and 2 and has also exhibited a chain of title to support that allegation. On the other hand, appellants have relied on a squatter's right with an indefinite and inaccurate description. Appellants have therefore failed to show title in themselves. There can be only one legal deed for a property. In the *Duncan* case, relied upon by appellants, there were two separate deeds before court; hence, it was erroneous for the trial judge in that case to have informed the trial jury that the appellants had no deed. The legal authority relied upon was therefore inapplicable to the instant case.

Moreover, we must observe here that ejectment supports the idea of adverse possession in the appellants. The questions involved in such trials are of a mixed nature of law and facts which, under the statutes, must be tried by a jury under the direction of the court. It is not an error for the court to refuse to instruct the jury on any point in such trials when, in its opinion, it does not appear proper to do so. In the instant case, the appellee had shown in himself a legal title to the property in dispute to recover it. By title here is meant the right of possession arising either from descent or purchase and the right of entry. It was therefore, not an error for the court to instruct the jury that a party had offered no legal evidence in the shape of a deed to the property in dispute. It was also not an error for the court to instruct the jury that the appellee must recover upon the strength of his own title and not upon the weakness of the appellee's. *Reeves v. Hyder*, 1 LLR 271 (1897); *Harris v. Locket*, 1 LLR 79 (1875).

Further, as to the issue that the court below instructed the jury to the effect that the defendants in this case had no evidence in the shape of a deed of title, we are of the opinion that the trial court committed no error, because after a careful examination of the entire records and the proceedings in this case, we have not found in the said records wherein the appellants offered written testimony to prove the right of possession, the right of entry, or any lawful or equitable title to lot #1 in block L-14 or lot #3 in block L-14 in Sinkor, City of Monrovia, or, for that matter, even a chart or a map of the area in question, showing the area being occupied by appellants.

As to the issue that the court's refusal to grant a new trial when prayed for after the verdict, it is our opinion that the granting or refusal of a new trial is a matter in the sound discretion of the court according to the exigency of the particular case, and based upon principles of sound justice and equity. The discretion is not generally reviewable as an error when the court is satisfied that the verdict is not contrary to the law, the evidence and the legal instructions of the court.

This court has tenaciously held and confirmed over and again that in ejectment, the plaintiff must recover on the strength of his own title and not on the weakness of the appellants', and this is applicable to all actions for the recovery of real property. If the plaintiff had actual prior possession of the **land**, this is strong enough to enable him to recover it from a mere trespasser who entered without any title. A naked possession of **land** by an intruder cannot prevail against a paper title. *Minor et al. v. Pearson et al.*, 2 LLR 82 (1912); *Couwenhoven v. Beck et al.*, 2 LLR 364 (1920). This Court has also held that ejectment supports the idea of adverse possession in the defendant. *Clark et al. v. Lewis[1929] LRSC 5;* , 3 LLR 95 (1929).

As to count three (3) of appellants' bill of exceptions, they have contended and argued before us as follows:

That although in ejectment a plaintiff must recover, if at all, only on the strength of his title and not upon the weakness of defendants' title and plaintiff failed to establish any title to lot #3, block L-14 claimed by him in the complaint; and there wasn't any proof adduced in evidence by plaintiff that defendants were occupying lot #1 or #3, yet the trial judge upheld the erroneous verdict of the trial jury and denied defendants' motion for new trial.

This count of the bill of exceptions must be overruled as a matter of law and fact, because a recourse to the records of this case showed that a warranty deed from Georgia B. Coleman to

Gerald Bennett Coleman for lot #1 in block 1-14, situated at Sinkor, Montserrado County, probated and registered on the 8th day of August, A. D. 1977, in Volume 264-77, pages 480-481, was proffered, testified to, marked by the trial court P/1 and confirmed. The records further showed that another warranty deed from Georgia B. Coleman to Gerald Bennett Coleman for lot #3, in block 1-14, situated at Sinkor, Montserrado County, probated and registered on the 8t h day of August, 1977, in Vol. 264-77, pages 478-479, was also proffered, testified to, marked by the trial court as P/2, confirmed, and made to form a part of the court's records. Hence, this count is not sustained.

Appellants have also contended in counts four (4) and five (5) of their bill of exceptions, as follows:

that although there was neither allegations of specific damages in the complaint, nor any scintilla of a proof of damages, yet, the trial judge erroneously and prejudicially upheld and sustained the arbitrary verdict of the trial jury and denied defendant's motion for a new trial; that the final judgment rendered by the trial judge in favor of plaintiff on the 20th day of February, 1985 is a nullity. It does not specify what property is awarded to plaintiff, whether Lot #3 or lot #1 in block L-14, which is not claimed but which deed was proffered and admitted into evidence to prove ownership to lot #3; that the amount of two thousand ($2,000.00) dollars awarded is a mere speculation because there is no scintilla of evidence to justify said award; and that the verdict upon which said judgment was predicated was not supported by the facts, the evidence adduced, or the law controlling."

As to the issue of appellants' motion for a new trial, it is not necessary to repeat our view here below, since this issue was disposed of earlier in this opinion.

On the issue of damages, our statute provides that in a complaint of an action of ejectment, the plaintiff may demand damages for wrongful detention of the real property as well as delivery of possession. Civil Procedure Law, Rev. Code 1:62.2.

In the prayer in appellee's complaint, we have found the following:

"Wherefore, and in view of the foregoing, plaintiff respectfully prays this Honourable court for a judgment evicting, ousting and ejecting the said defendants from the premises of the plaintiff herein described. Plaintiff also demands compensation as damages, in the amount to be determined by the jury for illegal occupation of plaintiffs property by the defendants. Plaintiff prays further that Your Honour will grant unto plaintiff such other relief as in the court's judgment would be deemed just and equitable."

Clearly, appellants have misapplied the question of damages in an ejectment action and the law controlling same. Damages in an action of ejectment is not based on specific damages, rather it is contingent upon general damages. Hence, the awarding of such damages was left in the sound discretion of the jury which has been done in the instant case. Moreover, the said verdict was not arbitrary, but was in conformity with the weight of appellee's evidence which outweighed that of the appellants by sufficient preponderance. The evidence of appellee was not only by the testimony of witness Georgia B. Coleman but it was supported by the title deed presented by

appellee which identified the **land** in dispute and established a *prima facie* case of the plaintiffs title or right of possession thereto. Plaintiffs evidence was able to completely and perfectly connect his title with the original source of the title, the Republic of Liberia. It is our view therefore, that the trial judge did not err when he gave an affirmative charge in favour of the appellee who had shown title to the property.

In ejectment actions or proceedings in the nature as we have in the instant case, the usual rules as to the necessity, propriety and sufficiency of instructions in civil actions generally apply. The instructions of the trial judge, having shown that he correctly stated the law applicable to the case, the same was not confusing, conflicting, or misleading, and it did not ignore or exclude any of the issues properly raised in the pleading by either party in support of which evidence was introduced. The verdict given on the said charge was not arbitrary.

We note that appellants' counsel laid great emphasis on an alleged arbitrariness of the verdict which they considered to be erroneous. For example, they point to an alleged failure by appellee to establish any title to lot #3 in block L-14, claimed by him in his complaint, and they assert that there was no proof adduced in evidence by appellee that appellants were occupying Lot Nos. 1 or 3. They claimed that there was no allegation of specific damages in the complaint and that there was not a scintilla of proof of damages presented by the appellee. Hence, they said, the judgment awarding appellee Two Thousand ($2,000.00) Dollars as damages was merely speculative and not supported by a scintilla of evidence to justify the award. It is our view that besides the treatment which we have already given in this opinion, which we do not think expedient to repeat here, we must remark that with respect to the forms and requisites of verdicts in actions of ejectment or other statutory proceedings, the same general rules apply as in other civil actions; that is, the verdict must comprehend the whole issue or issues submitted to the jury in the particular case and that it must certainly find for or against a party in the suit. This form and these requisites have all been observed with the verdict and the final judgment. The verdict reads:

"Gerald Bennett Coleman of the City of Monrovia, Liberia---PLAINTIFF VERSUS Joseph K. Dausea and Louseag D. Kargou (to be identified) the City of Monrovia, Liberia----------DEFENDANTS VERDICT (ACTION OF EJECTMENT)

We the petit jurors to whom the case, Gerald Coleman, plaintiff versus Joseph K. Dasusea and Louseag D. Kargou, defendants was submitted, after a careful consideration of the evidence adduced at the trial of the above entitled cause of action, we do unanimously agree that the defendants are liable to the plaintiff and are obligated to pay the sum of Two Thousand ($2,000.00) Dollars for general damages."

This verdict is unambiguous and needs no additional or specific grammatical or rhetorical construction or interpretation. It has showed appellants' responsibility in the suit. It showed also the defendants' state of condition of affairs which gave rise to the obligation.

It is the answer (verdict) of the jury given to the court concerning the matter of fact committed to their trial and examination. It makes no precedent and settles nothing but the immediate controversy to which it relates. It is the decision made by the jury and reported to the court and,

as such, it is an elemental entity which cannot be divided by a judge. 29 R.C.L.834. It is not a verdict against evidence, 20 R.C.L. 273, and it is neither a verdict contrary to law 20 R.C.L. 271, nor against the instructions or charges of the court. Indeed, there was no exceptions noted for our review.

The court's charge to the jury read as follows:

"Mr. foreman, ladies and gentlemen of the empaneled jury:

This is an action of ejectment instituted by the plaintiff against the defendants. The facts are very simple. In keeping with the evidence, you saw here with your own eyes plaintiff produced title deed to justify his right and title to the property and in rebuttal the co-defendants brought a piece of paper indicating that it is a certificate, and you heard in the facts defendants told you that they paid some money in the sum of Sixty ($60.00) dollars but it was not paid to Government to have received a Government Receipt ...The important issue in this case is that plaintiff has title deed and defendants do not have title deed, and we want you to understand that in keeping with law, the person who holds a title deed has right of ownership to that property, and he prevails over one who does not have a deed.

Mr. Foreman, ladies and gentlemen of the empaneled jury, we charge you to concentrate on that issue in your room of deliberation. Another issue is that in an action of ejectment, the plaintiff is entitled to damages because of the alleged illegal withholding of the said property from the plaintiff by the defendants. This damage is left with your conscience to award any amount or sum total you feel within your judgment that the plaintiff should receive for the alleged molestation committed by the defendants against the plaintiff for withholding his said property.

Therefore, Mr. foreman, ladies and gentlemen of the empaneled jury, we consider you to be sound men and women, and you have sat here about three (3) consecutive days listening to the facts in this cause and also the right of ownership and legal issues explained to you. You are therefore charged to retire into your room of deliberation and bring a verdict of not liable in favor of the defendants according to your understanding of the facts and law, or in keeping with your understanding of the facts and the law explained to you. You may bring down a verdict of liable against the defendants and that the plaintiff should have his **land** and with your own conscience; you may award to the plaintiff damages. And you are so charged".

No exception was noted to this charge of the trial judge.

A review of this verdict or decision given by the jury reveals that there is no evidence that the jury disregarded the charge of the trial judge on questions of law embraced by the issues to have necessitated the court to reverse the decisions of the empaneled jurors and to order a new trial because of their neglect to follow the directions of the trial judge upon matters of law. It was the legal duty of the jurors to comply with such directions; and if they had refused to do so, it was the duty of the trial court to set aside the verdict, except where there was evidence from which the jury could have found that the conditions required by the instructions did not exist. In any case, according to the weight of authorities, regardless of whether the instructions were right or wrong, they constituted the law of the case and it was the duty of the jury to follow them.

There is nothing in the evidence, taken as a whole, that could cause the trial court to form the opinion that the verdict of the jury was contrary to the evidence, or that the said verdict could not be sustained by the weight of the evidence, or that substantial justice would not be done between the parties; or that the verdict was so manifestly against the evidence as to show that the jury adopted some wrong principles in their deliberations; or that the minds of the jurors were not opened to reason and conviction; or that they were improperly influenced by ignorance or corruption; or that it was not the result of impartial and honest judgment; or that it was from some improper motive or condition or passion. There is no evidence that the award of damages in the amount of Two Thousand ($2,000.00) Dollars was excessive, exorbitant, extravagant, outrageous or unmeasurable; or that the evidence manifestly showed that the jury acted under the influence of prejudice or passion, or under clear misunderstanding of duty and the facts of the case. And since the assessment of damages is peculiarly the province of the jury, the court will be very cautious in overturning a verdict, especially when it appears that the verdict is clear, not exorbitant, and that the case has been tried in a fair and impartial manner. A new trial will be denied under such circumstances.

"The law is that no mere difference of opinion, however decided, justifies interference with the verdict of a cause. A new trial cannot be granted merely to obtain a slight reduction in damages, little more than nominal, when the plaintiff is entitled to nominal damages at least." 20 R.C.L. 64, p. 281.

As it is true of judgments in other civil actions, a judgment in ejectment should conform to the verdict. The judgment in the instant case, not having deviated from the verdict, as aforesaid, the said judgment should be and the same is hereby affirmed and confirmed to all intents and purposes.

Concerning appellants' argument that the amount of Two Thousand ($2,000.00) Dollars was arbitrary and speculative because there was no scintilla of evidence to justify said award, and that the verdict upon which said judgment was predicated was not supported by facts, this Court says this cannot be accepted as true. Besides the testimony of appellee Gerald B. Coleman in which he narrated how and when he purchased the **land** in question, by letter through his counsel, as well as the continuous notices he gave the appellants, both orally and in writing, that he was the owner of the **land** and that he had deeds to prove same, his request to appellants to vacate the premises were ignored. Then there are the insults they gave him by saying that "this was their time". In addition, appellee's testimony was corroborated by Georgia Coleman, his grantor.

The appellants deliberately, intentionally, obstinately, unreasonably and perversely refused to leave the **land**, continued to occupy and withhold plaintiffs **land much to his disadvantage and displeasure, which land** could have been used for purposes other than building thereon and generated or yielded income to the benefit of appellee. It was from these facts of appellants' conduct that motivated appellee to institute the action to recover through spending of funds which were all observed by the jurors, which thus justifiably awarded the reasonable sum of Two Thousand ($2,000.00) Dollars, and which was confirmed by the court's final judgment. Appellee complied with the requirement of law as found in this Court's decision in the case *East African Company and Muller v. Dunbar*, 1 LLR 279 (1895), by putting the point

in the prayer and respectfully demanding compensation as damages in an amount to be determined by the jury for the illegal occupation of appellee's property by appellants.

We must remark here that it is a settled principle of law that ejectment is a form of action in which the right of possession to corporate hereditaments may be tried and the possession obtained... It is a possessory action. The action may doubtless involve both the right of possession and the right of property. But the true purpose of the remedy is to obtain the actual physical possession of the specific real property together with damages for its detention rather than to try mere abstract questions of title, although the claim of appellee must have the possessory title and it is ordinarily necessary to determine the title to the property or at least to decide whether the claimant or appellee has a present right of entry and possession as against the appellants... Accordingly, the appellee must have a legal right to the possession of the property described in the pleadings and the only relief that may be granted him is the judgment for its possession and for damages. 25 AM JUR 2d, *Ejectment, §§* 1, 2 and 3.

Under these circumstances, as we have observed from both the law and facts, it is our opinion that the judgment of the lower court, being in conformity with the evidence and the law, should not be disturbed. A writ of possession is hereby ordered issued in favor of Appellee Gerald Coleman.

Our distinguished colleague, His Honour the Chief Justice, has not agreed with the majority opinion findings and determination of the majority; hence, he has prepared and filed a dissent. But in as much as our opinion is fully supported by law, facts, circumstances and precedent, we firmly hold that it shall be the decision of this Court undisturbed.

The Clerk of this Court is hereby ordered to send a mandate to the lower court empowering it to resume jurisdiction over the subject case and enforce its judgment. Costs are ruled against the appellants. And it is hereby so ordered.

Judgment affirmed

MR. CHIEF JUSTICE GBALAZEH *dissent.*

I have disagreed with the mighty majority in this case because of the gross failure of the said majority to abide by precedents, and to adhere to the principles of decided cases hoary with age. Additionally, I decline to accept the assumption advanced by the majority that a holder of any deed is indeed the owner of any **land**.

Appellee, plaintiff below, brought an action of ejectment against defendants, now appellants, in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, in January 1982. In the complaint appellee alleged as follows.

"That the plaintiff is the owner of a parcel of **land** located in the City of Monrovia, County of Montserrado, Republic of Liberia, known as lot no. 3, in block L-14, which he bought from Mrs. Georgia B. Coleman, who acquired the said parcel of **land** though a quit-claim deed from her sister, Diana Louisa Coleman, they being surviving heirs of their late mother, Mrs.

Hannah R. Hill-Philips, the surviving heir of the late Robert H. Hill, the original owner of the said parcel of **land. Copies of the public land** grant from the Republic of Liberia to R. H. Hill, recorded in Volume 27, page 222, of the records of Montserrado County, over the signature of the late President W.D. Coleman, dated 7th February, A. D. 1898; a copy of the quit claim deed from Diana Louisa Coleman to Georgia Henrietta Beatrice-Philips, dated August 7, 1946, recorded in Volume 511, pages 358-355, of the records of Montserrado County; and a copy of the warranty deed from Georgia B. Coleman to Gerald Bennett Coleman, registered according to law in Volume 264-77, pages 478-479 of the Registry of Montserrado County, probated on the 8' day of August,1977, inclusive, are hereto attached and marked exhibit "A", forming, a part of this complaint."

The complaint concluded that the defendants/appellants (hereafter appellants) were occupying the property described *supra* without any color of right and that although repeated demands made by plaintiff/appellee (hereafter appellee) to the appellants to vacate the said property, they had failed and refused to do so. The said action was therefore brought in order to evict them and to award appellee damages for the illegal occupancy.

Appellants answered denying the allegations and claiming that they had been given squatters' rights by the Monrovia City Corporation in 1982, to occupy the said **land** which was the bona fide property of the government.

After the trial, the jury retired and returned with a verdict of liable, and then awarded appellee damages amounting to $2,000.00. Upon denial of appellants' motion for new trial, the trial judge rendered a final judgment, affirming and confirming the verdict of the jury. Whereupon, the appellants appealed to this Court of final resort.

At the conclusion of arguments before this Court, the majority of my colleagues have decided to uphold the ruling of the trial court and to confirm its judgment. Notwithstanding, from my own understanding of the various documents before us, and after carefully listening to the arguments and explanations of counsels, I have found it difficult to follow their judgment and have therefore refused to append my signature thereto; and I have rather resolved to file this dissenting opinion for certain obvious reasons, as hereinafter stated.

Firstly, I have found several anomalies in appellee's complaint and also in both the award and verdict of the jury and in the judgment of the lower court. The appellee's complaint woefully failed to specifically state which portion of his **land** is being occupied by appellants for which he had instituted the action. Furthermore, both the verdict of the jury and the final judgment of the trial court failed to specifically state and describe the award of **land** made to the appellee, or whether there was in fact an award of **land** or merely an award of damages. The said verdict reads thus:

"VERDICT

"We the petit jurors to whom the case Gerald B. Coleman, plaintiff versus Joseph K. Dausea and Lousea D. Kargou, defendants was submitted, after a careful consideration of the evidence adduced at the trial of the above entitled cause of action, do unanimously agree that the

defendant is liable to the plaintiff and is obligated to pay the sum of $2,000.00 (Two Thousand Dollars for general damages.

WE RESPECTFULLY SUBMIT.

DATED THIS 25 TH DAY OF JANUARY, A.D. 1985."

On the other hand, the final judgment of the trial court, after narrating the procedures through which the case had traveled, concluded as follows:

"Therefore, in view of the foregoing, the unanimous verdict of liable against the defendants in this cause is hereby confirmed and affirmed and the defendants are hereby adjudged liable and they are to pay to the plaintiff as general damages the sum of $2,000.00. The clerk of court, is hereby ordered to issue a writ of possession in favor of the plaintiff evicting and ousting the defendants from the said premises and turning the same over to the plaintiff herein, and the defendant are hereby ruled to costs. And it is hereby so ordered."
"Given under our hand in open court
this 20th day of February, A.D. 1985.
Eugene L. Hilton
ASSIGNED CIRCUIT JUDGE PRESIDING"

What an inconclusive and highly irregular verdict; a verdict contrary to law, especially so in an action of ejectment where properties are described by metes and bounds. The foregoing verdict and judgment are so quaint that one can hardly imagine how the clerk would have prepared the writ of possession without metes and bounds, and how the sheriff would be able to enforce same.

This Court has always held that "a verdict must show what was awarded, and must not be so uncertain that a writ of possession cannot be issued upon it." *Duncan v. Perry*, 13 LLR 510 (1960).

This Court reiterated the said principle by specifying in a later opinion that: "In an action of ejectment, the jury's verdict must sufficiently describe the **land** awarded so that a writ of possession can be issued based upon the description."(Our emphasis). *Ginger et al. v. Bai et al.[1969] LRSC 38;* , 19 LLR 372 (1969).

The verdict in the case at bar completely ignored these legal injunctions from this Court, and failed to adequately describe the **land** awarded, if any was awarded at all, in metes and bounds to facilitate its location on the ground without much difficulty at all. I hold the view that both the verdict and the final judgment are uncertain; and therefore, the judgment of my colleagues confirming same on this appeal will not receive my support.

Secondly, I have refused to subscribe to the majority opinion because real estate matters are very important as they involve interests of immense value. I therefore cannot support the award of real

property or the deprivation of same, except where there is clear and convincing evidence that can reasonably defend my position for posterity long after my demise.

Property rights are so important to mankind that this Court has in the past rendered judgments outlining the circumstances under which a person may be deprived of property, and showing how one without possession might evict and oust the occupier of certain property to which both assert some claim.

However, I am convinced that the trial judge in this case had indeed ignored the several rulings of this Court with respect to ejectment, and he had merely ruled in favour of the appellee for the simple fact that he possessed a deed which, appellee alleged was part of a chain of title to the disputed property derived from a Public **Land** Grant to his ancestor by President W. D. Coleman in 1898; while on the other hand, appellants merely possessed a Squatter's Right Certificate from the Monrovia City Corporation.

Hence, the judge instructed the jury, and the jury found that the **land** in question was the property of appellee who has a deed, since the holder of a deed to any property is the owner. This instruction was given notwithstanding the law of adverse possession, perhaps and despite the fact that an alleged deed of realty might not be an authentic one, or that the proffered deed might just be a deed covering some other property.

I am sure this Court should not entertain such a position, because to do so will be like opening a Pandora's Box, wherein anyone with claims to property wins as long as he proffers any deed, while a defendant who has failed to proffer any deed loses. In fact, such a position is in direct contravention of, and in disregard for, the precedents of this Court on this matter.

As early as 1895, this Court held that Tin ejectment, the plaintiff must show in himself a legal title to the property in dispute to recover it; by title here is meant the right of possession arising either from descent or purchase, and the right of entry." *Reeves v. Hyder*, *1* LLR 271 (1895). The Court also held in later years that "In an action of ejectment, title must be proved by the successful party. *Cooper v. Cooper-Scott, [1951] LRSC 11; 11* LLR 7 (1951).

In addition, this Court re-emphasized those principles in the same matter of *Cooper v. Cooper-Scott* when they reappeared before it in 1963, holding: (1) that a plaintiff in ejectment must recover upon proof of title, which must be evidenced by a continuous and consistent chain; (2) that a plaintiff in ejectment must recover unaided by any defects or mistakes of the defendant, and the proof of the plaintiffs title must be beyond question; and (3) that "in an ejectment action, the plaintiff's title is not presumed, but must be established." *Cooper v. Cooper-Scott,* [1963] LRSC 38; 15 LLR 390 (1963).

The foregoing citations of law might be termed the most forceful and definite holdings of this Court on the subject of actions of ejectment vis-a-vis the rights of the appellee and the appellants. Disappointingly, however, the trial judge had completely ignored this Court's holding in *Cooper v. Cooper-Scott* and proceeded to confirm a jury verdict and award to the appellee in ejectment simply for having an alleged deed to the property without more, and appellants had

none. The judge, jury, and the appellee had all taken the chance to rob appellants of their rights because their title was allegedly defective.

Appellee's complaint alleged that the deed to the disputed property originated from a deed of public **land** grant given his ancestor by President Coleman in 1898, and from that, quit claim deeds were made by descendants until he finally came in possession of the said **land** by a Warranty Deed issued him in 1977 by a later ancestor.

However, the public **land** grant deed from the Republic of Liberia issued to plaintiff's ancestor in 1898 by President William D. Coleman, which he considers to be the bud in a chain of various ownerships and possessions, reads as follows:

"Therefore I, W.D. Coleman, President of the Republic of Liberia for myself and my successors in office in pursuance of the Act above cited, have given/granted, and confirmed and by these presents do give, grant and confirm unto the said R.H. Hill, his heirs, executors, administrators or assigns all the piece or parcel of **land** situated, lying and being in the City of Monrovia, South Beach, County of Montserrado, and Republic aforesaid and bearing in the authentic records of said City the number 9, on South East Beach and bounded and described as follows:

"COMMENCING at the South East Angle of adjoining Lot No.8 South East of Monrovia, owned by Alex Jordan's Estate and running down the beach of Monrovia South 52 degrees East, 7Y2 chains, North 38 degrees East 40 chains, North 38 degrees East 40 chains, North 52 degrees West 7 1/2 chains, south 38 degrees West 40 chains to the place of commencement and contains (30) acres of **land** and no more.---------- "

"In witness whereof, I, W. D. Coleman, have hereunto set my hand and caused the seal of this Republic to be affixed this 7th February A.D. 1898, the Republic the 51st .

W. D. Coleman

PRESIDENT"

The foregoing public **land** grand deed from President W. D. Coleman issued in 1898 to Mr. R. H. Hill, the ancestor of appellee, from whom his present claims derive, gives **land** "situated, lying and being in the City of Monrovia South Beach., County of Montserrado, and Republic aforesaid and bearing in the authentic records of said City the Number 9 on South East Beach and bounded and descried as follows:..." (Emphasis mine)

Everyone on this Bench knows that area of Monrovia usually referred to as South Beach which is the beach area of Monrovia around "Coconut Plantation" and extending to the back of Barclay Training Center and the Budget Bureau. And to my mind and sound judicial judgment, I believe doggedly, that the **land** granted by the Republic of Liberia through President W. D. Coleman in 1898 to R. H. Hill, appellee's purported original grantee, covered (30) thirty acres of the area of Monrovia we know and have herein described as South Beach, Monrovia, or Monrovia South Beach. Yet, both the deeds of 1946 allegedly recorded in Volume 58, pages

358-359 of the records of Montserrado County, and that of 1977, registered in Volume 264-77, pages 478-479, of the Registry of Montserrado County, which purportedly derive from the deed of 1898, refer to **land** in Sinkor; not even Sinkor towards the beach, but Sinkor between the Corners of Gibson Avenue and 14th Street, both of which are on the left-hand side of Tubman Boulevard, far from any beach. This is a strange anomaly which ought to have caught the attention of both my colleagues and of the trial court and jury. The fact that it didn't would certainly lend credence to a charge of inadequate understanding, or else to a charge of inadequate examination and study of the records of this case, and of the law on ejectment.

I am convinced, and this Court has held, that "instruments conveying real property are to be interpreted literally according to the text of the conveying instrument." *Wayne et. al. v. Cooper[1972] LRSC 7;* , 21 LLR 50 (1972). Hence, I firmly maintain that the trial judge had sufficient evidence of the inadequacies of the chain of title deriving from the original deed, that ought to have convinced him, as well as my colleagues here, that in fact plaintiff had failed to prove his title to the disputed property, especially in view of the holding of this Court that "in an action of ejectment, if neither party establishes any legal right, the appellee cannot recover." *Moore v. Gye,* [1970] LRSC 8; 19 LLR 429 (1970). Moreover, this Court held that in an action of ejectment, where the declaration sets up a claim to a specific parcel of **land** and distinctly describes it, a deed wherein appears none of the boundaries and descriptions mentioned in the declaration is not admissible as *prima facie* evidence of title. *Page et al. v. Harland et aL,* 1 LLR 463 (1906).

I am aware, unlike my majority colleagues, that the Supreme Court may render such judgment as would have been rendered by the trial court in a particular case if it had been properly decided below. *Townsend v. Cooper,* [1951] LRSC 16; 11 LLR 52 (1951); *Williams and Williams v. Tubman,* [1960] LRSC 47; 14 LLR 109 (1960); and Civil Procedure Law, Rev. Code 1:51.17.

In concluding, therefore, it is my considered opinion that the judgment should be reversed. Hence, this dissent.

Jarkonnie v Akoi et al [1989] LRSC 26; 36 LLR 384 (1989) (14 July 1989)

FLOMO JARKONNIE, Petitioner, v. **JOHN B. AKOI, Land** Commissioner, Lofa County, and **FLOMO POROPEAYEA**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE ISSUANCE OF 'HIE WRIT OF PROHIBITION.

Heard: June I. 1989. Decided: July 14. 1989.

1. Damages is pecuniary compensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment or injury, whether to the person, property or rights, through the unlawful act or omission or negligence of another.

2. Expense is the cost generally allowed to the successful party; all the expenses which the property owner is put to by the litigation.

3. A citizen desiring to purchase public **land** in the county area shall apply to the **land commissioner of the county in which the land** is located: and the **land commissioner. if satisfied that the land** in question is not privately owned and is unencumbered, shall issue a certificate to that effect.

4. A **land** commissioner has jurisdiction to hear and determine cases arising from the sale of public lands, as he is required by law to ascertain that the **land** sought to be bought or sold is unencumbered.

5. In an investigation by the **land commissioner of a dispute over land** claimed pursuant to tribal certificate, in addition to finding a party liable, the **land** commissioner may impose a line and enforce payment of the fine to cover the expenses of the successful party.

4. A writ of prohibition will not be issued to a court or tribunal which has neither exceeded its jurisdiction nor attempted to proceed by a wrong rule.

Flomo Jarkonnie, the petitioner, in January 1988 engaged the services of one George A. Corbin, a public **land** surveyor resident in Monrovia, Montserrado County, to survey a parcel of **land** for him in Kpaiyea Town, Salayea District, Lofa County, and which parcel of **land** was adjoining that of Co-respondent Flomo Poropeayea, also of Kpaiyea Town. Surveyor George A. Corbin is said to have put up public notices for the survey of the **land** but without any reference to the **land** commissioner of Lofa County. The co-respondent, owner of the adjoining **land**, immediately protested against the survey and filed a complaint before the superintendent of Lofa County. Predicated upon the said complaint, the superintendent ordered the **land** commissioner to conduct an investigation. At the conclusion of said investigation, the **land** commissioner found appellant administratively liable and ruled him to pay the expenses incurred by the co-respondent, which resulted from the complaint filed and the investigation conducted, which expenses amounted to $220.00.

Against this ruling, and to prevent the payment of this amount, the petitioner fled to the Chambers Justice and applied for a writ of prohibition. The petition was heard and denied and the appellant appealed to the Court *en banc*.

In finally deciding the case, the Supreme Court opined that a **land** commissioner, who is a member of the Executive Branch of Government, may entertain complaints growing out of **land** disputes involving tribal elements, whose claims are not predicated upon title deeds; and equally so, he is clothed with authority to enforce administrative decisions as an outcome of such claims. Consequently, the writ of prohibition could not lie. The petition was *denied* and the ruling of the Chambers Justice affirmed with costs against the appellant.

Boima K. Morris appeared for petitioner. *J. Edward Koenig* and *Henrietta M Koenig* appeared for respondents.

MR. JUSTICE BELLEH delivered the opinion of the Court.

Following a ruling on the petition for a writ of prohibition by our distinguished colleague, Mr. Justice Junius, who presided over the Chambers of this Court during the October, Term, A. D. 1988, petitioner herein excepted to the said ruling and announced an appeal to this Court sitting *en banc* for our consideration and final determination of the issues presented in petitioner's brief, which form the factual and legal basis for this appeal.

For the benefit of this opinion, we hereunder quote word for word petitioner's petition for the writ of prohibition as submitted to the Chambers Justice of this Court:

"PETITIONER'S PETITION"

"1. That your petitioner, having obtained a tribal certificate for his farm **land** and an executive survey order to survey said farm **land**, secured the services of a surveyor from Monrovia to survey his farm **land** situated in Kpaiyea Town, Salayea District, Lofa County. The surveyor, prior to surveying the **land**, gave two weeks notice over the radio and in the town to all those who had **land** adjacent or within the vicinity to come with either their deeds or tribal certificates on the day of the survey, but no one brought any deed or tribal certificate. The surveyor then surveyed his **land**. To his greatest surprise and dismay, Co-Respondent Flomo Poropeayea carried a complaint to Co-Respondent John B. Akoi to the effect that he, the petitioner, had surveyed Flomo Poropeayea's sugar cane farm and cash crop after his deed had been prepared by the **land** commissioner and forwarded to the superintendent. The **land** commissioner then withheld all his papers, the prepared deed, the tribal certificate, survey order, and has had them up to the filing of this petition.

2. That the co-respondent is now trying to enforce the execution of this illegal judgment by compelling the petitioner to pay what he termed "expenses" in the amount of $220.00 (Two Hundred Twenty Dollars) when in fact and in truth as a **land** commissioner, he has no jurisdiction to try and determine an action of damages to personal or real property or criminal mischief. For, the Co-respondent Flomo Poropeayea should have gone to a court of competent jurisdiction to file his complaint if he felt that the petitioner, in surveying his farm, damaged any property of his, including sugar cane farm and other cash crops but not the **land** commissioner or to any administrative forum. The **land** commissioner has no trial jurisdiction to try and determine action of damages or criminal mischief. Therefore, prohibition will lie to restrain a void and an illegal judgment. See exhibit "A".

The gist of the petition for writ of prohibition is that on January 14, 1988, Petitioner Flomo Jarkonnie of Kpaiyea Town, an adjoining **land** owner ordered the survey of his portion of **land** by one George A. Corbin of Monrovia, Montserrado County, a public **land** surveyor, who is said to have put up a notice for the survey of the said **land without any reference to the land** commissioner of Lofa County. Whereupon, the co-respondent immediately protested against the survey and filed a complaint before the superintendent of Lofa

County, who ordered the **land** commissioner to conduct an investigation, and as a result of the investigation, petitioner was administratively found liable and a decision was accordingly rendered against petitioner. Consequently, petitioner was ordered to pay all expenses incurred by appellee in the sum of $220.00. There is no showing that petitioner ever appealed from the decision of the **land** commissioner; instead, petitioner elected to file a petition for a writ of prohibition before the Justice presiding in Chambers, our former colleague, Mr. Justice Biddle, who ordered the issuance of the alternative writ of prohibition.

The respondents having been served with the alternative writ of prohibition, filed a four-count returns contending, among other things, that:

1. The **land** commissioner is authorized under the law to conduct an investigation growing out of **land** dispute among elements within his assigned area, especially so where said dispute is based upon mere tribal certificates and no deed is involved; and that the **land** commissioner being an administrator, he is legally authorized under the law to probe into administrative matters, assess expenses incurred against the losing party to the extent of imposing administrative fines, subject to appeal under the doctrine of chain of command and administrative procedure; and

2. The proceedings and/or investigation had by the **land** commissioner was solely an administrative matter growing out of **land** dispute and not an action of damages as alleged by the petitioner, and therefore prohibition will not lie.

The Justice in Chambers ruled denying the petition. Petitioner, being dissatisfied with the ruling of the Chambers Justice, excepted to same and announced an appeal to this Court sitting *en banc* for review.

There are two issues presented for our consideration and final determination. They are:

1. Whether or not the complaint filed before the **land** commissioner was for damages; and

2. Whether or not the **land** commissioner who is a member of the Executive Branch of Government may entertain complaints growing out of **land** dispute involving tribal elements whose claims are not predicated upon title deeds.

"Damages" is defined as "a pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another."

"Damages may be compensatory or punitive according to whether they are awarded as the measure of actual loss suffered or as punishment for outrageous conduct and to deter future transgressions. Nominal damages are awarded for the vindication of a right where no real loss or injury can be proved. Generally, punitive or exemplary damages are awarded only if compensatory or actual damages have been sustained."

"Compensatory or actual damages consist of both general and special damages. General damages are the natural, necessary, and usual result of the wrongful act or occurrence in question. Special damages are those "which are the natural, but not the necessary and inevitable result of the wrongful act." BLACK'S LAW DICTIONARY 351-352 (5thed.).

"Damages" connotes the character of relief afforded to an injured party for the injury suffered, that the amount which will compensate the injured party for all detriment which was proximately caused by the unlawful act of defendant."

"The term 'damages' is to be distinguished from other terms such as debt, expenses, interest penalty, salary value, and verdict." 25 C. J. S., *Damages, §* 1(b).

"Expenses" as used in a legal sense, is the expense of the suit the cost which are generally allowed to the successful party; all the expenses which the property owner is put to by the litigation." 35 C. J. S., at page 235.

The records reveal that predicated upon the complaint filed in the office of the superintendent of Lofa County by the corespondent herein, protesting the signing of any public **land** sale deed by the superintendent of Lofa County, covering portions of 'parcel of **land**" which had allegedly given to the co-respondent and his family by the tribal authorities of Lofa County, Honourable Gayflor Johnson, the superintendent of Lofa County mandated the **land** commissioner of Lofa County, co-respondent herein, to conduct an investigation.

After investigating the said protest, the co-respondent **land** commissioner made a ruling. For the benefit of this opinion, we hereunder quote the relevant portions of the ruling of the corespondent **land** commissioner:

"In lieu of all stated above, Defendant Flomo Jarkonnie is hereby ruled guilty and requested to defray all expenses of protesters through the office of the **land** commissioner of this County, Lofa, and it is hereby ordered:"

According to the decision of the co-respondent **land** commissioner, quoted *supra*, there is no indication that besides ruling petitioner guilty of the protest, the co-respondent **land** commissioner awarded damages in favor of Co-respondent Poropeayea for the cash crop trees which were included in the survey conducted at the instance of petitioner. Instead, the corespondent **land** commissioner ruled simply that petitioner be required to pay the expenses incurred by Co-respondent Porpopeayea during the investigation which is a normal procedure in administrative courts. In short, we are of the opinion that the **land** commissioner did not award damages in favour of the corespondent as erroneously contended by counsel for petitioner.

The second issue to be determined is whether or not the **land** commissioner who is a member of the executive branch of government may entertain complaints growing out of **land** dispute involving tribal elements whose claims are not predicated upon title deeds.

The Public **Land** Law, 1956 Code 34:30, provides:

"A citizen desiring to purchase public **land** in the county area, shall apply to the **land commissioner of the county in which the land** is located and the **land** commissioner if satisfied that the **land** in question is not privately owned and is unencumbered shall issue a certificate to that effect." In respect to the office and functions of the **land** commissioner, the Public Lands Law, 1956 Code, 34:1 & 2 provide, as follows:

'The President by and with the advice and consent of the Senate, shall appoint a **land** commissioner in each county. The duties performed in the counties by the **land** commissioners shall be performed in the hinterland by the district commissioners."

Each **land commissioner, if satisfied, that the public land** about to be sold is not privately owned and is unencumbered, shall issue a certificate to a prospective purchaser to that effect. He shall also under the circumstances required by law draw up deeds of public lands sold under the procedure prescribed in section 30 of this title or allotted under the provisions of chapter 14 thereof." The office of the writ of prohibition, according to section 16.21(3), Civil Procedure Law, Rev. Code 1, is a "special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding as specified therein."

In the case *Bryant v. Morris and Darby*, [1954] LRSC 41; 12 LLR 198 (1954), this Court held that "a writ of prohibition will not be granted to a court which has neither exceeded its jurisdiction nor attempted to proceed by a wrong rule."

In view of the functions and duties of **land** commissioners as herein specified, coupled with the controlling laws, we are of the opinion that the **land** commissioner does have jurisdiction to hear and determine cases arising from the sale of public lands, as he is required by law to ascertain that the **land** sought to be bought or sold is unencumbered ., hence, prohibition will not lie to refrain the co-respondent **land** commissioner from enforcing his decision.

We therefore hold that the ruling of the Chambers Justice be, and the same is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the office of the **land commissioner of Lofa County instructing the said land** commissioner to resume jurisdiction over the matter and enforce his decision. Costs are ruled against the petitioner. And it is hereby so ordered.

Petition denied

Tay v Teh et al [1968] LRSC 18; 18 LLR 310 (1968) (19 January 1968)

G. WALTON TAY, Agent for G. H. TAY, Appellant, v. NAGBA TEH, GEORGE ALFRED WREH, YENNOH, TEHSEE DOE, ELIZABETH JOE and CORFOR, alias

Teetee Borbor, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 26, 30,
31, 1967. Decided January 19, 1968. In an action of ejectment the plaintiff is required to establish his case upon the strength of
his own title and not upon the weakness of the defendant's title. 2. In an action of ejectment, if neither claimant relies upon a
good title, he who has the prior possession has the better right to the property. 3. Where the ends of justice require it in a particular
case, though an appellant appears not to have formally complied with the need to note an exception at the time of ruling, the Supreme
Court will observe the spirit and intent of the law and will accept the bill of exceptions apparently approved by the trial court,
upon the appeal therefrom. 4. When no justiciable issue presents itself, the Supreme Court may order judgment in the case, without
remand. 1.

An action of ejectment was commenced by appellant, as plaintiff against tenants of owner of a tract of land, in which
owner intervened, both litigants claiming title to the same property through different grantors. On appeal from the judgment of the
trial court confirming the jury's verdict for defendants, the judgment was reversed and judgment ordered by the Court for the appellant,
without remand.
Harmon, Grimes and Morgan for appellant. C. L. Simpson and M. M. Perry for appellees.
MR. CHIEF JUSTICE WILSON delivered
the opinion of

the Court. The Court has decided this case without indulging in sentiment or what may be regarded as the morals of
the case.

In 1839, on July 18 of said year, a colonial grant deed was executed in favor of one David
White by the Colonial Governor of the Republic of Liberia, Thomas Buchanan. This grant was for a 20-acre plot of land situated on
Bushrod Island, near Monrovia. The deed referred to is set forth. "These presents made this 18th day of July in the year of our Lord
One Thousand Eight Hundred Thirtynine and of the Colony of Liberia, between Thomas Buchanan, Governor of the said Colony, acting
in behalf of the American Colonization Society of the one part, and David White of the other part: witness that in consideration
of each and every of the duties enjoined and conditions prescribed by sundry regulations, laws and ordinances established by the
authority of said American Colonization Society by him, the said David White, before the ensealing and delivery of these presents,
duly and lawfully fulfilled and discharged, the performance whereof is hereby certified and acknowledged, he, the said Thomas Buchanan,

had granted, and by these presents doth grant unto the said David White, his heirs and assigns, all that lot or parcel of land situated, lying and being on Bushrod Island and Colony of Liberia, bearing in the authentic record of said Colony the number `7,' bounded north 45 degrees East, running back 164 rods from the Stockton Creek to a division line between the Colonists and King Peter and containing 20 acres of **land and no more ; to have and to hold the said lot or parcel of land** in fee simple unto the said David White, his heirs and assigns, for ever to and for only the property, use and behoof of him, the said David White, his heirs and assigns, and to and for no other use, intent or purpose whatsoever, subject to the conditions set forth in the Constitution and Laws of the Colony. "In witness whereof the said Governor of the Colony,

 has hereunto set his hand and the Seal of the said Colony.
"Done at Monrovia the day and year aforesaid. [Sgd.] THOMAS BUCHANAN, Governor."

Thereafter, the said White transferred the property to another, and from there the chain of title commenced to extend until eventually the property was transferred to one William Henry Bryant, from Abraham B. Stubblefield, who transferred same to one Corfor Borbor, alias Teetee Borbor, the appellee in this cause. We would like to note here that, unlike the original link in the chain of title from Governor Buchanan, which bears the number, "7," all succeeding transfers, down to the deed vesting title in the said Teetee Borbor, carry the number, "6." The last transfer to Teetee Borbor, the appellee in this case, was made on the 3oth day of December, in the year 1927. This, therefore, constitutes the chain of title on which appellee bases his fee simple right. In the year 1949, Mr. G. H. Tay, the father of appellant, acquired by purchase - 1/2 acres, the equivalent of 6 town lots, on Bushrod Island, near Monrovia City, Montserrado County, from Messrs. Jacob Fay, Sumo Gbe, Tarlow Kai, Jashu Budu, Jessie Caphart, and Henry V. Logan, heirs of the late King Peter. The deed is hereinafter set forth. "Know all men by these presents that we, Jacob Fay, Sumo Gbe, Jashu Budu, Jessie Caphart, Tarlow Kai, and Henry V. Logan, of Bushrod Island, of Monrovia, in the County of Montserrado, of the Republic of Liberia, for and in consideration of the sum of $90.00, paid to us by Mr. Gilbert H. Tay of the Settlement of Schefflin, of Montserrado County, the Republic of Liberia (the receipt thereof is hereby acknowledged), do hereby give, grant, bargain, sell and convey unto the said Gilbert H. Tay, his heirs and assigns, a certain lot or parcel of land with the building thereon and all

privileges and appurtenances to the same belonging,
situated in the Bushrod Island of Monrovia, County of Montserrado, and
Republic of Liberia, and bearing in the authentic record of
said Bushrod Island the block No. 1, and bounded and described as follows :
Commencing at the North East corner of Harietta A. Kennedy's
adjoining Southern block and running parallel with it due West io chains ;
then running due North I-% chains parallel with the new
Bushrod Island Brewerville motor road to the place of beginning and
containing -I/2 acres of land and no more, to have and to hold
the above premises in the said G. H. Tay, his heirs and assigns to him and
their use and behoof for ever, and we, the said Jacob
Fay, Sumo Gbe, Jessie Caphart, Tarlow Kai, Jashu Budu, and Henry V. Logan,
for us and our executors, administrators and assigns,
do covenant with the said G. H. Tay, his heirs and assigns, that at and until
the unsealing of these presents we are lawfully seized
in fee simple of the aforesaid granted premises, that they are free from all
encumbrances ; that we have good right to sell and convey
the same to the said G. H. Tay, his heirs and assigns for ever, as aforesaid
; and that we will, and our heirs, executors, administrators
and assigns shall warrant and defend the same to the said Gilbert H. Tay, his
heirs and assigns for ever, against the lawful claims
and demands of all persons. "In witness whereof we, JACOB
FAY, SUMO GBE, TARLOW KAI, JESSIE CAPHART, JASHU BUDU, and HENRY V. LOGAN,
have hereto

set our hands and Seal this 8th day of December in the year of our Lord One
Thousand, Nine Hundred and Forty Nine."
It is this piece of real property which appellant claims to be his that has
provoked this litigation. Appellant claims the property
to be his and not within

the title right of appellee's 20 acres of land, while appellees maintain
that
the property sold to appellant by the heirs of King Peter was a part of the
20 acres of land. There were many issues of law raised
by the pleadings, but the trial judge, Hon. Alf red L. -Weeks, only ruled as
follows : "The court, after considering the many issues
raised, has come to the following conclusion: "I. In ejectment the plaintiff
is required to recover upon the strength of his own
title, and not upon the weakness of his adversary's. "2. Plaintiff must show
legal title in himself, link by link. "This court, therefore,
rules this case to trial on the merits of the issues raised in the complaint
and answer. The parties are confined therein during the trial. The other
pleadings, not being
pertinent to the issues, are hereby rejected. And it is so ordered. "[Sgd.]
ALFRED L. WEEKS,
Assigned Judge."

The trial judge should

have adhered to the rule requiring determination of issues of law before considering issues of fact. Civil Procedure Law, 1956 Code 6:62o. Moreover, the record in this case immediately following this ruling shows no exception taken thereto by the appellant, even though in his bill of exceptions one of the counts states an exception to said ruling, the judge, in approving the bill of exceptions containing this count, making the following notation: "Approved insofar as it is supported by the record." We consider such a count sufficiently important so that the court should have particularly made comment on the absence of exception taken at the time of ruling. We will, in spite of the grave doubts as to the legitimacy of the record which omits the recording of exceptions to said ruling, still pass on the merits of the issues raised in the plaintiff's complaint and the answer by the defendant.

Now to the case. The argument is advanced that the plaintiff cannot recover on the weakness of defendant's title, but must rely on the strength of his own title, as a main point of defense, where plaintiff attacks the legal sufficiency of defendant's title. The conclusion of the trial Judge sustained the position that plaintiff must show title in himself link by link to the sovereign State in every case and under every circumstance. This seems to us to be incorrect, since, under the statute, plaintiff's title may be established by showing the source of his title, that is, from a grantor. And where the said grantor's right to transfer property is not successfully attacked, it must be concluded that plaintiff's title has been established. This much heralded rule, as laid down in the statute, that the plaintiff must recover on the strength of his own title and not on the weakness of his adversary, is found in our case law. In William, et al. v. Karnga, et al., 3 L.L.R. 234 (1931) , the Court held that parties in ejectment proceedings must recover upon the strength of their titles and not the weaknesses of defendant's. To the same effect, Couwenhoven v. Beck, 2 L.L.R. 364 (1920). See also Bingham v. Oliver, 1 L.L.R. 47 (1870). Succinctly recited in the brief of appellees, these should not be stretched beyond the realm of logic and reason nor an interpretation made that does not accord with the intent and meaning of the law. The following seem the relevant issues in the case : 1. Whether or not the title deed on which appellee bases his claim is genuine and conforms to all of the statutory rules in describing a piece of property intended to be conveyed. 2. Was the deed for the property so described, or the links forming the chain of transfer so identical, in all of its material parts, to make the chain absolute and complete? 3. Whether or not the land granted by deed to Teetee Borbor, having as its original grantor, Governor Bu-

chanan, is sufficiently described as to enable its location by competent survey and if this was done at all at the trial of this case in the Circuit Court. 4. With this established, we must focus our attention on the source of the line of title that came down to appellee. We must now look at the evidence in the case. According to the deed by Governor Buchanan to White, which has been described, the starting point of the 20 acres of land to which appellee acquired title from a transfer to him by William Henry Bryant, is the Stockton Creek, and nowhere else. This is indisputable according to the text of the deed. The plot which was put into evidence by appellee as the result of instructions from the President of Liberia to Mr. Fritzroy Williamson presented in court by appellee's witness, surveyor Speare, shows that appellee does possess a piece or parcel of land adjoining the Stockton Creek. Since there has been no evidence at the trial to show that he was granted another piece of property other than that commencing from the Stockton Creek covered by a title deed granted by Governor Buchanan, his claim rests on the grant of Governor Buchanan, which subsequently devolved on him by transfer from William H. Bryant, his grantor. On the left side of the Monrovia-Bomi Hills Highway is another piece of land shown by this government plot prepared by Mr. Williamson, described as the property of Teetee Borbor, with the notation on the plot "occupied by Teetee Borbor's people." This property is situated on the left side of the Monrovia-Bomi Hills Highway and borders on the,Atlantic Ocean, otherwise known as point four. The testimony of appellee's witness, Speare, substantially clashes with the description given in the original grant of Governor Buchanan, from which appellee acquired title to the 20 acres of land starting from the Stockton Creek. Surveyor Speare declares this property to be

on the left, and not the right side of the highway from Monrovia to Bomi Hills, and in his certificate describing the location of the land states that it commences from a point marked by a growing tree which is 160 rods, or 2,640 feet from the Stockton Creek. In other words, this point of 2,640 feet from the Stockton Creek he describes as the starting point, running North 45 degrees, East to chains, West 20 chains, thence South 45 degrees, West to chains, to the place of commencement. That parcel of land, he states, is exactly situated on the left side of the MonroviaBomi Hills Highway, that is to say, going from Monrovia to Bomi Hills. This description and the certificate of survey put into evidence by appellee on the sworn testimony of surveyor Speare, reflects on the 20-acre plot of land shown on the Department of Public Works' plot made by Mr. Williamson on orders of the President of Liberia, since, by inspection of the plot, it is clearly and vividly shown that the zo-acre grant through Governor Buchanan to appellee is definitely and positively on the right-hand side of the Monrovia-Bomi Hills Highway, and not on the left side. That the

property on the right side of the Monrovia-Bomi Hills Highway borders on the Stockton Creek, which, according to the grant of Governor Buchanan to David White, has as its point of beginning the Stockton Creek and contains 20 acres of land. The starting point on the Stockton Creek of Teetee Borbor's zo acres of land having been pinpointed and his name boldly written on the plot made by Mr. Williamson, authorized representative of the Government, after survey on instructions of the President of Liberia, excludes any possibility of the starting point of this land being at any other place than that shown on this plot, which plot was offered into evidence by appellee and admitted without objection and, hence, must be of great evidentiary value in determining the starting point of appellee's 20 acres of land granted to through the chain of title from Gov.

ernor Buchanan. To attempt, therefore, to speculate that the starting point can be at any other place would be the self-impeachment of appellee's best evidence produced and admitted in proof of the area and location of his land. Nor can the 20 acres, with the starting point established by Williamson and shown on the plot, be said to extend to the point four area where appellant's land is located, and on which he has undoubtedly trespassed and placed his coappellees as his tenants. By no stretch of imagination can zo acres of land extend from the Stockton Creek to the point four area, bordering on the Atlantic Ocean, where the property of appellant Tay is located and on which he contends Teetee Borbor's people have encroached. The Government plot of Mr. Williamson shows a piece of property on the left side of the Monrovia-Bomi Hills Highway. On the plot it's described as the property occupied by Teetee Borbor's people, and borders on and includes the land sold by the heirs of the late King Peter to appellant. It is, therefore, not possible from the land granted Teetee Borbor by Governor Buchanan and situated, according to the grantor's deed, on the Stockton Creek, to be included also in the land shown in the plot on the left side of the highway from Monrovia to Bomi Hills and bordering the Atlantic Ocean and declare the property to which Teetee Borbor is entitled by virtue of the transfer made to him by William H. Bryant, who acquired title to the identical zo acres from the same source which originated in Governor Buchanan, to be on the left side of the highway from Monrovia to Bomi Hills as shown on the plot. For to do so would be changing the starting point mentioned in the deed of Governor Buchanan, the only source by which we can legally and correctly determine and base our conclusions in deciding the location of the 20 acres. If we, as we must do, declare the starting point to be the Stockton Creek, in harmony with the deed of Governor Buchanan, and accept as a part

of the 20 acres the property situated on the left side of the Monrovia-Bomi Hills Highway, as shown on the plot of the Department of Public Works, as the town of land occupied by Teetee Borbor, we would be able to include the zo acres grant by extending more than one mile from the starting point and embracing many pieces of property owned by other persons, which would be impossible for us to do. Guided by the plot which was introduced into evidence by Teetee Borbor, and comparing the location of the land on this plot with the deed of Governor Buchanan, we must conclude that the zo acres of land bordering on the Stockton Creek is on the right and not the left side of the Monrovia-Bomi Hills Highway leading from Monrovia. And since the only land that Teetee Borbor has claimed title to under this grant is situated on the left side of the river, we cannot give him the benefit in thisaction to any land outside of the 20 acres and on the left side of the highway bordering the Atlantic Ocean. This conclusion is based on the record we have before us and not on speculation or hypothesis. According to the complaint filed in this action, G. Walton Tay, as agent and legal representative of his father, G. H. Tay, purchased a piece of property from the heirs of King Peter, dated December 8, 1949, bounded and described as follows : "Commencing at the North East corner of Harietta A. Kennedy's adjoining Southern block and running parallel with it due West io chains ; thence running due North r-1/2 chains parallel with the Bushrod Island/ Brewerville motor road to the place of beginning and containing r- 1/2 acres of land and no more." He complains that up to the filing of this action he was still the owner in fee and was entitled to the **land described which the appellee was withholding from him. Asserting his right to the land** in question and observing the trespass thereon by appellees tenants under arrange-

anent` with Teetee Borbor, he served several notices demancding they vacate, which they refused to do, hence, the action of ejectment which he eventually filed. 'Tale land so described is situated on the left side of the high_way leading from Monrovia to Bomi Hills, and not on lie right side adjoining the Stockton Creek, where appllee's land, according to Governor Buchanan's deed, is sit uated. This being the case, we cannot but conclude from the record before us that title is vested in Tay by virtue of the deefi from the heirs of King Peter, and we must give considetration and recognition of ownership to the land in this area by King Peter, by virtue of the deed of Governor Buchariun made to David White in 1839. We will quote the relevant portion of said deed. `°`All that lot or parcel of land situated, lying and being can Bushrod Island and the Colony of Liberia, bearing i n the authentic record of said (Society) Colony the Dumber `7,' bounded 45 degrees East, running back E6o rods from the Stockton Creek to a division line between the Colonists and King Peter and containing ao acres of

land and no more." B ecause of this recognition of King Peter as owner of Ian& in Bushrod Island, his right to convey it is thereby vested in him and his succeeding heirs. Consequently, the -transfer of any portion of this property to any person or p.ersons cannot be questioned. Hence, the source from wli.ch appellant Tay became vested in fee is established in the I-1/2 acres of land on which he claims appellees trespassed. Hie undertook to evict said defendants, whereupon, in thei r defense, they alleged ownership of said property. It vaas imperative under the law that the defendants show a b e tter legal title to said property than that of plaintiff. In support of this legal principle, we cite 18 AM. JUR., Eje·ctinent,§ 37, par. 37. The general rule in actions of ejectment that plaintiff

must recover upon the strength of his own title does not operate to prohibit the acquisition of possessory rights which may be enforced in cases where the true owner does not intervene : it is well established by the weight of authority that prior possession by the plaintiff or those under whom he claims is prima facie evidence of title sufficient to maintain ejectment as against a mere trespasser or intruder without even color of title, and especially against one who has taken possession by force and violence. In other words, if neither claimant relies upon a paper title, he who has the prior possession has the better right. The exception to this rule is based upon the most obvious conception of justice and good conscience. It proceeds upon the theory that a mere intruder or trespasser may not make his wrongdoing successful by asserting a flaw in the title of the one against whom he has committed the wrong. Prior possession may therefore enable the plaintiff in ejectment to recover against a mere intruder regardless of whether there is an outstanding title and even where title may be shown to exist in another. Furthermore it is not imperative that plaintiff in addition to proof of his prior possession, also give proof of a record title which the defendant claims is not valid. He is still required to recover on proof of his prior possession where the defendant is simply an intruder and has no color of title. A fortiori, possession occupied with color of title must prevail where a better title is shown in the other party. "Although there is some authority to the contrary, the doctrine of recovery of prior possession is generally limited to actions against mere trespassers or intruders and does not apply to actions where the defendant has acquired possession peaceably and in good faith under color of title." Buttressing the foregoing citation and in support of our contention in respect of possession by plaintiff, or the

source from which he claims as against an adverse possession, we cite t5 CYC. 3o, 31, which reads : "Ejectment may be maintained upon the prior possession of plaintiff, or of parties through whom he claims, such possession being a sufficient prima facie title. Accordingly where no legal title is shown in either party, the party showing prior possession in himself or those through whom he claims will be held to have a better right. Thus it has been held that plaintiff upon such a showing may recover against defendant who shows no better right or title; who shows neither a good legal or a paper title, nor a right of entry, and is without title or claim; whose title or claim is invalid, was obtained by fraud, or has been forfeited ; who sets up no lawful right or title or evidence of ownership ; or who relies solely upon a latter possession, a possessory interest only, upon mere entry without lawful right or title, or upon a mere naked possession, showing no better right in himself than in plaintiff, being a mere intruder, trespasser or wrongdoer ; especially so when he has taken possession by force and violence, tortiously and without authority, or where he is estopped from disputing plaintiff's title." What presents itself in this case is that title is asserted against title, that is to say, plaintiff claims title under the title deed from his grantor, the heirs of King Peter, and defendants claiming through the grant of Governor Buchanan. However, as has been fully explained in the preceding portion of this opinion, and fully illustrated on the plot presented to court by defendants, their land so acquired has its starting point measured from the Stockton Creek, though by testimony of their witness, surveyor Speare, it is attempted to be rejected insofar as the starting point is concerned, and by overextending the claim and area of title to the left instead of the right side of the Monrovia-Bomi Hills Highway has, from all the facts

and circumstances produced at the trial and by the plot of Mr. Williamson, without any shown color of right and title, placed on plaintiff's property Borbor's people, against whom the original action of ejectment was filed before Borbor became a party by an intervention. A reading of 18 AM. JuR., Ejectment, § zo, gives the following: "To recover the possession of real property by means of an action of ejectment the plaintiff must have either title to the property with a present right of continued possession or have had actual bona fide possession of property with a right to maintain continued possession when ousted by the defendant and a present right to the possession when the action was begun; although the action may, and frequently does become the means of trying title, it is essentially a possessory action and is ordinarily confined to cases where the claimant has the possessory title, that is, a right to entry upon the land. "A well-established principle which has acquired the force of a maxim is to the effect that the

plaintiff in ejectment can recover only upon the strength of his own title and not on the weakness of his adversary's. This rule is equally applicable in actions of trespass to try title. The defendant is not required to show title in himself and he may lawfully say to the plaintiff, 'Until you can show some title, you have no right to disturb me.' The plaintiff must recover upon the strength of his own title as being good either against the world or against the defendant by estoppel; and if that title fails it is immaterial what wrong the defendant may have committed. It has been said that this rule must be limited and explained by the nature of each case as it arises, and that the rule is applicable where title is asserted against title. "In any case, a plaintiff in ejectment cannot recover as against one without title unless he proves title or prior possession in himself; and if he recovers by vir-

tue of prior possession, he may be said to recover as much upon the strength of his own title as if he has shown good title to the premises."
Commenting further on the deed of appellees, a material conflict appears on the face thereof, by recourse to the deed of the original grant from Governor Buchanan to White, which calls for the number "7," whereas the deed on which Teetee Borbor is claiming bears the number "6." This dissimilarity, as confessed by appellee's counsel when arguing before this Court, has not been explained. A similar discrepancy appears in respect to the number of rods, that is to say, 164 rods in the original grant, and 16o rods in the instant deed which, though not denying appellee's title to 20 acres of land, by description is vague and uncertain, which does not occur in appellant's deed, proved to be genuine in all respects and presenting no ambiguity. 13 CYC. 543, applies : "The want of description of the subject-matter so as to

denote upon the instrument what it is in particular, or of a reference to something else which will render it certain is a defect which renders the whole deed inoperative. A conveyance is also void if the description thereon is also vague and uncertain ; but to have this effect the ambiguity must appear on the face of the instrument. The office of a description however, is not to identify the land but to afford the means of identification, and when this is done, it is sufficient. Generally, therefore, any description is sufficient by which the identity of the premises can be established. A conveyance is also good if the description can be made certain within the terms of the instrument for the maxim id certum est quod certum reddi potest, applies.
Extrinsic facts pointed out in the description may also be resorted to ascertain the land conveyed and the property may be identified by the extrinsic evidence as is in the case of record of the county where the land is situate.

"Again
where all the particulars in a description are essential, the description in the deed must agree with every particular or nothing
will pass; but where they are all not essential and it does not so agree, yet if there is sufficient to identify the estate granted,
the deed will be good. If part of the description is proven inconsistent on being applied to the premises, it does not vitiate the
deed, the interest being apparent." In addition to the comments previously made in this opinion on the question of better title on
the part of appellees over that of appellant, according to the descriptive comments made by us on the two deeds, the record reveals
that the action of ejectment was not commenced against Nagba Teh, George Alfred, and others, who, as was subsequently disclosed after
the commencement of the suit, were placed on this land by Teetee Borbor, which was not physically occupied by Teetee Borbor himself.
Because of this, Teetee Borbor petitioned the court to intervene as one of the parties in the case, which application was granted.
The occupation of this land, therefore, was by appellant, as can also be seen from a lease contracted with the Government of Liberia,
by appellant Tay, which had a lifetime of nine consecutive years, within which period there was no attempt made by Teetee Borbor
nor any of his tenants, to contest the right of ownership to the land by appellant Tay. Confronted as defendants were by the deed of plaintiff, which stemmed from the heirs of
King Peter, and has not been contested according to the record, and by the lease thereof by the plaintiff to the Government of Liberia
for nine consecutive years, and there being no evidence of their disability to do so, would seem to settle the ownership to the said
1- 1/2 acres of land in Tay. The fact that the 20 acres of land granted to Teetee Borbor, originating in Governor Buchanan's grant
in the year 1839, are on the right-hand side of the Monrovia-Bomi Hills Highway,

and having as its place
of beginning the Stockton Creek, makes it physically impossible according to Mr. Williamson's plot, for said twenty acres of land
to extend to the 1-1/2 acres owned by Tay, making the occupation of this 1-1/2 acres of land by the tenants of Teetee Borbor a trespass.
The plaintiff, therefore, has the right to evict them and the intervenor, Teetee Borbor, from the land, having established his title
in himself to the land, as shown in the deed presented in court, as opposed to the overextension by defendants of their 20 acres
of land. Relying on the rule stated in 18 AM. JuR. quoted above, which does not conflict with our statutes, the burden of proving
a better title rests with defendants and not plaintiff, since according to the record plaintiff has been proved in possession of
this property for a considerable length of time, and the persons who were originally sought to be evicted were tenants at will, placed

on the land by Teetee Borbor himself, which constituted a trespass by them. There can be no substitution of land granted in the exclusive option of the grantee. Nor can boundaries expressly described in a deed by a grantor be changed by the oral testimony of a surveyor who, besides not being the one who surveyed and designated the points and distances described in a deed, gives an opinion on the intention of a grantor which materially varies from that which is expressly described in the deed, as has been attempted to be done in this case by surveyor Speare. (See testimony of surveyor Speare and compare with text of deed of Governor Buchanan, the original grantor, from whom the defendant's title derived.) (Also see the plot made by the Bureau of Surveys and Research, upon authorization of the President of Liberia, offered and admitted into evidence by appellees without objection, setting out two plots of land occupied by Teetee Borbor on the Stockton Creek on the right side of the Monrovia-Bomi Hills Highway, and the other point four near the Atlantic Ocean on the left side of the Monrovia-

Bomi Hills Highway, which appellant claims the tenants of Teetee Borbor have trespassed on.) Appellant, according to the record certified and transmitted to this Court, holds no claim to any portion of appellee's zo acres of land granted to him through a chain of title from Governor Buchanan. On the contrary, it is the defendants who claim title to the 1- 1/2 acres of land owned by appellant Tay, which, from our inspection of the record, is not within the acreage deeded to Teetee Borbor, one of the appellees. In other words, appellee has no title in himself to any portion of appellant's land, hence, the question as to who has the better title to appellant's I-1/2 acres does not seem to arise at all, except that appellant has the legal right, under the circumstances, to evict from his I-y2 acres of land any intruder, including the tenants of Teetee Borbor, as they are styled, who are trespassers. Observing further the description and numbers of the two deeds, the one in favor of Teetee Borbor and the other, Tay, we find that Teetee Borbor's deed is described as follows : "Situated on Bushrod Island in the City of Monrovia, Montserrado County and bearing in the authentic record of said County the number '6' and bounded and described as follows : Commencing at the North angle 45 degrees East, running back 16o rods from the Stockton Creek, a dividing line between the Colonists and King Peter's Town, according to the original deed granted by Governor Buchanan, Governor of the Colony of Liberia, to David White (the original owner) , bearing date July 18, 1839, as recorded in Volume 5 pages 125/126 and containing zo acres of land and no more." And that of Tay : "Commencing at the North East Corner of Harietta A. Kennedy's adjoining Southern Block and running parallel with it due West io chains, thence running

due East i-1/2 chains, thence parallel with the Bushrod Island/Brewerville motor road to the place of beginning and containing I- 1/2 acres of land and no more bearing a portion of block No. 1." From the above description of both deeds there is a definite dissimilarity and material difference in the description and the block number. Hence, they could not possibly be the same area. It is Teetee Borbor, one of the appellees, therefore, who has, without any color of right or legal justification, trespassed on the land of appellant and placed thereon his people as his tenants, hence, the action of ejectment as filed by appellant to evict them is fully justified. The verdict of the jury and the final judgment of the court affirming same are hereby reversed, with costs against appellees, and the judge of the Sixth Judicial Circuit is hereby directed and commanded to issue a writ of possession in favor of appellant and to put him in possession of said property which he seeks to evict appellees from. And it is so ordered. Reversed, judgment for appellant without remand. MR. JUSTICE SIMPSON dissenting.

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I have found it completely impossible to append my signature to the judgment reversing the lower court's judgment in the present case. The majority has stated that this case has been decided, "without indulging in sentiment or what may be regarded as the morals of the case. . . ." I should like us to re-examine the facts and the law relied upon and then have recourse to the above quotation. To my mind, this case as has been stated by the majority is very simple. On May 3, 1961, the plaintiff, Tay, filed an action of ejectment against Nagba Teh, et al., alleging ownership in a portion of block no. I situated on Bushrod Island, in the City of Monrovia, and proferted as a source

of title a warranty deed from Jacob Bay, et al. He continued by making a statutory averment in respect of unlawful detention and finally prayed that he be placed in possession of the subject property and defendants ousted therefrom. Immediately thereafter, Corfor Borbor, alias Teetee Borbor, filed a motion to intervene, which motion, though opposed, was granted by the trial court. He thereafter filed an answer containing six counts, which essentially contended that the alleged grantors of the plaintiff could not produce a deed in their own names, nor in the name of their predecessor in possession and in the circumstances, the complaint should not be favorably viewed by the court. Additionally, it was contended that the defendants were the lawful owners of the tract of land in issue, which was a portion of a 20-acre tract initially purchased by one David White from the Governor of the Colony of Liberia, on July 18, 1839. The defendant thereupon proceeded to endeavor to link his chain of

title to the deed granted David White by Governor Buchanan. The pleadings thereupon rested, and the trial judge in ruling on the issue of law handed down a two-count ruling to the effect that in an action of ejectment, one must recover upon the strength of his own title and not the weakness of his adversary's. In the second paragraph of the ruling, the judge held that in an action of ejectment, one should prove his title link by link; therefore, the case was ruled by him to trial on the merits of the issues raised in the complaint and the answer. Continuing, the judge held : "The parties are confined thereto during the trial." The record transmitted to this Court over the signature of counsel for both parties shows that no exceptions were taken to this ruling of the judge on the issues of law that established the modus operandi for the conduct of the trial of the facts. When this case was called for hearing by the Supreme Court, the supplementary brief as filed by appellant con-

tained as its first count an averment to the effect that the trial judge had failed to pass upon and decide the salient and important issues of law and the demurrers raised in the answer of the defendant, now appellant, as he was styled, and that the trial judge's failure to make a comprehensive ruling on all the issues of law involved in the case constituted reversible error. To begin with, this count of the brief is confusing, since the appellant was plaintiff and not defendant in the court below. It, therefore, follows that the plaintiff in his complaint could not have raised demurrer, for there was nothing to demur to. In any event, at that particular stage of the proceedings the record shows that counsel for appellant was called to a point of order by his adversary, who contended that no argument could at that juncture be made in respect to the ruling on the issues of law, for there had been no exceptions taken thereat in the lower court. When called upon to answer this point of order, counsel for appellant held that the record transmitted showed no exceptions, but he was not certain as to whether or not exceptions had been taken in the lower court, for at that time he was not counsel to plaintiff. Thereupon, in fairness to both sides, and realizing the age-old rule of this Court predicated upon statute, the case was suspended until the following morning, and the Clerk of Court ordered to send a mandate to the lower court in order to ascertain whether or not the point of order was correct. When the Court sat on the following morning, the original records of the lower court were brought before us, and upon examination it was discovered that the minutes of the 36th day's session, October 14, 1965, showed that no exceptions had been taken to the ruling. Irrespective of this fact, counsel for appellant was permitted to make argument before us in respect to issues of law. This brings me to the first point of disagreement with my colleagues. The student of law who opens the first volume of our reports will find on the second page thereof

the following summary of the law in the syllabus to Yates v. McGill, i L.L.R. 2 (1861).

"A bill of exceptions is a formal statement in writing of exceptions taken to opinions, rulings (emphasis supplied) and decisions of a judge in the course of a trial, and constitutes the foundation of an appeal--where it does not appear in the records of an appeal the omission is fatal." In the body of the same opinion, the following is found on page 3, which we beg leave to quote at length due to its historic legal value : "The statutes governing this country, and the manner by which cases are to come here, is plain, and those who fail to meet its requirements cannot expect to meet its benefits. The court cannot assume responsibilities and burdens of which any party may fail to avail themselves, in the incipient stage of a case, much as it might be anxious to give relief. The most important feature of an appeal, in such cases, is the bill of exceptions, which our law plainly says must be filed. The exceptions are the points upon which the whole consideration of the records are considered to know whether the finding of the jury and judgment have been in keeping with law and evidence. The appellant presumes to say his case was not wrongfully brought. Then why are not the points in law definitely pointed out, as upon that alone the Supreme Court can adjudge if the law has been rightfully applied or not. "The bill of exceptions in legal practice is a formal statement in writing of exceptions taken to the opinions, decision, or directions of a judge, delivered during the trial of a cause, setting forth the proceedings in the trial, the opinion or decision given, and the exceptions taken thereto, and sealed by the judge in testimony of its correctness. . . ." From the above, it is shown that this Court has held for

more than a century, from the time of an opinion that is almost as old as the recordation of the opinions of this Court, that for there to be appellate review of a point of law in respect to the ruling of a trial judge, there first must be an exception taken to this ruling. The majority has said in its opinion that the judge was evasive in a notation made at the time he approved the bill of exceptions, for he gave his approval insofar as the bill was supported by the record. Possibly, the judge in making his notation thought of Elliott v. Dent, 3 L.L.R. III (1929), where the Court held that where the bill of exceptions or assignment of errors in an appeal fails to show on its face that the exceptions taken and set up in said bill of exceptions or assignment of error conform to, and are supported by the records at a trial (emphasis supplied), the appellate court will not take cognizance of such exceptions upon an appeal. Or again, it may also be possible that the trial judge was observing the unwritten rule that is followed

by judges in lower courts and approvals given by them to bills of exceptions presented by parties. Strangely enough, when argument was held before this Court, a question came from the bench to counsel for appellant, and he was asked whether this method of approving bills of exceptions was out of the ordinary, and in reply he said that in fairness he must hold that when he, too, was a trial judge, he oftentimes approved bills in similar fashion. However, the Court has long held that an exception to a ruling or order of a trial judge is the foundation of the preservation of the particular issue for appellate review. In closing, I will only cite Richards v. Coleman, [1935] LRSC 32; 5 L.L.R. 56 (1935), and Phillips v. Republic of Liberia, 4 L.L.R. I 1 (1934), where the Court held, quoting from 8 ENCY. PL. AND PRAC. 157 (2), that an exception is an objection taken to a decision of the trial court upon a

matter of law, and a notice that the party thereby preserved for the consideration of the appellate court a ruling deemed erroneous. Without an exception an objection, no matter what its intrinsic merits, is lost. Why do we have these pronouncements by this Court stretching over a hundred years? In my opinion, the genesis is found at 2 HUB. 1578, which antedates our very independence as a sovereign state, our Constitution, and the laws made in pursuance thereof, together with the opinions of this Court interpreting those laws, as stated in Cooper v. Republic of Liberia, 13 L.L.R. 528 (196o), where the Court held that the Supreme Court has original jurisdiction only as expressly conferred by the Constitution; consequently an issue not raised in an inferior court cannot be considered by the Supreme Court on appeal unless the issue lies within the constitutional scope of the Supreme Court's original jurisdiction. My colleagues have held that a plaintiff can show the source of title in a grantor and where the grantor's right to transfer property is not attacked, it is to be concluded that plaintiff's title has been established. This, in my view, constitutes a rather opaque interpretation of the law of property. We should remember at all times that property constitutes the third of man's greatest possession, the other two being life itself and liberty to live it. A fortiori, a pronouncement of this type would have the tendency to shake the title of every individual to realty where a plaintiff files an action of ejectment and asserts title solely by producing a grantor's deed against his adversary. Let us put this pronouncement in its proper perspective in respect to the matter presently under consideration. At the trial of this case, when the appellant was on the stand at the time of cross-examination, the following question was propounded to him: "Q. You have no supporting document to link you

in your alleged title from the sovereign through your alleged grantors to you ; how is that? "A. No, I do not have it."
After this, the defendant thought that he could, and did in fact, rest in the court below. Evidently, this was done in reliance upon the ruling of the trial judge to which no exceptions were taken. However, this, the majority has contended, was wrong, and plaintiff has better title. Irrespective of this patent fact which was revealed by the record, and even the original record from the court below, not only were the issues considered and determined by the trial judge made the subject of review by this Court, but we proceeded by going even further, to the extent of making sundry factual determinations. There are an array of them which I find myself compelled to go into, especially so since, in my view, quite a few of them are not in harmony with the record certified to this Court. Continuing, this Court held, "The fact that the grantor to appellant's right has been cited as the heirs of King Peter in whom fee simple ownership to land was recognized by Governor Buchanan in the year 1839 in the first link of the chain from which appellee, Teetee Borbor, acquired his title deed, which has not been challenged nor declared void or voidable in the record before us, genuinely and completely vests title in him and appellant." This position of the Court is not in harmony with the record presented to us for review, for nowhere in the title deed of appellant nor in the only pleading filed by him, the complaint, is there stated that the grantors of appellant are the heirs of King Peter. King Peter's name was mentioned in the deed to White from Governor Buchanan as a contiguous owner with White. In the circumstances, it is difficult to see how, in the face of count three of the answer, the Court could hold that the title of King Peter to the land in question had not been chal-

lenged. And this is especially true since count three of the answer held : ti . . . the alleged grantors of G. H. Tay, who style themselves as King Peter's heirs, have no title to the said land and because of this, cannot produce a title deed either in the name of King Peter or in their own names covering the area in dispute or a portion thereof. . . ." My question is, what more challenge does the law require? My colleagues have further held that surveyor Speare, testifying for appellee, held that the subject property was on the left side of the road from Monrovia to Bomi Hills and, it . . . in his certificate describing the location of the land (Speare) states that it commences from a point marked by a growing tree, which is 160 rods, or 2,640 feet from the Stockton Creek, he describes as the starting point running North 45 degrees East io chains, West 20 chains, then South 45 degrees West io chains to the place of commencement. That parcel of land he states, is exactly situated on the left side of the Monrovia-Bomi Hills Highway--that is to say, going from Monrovia to Bomi

Hills. "This description and certificate of survey put into evidence by appellee on the sworn testimony of surveyor Speare, reflects on the 20-acre plot of land shown on the Department of Public Works' plot made by Mr. Williamson on orders of the President, since, by inspection of the plot it is clearly and vividly shown that the 20-acre grant made through Governor Buchanan to appellee, is definitely and positively (emphasis ours) on the right-hand side of the MonroviaBomi Hills Highway, and not on the left side; and that the property on the right side of the MonroviaBomi Hills Highway borders on the Stockton Creek,

which, according to the grant of Governor Buchanan to David White, has as its point of beginning the Stockton Creek and contains zo acres of land."
I cannot agree with this statement mainly because it constitutes an endeavor on the part of the Court to judge facts. Later in this opinion I shall speak more to this point of invading the province of the jury, but for the time being I shall state that the Court has taken unrelated bits of facts and endeavored to arrive at a definitive factual determination in an area where technicians, meaning surveyors, are more competent to decide by actual ground surveys. At this juncture I feel it necessary to state that the plot termed the "Speare plot" was only introduced into evidence by him and was prepared by Fitzroy Williamson under commission of the President of Liberia. Additionally, this plot shows but one piece of land on the left side of the Monrovia-Bomi Hills road owned by King Peter's heirs, whom appellant neither in his deed nor in his complaint, contends he holds under. Even assuming arguendo that appellant's grantors are heirs of King Peter, it is a fact that the self-same plot shows two pieces of land owned by Teetee Borbor, one on either side of that road. Interestingly enough, according to the same map, the land on the left side of the road, starting from Monrovia, is the only land in Bushrod Island where the two parties have contiguous boundaries. In the circumstance, are we to dismiss Teetee Borbor town and the other Teetee Borbor **land that borders the Atlantic Ocean and say that he has only the land** on the right side of the road, which, any layman can see, does not constitute twenty acres? May I ask, what is the purpose of the map, or plot, by Williamson, what is the purpose of the chain of title presented by Teetee Borbor, what is the purpose of the judge's ruling, what is the purpose of the adverse testimony of G. Walton Tay? Are these all but to be used against Teetee Borbor, though factually and legally

favorable to him? Let us now go back to the beginning of the majority opinion and ask, what
is sentimentality, what is morality? Are these but phrases possessed of empty sounds? I profess a little knowledge of the law but
even less concerning surveying. When one says i6o rods from the Stockton Creek is the point of commencement, does this mean that
you measure from the Stockton Creek a distance of i6o rods, and have you there the depth of the property; or is it meant by this
that the point of commencement is 16o rods from the Creek. Really, I am a lawyer by profession and, therefore, have not the answer
to this query. But more than this, it is my feeling that the only competent agency to answer this is a board of surveyors or arbitrators,
call them what you may, but certainly not Justices of the Supreme Court of Liberia, for in my view we are not qualified to do this.
The Court has said that, "By no stretch of reason or imagination can 20 acres of land extend from the Stockton Creek to the point four area, bordering on the Atlantic
Ocean where the property of appellant Tay is located, and on which he contends, Teetee Borbor's people have encroached." To my mind,
this statement is factually wrong in at least one place. The plot, heavily relied upon by the majority, shows that the King Peter
land on the left side of the highway to Bomi Hills actually borders the highway and not the Atlantic Ocean as stated by the majority.
Additionally, it has not been established by any surveyors where the point of commencement is, unless it can be said that we have
usurped the function of surveyors. Besides the fact that this statement of the majority is ex cathedra, since we are speaking of
things not of record, it would not be amiss to state that Monrovians know that the point four area bordering the Atlantic Ocean is
held by the Government as a well field for the Monrovia Water Supply System; therefore, to state that appellant Tay's

property extends to the ocean is to befuddle reason and common sense. The property claimed by Tay cannot and does not
border the Atlantic Ocean in accordance with the celebrated plot. The fact of the matter is, and the Williamson plot relied upon
heavily by the majority of the Court clearly shows, that Teetee Borbor's property borders the Atlantic Ocean, while the property
on the left side of the highway that is claimed by the alleged King Peter heirs, borders the highway. Should not a surveyor determine
who owns what? What has happened here is that the Court has decided to itself examine deeds and plots, make measurements and comparative
measurements, eventually coming up with a determination that is conclusive in respect to ownership. This is fact, not law. Not only
are these facts specialized but the determination is predicated upon an assessment of these specialized facts,. and constitutes an
invasion of the rights of the jury as enumerated in the Constitution and the statutes, especially where there has been no waiver

of the right to trial by jury. The Court has further held that the deed of King Peter, though never exhibited nor made a part of the trial, is valid and makes King Peter a fee simple owner of land in Bushrod Island, and his conveyance (of which there is no evidence at all in the record) cannot be challenged. Now, what, according to the majority, gives King Peter and his purported privies this right? This is determined solely upon the basis that his name was mentioned in the deed of his adversary's (Teetee Borbor's) privies as a means of property delineation. This type of reasoning has a tendency to befuddle me. However, it seems to me that if Governor Buchanan stated in the deed to White that there was a common boundary between the zo-acre tract granted to White and the land of King Peter, being possible contiguous owners, a proper survey seems necessary to determine the issue. With reference to the law relied upon by my colleagues,

it is incumbent upon me to make some comments thereon. Quotation from i8 AM. JUR., Ejectment, § 37, was made in extenso. In my view the law cited bears no relation whatever to the case at bar, for, therein, the law writers spoke of paper title as opposed to a mere trespasser or intruder. In this case, with which we are now concerned, appellees were claiming under color of title and, therefore, could not be classified as intruders within the legal meaning of that word. In addition to the above, the quotation from 15 CYC. 30, 31, is even farther away from the point at issue. There, the law writers spoke of a party plaintiff in possession without title as against a defendant who was only an intruder possessed of neither a good legal or paper title. It strikes us as strange, however, that in the next succeeding paragraph the Court admits that here we are dealing with title against title. One, therefore, wonders why these quotations were, in the first place, made a part of the opinion. The same applies to the citation from 18 AM. JUR., Ejectment, § 20, in respect to the fact that ejectment is a possessory action and the plaintiff must recover upon the strength of his own title and not the weakness of his adversary's. After setting forth this citation, including this pronouncement, the Court proceeded in the following paragraph to hold that defendant's title is weak because of a defect in one of the instruments of transfer and, therefore, plaintiff, now appellant, should prevail. One wonders, therefore, why this particular portion of the common law was quoted, if adherence thereto was not to be observed. "The burden of proving a better title rests with appellee and not appellant." In the case at bar, the appellee was defendant in the court below while appellant was plaintiff in that court. In the circumstances, with the pronouncement just quoted, we have today effected substantial change both in the basic rules of ejectment and practice and pleading. This Court

has now held that in ejectment suits the burden is on the defendant to prove that
he has a better title than the plaintiff. With regard to practice and
pleading, the Court has also held in a reversal of scores of
pronouncements, that the initial burden of proof is on one whom a claim is
made against and not he who alleges the existence of a
particular fact. Let us remember that this new rule of law, this judicial
legislation, affects not only us but our children's children.
In closing, the Court has reversed the verdict of the jury and the final
judgment of the court affirming the same. This brings us
to what I consider the most vital part of the opinion. Can an appellate court
overturn the verdict of a jury in an instance wherein
the right to trial by jury has not been waived by the contesting parties? For
the many reasons that I shall enumerate below, I do
not believe that such a position is legally correct. It invades the
fundamental rights of litigants. Article 1, Section 6th, of our
Constitution, reads : "Every person injured shall have a remedy therefor, by
due course of law; justice shall be done without sale,
denial or delay; and in all cases, not arising under martial law, or upon
impeachment, the parties shall have a right to trial by
jury, and to be heard in person or by counsel, or both." To my mind this
section unequivocally states that every individual injured
shall have a right to trial by jury. Therefore, it seems to me that, where
this right has not been waived, it is unassailable and
may not be denied the individual, not even by our Supreme Court. Now, let us
look and see what our statutes, the voice of the Legislature,
have had to say about this all important point : "There shall be no appeal
from any verdict of a jury on any question of mere fact
except to the court in which the case was tried for the purpose of setting

aside the verdict and granting
a new trial." Civil Procedure Law, 1956 Code, tit. 6, § This statute goes
back to our Colonial days and can even be found at 2 HUB.
1578. Why is this? In our view, strict adherence to it is required by the
Legislature to insure compliance with the above-quoted
Constitutional provision. Therefore, it is clear that this Court is not an
examiner of facts. We are authorized in the exercise of
appellate jurisdiction to examine only the law in relation to established
facts. The jury is the only body authorized to examine
facts. Let us look further at our statutes for additional direction on this
all important point. Our Civil Procedure Law, speaking
of judgments on appeal, provides, "If the judgment is reversed, the appellate
court may grant a new trial or award such other judgment
as in its opinion is best. If there are no disputed facts requiring the
determination of a jury (emphasis supplied), it may give
such judgment as should have been given by the trial court, awarding such
additional costs as it deems just, including the costs of appeal." 1956 Code,
tit. 6, § r o6r, in part.

The statute clearly shows that a remand is mandatory where there are disputed facts. Where does the point of commencement of Teetee Borbor's property start? Is it on the edge of the Stockton Creek or 16o rods from the edge of the Creek? The map or plot of Williamson shows two pieces of property owned by appellee ; which piece is in controversy? Is it the one that borders the King Peter property or is it the other portion on the other side of the highway? Can this Court make such a factual determination? We should remember that even in instances where the land dispute requires arbitration, the board's report is then sent to the jury to pass upon. Why? A recourse to Article 1, Section 6th, of the Constitution gives the answer to that question.

Before closing, let us quote from AM. JUR., Appeal and Error, § 1210, et seq., as it relates to powers of a reviewing court : "The province of a reviewing court, generally speaking, is only to inquire whether a judgment when rendered was erroneous or not. In the absence of statutory authority, such court is without power to make findings of fact in cases brought before it and render judgment according to the facts which it finds. It is not the province of the reviewing court to make a finding of fact in causes heard on appeal, though the evidence would clearly warrant such finding; nor to substitute one finding for another, except, perhaps, in a case where no other reasonable inference can be derived from the evidence, or where the trial court fails to direct a verdict when there is no evidence to support the plaintiff's case. In some jurisdictions reviewing courts have been given statutory authority to make findings of facts. Such a grant may, however, be limited by the state constitutional guarantees. According to the view expressed by some courts, constitutional provisions which guarantee that the right to a trial by jury shall remain inviolate preclude the legislature from authorizing an appellate court, in cases in which there was a trial by jury in the lower court, to make a finding of facts and reverse a judgment in plaintiff's favor on the facts without remanding the case for a new trial. "In such cases, the courts must remand the cause for a new trial. Such a constitutional guaranty does not, however, prevent the granting to a reviewing court of the power to make findings of fact in cases where a jury trial is waived by agreement of parties. Nor does it preclude an authorization to that court to make a finding of fact without remanding the case, in cases where the trial court would have been justified in directing a verdict because the evidence does

not establish a cause of action. But in no event will the court determine a fact where
no issue was made in the lower court, and the record contains no evidence from which no question could be determined." For several
reasons given above by me, I have found myself duty bound to refrain from affixing my signature to the judgment in this case and,
hence, this dissenting opinion.

Karpai v Sarfloh [1977] LRSC 17; 26 LLR 3 (1977) (29 April 1977)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT THE

MARCH TERM, 1977

BENDU KARPAI, et al., Appellants, v. SARFLOH,
et al., Appellees.
APPEAL FROM THE CIRCUIT COURT.

Argued March 21, 1977. Decided April 29, 1977. 1. A plaintiff in ejectment can
recover only on the strength of his own title and not upon the weakness of his adversary's. 2. A witness may testify only to facts
within his firsthand knowledge, except an expert witness who may testify as to his opinion with regard to subjects concerning which
he is qualified as an expert and except in other special circumstances. 3. Every citizen has the legal right to acquire property
anywhere in Liberia regardless of class, creed, or origin. 4. Persons occupying land in a town under a deed granting to their ancestors
inhabiting that land the rights to the enjoyment thereof and the right of succession to their heirs under a statute authorizing communal
grants to tribal people, cannot be ejected by others claiming rights under the same deed as descendants from the original grantee.

Kema Kpene, the administratix of the estate of Kindi Worrell, instituted an action of ejectment against Bendu Karpai and other defendants
alleging that they were wrongfully occupying wo acres of land in Kindi Town which had been deeded by the Republic of Liberia to Kindi
Worrell, Chief of Kindi Town, and to the inhabitants thereof and their heirs as tenants in common. On the basis of the jury's verdict,
the lower court rendered
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judgment in favor of planitiffs. Defendant appealed from the judgment. On the death of Kema Kpene pending the hearing of the appeal, her alleged heirs were substituted as appellees. The Supreme Court found that the evidence introduced at the trial, while casting doubt on Kema Kpene's relationship to Kindi Worrell, clearly established that Bendu Karpai was descended from him. The land had been deeded to Kindi Worrell under the authority of a statute permitting government grants to tribal persons as trustees of the tribe, to hold for the benefit of the inhabitants of the land and their heirs without power of alienation except with the consent of the Republic of Liberia. The Court concluded that Bendu Karpai as a descendant of Kindi Worrell was entitled to remain on the land. The judgment of the lower court was reversed.

Toye C. Barnard and Moses K. Yangbe for appellants. S. Benoni Dunbar and Edward Wollor for appellees.

MR, JUSTICE AZANGO delivered the opinion of the Court. As early as 1905, the government of Liberia by legislative enactment declared : "Extent of tribal rights in lands. Each tribe is entitled to the use of as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right to the possession of such land as against any person whomsoever. "The President is authorized upon application of any Tribal Authority to have set out by metes and bounds or otherwise defined and described the territory of the tribe thus applying. "A plot or map of such survey or description shall be filed for reference in the archives of the Depart-

ment of State within six months after the completion of such survey. The omission of a tribe to have its territory so delimited shall not, however, affect in any way its right to use of the land. "Communal holdings. The interest of a tribe in lands may be converted into communal holdings upon its application to the government. The proposed holding shall be surveyed at the expense of the tribe making the application. The communal holding shall be vested in the members of the Tribal Authority, as trustees for the tribe, but the trustees shall not be able to pass title in fee simple in such lands to any person whomsoever. "Division of tribal land into family holdings. If a tribe shall become sufficiently advanced in civilization, it may petition the government for a division of the tribal land into family holdings. On receiving such a petition, the government may grant deeds in fee simple to each family of the tribe for an area of twenty-five acres." 1956 Code i :270-272. With this in view, President Arthur Barclay, in 1911, in consequence of an application made by Kindi Worrell, Chief of Kindi Town, Paynesville, Montserrado County, and a number of heads of the various families at the time, granted to the said Kindi and to the inhabitants of Kindi Town and to their heirs as tenants in common forever,

the following deed : "Whereas in a section of an Act of the Legislature of Liberia entitled, 'An Act for the Government of a District in the Republic Inhabited by Aborigines' approved January 25, 1895, it was provided that there should be granted to the inhabitants of each town of a district inhabited by aborigines, sufficient land around each town for agricultural purpose ; and "Whereas Kindi Worrell, Chief of Kindi Town in the County or District and the inhabitants of said Town to the number of all heads of families, have

applied for a grant of land in accordance with the provisions of said Act, now therefore I, Arthur Barclay, President of the Republic of Liberia, for myself and my successors in office do give, grant and confirm unto the said Kindi, Chief of Kindi Town and to the inhabitants aforesaid, their heirs as tenants in common forever, all that piece or parcel of land situated, lying and being in the rear of Paynesville in the County of Montserrado and bearing in the authentic records of said settlement the Number 3 of 181 Range and bounded and described as follows : " 'Commencing about ioo feet from high water mark on the Western side of a lake on the beach above Kindi Town marked by a soap stick for the purpose being the South East angle of said lot and running North 45 degrees West 25 chains thence running 45 degrees East 40 chains thence running South 45 degrees East 25 chains, thence running South 45 degrees West 40 chains to the place of commencement and contains one hundred (ioo) acres of land and no more in accordance with the provisions of said Act.' "To have and to hold the above granted premises together with all and singular the buildings, improvements and appurtenances thereof and thereto belonging to the said Kindi, Chief of Kindi Town and the inhabitants thereof, and their heirs, forever and I, the said Arthur Barclay, President aforesaid, for myself and my successors in office do covenant to and with the said persons and their heirs, and that at the ensealing hereof I, the said Arthur Barclay, President aforesaid, by virtue of my office and by authority of said Act had good right and authority to convey the aforesaid premises to the said Kindi, Chief of Kindi Town and to the inhabitants thereof as tenants in common; and I the said Arthur Barclay, President as aforesaid and my successors in office, will forever warrant and defend the said lands to the said Chief Kindi

and inhabitants of Kindi Town, their heirs, against the unlawful claim of all persons claiming any part of the above granted premises. "The above tract of land cannot be sold, transferred or alienated without consent of the Government of Liberia. [Emphasis added.] "In witness whereof, I, the said Arthur Barclay, have hereto set my hand, and caused the seal of the Republic of Liberia to be affixed this 24th day of February in the Year of Our Lord, Nineteen Hundred and Eleven and of the Republic the 64th. "[Sgd.] ARTHUR BARCLAY, President of Liberia."

Thus President Arthur Barclay declared to all mankind that this parcel of **land** was descendible not merely to the lineal heirs of Kindi Worrell, Chief of Kindi Town, but to collateral relations, according to the rules of descent upon their death. In other words, Kindi Worrell was to possess and enjoy the premises without interruption and his descendants were to succeed to the enjoyment of this property; and the ancestors and their heirs were to take equally as a succession of usufructuaries, each of whom during his life was to enjoy the benefit; but none of whom could lawfully dispose of, or have absolute dominion over the property. The **land** was to be inalienable unless the Republic of Liberia should give consent to its disposition. It was also intended by the grantor that in keeping with universal fundamental rules, one tenant in common cannot maintain trespass against another so long as both retain possession of the property. The possession of one tenant in common is presumed not to be adverse but is held to be for the benefit of other tenants in common. He cannot convey his interest in any particular portion of the estate described by metes and bounds, as such a conveyance would injure the rights of his co-tenant in case of partition. Therefore, one of several tenants in

common cannot dedicate a portion of the **land** to the public. All co-tenants, communal holders, and inhabitants have entire possession of the whole property, and there is a fiduciary relation among them which imposes on their mutual rights to protection, so any act which any tenant or inhabitant does for the benefit of the property is presumed to be for the benefit of the whole property and no one tenant will be permitted to prejudice the rights of the other tenants. It also follows from the fiduciary relation between co-tenants that one cannot buy an outstanding incumbrance against the property for his own benefit, but any purchases of that nature would inure to the benefit of all the tenants, although the purchaser may be entitled to receive contributions from the other cotenants for their share of the purchase. 9 MODERN AMERICAN LAW, Real Property, § 305. It is also true that a communal holder has a right to use and enjoy the common property in a reasonable manner to the extent of his own interest but not to impair the interest of any other tenant. We should not forget to mention that when the grantor of the deed also referred to "the inhabitants" aforesaid and their heirs as "tenants in common" he meant to include any person making that place his principal seat of residence or business, or intending to make it his home. He also meant any person who came to Kindi to contribute to the welfare of the people. He meant dwellers or householders, including holders in fee simple, for life, years, or at will and those having no interest in the **land** except as a place of habitation. Yet despite this express intention on the part of the Legislature and President Arthur Barclay 66 years ago, from which time the inhabitants of Kindi Town and the heirs of Kindi Worrell have enjoyed in common the peaceful and uninterrupted possession of the parcel of **land**, on April 25, 1972, Madam Kema Kpene, one of

the inhabitants and administratrix of the intestate estate of the late Kindi Worrell, by and through her attorneyin-fact, Momo Kamara, all of the township of Paynesville, Montserrado County, instituted an action of ejectment against Bendu Karpai, another inhabitant of Kindi Town, Paynesville, Montserrado County, and E. Sumo Jones, Voinjama, Lof a County, and Daniel Tolbert, William Cooper, and A. K. Yar of the City of Monrovia. The complaint alleged : I. That they [Kema Kpene and Momo Kamara] are the only legal surviving heirs of the late Kindi Worrell, Chief of Kindi Town, who died seized in fee simple of ioo acres of land being the Number 3 of 151 Range, situated, lying, and being in the rear of Paynesville, County of Montserrado and Republic of Liberia, as fully appeared from the document made profert and marked Exhibit "A" to form part of the complaint. 2.. That they being the only surviving heirs of Kindi Worrell, Chief of Kindi Town and his people, are entitled under the law of descent to the ownership, possession, and occupancy of the said ioo acres of land hereinabove described from their Exhibit "A." 4. That with respect to their Exhibit "A" herewith referred to, same is a certified copy of the original deed executed to Kindi Worrell, Chief of Kindi Town and his people, by the late Arthur Barclay, President of Liberia, on February 24, 1911; but that through chicanery and deception, the late E. Senesee Freeman obtained the original deed from Madam Kema Kpene, who delivered it in the presence of his wife, Madam Zolen Freeman, which original deed presently is in the possession of one of the defendants, Bendu Karpai, who bears absolutely no relationship to Kindi Worrell and his people. 5. That being the only surviving heirs of the late Kindi Worrell, Chief of Kindi Town and his people, they are entitled under the law of descent to the ownership, possession, and occupancy of the said Ioo acres of land, de-

scribed and supported by their Exhibit "A," but that notwithstanding this fact, and being aware of plaintiff's title, defendants have illegally entered, trespassed upon, and occupied said tract of land and are now illegally, wrongfully, and prejudicially withholding possession thereof from plaintiff, despite plaintiff's warning and request in person, as well as letters to defendants to discontinue their encroachment without any color of right; but all efforts have proven futile. 6. Plaintiff therefore prayed the court to eject, oust, and evict defendants from the premises and to have plaintiff repossess the property and to award damages to plaintiff for the unlawful occupancy and use of the land by defendants, and to grant unto plaintiff such other and further relief in the premises as the court would deem equitable and right. Co-defendant/appellant Bendu Karpai appeared and filed an independent answer containing seven counts, two of which we consider important in the determination of the issues involved in this case. Those

counts are succinctly stated as follows : "4. That the plaintiff is not an heir of the late Kindi Worrell of Paynesville. Rather it was conclusively proven at an executive investigation, that plaintiff was simply a servant girl in the family of the late Kindi Worrell and therefore has no inheritable blood in her veins to lay claim to the estate of the late Kindi Worrell. That her alleged appointment by the Monthly and Probate Court as administratrix is ultra vires inasmuch as the real heirs to Kindi Worrell were not notified of said petition to appoint plaintiff administratrix over the estate of the late Kindi Worrell. "s. That the defendant is the legal heir of the late Kindi Worrell together with other relatives, and that her late grandfather was seized in fee simple of the premises in question, as will more fully appear by a

copy of the deed for the property herewith proferted as Exhibit 'D' to form part of the answer." The answer further averred that the validity of defendant's claim to the title to the land in question had been referred to the late President Tubman for determination. Those averments are now immaterial, since on his decision the issue has reverted to the courts. Plaintiff's reply reiterated her claim that Kindi Worrell was her father and had acquired title to the land in question from the late President Barclay. She contended that defendant was of the Vai tribe whose ancestors came from Grand Cape Mount County and that defendant is not remotely related to the late Kindi Worrell. Plaintiff further claimed that the deed to the ioo acres is presently in defendant's possession, but that the instrument of which defendant made profert and on which she bases her claim to title is without legal efficacy in that it bears no indication of probation or registration, and that any other deed on which she relies was obtained through fraud. With the statement of these issues in the complaint and subsequent pleadings, the issues of law were disposed of and the case ruled to jury trial, which culminated in a verdict awarding plaintiff possession of the roo acres of the land, **but without damages as was prayed for by plaintiff for the unlawful detention of the land**. Motion for a new trial was heard and denied and final judgment rendered affirming the verdict. Exceptions were noted and an appeal announced and perfected before this Court on a bill of exceptions containing two counts stated as follows : It 1. Because on November 13, 1975, Your Honor overruled the motion for a new trial, sustained the resistance thereto and rendered final judgment against the defendants affirming the verdict of the jury to which defendants then and there excepted. "2. And also because defendants say that the verdict of the trial jury which the judgment affirmed is

manifestly against the weight of the evidence adduced at the trial." During the pendency of the appeal, Sarfloh, Govono Kai, Jaye, Armah, and Gidyea petitioned this Court that they be designated and appointed as substitutes on behalf of Kema Kpene and Momo Kamara, attorney-in-fact, on the grounds that both Kema Kpene and Momo Kamara were deceased and that petitioners were the only bona fide lineal heirs of the late Madam Kema Kpene who are entitled to inherit from her. The petition was granted, and the records in this case were opened to us for review. Since in ejectment the plaintiff must recover upon the strength of his title, and proof of the plaintiff's title must be beyond question, let us now see if plaintiffs have established their line of title from Kindi Worrell. Pursuing this inquiry, we shall seek to ascertain whether, as plaintiffs claim, the ioo acres of land have descended to them as heirs of the late Kindi Worrell, who died intestate, and whether, under the provisions of the deed from President Arthur Barclay in keeping with the Act of the Legislature of 1904. and 1905, plaintiffs have the legal right to evict defendants from the premises. The first witness for the plaintiff was Bondokai, whose testimony showed that the late E. Senesee Freeman took from the late Kema Kpene the original deed for the disputed land for the purpose of surveying a portion of it for the Cultural Center and that Madam Kema delivered it to him reluctantly with the understanding that it would be returned to her after the survey was made, but this was never done up to the time of Freeman's death. Bondokai further testified : "Bendu went to Senesee Freeman's wife and told her that her late husband had a deed for her. Mr. Freeman's wife, Ma Zoe, told Bendu that she never gave her any deed for him; but that it was another group who gave the deed to her husband. She never gave the deed to Bendu. When Bendu left, Ma Zoe sent

for Mr. Freeman's brother and told him to look for the Kindi Town deed that was brought here by Kema Kpene. When Zinnah came, he found the deed and Ma Zoe told Mr. Zinnah to send for the old lady's daughter (Sarfloh) to give her the deed. Upon hearing that the deed was found, Bendu came along with my sister to Mrs. Freeman. This was said in the presence of many persons by Bendu Karpai." According to the records and testimony of Bondokai, Bendu Karpai still has the original deed in her possession. At the trial, only a. copy was offered by plaintiff. Witness Bondokai testified on direct examination that Bendu Karpai bore no relationship to Kindi Worrell nor was she related to him in any degree. On the crossexamination he stated that he was not present when his mother gave the deed to the late Freeman. The second witness for the plaintiff was Sarfloh. She confirmed the testimony of Bondokai insofar as it related to the delivery of the deed to E. Senesee Freeman by her mother, Kema Kpene, in order to survey a portion of the land for the Cultural Center, with the understanding that it should be returned to her after the survey

was made. Then, continuing her testimony, she said : "Mr. Freeman said that we could go back home, and assured us that nothing would happen to the deed. Then we went. Unfortunately, Mr. Freeman took seriously sick and he was taken to Kindi Town. While there, my mother again asked him about this deed.
He told her not to worry; the deed was in his trunk. When my mother was asking Senesee Freeman for the deed, Bendu whose brother was Consuah and I were there. It was the same day they moved Senesee Freeman from Kindi Town to Gbassy Town. My mother and I went to Gbassy Town. At this time Freeman had died. We met his wife Zoe and asked her for the deed. After we had gone to and fro and did not get the deed one day, Mr. Edwin Free-

man sent word for us to go for the deed. Upon our arrival, he took the deed and gave it to me. Bendu who had accompanied me to Mr. Freeman grabbed the deed from my hand and said that she was carrying it to my mother and would deliver it to her on the following day. In the presence of others persons, she showed the deed to my mother and it was identified to be her deed ; but said that she would not give it to my mother until she was ordered by a court to do so. That is what I have to say." Sarfloh confirmed that Bendu Karpai bore no relationship to the late Kindi Worrell. To the contrary, the witness said Kindi Worrell was her grandfather. On the cross-examination, she stated that Kindi Worrell had only one child and that was her mother, Kema Kpene. She also testified that she did not know anyone called by the name of Fahn Kindi but she knew someone called Fahn Karpai and that was Bendu's father, but that Fahn Kindi alias Fahn Karpai bore no relationship to Kindi Worrell. He was a Gbandi man, who lived in Kindi Town like Fahn Karpai and Bendu Karpai. When asked where did Fahn Karpai come from to be in Kindi Town, she replied that he came from Grand Cape Mount County; but first lived at Fiamah, but later migrated to Kindi Town under unpleasant circumstances. Commenting on the contention that Bendu Karpai bore no relationship to Kindi Worrell entitling her to the possession, occupancy, and enjoyment of his estate, this Court has consistently held in accord with other legal authorities that "the essential issue in an ejectment action is not ties of blood, but title. A plaintiff in ejectment may recover property which descended to him, if the title was legally vested in him. On the other hand, in an ejectment action, a plaintiff who bears no blood relationship to the original owner may also recover if he took the proper legal steps to secure his title from attack, even against those of the bloodstream of the original owner."
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Cooper-King v. Cooper-Scott, is LLR 390, 406 (1963).
Furthermore, "in ejectment, the plaintiff must recover upon the strength of title, which must be evidenced by a continuous and consistent

chain of valid conveyances, and not upon mere speculation or presumption." He must recover "unaided by any defects or mistakes of the defendant; and proof of the plaintiff's title must be beyond question. The plaintiff's title is not presumed, but must be established affirmatively." The plaintiff must recover " upon the strength of a chain which is consistent and continuous, and in which each link can stand by itself." Id., PP. 403, 404, 405Common law authorities also establish that to recover the possession of real property by means of an action of ejectment, the plaintiff must "have either a title to the property with a present right of continued possession or have had an actual bona fide possession of the property with a right to maintain a continued possession when ousted by the defendant and a present right to the possession when the action was begun. . . . A well-established principle which has acquired the force of a maxim is to the effect that the plaintiff in ejectment can recover only on the strength of his own title, and not on the weakness of his adversary's. . . . In any case, a plaintiff in ejectment cannot recover as against one without title unless he proves title or prior possession in himself; and if he recovers by virtue. of prior possession, he may be said to recover as much upon the strength of his own title as if he had shown a good title to the premises." 18 AM. JUR., Ejectment, § 20 (1938). In the instant case, plaintiff relies on title that is of communal holding. The next in line to testify for plaintiff was Momo Kinza. Substantially testifying in the same vein as other preceding witnesses, he stated that he knew Kema Kpene and Bendu Karpai, who was his sister. He stated that Kindi Worrell was the owner of the disputed land, that Kema Worrell was his daughter, and that he, Momo

Kinza, and Bendu had one father. He also declared that "the land does not belong to the defendant Bendu Karpai. When the plaintiff's father died, it was at that time that the defendant took hold of the deed. The old lady asked me to intervene to get the deed from Bendu; but she refused to deliver it. She said the only way the old lady will get the deed will be in court." He further testified that Kindi Worrell was of the Gbandi tribe and their (his and Bendu's) father was of the Vai tribe. When asked in whose name the deed was issued for the disputed **land and for what purpose, he replied: "The deed is for Kindi Worrell. The land** is in Kindi Town near E.L.W.A." He admitted he did not know Kindi Worrell, nor did he ever see him. The deed not having been issued in plaintiff's name, any reliance thereon without showing possession of it, we hold would be of no legal effect. When the witness Kinza was further interrogated to tell the court and jury whether or not Kindi Worrell had any child, and, if so, on what did he base his testimony, he replied, "My father Fahn Karpai told me about Kindi Worrell having one child. Her name is Kema Kpene." The fourth witness for the plaintiff was Momo Kamara. He testified to the following effect: that he knew the plaintiff and defendant in the case; that at one time when he called on Madam Kema Kpene, she informed him that due to her sickness and feebleness, defendant Bendu Karpai was taking an undue advantage

of her; that he, Momo, being her first cousin, she had called him to assist in recovering her property; that she told him that the late E. Senesee Freeman's son refused to give it up and is retaining it until otherwise ordered by the court to do so; that she, Kema Kpene, had appealed to Bendu's family to prevail upon her to give up the deed but Bendu had refused ; that the matter was once taken to the Executive Mansion for settlement, but she was later advised to take it to court; that she had documents to support her

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contention; that sometime in the past, defendant Bendu Karpai had "a deed fixed and sold a portion of this land to the Cultural Center Institute"; that the matter was taken to the Monthly and Probate Court and an order was given appointing Kema Kpene as administratrix of the estate of Kindi Worrell; and that this is all he knew. Momo Kamara reaffirmed that Kindi Worrell came from Kamatahun in Lof a County, and was of the Gbandi tribe. When asked where did Fahn Karpai come from, he testified that he was told by Kema Kpene and her son that Fahn Karpai came from Grand Cape Mount County and that he was of the Vai tribe. When further asked whether or not Kindi Worrell had any children, and if so, how many, he replied, "My cousin told me Kindi Worrell had only one child and the child was Kema Kpene." Again when asked on the crossexamination, "So then the narrative about the tribal history of Bendu and her family which you have told here is what you were told," he replied, "This is what her brother told me." He affirmed that Bendu Karpai bore no relationship to the late Kindi Worrell, and that she is still occupying the too acres of land, causing confusion and selling the land. Besides the fact that hearsay evidence is no evidence, in the instant case the testimony of Momo Kinza and Momo Kamara must be rejected because according to established rules, a witness must have knowledge of a fact or occurrence sufficient to testify with respect to it. BALLENTINE'S LAW DICTIONARY, Witness (3d ed., 1969). He is restricted to facts within his knowledge, except for expert witnesses, who may testify as to their opinion on subjects concerning which they are qualified as experts. Ammons v. Republic, [1956] LRSC 21; 12 LLR 360 (1956). In the instant case the witness Momo was called upon to state all facts that were within his certain knowledge and manifestly not as to things as to which he had no knowledge

at all or to testify to opinions. The testimony of the witnesses Momo Kinza and Momo Kamara having violated this rule, leaves us with no alternative but to reject it. We feel further that the testimony of Momo Kamara must be rejected because of its intrinsic weakness, its incompetency to satisfy our minds as to the existence of the fact, and the fraud which may be practiced under its cover. In other words, it has no value; hence it is inadmissible.

It must be rejected also because, whatever transaction occurred between Momo Kamara and his mother, Bendu Karpai was not a party thereto ; neither was she given an opportunity to cross-examine Kema Kpene under oath in order to test the veracity of the statements. Here is our authority: "The chief reason for the exclusion of hearsay evidence are the want of the sanction of an oath, and of any opportunity to cross-examine the witness. But where the testimony was given under oath, in a judicial proceeding, in which the adverse litigant was a party and where he had the power to cross-examine, and was legally called upon so to do, the great and ordinary test of truth being no longer wanting, the testimony so given is admitted, after the decease of the witness, in any subsequent suit between the same parties. It is also received, if the witness, though not dead, is out of the jurisdiction, or cannot be found after diligent search, or is insane, or sick, and unable to testify or has been summoned, but appears to have been kept away by the adverse party. r Greenleaf, Evidence, § 163, cited in Cummings v. Republic, [1935] LRSC 9; 4 LLR 284, 291 (1935) In the instant case, none of these circumstances prevailed. As we proceed with our inquiry into the merits of the ejectment action, we observe that great emphasis has been placed on the tribal identities of the forebears of both plaintiff and defendant, thus implying prejudice against Kindi Worrell's heirs and the inhabitants of the roc ."

acres of land in Kindi Town. Even stronger insinuations were made against Bendu Karpai as being a servant girl in the Worrell's family and hence not entitled to the peaceful enjoyment of the property, thus inculcating a caste system among the inhabitants of Kindi Town. Let us be reminded that under Article I, section 1st, of the Bill of Rights, "all men are born equally free and independent, and have certain natural, inherent and unalienable rights; among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of pursuing and obtaining safety and happiness." In the Republic of Liberia, the acquisition of property is not restricted to any one class, creed, or origin. Every citizen has the legal right of acquiring property anywhere in Liberia so long as he conforms to set principles of law. There is no class legislation or inhibition or limitation to acquiring **land in Liberia. It is therefore inconceivable to imagine a prohibition against any citizen attempting to acquire land** whether he is from the East or the West. What does it matter whether or not Kindi Worrell was a Gbandi man, or for that matter, that Bendu Karpai or Fahn Kindi alias Fahn Karpai was of the Vai tribe? Being citizens of the Republic of Liberia they can own real property, especially so being heirs of their ancestors who were inhabitants of Kindi Town and constituted heads of families at the time the grant was made to Kindi Worrell and his people in 1911. Let us remind you that the intent of the Legislature in making the grant to the inhabitants of Kindi Town by the Act of 1905 was for enjoyment of Kindi Worrell, his heirs, his people, and inhabitants at the time of the grant,

and after their deaths to their succeeding generations and offspring whether near or remote. The fact that either of the ancestors immigrated to Kindi Town with a different tribal background and origin could not by any stretch of imagination destroy the rights guaranteed to

him under the provision of the deed granted in 1911. That the ancestors of both plaintiff and defendant lived and dwelled on the ioo acres of land over 6o years ago testifies to the legitimate rights of the heirs of such inhabitants to succeed to the enjoyment and continuous occupancy of the land. In other words, the deed of President Arthur Barclay specifically and unequivocally created communal holdings among the tribal peoples therein indicated. It would be inconceivable and illegal for any legitimate heirs or inhabitants of Kindi Town to institute any proceeding that would eject others who have a joint interest and unity of purpose in the premises and who are entitled to the peaceful occupancy and enjoyment of the ioo acres of land.

Plaintiff having completed his presentation of evidence, defendant/appellant testified as follows regarding the acquisition of the land by Kindi Worrell: "He [Fahn Kindi] told the late President Arthur Barclay, the land he was occupying was not his, he wanted a piece of land for himself. He told the late President Barclay to place his late father's name on the deed. The late B. J. K. Anderson surveyed the land and made the deed and gave it to the President. The deed was kept with the late Arthur Barclay until Kindi Worrell died. There was no trouble about this land. At one time, he went to President Arthur Barclay for the deed which he gave it to my father Fahn Kindi. After that no one troubled us about the land. The deed was in the possession of my father Fahn Kindi until he died. Prior to his death he handed it to me. The deed was given to one Senesee Freeman to have the land surveyed for the Cultural Center. After that I asked the witness who was on the stand to help me get my deed. I got it from Edwin Freeman. After this the plaintiff sued me." The original deed referred to in her testimony was identified and offered in evidence. On the direct examina-

tion, she testified, as had preceding witnesses, that Kindi Worrell immigrated from Grand Cape Mount County and settled in Sinkor, Monrovia; that while there he befriended the late President Arthur Barclay; that her f ather Fahn Kindi was the only child her grandfather ever had ; that if anyone said that · Kindi Worrell had any other children, "then he lied." Significantly, even though this challenging statement was uttered by defendant Bendu Karpai, yet it has remained uncontroverted by plaintiff. It is therefore accepted that Kindi Worrell never had another child. The testimony of Momo Kinza that Kema Kpene was a daughter of Kindi Worrell was therefore destroyed. As

the trial progressed, defendant Bendu stated to the court below in answer to questions propounded to her on the cross-examination that it was not true that the original deed had ever been in the possession of plaintiff Kema Kpene. It was she, Bendu, who delivered the deed to the late E. Senesee Freeman, and that at no time had she and one Sarfloh ever gone to the widow of Senesee Freeman for any deed. Answering a juror's question, she established as a matter of fact that Fahn Kindi was her father. The first witness for defendant was Gbassy Kindi. He testified substantially that when he was a child, he lived with his father Fahn Kindi, who later took him to the late E. Senesee Freeman ; that at his father's death his sister Bendu opened their father's trunk and found a deed for the ioo acres of land, which she showed to him; that at one time when he came to visit his sister, she told him and others present that being unlettered, she could do nothing unless they had consulted the deed from his family. While answering a question on the direct examination, he disclaimed Momo Kinza (the witness who had earlier testified for the planitiff) as one of the children of Fahn Kindi. The last two and final witnesses for the defendant were

Counsellor Anthony Barclay and Honorable J. C. N. Howard, the Commissioner of Paynesward City. Because we strongly feel that their testimony bears great weight in reaching a fair determination of this case, we have quoted them in extenso: "Q. What is your name and where do you live? "A. My name is Anthony Barclay and I live in Paynesville. "Q. Are you acquainted with one Bendu Kindi Worrell? "A. Yes. "Q. One lady by the name of Kema Kpene now deceased has sued the said Bendu Worrell claiming that she owned ioo acres of land in Kindijah. If you know anything how this land was acquired and by whom please tell the court and jury. "A. Kindijah was acquired by one Kindi Worrell during the administration of my late father, President Arthur Barclay. During that time I do not remember Kindi Worrell in person, but the deed say so but I remember Fahn Kindi who was his son and who visited me after my father's death several times, and I in turn visited the town of Kindijah. At that time it was called the name [sic] to be my father's property but in the so's one old man George Jackson, resident in Paynesville, encroached upon this land. So Fahn Kindi came to me for protection and as I had not found any deed calling for this **land among my father's deeds, I asked him if he had a deed for this land**. He replied yes. I told him to bring it for me to see. He brought the deed and I noticed that the deed had not been probated, so I asked him why he had not had the deed probated. He said he thought it was not necessary because he got the deed from

the government, so I said I will have it
probated for you, then I will take up the question with Mr. Jackson, whom I
knew very well. I presented the deed to the Probate Court for probation. The
judge, I think was Judge Fiske,
who hesitated because he said it was an old deed but after consultation with
some lawyers and with the Attorney General I believe,
the deed was registered and probated. I then took up the question with Mr.
Jackson and he left the land. Seeing that Fahn Kindi had
a deed for the place I think the deed is dated 1911 and that time Fahn Kindi
had introduced me to Bendu as his daughter and gave
one of his sons to my wife and myself for schooling. That boy is still living
and we have his child, a girl, with us now. As far
as I could see from my dealing with this man, Kindijah was a Vai Town. "Q.
Please look at this document marked by court B/N 1 and
say whether this is the deed which you had probated by the Registrar for
Kindi Worrell which you referred to? "A. This is the deed.
The endorsement is done in my handwriting. Judge Fiske was the judge of the
Monthly and Probate Court. Mr. Reuben Logan was the Registrar.
And it was signed by Arthur Barclay, President." Minutes of Court, 39th Day's
Session, Thursday, October 3o, 1975. The second witness
: "Q. What is your name and where do you live? "A. J. C. N. Howard, and I
live in the City of Paynesward, Montserrado County. "Q.
Say whether or not you hold any public office in the City of Paynesward, and
if so, state what and how long? "A. Yes, as Commissioner.
I have been Commis-

sioner for the past 25 years, but during the period of three commissioners
elected
by the Townships I was elected as Township Commissioner in 195o and re-
elected every year up to 1975. And I was commissioned in 195o
and I have been serving up to the present time. "Q. Say whether or not you
are acquainted with Kema Kpene, the plaintiff, and Bendu
Kindi, the defendant in this case? "A. Yes. "Q. The plaintiff has instituted
an action of ejectment claiming that the defendant is
withholding and detaining one hundred acres of land which she claims is
her property; search your memory please and if you have any
facts and circumstances therein, state same for the benefit of the court and
jury? "A. I do not recall Kema Kpene, the plaintiff,
owning any land in Paynesville. In fact I only met her about two years.
What I do know is one Fahn Kindi was the son of Kindi Worrell
who owned the Kindi Town and Fahn Kindi was the father of Bendu. Kindi
Worrell is the man who I knew to own the Kindi is the father
of Bendu [sic]. "Q. State whether or not you know of Bendu ever serving in
any official capacity and if so, as what? "A. Yes, I do
know that Bendu up to last year or the latter part of last year was one of my
town chiefs. She served up to the time when the dispute
came up about pulling up a cotton tree, and the Minister of Local Government
sent for me and told me that one of my town chiefs had

offered an insult to the President of Liberia by pulling up a cotton tree that he planted and I should do something about it. I went up there

and called the town together that since Kindijah was in Kindi Town and the President will always be going to Kindijah and Bendu in her capacity as town chief will have to meet the President, I will have no alternative but to suspend her and have someone else act in her stead until the cotton tree matter has been adjusted. "Q. Do you know of a man Kindi Worrell having any other child beside Fahn Kindi? · "A. I do not know of any nor have I heard of any." Minutes of Court, 39th day's Session, Thursday, October 3o, 1975. Defendant having rested, plaintiff introduced one Morris Alma as rebutting witness, only to prove that Bendu Karpai carried the deed for the zoo acres of land to Kindi Town and showed it to the inhabitants thereof and said that it was for Kema Kpene, but when Kema Kpene offered to accept it, Bendu Kindi refused and said that she could not deliver it to her until ordered by court or some law. This ends the testimony of the witnesses in the case. The question now arises, has ejectment been proven? We think not. But we focus mainly on whether any of the inhabitants of Kindi Town or an heir of Kindi Worrell has legal competence to evict any of their kith and kin from the zoo acres of land in question, considering the expressed provision of the 1911 deed granting the communal holdings to all the heirs of Kindi Worrell and the inhabitants of Kindi Town. We certainly think not. The legislative will is supreme and when the language of the statute is clear and certain must be given effect. The Legislature of Liberia in 1905 having empowered the President of Liberia to grant the inhabitants of each town of a district inhabited by aborigines sufficient land around the town for agricultural purposes, and that statute having been carried out by President Barclay, and the right to the land granted to Kindi Worrell and the

inhabitants of Kindi Town in Paynesville, it is our view that it shall forever stand.

The institution of this action of ejectment is unmeritorious, and since we are unconvinced that plaintiff has both the legal title and the possessory right in said land, the action is hereby dismissed. The heirs of Kindi Worrell and inhabitants of Kindi Town are forever entitled to the continuous occupation, possession, and uninterrupted enjoyment of their land in keeping with the express provision of the deed of 1911, with the proviso that it shall not be sold, transferred, or alienated by any person or persons without the will and consent of the government of the Republic of Liberia. Costs are disallowed. And it is hereby so ordered Judgment reversed.

Wright et al v Sherman [1952] LRSC 15; 11 LLR 205 (1952) (6 June 1952)

ETTA WRIGHT, E. W. MORGAN, and MADLINE MORGAN, Appellants, v. ARTHUR SHERMAN, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 17, 18, 1952. Decided June 6, 1952. Where facts establishing title of a holder
of an interest in real property are brought before a court of equity, a decree may be issued to remove cloud from title and to quiet
the possession of the property.

Appellant filed a bill in equity petitioning the court below to issue a decree removing a cloud
upon his title to, and quieting his possession of a parcel of land. After trial, the decree was issued. On appeal to this Court,
judgment affirmed with amendment.

Samuel C. M. Watkins for appellant. Cooper for appellee.

Momolu S.

MR. JUSTICE REEVES delivered
the opinion of the Court. This action was instituted by Arthur Sherman, plaintiff below, by filing a petition alleging that in 1947
he purchased a ten-acre block of land in the settlement of Oldest Congo Town, in the County of Montserrado, Republic of Liberia,
from one Susanna James ; said parcel of land bearing number 36, and bounded and described as follows : "Commencing at the North East
angle of lot number thirty-seven (37) thence running South +5 degrees East 6 chains ; thence running South 45 degrees West 17% chains
to the place of commencement and containing ten acres (1o) of land and no more." which parcel of land was originally owned by one
Susanna

James and her sister, Sarah Carney, alias Sarah Morgan, who, in October, 1925, sold her share
to her sister Susanna James, plaintiff below; and, notwithstanding that said plaintiff made improvements by building thereon, B.
W. Morgan and Madline Morgan, two of the defendants, heirs of Sarah Morgan, in February, 1949, sold to Etta Wright, the other defendant,
a certain lot or parcel of land with the buildings thereon and all the appurtenances to the same belonging, situated in the settlement
of Oldest Congo Town, County of Montserrado, Republic of Liberia, and bounded and described as follows: "Commencing at the North
East Corner of Anthony Benson adjoining Western Block and running parallel with it South forty-five degrees West twenty (2o) chains,
thence North forty-five degrees West five chains parallel with the Old Motor Road to the place of beginning, and containing ten (

io) acres of land and no more." Plaintiff further complained that, notwithstanding and with full knowledge of the foregoing facts, B. W. Morgan and Madline Morgan, heirs of the said Sarah Carney, alias Sarah Morgan, in the month of February, 1949, without the knowledge of plaintiff, executed a deed in fee simple for the identical parcel of land in favor of Etta Wright, one of the defendants herein, thereby creating a cloud over the title of the plaintiff to said parcel of land, although they knew that the plaintiff was, as now, in possession of said parcel of land, as will more fully appear from copy of the deed thus executed by said defendants in favor of co-defendant Wright annexed as "C" to form a part of the complaint. Wherefore plaintiff prayed a decree removing a cloud upon the title so created and thereby quieting the possession of said land so as to save him from hereafter being disturbed, or harassed by suits respecting his title thereto. Defendants below filed an answer alleging that the deed filed by plaintiff of his grantor Susanna E. James from

Sarah Carney, dated October, 1925, was not probated and registered until January 28, 1947, a lapse of about twentytwo years ; and that Susanna James, plaintiff-grantor, and Sarah Carney, her sister, never jointly owned the property; but that Sarah Carney was the sole owner of a block of land containing fifteen acres for which she executed a will to her heirs on December 22, 1924. And further that the purported deed under which plaintiff claimed was not signed in the presence of any witness ; and that a careful examination of the boundaries respectively set forth in plaintiff's deed and in defendant Etta Wright's deed show that said deeds do not refer to the identical parcel of land. Plaintiff's reply alleged that, as the defendants were privies of Sarah Carney, alias Morgan, they were estopped from questioning the authenticity of said deed ; that the purported will mentioned in said answer was fraudulently executed ; that a surviving witness, John M. Earley, denied having any knowledge of any execution of said will in his presence or by him ; and, further, that, although plaintiff alleges that said deed was duly executed by the late Susanna James and witnessed by J. M. Earley, Sr., J. C. N. Howard and J. C. Blunt, the clerk in making a copy, inadvertently omitted said witnesses, whose names plaintiff respectfully prays the court to have indited ; for, being in equity, it would in no manner adversely affect the rights of the parties. The pleadings continued as far as the rejoinder. On January 23, 1951, the case was called. The parties Were represented by counsel. Arguments were heard. The court then made the following ruling on the issues of law: "This case involves questions of fact; and the court will enter upon the trial thereof and hear evidence on the following points : "Did Susanna James and Sarah Carney own a ten-acre block jointly? "Did Sarah Carney part with her interest in and

to said ten-acre block
of land to Susanna James? "When did Sarah Carney die? "Did she make and
execute a last will and testament?" No exceptions being taken,
said matter was assigned for February 1, 1951. On said day, the court having
opened in equity, the case was called, parties present,
and the trial commenced. Witnesses for plaintiff were called, qualified and
deposed. On the following day plaintiff rested oral testimony
and offered documents marked by the court Exhibits "A" and "B." Defendants
objected to the admissibility of plaintiff's Exhibit "B"
for the following reasons : (C I. Said document, purportedly a deed issued by
Sarah Carney on October 19, 1924, was never probated
and registered as the law provides until twenty-two years thereafter. Section
1302 of the Revised Statutes of Liberia provides that
all instruments relating to real estate must be probated and registered
within four months. "2. Said purported deed on its face does
not show nor convey to Susanna James five acres of land, but, instead, ten
acres of land which the said Carney is alleged to have
held in fee simple. "3. Said purported deed is not sufficiently identified by
any of the witnesses who have testified thus far. Nor
have any of the subscribing witnesses, whose names appear thereon, been
produced to testify to the fact that it was Sarah Carney
who had affixed thereon her "X," since indeed Sarah Carney could not write,
nor could she read." Said objections were argued, and
the court ruled as follows: "With respect to Count `I' of defendants'
resistance, the law bearing on this point is that, where a
deed or other instrument conveying real property is not registered and
probated within statutory time, it is only

voidable as against any person having a subsequent conveyance in his favor
that has been registered and probated within
statutory time ; and, inasmuch as the defendants in this case have shown no
subsequent conveyance of the same property that has been
duly registered and probated within a time prescribed by law, said objection
is not well founded, and is therefore overruled. "With
respect to Count 4 2 1 of the objections, the plaintiff's pleadings made it
clear that Sarah Carney, in issuing the deed to Susanna
James, made it out for ten acres instead of five acres. This fact was never
controverted by defendants ; and this court does not
see the merits of said contention. Count '2' of defendants' objections is
therefore overruled. "With respect to Count '3' of · the
objections, this court is of the opinion that said document has been duly and
sufficiently identified by the witnesses who testified on this point.
Moreover the deed from Sarah
Carney to Susanna James is more than thirty years old. The objection is
therefore overruled, and plaintiff's Exhibits 'A' and 'B'
are admitted into evidence." The following day the trial continued when the
witnesses for the defendants testified. The parties having

all rested, the judge of the lower court heard the arguments and reserved his ruling. On March 19, 1951, the court again met with parties present and issued the following decree : "The history of this case, as far as we have been able to gather from the pleadings, may be epitomized as follows. In 1947 Arthur Sherman purchased a piece of property from Susanna James of Oldest Congo Town, and thereafter commenced operations thereon. Two years later, in 1949, W. B. Morgan and Madline Morgan, heirs of Sarah Morgan Carney sold the same property to defendant Wright, thereby casting a cloud on the title of the plaintiff, to remove which he insti-

tuted this action. Contesting the right of the plaintiff to recover, the defendant averred that Sarah Carney and Susanna James never jointly owned the aforesaid piece of property. It would appear that plaintiff bought this piece of property from Susanna James who he alleges once held it in joint tenancy with Sarah Carney, the latter having parted with her share and interest in favor of Susanna James as is evidenced by a deed from Carney to James dated October 19, 1925. "With respect to the facts in controversy we requested the parties to produce evidence on the following points : Did Susanna James and Sarah Carney ever jointly own said piece of realty; and, if so, did Carney part with her interest and title in favor of James? When did Carney die ; and did she make a will? Accordingly witnesses were produced, qualified and deposed ; and from this evidence, these facts were established : (a) Carney and James did jointly own said property (see testimony of Benson and Nelson, the latter being a witness for defendants) ; (b) Carney did part with her interest to James as evidenced by deed from Carney to James dated October 19, 1925, probated, registered and admitted into evidence; (c) Carney predeceased James. This was the evidence for the plaintiff. "Coming now to the evidence for the defendants, we have the following: Sarah Carney made a will and demised the property to the grantors of the defendant, Etta Wright; and Carney and James did jointly own said property. That fact of the joint tenancy between Carney and James of the ten-acre block of land, the subject of this action, as also that Carney predeceased James, and that Carney, in her lifetime, did sell her share in said property to James, and James did not transfer said property to plaintiff, leaves this court

without a doubt as to the legal and equitable right of the plaintiff in and to said property. "It having been established to the satisfaction of this court that Carney predeceased James, it is our opinion that, even granting that Carney did execute a last will, she could not, under the doctrine of survivorship, part with such property. We conclude that the grantors of Wright had no legal right and title to said

piece of realty and therefore could not pass title therein to anyone. In view of the foregoing we have no alternative but to decree that : (a) Arthur Sherman has valid and legal right and title to said property; and (b) B. W. Morgan and Madline Morgan shall refund to Etta Wright the amount paid them for said land. Costs against defendants." It is apparent from the records that the conflict from which this action arose was initiated by J. Prince Nelson, a son of the late Sarah Carney. He partly sold the tenacre block of land in question to appellee Sherman and received a portion of the price agreed upon ; but, thereafter, appellee Sherman learning that the said Nelson was not the owner of the block of land, **but that it was owned by Susanna James (for, though Sarah Carney formally owned a part of said land**, she had sold her interest therein to Susanna James), appellee Sherman approached Susanna James and purchased said block of land. This information came out as follows in the testimony of J. C. N. Howard : "Q. Say whether or not, during the lives of the said Susanna James and Sarah Carney, they ever owned jointly any piece of realty in the settlement of Oldest Congo Town ; what disposition they made of said property? "A. I did not know that Mrs. Sarah Carney and Susanna James owned a ten-acre block of land

jointly until a few years ago, when Mr. Arthur Sherman met me in Monrovia one evening and asked me to go up with him to Oldest Congo Town to witness some land transaction. We went to Commissioner Earley. Commissioner Earley, one S. M. Blunt, who is now deceased, and I went to Mrs. Susanna James's place, where Commissioner Earley asked Mrs. Susanna James to bring out her papers in connection with the land they had talked about a month ago. Mrs. Susanna James then brought out her papers and asked me to check them over. It was then I saw a deed issued and signed by Mrs. Sarah Carney transferring her portion of five acres of land to Mrs. Susanna James. I have forgotten the amount now. But I remember that Mrs. Susanna James was formerly living on the eastern half or portion of said **land but did not know that Mrs. Sarah Carney owned a portion of that land** up to that time because Mrs. Carney was living toward the Baptist Church and had a house there ; there where she died. And this land is about a half mile from Mrs. Sarah Carney's house. We took the papers. Mrs. Susanna James agreed to sell the ten acres, and five acres of her father's land, but she said that the price was too low. I said to her : 'You are old and you are not able to go to court from time to time following Jack Nelson; since Nelson sold a portion of your land to Mr. Arthur Sherman, and Mr. Sherman having heard that Mr. Nelson had no genuine title to this land, **agreed to pay you for the same land**, although he had already bought it from Nelson. I would suggest that you sell the land.' She agreed and asked me to write the transfer deed. She signed her 'X' cross; Commissioner Earley signed as witness; Mr. Sherman then handed me the money; and I

gave the money to her and she delivered the deeds in our presence to Mr. Sherman. Then Mr. Sherman asked Mr. Earley, Mr. Sam Blunt and myself to go with him to Mr. Jack Nelson. When we went we met Jack Nelson on the road. Mr. Sherman stopped the pick-up and said to Mr. Jack Nelson : 'What kind of trick you played on me? You know the land wasn't yours and you sold it to me. But, if you don't give my money back, I will put you in court.' Mr. Nelson said : `Who told you that the **land is not mine?' Then Mr. Sherman took out the deed signed by his mother, transferring the land** to Mrs. Susanna James, and showed it to him. Then Mr. Sherman said that it was a dirty trick. They had some hard words and we left. That is what I know about the matter." A similar question was put to John M. Earley as follows : "Q. Please say if you know whether, during the lifetime of Susanna James and Sarah Carney, they owned jointly any piece of realty, and what disposition they madc of said property? "A. What I do know is that unexpectedly one day Mr. J. Prince Nelson went with Etta Wright and arrived at my place, Mr. Nelson asked me to go with him because he wanted to sell a piece of **land** to Mrs. Etta Wright. I went with him. We went around the place and the lady returned to Monrovia. Unexpectedly I saw Mr. Arthur Sherman with Mr. Howard arrive at my place asking me to please go with them to the late Susanna James's place and I did so. When we got there Mrs. Susanna James brought her original deed calling for ten acres of **land, and with a transfer deed from Mrs. Sarah Carney. That transfer deed called for five acres of land** trans-

ferred from Sarah Carney to Susanna James. Susanna James said that she wanted to sell that five acres of **land** to Mr. Arthur Sherman, because Mr. Nelson is threatening to sell this piece of **land** over her head, and her being an old lady she was not able to contend with Mr. Nelson. Mr. Sherman agreed to buy the ten acres of **land** and he paid the amount which she charged him. The said transfer deed was issued and signed by Mrs. Susanna James, and Mr. Howard and I witnessed the deed. The original with the transfer deed were turned over to Mr. Sherman. I wrote Mrs. Etta Wright and told her the whole contents of this piece of **land**. I told her in my letter not to pay a cent to Mr. Nelson because I found out after an investigation that this **land** was not owned by Mr. Nelson's mother, Mrs. Sarah Carney. She had sold her share of the **land** over to Mrs. Susanna James before her death. I sent the letter by Mr. Sherman to Mrs. Etta Wright. She took no cognizance of the letter. A few weeks thereafter I received a writ of subpoena to appear as a witness on a will devising a ten-acre block to her grandson, Benjamin Morgan, and to Madline Morgan. Then I became upset. I appeared before the court and got on the stand. The court then produced this will to me with my name signed to the will as a witness. I gave my statement to the court upon oath and my sound mind to the effect that I did not sign my name to that particular will in question. My name was forged to this will." Evidently

when Mr. Nelson realized that he had failed in disposing of said property to appellee Sherman, he became chagrined and decided to undertake a reprisal ; and thus there appeared on the scene a will executed by Sarah S. Morgan which contained the following clause:

"

2. I Will and bequeath to my daughter Sarah and my son Jesse Morgan one block of land containing (Is) fifteen acres of land with a building thereon. Which is known as my dwelling house during my natural life, situated and located in the settlement of Oldest Congo Town, County of Montserrado and Republic of Liberia." B. W. Morgan, one of the defandants, testified as follows about this will : "Q. When did you know that the land which you had undertaken to sell was your property? "A. One day round About 194.5-46, I was passing by Mr. Earley's house. He called me in and said to me : 'I have a deed here which Mrs. Susanna James and your uncle Jack are contending over, but I found out that this deed was pledged to Mrs. Susanna James by your grandmother, Mrs. Sarah Carney, for the amount of seventeen dollars. You and your sister not knowing anything about it, Jack, who knew, wanted to get it from her. This place was given to your father by your grandmother. It is the spot on which you were born, but Jack wants to sell it from you and your sister. But I will call a family council, asking one or two old persons to be in the midst. I will send for you and your sister to be there, also, because this deed was given to me by Mrs. Susanna James to turn over to Jack, and he gave to Mr. Earley the seventeen dollars that this deed is pledged for. I will not do it because Jack wants to rob you all out of your place. In this council I. will turn this deed over to you and your sister, and you pay over to Susanna James the seventeen dollars.' That is how I come to know that land to be ours at first. A few months later, Uncle Jack one day sent for us and told us that Mr. Bull found out Grandmother's will in the Monthly

and Probate Court one day while searching up some papers. We then came to Monrovia to Mr. Bull and he said the same words to us. We had this will registered and probated and gave Mrs. Wright a deed for ten acres of land. This is all I know.

"Q. Who was living on this land at the time you disposed of it? "A. No one. "Q. No building was on the land? "A. Mr. Sherman had an unfinished building on it. "Q. And did Mrs. Wright see and know of the unfinished building being that of Mr. Sherman at the time? "A. Maybe. I don't know, because Mrs. Wright does not live out there. "Q. Were you present at the investigation conducted by Commissioner Earley at which M. B. Smarte, Lewis Smarte and Susanna James testified concerning this identical ten-acre piece of land? "A. No."

The mention made in the will of the fifteen acres of land and the house that was built thereon was referred to as follows in the testimony of witness Benson: "Q. Do you not know that Mrs. Sarah Carney owned a fifteen-acre block of land in Oldest Congo Town whereon she had her dwelling house? "A. The place she had her dwelling house is not the same property in question now. She did not have fifteen acres of land. **"Q. Do you know Mrs. Sarah Carney owned a separate piece of land** in Oldest Congo Town whereon she lived during her natural life? "A. The ten acres of land whereon she lived and died

was owned by Mrs. Sarah Carney and Lulu Smarte." Obviously defendants were correct in Count "5" of the answer which reads as follows : "And also because defendants say that from a very careful examination of the boundaries shown in plaintiff's deed under which he claims and that of defendant, Etta Wright, grantee from B. W. Morgan and Madline Morgan, grantors, same is not the identical parcel of land, for which the plaintiff has filed this complaint praying this court to enter a decree removing the cloud upon the title and to quiet the possession." Defendants, in this count of their answer, were consistent and honest. The boundaries of said block of land could not be that of appellee Sherman which Mrs. Susanna James had sold him ; said boundaries had to differ. Aside from the other facts brought out in the evidence, this admission of defendants, the description of the land given in the will, and the statements given by witnesses Benson and Howard, justified the trial court in granting a decree quieting appellee's title. Without further belaboring the question, this Court therefore affirms the decree rendered below, with an amendment to section (b) thereof, to wit : that B. W. Morgan and Madline Morgan grant unto Etta Wright a transfer deed for the block of **land they claimed under the will of their late mother, and, in the event said land** has been sold, that they refund to said Etta Wright the amount paid them for said land ; costs against defendants. And it is so ordered. Affirmed.

Young et al v Embree [1936] LRSC 21; 5 LLR 242 (1936) (15 May 1936)

THOMAS YOUNG, ARMLAHBAH and MESARMAH, Appellants, v. REVINGTON L. EMBREE, Representative of the FOREIGN MISSION OF THE METHODIST EPISCOPAL CHURCH, Appellee.
CONTEMPT PROCEEDING.

Argued April 17, 22, 26 ; November 26; December 9, 30, 1935 ; April 30, May 4,
1936. Decided May 15, 1936. 1. In legal proceedings every party should be designated by his proper name and title, and should be

legally made a party plaintiff or defendant 2. Hence, if it is sought to make several parties defendants in an action, some of whom are named, and the others referred to as "et al.," those thus described as "et al." will not be considered as having been under the jurisdiction of the court. 3. Injunction does not lie where title to real property is an issue involved ; more especially where the party sought to be enjoined sets up adverse possession to said land. 4. In order to authorize punishment for the violation of an injunction, the acts complained of must be clearly embraced within the restraining clause of the injunction. 5. Hence, the language of an order of injunction should not be extended to cover acts not fairly and reasonably within its meaning. 6. One cannot be punished for violating an order of injunction unless it is made to appear that such order was personally served upon him, or that he had actual notice of the making of such order. 7. In citing an adjudicated case as authority one should always be careful to consult the text as he may be led into error by confining himself only to the syllabus. 8. All persons claimed to be privies of another should be shown to be either privies in estate, privies in blood, privies in representation or privies in law.

Plaintiff-appellee obtained injunction to restrain members of the Gola trib from occupying certain towns alleged to be on pla ntiff-appellee's property and subsequently instituted ontempt proceedings against defendant-appellants, m bers of the Dey tribe, for violating the injunction. Judgment for plaintiff-appellant entered in Circuit Court reversed on appeal and case remanded with instructions. [1935] LRSC 25; 4 L.L.R. 393. On second appeal further instructions given. [Unreported officially.] On return to Supreme Court, contempt proceedings dismissed.

Anthony Barclay for appellants. mon for appellee.

H. Lafayette Har-

MR. CHIEF JUSTICE GRIMES delivered the opinion of

the Court. Reduced to its final analysis the crux of the dispute which led to the injunction case, decided in the Circuit Court of the First Judicial Circuit on the r6th day of May, 1933, and upon which decision these contempt proceedings are based is : who is the owner of Kpingbah town, situated in the settlement of New York, within the District of Clay-Ashland in Montserrado County. Revington L. Embree, Representative of the Foreign Mission of the Methodist Episcopal Church, appellee, claimed that said town was within the limits of a five hundred acre block of land which he, by an undated deed, executed in the year 1926, as per copy sent up in this record, purchased from James B. McGill, Sr.; while, on the other hand, Thomas Young, Armlahbah, and Mesarmah, appellants, claim adverse title to said town as heirs of one Swar, by virtue of a county land deed from the late President Cheeseman, dated January

r r 1896. Plaintiff, now appellee, without having taken any legal steps whatever to settle the disputed title, filed an action of injunction against "Bye Bathay, a native of the Gola tribe and his people and Darkpannah, defendant," to enjoin them presumably from occupying certain portions of said land as gathered from the final decree, the only part of said case included in the record now before us, and after a hearing of said complaint, His Honor Judge Russell, Circuit Judge, presiding by assignment in the First Judicial Circuit, now Mr. Justice Russell, on the r6th day of May, 1933, entered a final decree enjoining the said Bye Bathay and Darkpannah from "occupying said tracts of land or any part thereof." On the 28th day of August, 1934, Counsellor H. L. Harmon, attorney for appellees, instituted the present

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proceedings complaining that "Armlahbah, Mesarmah and Thomas Young, et al., co-defendants, whose names to the plaintiff are at present unknown, have unlawfully disobeyed the injunction, entered upon said tract and are constantly molesting the 'subjects' of the mission in violation of said injunction." The Court will remark in passing that it is unable to consider the "et al., whose names to the plaintiff are at present unknown," complained against by said appellee because in legal proceedings every party thereto should be designated by his proper name, and title, and should legally be made a party either by joining in the suit as plaintiff, or by being brought under the jurisdiction of the court by the service of process, or the voluntary and express waiver of service of process, as defendant. 22 Cyc. 322 G; Tubman v. Murdoch, [1934] LRSC 26; 4 L.L.R. 179, 2 Lib. New Ann. Ser. 5 (1934). Confining ourselves then to the parties before the court viz.: Thomas Young, Armlahbah and Mesarmah, appellants, Counsellor Anthony Barclay in behalf of these filed an answer denying that they were Gola people, but members of the ,Dey tribe, having no connection whatever with Bye Bathay and his people of the Gola tribe; and also contending that they had not entered upon the **land of plaintiff, nor molested any person occupying said land**, but that all the lands upon which they were operating were theirs in fee simple by virtue of a deed, profert of which they made, dated forty years ago; and that in view of the fact that the title of the land was in dispute an action of injunction had been wrongly instituted, as title can only be legally settled by ejectment. It was an error to enter upon a trial of the facts without having first settled the issues of law raised ; but His Honor Nete Sie Brownell, the trial Judge, evidently realized the error while the first witness, Revington L. Embree, was being cross-examined, and had the following entered upon the record :

"As a result of this ruling an exchange of views between the Court and Counsellors on the point at issue was had. Counsel for plaintiff contending that Kpingbah town which is the centre of the misunderstanding is part of the mission land over which respondents are exercising adverse title. The respondents on the other hand contended that they having not been parties to the original suit, their deed was never taken into account by the Arbitration appointed by the court and Kpingbah town is part of their land, as embraced by the deed made profert of by them. At this stage the court asked the counsels for both sides whether they did not think it useful for them to file stipulations for a surveyor to repair to the spot and make observations taking into consideration the deed made profert of by respondent Thomas Young and his people. To this suggestion of court all parties concerned agreed and promised to file same in court at ten o'clock on the morning of the 21St instant and at which time they hoped to agree on a Surveyor who will make the necessary observations and report to the court. Witness Embree was thereupon discharged with thanks of the court." Records of September 20, 1934, page 3. Accordingly B. J. K. Anderson, a surveyor by profession, was chosen as sole arbitrator. Several objections however were made to his award which the trial court seemed to have ignored, or, at all events, did not determine; and upon his final judgment confirming said award, and imposing fines upon the defendants, they appealed to this Court at its last April term for a review of the proceedings and final judgment against them. This Court, after having listened carefully to the arguments on both sides at our last April term, which were as bitter as they were excited, reached the conclusion that an effort was being made in this Court to obscure the real issues as effectively as they had been apparently relegated

into the background in the court below. We therefore issued an interlocutory order to His Honor Judge Shannon, presiding in the court below, directing that a new surveyor be chosen, indicating how he should proceed to make an impartial survey, and that a report be made. L.L.R. 393, 2 Lib. New Ann. Ser. 232 (1935). At our last November term of Court the returns of the Judge were found unsatisfactory, whereupon a further interlocutory order was issued to the same Judge, and he was kept presiding in the First Judicial Circuit until satisfactory returns had been filed. Unreported officially, 3 Lib. New Ann. Ser. 26 (Dec. 13, 1935). (See supra, p. I4I.) This is a brief synopsis of the case before us, and we shall now proceed to consideration of the issues presented by the record for our consideration. According to the award of the arbitrator, the Rev. Dr. Dunbar, chosen as surveyor by virtue of our interlocutory order of April z6, 1935, the contending parties are contiguous owners, and a correct survey of the two tracts of land owned respectively by appellant and appellee has disclosed that although the town of Golavah, the subject of the injunction in which

Bye Bathay and Darkpannah were defendants, was situated entirely within the lands of appellee, Kpingba town, a town of only four houses, the kernel of the dispute in the contempt proceedings, is only partly on the land of appellee, and partly outside of the boundaries of said land, three of the houses being within, and the other houses being without. The record is defective in not having shown even remotely in which part of the town thus dissected by the survey of the Rev. Dr. Dunbar the acts alleged in violation of the injunction occurred. In view of the foregoing the wisdom of the principle so often enunciated by our predecessors from this Bench, that injunction does not lie where title to real property is an issue involved (See Johnso,n v. Cassell, 1 L.L.R. 161

(1883), and Green and Gray v. Turner, 1 L.L.R. 276 (1895) , is made so much the more plain, since indeed it would not only be unjust, but an absurd paradox for any court of justice to enjoy a party, at the suit of another, from occupying, or exercising other acts of dominion over, lands of which he is the owner in fee simple. This general rule is more fully stated in 22 Cyc. in the following terms : "As a general rule a court of equity will not interfere to protect legal rights in property until the complainant has established his title or right by an action at law, especially where the answer denies the title of the complainant to the property sought to be protected. If the legal right or title to property has not been established at law, is not clear or established prima facie, or has not been long enjoyed, but is disputed, and the injury threatened is not irreparable or the remedy at law inadequate, an injunction will not issue. So where there is a reasonable doubt as to the right or title of the applicant for an injunction to protect property, equity will not interfere in the absence of emergency until after the right or title has been established at law. For instance it has been held that an injunction will not be granted in cases where the right depends upon the meaning of an ambiguous and uncertain contract, deed, or will; where the principles of law upon which the right depends are doubtful and have not been adjudicated by a court of law; or where complainant has previously attempted and failed in an action at law to establish his title." 22 Cyc. 818-20. "A court of chancery is not the appropriate tribunal for the trial of title to land, and where the main object of a suit asking for relief by injunction is to determine the legal title to property, or to fix the boundaries of land, equity will not interfere by injunction, but will remit the parties to a court of law. Likewise equity

will not try title to personal property in an injunction suit." Id. at 821 (III).
"Equity will not restrain by injunction the commission of a mere ordinary or naked trespass. The nature of the trespass or the injury

resulting therefrom must be such as to require equitable interference." Id. at 827-28 (II). I\ lore especially is this true where the party sought to be enjoined sets up adverse possession to the land. All of these principles give cogency to the contention of appellees, first raised in the 5th plea of their answer, that had the right action been brought they would have been able to show conclusively that they were not guilty of contempt by violating the writ of injunction, nor even trespassers upon that portion of the land, the subject of dispute, claimed by appellee to which they, the appelants, were also laying claim by adverse possession.
Another point raised during the hearing at this bar is: inasmuch as the decree in injunction expressly enjoined the parties to that suit from "occupying" the lands of plaintiff, would it be such a breach of the injunction as to support these contempt proceedings for appellants to enter the lands in dispute merely to cut palm-nuts, to cut down coffee trees, or in burning farms on their own lands in such a careless manner as to also burn, and destroy trees and other products of the lands of appellees. The principle applicable thereto seems to be that stated as follows : "In order to authorize punishment for a violation of an injunction, the acts complained of must be clearly embraced within the restraining clause of the injunction. And whether or not particular acts constitute a violation of an injunction depends largely upon its special provisions. The language of an order of injunction should not be extended to cover acts not fairly and reasonably within its meaning. An

injunction decree is to be construed with reference to the nature of the proceeding and the purpose of the injunction." 22 Cyc. 1oi5--to16. But another and still more important question which we must now address ourselves to is : supposing, for argument's sake, appellants had not been adverse claimants to the land in question, and/or they had committed acts directly in contravention to the restraining order, could they even then have been punished for contempt in violating the injunction without proof that they, not having been parties to the original injunction proceedings, had had actual notice of the issuance, and scope, of the restraining order. The rule of law is that: "One cannot be punished for violating an order of injunction, unless it is made to appear that such order was personally served upon him, or that he had notice of the making of such order. Where, however, a party has actual notice of an injunction, clearly informing him from what he must abstain, he is bound by the injunction from that time, and will be punished for a violation thereof, although it may not have been served, or be defectively served on him.
And where an injunction has been ordered, a party having knowledge of that order, who deliberately violates the injunction that has been ordered, although not yet issued, is guilty of contempt of court; but in order to convict a person of contempt, under circumstances of that kind, it must be shown clearly that he had knowledge of the order for the injunction in such a way that it can be held that he understood it, and with that knowledge committed a wilful violation thereof." 22 Cyc. 1013-1014. Unfortunately, it is a source

of regret to us that some of our practitioners seem to be developing the habit of citing as authority the syllabi to opinions instead of the text of the opinions themselves. And, for that reason, it

may not be amiss to remark here in passing, that the object of the syllabus is merely twofold : (i) To give at a glance an idea of the principles settled in an adjudicated case; and (2) To facilitate the preparation of the index. Possibly some of our practitioners may, by their error, have been unconsciously led into an erroneous conception of the principle involved by referring merely to the syllabus of In re Moore, 2 L.L.R. 97, I Lib. Semi-Ann. Ser. 15 (1913), which syllabus reads: "To render a person amenable to a restraining writ it is not necessary that he should have been a party to the suit in which the writ was issued." But delving deeper down into the case itself we find that the Court quotes with approval the following holding of the United States Supreme Court in In re Lennon[1897] USSC 100; , 166 U.S. 548, 41 L. Ed. 'Ito (1897) : " 'The fact that petitioner was not a party to such suit . . . nor, was served by the officers of the court with such injunction, is immaterial so long as it was made to appear that he had notice of the issuing of an injunction by the court. To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice.' " 2 L.L.R. 97, tot. Still more explicitly is the principle expounded in the following: "Under some circumstances, at least, a party to an injunction suit may be chargeable with notice of the issuing of the injunction so that his violation thereof will render him guilty of contempt, even though he has no actual notice; but it is otherwise as to one not a party. In order to charge such a person with contempt, he must have had actual notice of the injunction prior to the performance of the acts upon which the charge of contempt is based. Thus a stranger to

an injunction, if he has notice or knowledge of its terms, is bound thereby, and may be punished for contempt for violating its provisions; but he cannot be charged with contempt unless a copy of the injunction was served upon him or it is proved that he had knowledge of its provisions. It is well settled that actual notice of the injunction is sufficient to render even one who was not a party guilty of contempt in violating it, and that it is not necessary, if he had actual notice, that he should have been served with a copy of the injunction or the writ." 6 R.C.L. 504, § 16. There is only left remaining now the necessity of examining the thesis of counsel for appellee contained in the second paragraph of his brief that the parties in these contempt proceedings were in privity with those in the former injunction case. We have not been able to discover upon what

ground the counsellor for appellee bases his contention that there was any sort of privity between the appellants in the case at bar, and the defendants in the former injunction case. For: "There are privies in estate, as donor and donee, lessor and lessee, and joint tenants; privies in blood, as heir and ancestor, and coparceners; privies in representation, as testator and executor, administrator and intestate; privies in law, as where the law without privity of blood or estate casts land upon another, as by escheat." 32 Cyc. 388, footnote to. In view of the foregoing it is our opinion that the contention that there was any privity between Bye Bathay and Darkpannah of the Gola tribe on the one hand and Thomas Young, Armlahbah and Mesarmah of the Dey tribe on the other is unfounded, far-fetched, and erroneous. The judgment of the court below should therefore be reversed ; the conviction of contempt against Thomas

'Young, Armlahbah and Mesarmah, appellants, should be quashed ; and appellee ruled to pay all costs; and it is hereby so ordered. Proceeding dismissed.
MR. JUSTICE RUSSELL read and filed the following dissenting opinion.

This case is before this Court on an appeal from the Circuit. Court of the First Judicial Circuit, Montserrado County, from exceptions taken to the final decree of the trial Judge, and which decree was predicated on an award of the Arbitrator appointed upon the recommendation, suggestion and stipulation of the two contending parties in this ease which stipulations are as follow, to wit : "This case having been called, Counsellor H. L. Harmon and Attorney M. Dukuly, appeared for plaintiff, and Counsellor Anthony Barclay for Thomas Young, Armlahbah and Mesarmah, defendants. Upon examination of the matter by the court, Mr. Embree ,being on the stand, His Honour Judge Brownell observed that in his opinion the examinationin-chief and the cross-examination seemed not to be confined to the real issue before the court; whereupon an exchang, of views between the court and counsellors on the point at issue was had, and the following issues were raised by the parties: "r. Counsel for plaintiff contended that Kpingbah town which is the centre of this misunderstanding is part of the Mission land over which defendants are exercising adverse title, and that a decree by this court perpetuating the former injunction had been d .sobeyed by defendants and their people. (See decree.) "2. Defend ants in contempt proceedings on the other
,

hand contended that they not having been made parties to the original suit, their deed was never taken into account by the Arbitrator appointed by the Court (His Honour M. Nemle Russell), and Kpingbah town is part of their land. "STIPULATIONS : " (a) The parties

having nominated and appointed Surveyor B. J. K. Anderson to proceed to the spot in question and make the necessary observations in reference to the two deeds. "(b) Both parties hereby agree to hand in officially certified copies of their deeds to the Arbitrator whose award shall be accepted as to the ownership of Kpingbah town. " (c) These stipulations shall be binding upon both parties and the award of the Surveyor shall be accepted as the basis of the Court's decree in these proceedings. "(d) Copy of these stipulations shall be filed with the Court in its Equity Jurisdiction. "[Sgd.] H. LAF. HARMON, Counsel for Plaintiff. "[Sgd.] ANTHONY BARCLAY, Counsel for Defendants." These stipulations having been filed, the court filed the necessary order, appointing the arbitrator-surveyor, and the clerk was ordered to issue the appointment for Mr. Anderson. The survey was done by Mr. Anderson, who filed the following report: "The undersigned, appointed as Arbitrator in the case: Revington L. Embree, representative of the Methodist Episcopal Church in Liberia, plaintiff versus Bye Bathay, a native of the Gola tribe and his people and Darkpannah, defendants, Disobedience of Injunction, for the purpose of determining whether Kpingbah town claimed by both parties to the above

entitled cause is situated on plaintiff's or defendant's land, comparing the deeds of both parties to the suit, begs leave to submit the following: "1. Kpingbah town located by actual survey was found to lie at a distance of above twenty-five chains within the line North 6o degrees, East running forty chains (40) of M. T. Decoursey's land **said line determining the North by East extremity of plaintiff's land** and lies in range 4. In relation to the line running South 3o degrees East from the North-east angle of plaintiff's land, the said Kpingbah town was located within twenty (20) chains of said line, and thus lies within the boundaries of plaintiff's land as covered by the deeds. "2. Upon comparing the deeds of both parties to this section it was discovered that plaintiff's land lie within the range t, 2, 3, and 4, while defendants' **land lies within range 5. "3. The parcel of land**, occupied for some time by defendants, commences at the North-west angle of plaintiff's land, said point being located in range 4. This location would be consistent with the deed if their certificate of survey as contained in their deed, specified their commencement to be at N.W. angle of M. T. Decoursey's land, instead of the one specified therein, which is actually a little less than two miles away from their present lo-. cation. "4. In the survey of plaintiff's land in order to locate the position of Kpingbah town, relative to the dispute, it was discovered that not only have the defendants occupied the said town, which as already stated above, lies within plaintiff's land, but it also, it [sic] was observed that they are operating upon territory which lies well within

range 2 or just above
the middle of the plaintiff's land. "s. For more detailed information on
the above, see the attached certificate of survey made by
the Arbitrator. "Respectfully submitted, "[Sgd.] B. JOSEPH K. ANDERSON,

Arbitrator."
The defendants in these contempt proceedings
being dissatisfied with the above award and its supporting certificate, filed
the following objections, to wit : "Thomas Young, Armlahbah
and Mesarmah, Objectors to the Award of the Surveyor and Arbitrator in the
above entitled cause, respectfully pray that the Award
be set aside for the following reasons : "1. Because when on the 27th day of
September A.D., 1934 the said B. J. K. Anderson, Surveyor
and Arbitrator, arrived at New York in company with Revington L. Embree, the
plaintiff in the above entitled action of injunction, they, Surveyor and
Plaintiff,
without notifying objectors of their arrival and readiness to make the survey
immediately that same afternoon proceeded to survey
the land objectors only hearing accidentally of what was going on. This
first act on the part of said Surveyor was not in keeping
with the spirit, meaning and provisions of the stipulations of the parties.
And this the objectors are ready to prove. "2. And also
because on the 9th day of September A.D. 1934 objectors having discovered
that about 25 chains of land in range one (1) had been
surveyed without the knowledge and in the absence of objectors said land
although a part of 400 acres as contained in the deed of
the said Methodist Mission, being left thereof for the purpose of extending
the boundaries of the said Methodist Mis-

sion land, objectors having protested, received the reply from the said
Surveyor 'that he knew what he was doing.' And
this the objectors are ready to prove. "3. And also because when during the
survey Objectors requested to see the original deed of
the said Methodist Mission, both plaintiff and Surveyor stoutly objected and
refused to exhibit said deed to them, the said survey
being carried on from a plot which said objectors had never seen and had no
knowledge of as to its genuineness and correctness. This
act on the part of the said Surveyor showed gross partiality and was not in
keeping with the spirit, meaning and provisions of the
stipulations signed by the parties. And this the objectors are ready to
prove. "4. And also because when on the ist day of October
A.D., 1934, the objectors having hurried to the place of the survey and where
the said Surveyor resided, found that the said Surveyor
and plaintiff had already commenced surveying although it was yet early in
the morning without them and without allowing sufficient
time for them to reach the spot knowing full well that objectors resided at
least an hour and some minutes away from the said place.

The Surveyor's attention having been called thereto and a protest made, he replied that he did not care; or was not interested in them, or words of like tenor. This also showed partiality on the part of the skid surveyor and was contrary to the spirit, meaning and provisions of the stipulations. And this the objectors are ready to prove. "5. And also because objectors are dissatisfied with said survey and verily believe that said Surveyor acted fraudulently and evinced great partiality in favour of the said Revington L. Embree, repre-

sentative of the Methodist Mission, plaintiff, in that before the said Surveyor left Monrovia, and after he arrived at the place of dispute demanded and endeavoured to compel objectors through their counsel and themselves direct, respectively, to pay to him the sum of Twenty dollars ($2o.00) which he said would be used for his expenses but not to be considered as a part of his charges, objectors having refused to pay said sum, and surveyor then evidently became partial and antagonistic to objectors. And this the objectors are ready to prove. "6. And also because the Surveyor and arbitrator aforesaid not only went up the river to New York, the place of the dispute of title, but resided with the said plaintiff as his guest thereby the said Surveyor became embarrassed as objectors verily believe and could not, even if he desired to, act freely and with that degree of impartiality expected of him as a surveyor and arbitrator in a matter of disputed title to land. And this the objectors are ready to prove. "7. And also because it was understood that the survey would be done in accordance with the boundaries and descriptions as set out in the original deeds, said Surveyor ,did not do this, paying no attention whatever to objectors' deed. This was contrary to the spirit, meaning and provisions of the said stipulations. And this the objectors are ready to prove. "8. And also because objectors say when there is a disputed title to land, the only remedy for settlement is ejectment and not injunction, nor complaints against parties who are never parties to the suit, for disobeying an injunction. That the whole and sole object of the complaint against them who are Deys and not Golas is to deprive

them of their land illegally. Objectors say that only ejectment can legally oust them and not injunction, the said Kpingbah town having been owned and occupied by them undisputedly for a number of years. And this the objectors are ready to prove. " 9. And also because objectors say that the said Surveyor and arbitrator acted on the whole partially, unjustly, arbitrarily and corruptly against their interest and in favour of plaintiff, contrary to the spirit, meaning and provisions of the stipulations of parties. The objectors therefore pray that the Award be set aside and made of nought and a new survey ordered. And

this objectors are ready to prove. "[Sgd.] THOMAS YOUNG, ARMLABAH & MASARMAH, Objectors, by their Attorneys.

"[Sgd.] ANTHONY BARCLAY,
Counsellor at Law.
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"Affidavit attached." The court after hearing evidence as to the alleged failure of the surveyor to notify
defendants of his arrival at New York and proceeding at once with the survey, as well as other evidence as to whether abutting land
owners were in a position to say that Kpingbah town is on plaintiff's or defendants' land, as found by the award, overruled the objections and rendered a final decree, based on Award of surveyor Anderson. To this decree of the trial court, respondents excepted and prayed
for an appeal to this Court and filed a bill of exceptions containing four counts which are as follows, to wit: "i. Because when
on the 22nd day of August A.D. 1934, a complaint having been made by Revington L. Embree, representative of the Methodist Episcopal Church, plaintiff against Thomas Young, Armlahbah and Mesarmah, respondents

for disobeying injunction
decree of His Honour M. Nemle Russell, dated 16th day of May A.D. 1933 respondents having shown to Your Honour by verified answer
that they were not parties to said injunction directly or indirectly and consequently should not be held in contempt for disobeying
said injunction, Your Honour overruled said plea and held them to answer for disobedience to which respondents except. And also because
Your Honour further overruled count five of the Answer of respondents in contempt proceedings which raised the question of title
and which set out that where title is in dispute ejectment is the proper remedy and not injunction, to which respondents except.
"3. And also because when on the 2 I s t day of September A.D. 1934 it became apparent during the hearing of the contempt proceedings
that the bone of contention was over the ownership or title to land upon which is situated Kpingbah town, and stipulation were filed
by both parties for an impartial surveyor and arbitrator to go up and ascertain said fact, upon the report of the arbitrator and
surveyor, respondents having on the 4th day of October A.D. 1934, filed objections of law and fact, without calling on said objectors
to prove by evidence the allegations of fact stated in said objections to which respondents except. "4. And also because on the 8th
day of October A.D. 1934, Your Honour handed down your final decree to which respondents except. "THOMAS YOUNG, ARMALAHBAH & MESARMAH,
Objectors and Respondents, by and through their Attorney. "[Sgd.] ANTHONY BARCLA.Y, "Counsellor-at-Law.

"Approved subject to . record : "[Sgd.] NETE SIE BROWNELL,

Resident Judge, First Judicial Circuit, Mo., Co."
At the April, 1935
term of the Honorable Supreme Court, when this case was called for hearing the contending parties filed another stipulation which
is as follows, to wit: "STIPULATIONS "It having been apparent that there are irregularities committed on both sides in the progress of this cause, as for example neither
side joined issue before the cause was heard in. the Circuit Court of the first judicial circuit in the above contempt proceedings;
and in order to prevent multiplicity of suits and effect a final settlement of the dispute, it is considered advisable to go beyond
the contempt proceedings and ascertain on whose land is situated Kpingbah town and Golahvah, the subject of these proceedings, in
order that the parties concerned may have once and for all time their boundaries defined, it is hereby agreed to by and between the
parties thereto : "1. That the services of the disinterested Surveyor H. B. Duncan, or any other Surveyor, who has never been employed
by either side for the survey of the said tract or tracts of land, be secured to go up to the spot and make an impartial survey.
"2. That for the purpose of the survey both parties will surrender their title deeds to the Court which will supply authenticated
copies thereof to the Surveyor chosen, to be returned by said Surveyor after the survey. "3. That the survey is to be done from start
to finish in the presence of the contending parties, or their representatives, and shall take place as early in May as possible,
provided, however, that notice

of at least four (4.) days shall first have been given to all parties concerned, before the date for the commencement of the survey. The Surveyor shall immediately thereafter file his report in the Court.
"4.. The Surveyor chosen shall be sworn in open Court and in the presence of the parties, to act justly and impartially; and during
the period he is employed in carrying out the survey he shall not reside with either of the parties interested, but preferably on
the other side of the river. "5. That the costs of said survey shall be borne by both parties equally and shall be collected by the
Court. "[Sgd.] ANTHONY BARCLAY,
Attorney for Thomas Young, Armabalahbah and Mesarmah,

Appellants. "[Sgd.] R. L. EMBREE, Appellee."
The Supreme Court, accepting the stipulations, ordered an interlocutory order issued by the Clerk of this Court to the court below,
commanding the judge thereof to resume jurisdiction and carry out the order of this Court, which interlocutory order reads as follows,
to wit: "Pending the hearing and as a result of questions propounded to the parties from the Bench, it was made clear that the real

kernel of the dispute was being lost sight of in the injunction proceedings and the contempt proceedings which grew thereout and were the special subject of this appeal. The parties at that stage applied for a suspension of further proceedings here so as to enable them to prepare and file stipulations that might put a final end to the dispute. "Said stipulations were duly filed in Court on the 26th day of April, 1935, and are as follow: . . . [See supra[1935] LRSC 25; , 4 L.L.R. 393.] "The Court permits the said stipulations to be filed,

and decides to suspend further proceedings in said cause pending the execution by the court below of the following order. "i. The Circuit Court of the First Judicial Circuit shall resume jurisdiction of this cause for the purpose of carrying out the intention of the parties as expressed in said stipulations. That the said court shall consult the surveyor chosen and parties hereto, before fixing the date of the survey. "3. That the . parties who have signed these stipulations will themselves be present on the scene at the time of the survey in order to personally participate therein. ".1.. That the said court will make a report to this Court of all that shall have been done in the premises during our resumed sittings to commence May loth proximo. "5. That the Clerk of this Court shall send a mandate to the court below with a copy of this interlocutory order for its information, guidance and direction. "Given under our hands and the Seal of Court this 26th day of April, A.D. 1935. "[Sgd.] L. A. GRIMES, Chief Justice, Supreme Court of Liberia. L.S. "[Sgd.] SAMUEL J. GRIGSBY, Associate Justice, Supreme Court of Liberia.

"[Sgd.] R. EMMONS DIXON, Associate Justice, Supreme Court of Liberia."

The interlocutory order of this Court, in my opinion, sets aside the appeal prayed for and granted to appellants, because the points set out in the objections to the award were sustained to the effect that fraud was committed by Mr. Anderson in the survey of the tracts of land in dispute. Upon stipulations of both parties a new survey was ordered by this Honorable Court at its April term,

19 35. The trial judge thereupon resumed jurisdiction

and upon the recommendation of the contending parties, appointed Surveyor J. F. Dunbar, who surveyed the said tracts of land and made the following as his reports: "CROZIERVILLE,

May 30, 1935.
"THE CIRCUIT COURT, FIRST JUDICIAL
CIRCUIT,
REPUBLIC OF LIBERIA. "HONOURABLE SIR,

"My having been chosen the Surveyor by both parties who signed in the presence of
the Honourable Supreme Court stipulation prescribing that a final settlement of their disputes be effected by an impartial survey
of the tract or tracts of **land which occasioned said dispute, to survey said tract or tracts of land** in order to have once and for
all time the boundaries of those tracts defined, beg to submit the following report: "The survey was started on the 23rd instead
of the 21st instant for reasons already submitted to the Honourable Court.
"On the day of starting Prof. Embree was present, representing
himself ; Thomas Young represented himself, Counsellor Anthony Barclay not being present. There were present, also as witnesses for
Thomas Young: Messrs. Henry Snetter, Charles White of Millsburg and Henry Harris. The survey took up four days and each of the parties
named was present on the line. Many other persons from the nearby towns, some as workmen, and others as lookerson, followed the survey.
"In keeping with the fourth stipulation signed by the parties, I suffered great inconvenience of walking to my home on my plantation
every evening, a distance of about six miles, and of walking back to the spot every morning.

"I enclose
diagram showing as near as possible the areas the deeds forwarded me by the court call for. The heavy lines in the diagram show the
sides surveyed by me. "Every consideration was given the views and wishes of both parties which did not affect the actual survey
in order to bring about a final settlement of the dispute. The side surveyed (the eastern) was chosen to satisfy Thomas Young although
Prof. Embree, Mr. Snetter and I felt that the western side should have been taken because the area (25 acres) bordering on the river
starts from the south-east angle of lot No. 41. "As is observed on the diagram, the point of departure--the corner or angle taken
as starting point-- was the south-east angle of lot No. 41. To get this starting point the distance between the south-east angle of lot No. 39--an old plum tree--and the southwest corner of lot No. 41 was tested. After measuring the distance between the south-east angle of half
of the width of lot No. 77--the whole frontings of the Mission's river block--I started inland. "The course of bearings of each block
and of the whole area of the lands in dispute as is found in the deeds is 3o (thirty) degrees by 6o (sixty) degrees. The blocks owned
by the Mission forming one united area of 525 (Five hundred and twenty-five) acres, and this whole block having been surveyed and
boundaries fixed by soap trees on some of its sides since over forty years ago, according to the rule of resurveying such in area,
as is given by recognized authorities on surveying, a magnetic variation of at least two minutes for each and every year is to be
made or allowed. I therefore adopted 3I 1,4 degrees and 53% degrees as the course for the re-survey made by me. The survey made according

to these compass bearings harmonized to a very great extent with the old land marks on the side line of lot No. 4.7 and on the front

base line of the 400 acres and made a very slight difference of the eastern side where there are no
old land marks and where surveyors A. D. Simpson made a survey not many years ago, taking undoubtedly 3o degrees by 6o degrees as
his course. The course adopted by me was agreed upon and accepted by both parties before the survey was made. "The eastern side line
was completed on the afternoon of Tuesday, the 28th instant, in the presence of the parties named above and about 32 others representing
both interests. The length of this line from the river is chains. "The running of this line threw the Golavah town in the Mission
area, the distance inward or from the river not being tested, but I judge it to be about 87 chains from the river and about 1 2 to
15 chains from the side line. "Kpingbah town consists of 4 houses situated in a somewhat rectangular form. The line by me threw three
of the houses, which constitutes the body of the town, in the Mission area, leaving one situated in the eastern angle, outside, .
. . chains from the river. "When the end' of this 157 1/ chain line was reached, I asked the two parties whether I should proceed
further by turning westward to run 40 chains, the length of the inland base line of the 525 acres. This 40 chain line had been run
by the last surveyors appointed by the Honourable Court, Mr. Joseph Anderson being one of them, and the end of the side line fell
only eleven feet from the iron pegs placed on this cross line by Surveyor Anderson and his colleague. Prof. Embree contended that
I should survey (rerun) this cross line because Thomas Young refused to accept or be governed by the marks placed on this line by
the last Surveyors, which was one of the causes of the Injunction and Contempt proceedings filed in the court by him. I readily agreed
to run this line provided both parties agree to pay me my price of one

shilling an acre for the 52S
acres. I turned to Thomas Young for his final word. He said in the presence of all the parties present that he was satisfied with
the survey made by me up to that point, and if all the marks placed on the cross line in question by the former surveyors were brought
in eleven feet from where they are now resting, he was prepared to accept that line as northern boundary between the Mission land
and his land and regard the matter as settled and closed ; that if Prof. Embree wanted the line run he was satisfied; only have the
stakes or pegs on that line brought in eleven feet. I then appealed to Prof. Embree for his final word. He said he too was satisfied
with the survey made by me and that if bringing in the boundary marks on the northern line eleven feet would satisfy Thomas Young
and close the question, he was willing and prepared to have it done. I tried to make it clear to all who were present what both parties had said and gave notice that I was reporting

this to the Honourable Court. The survey was thereupon brought to a close. "I was agreeably surprised to find the boundary marks
on this northern line, placed there by the last surveyors, so near the end of my side line. Undoubtedly the course taken by these
surveyors must have been North 59 degrees East, coming across from the western line. Their work appears to be commendable and might
have been accepted by the Honourable Court. "I also enclose my bill for the work done and hope the Honourable Court will see to it
that it be settled without delay. "I am herewith returning the copies of the deeds sent me for survey. "I have the honour to be,
Your obedient servant, [Sgd.] J. F. DUNBAR."

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There is nothing in the record to show that after the
s ubmission of Surveyor Dunbar's report the trial judge made any decree on said report and that exceptions thereto were thereafter
taken by any of the parties in the case, which act alone would have been the authority for this Court to take appellate jurisdiction
over this case and render a legal decree. For this Honorable Supreme Court to take the report of Surveyor Dunbar and pass upon it
without any decree of the trial court thereon, would in my opinion be tantamount to taking original jurisdiction in the case; which,
according to the Constitution of this Republic this Court is strictly forbidden to do so. Lib. Const., Art. IV, sec. 2. The records
of the court below after the interlocutory order were transmitted to it, showed that both parties, to wit: Revington L. Embree (on
the 18th January) and Thomas Young for the respondents (on the 13th January, 1936) appeared in the court below and expressed perfect
satisfaction at the survey of Surveyor Dunbar. Dr. Dunbar's report; Minutes of the Circuit Court, First Judicial Circuit, January
8, 13, 1936. For the foregoing reasons assigned and the law supporting same, I have thought it my duty to file this dissenting opinion,
whereby I refrain from joining my colleagues of the Bench in taking original jurisdiction over Surveyor Dunbar's report and in reviewing
a case in which no exceptions are taken to Surveyor Dunbar's report. In conclusion, the petitioners and respondents have expressed
their satisfaction with Surveyor Dunbar's survey, which says that the respondents who have placed themselves under the jurisdiction
of the trial court by pleading or joining issue with petitioners and accepting a resurvey of the tracts of **land** in question are guilty
of contempt, because according to the said survey they are on the Mission **land**. In re Ricks et al.[1934] LRSC 7; , 4 L.L.R. 58, (1934).

Tubman v RL [1974] LRSC 56; 23 LLR 301 (1974) (13 December 1974)

ROBERT C. TUBMAN, Appellant, v. REPUBLIC OF LIBERIA, Appellee.
APPEAL FROM THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued November 21, 25, 26, 1974. Decided December 13, 1974. 1. The qualification of an expert witness should be established by the side offering his testimony prior to the giving of such testimony by him. 2. In all trials, but especially criminal trials, the trial judge should so conduct the trial in the presence of the jury that no bias or prejudice can be imputed to him. 3. For a person to be found guilty of uttering a forged instrument, he must have offered to pass, or make current, or publish such forged instrument, knowing it to be forged, declared such instrument was genuine, intending by so doing to defraud.

Appellant was to acquire ten acres of land, after the Superintendent of Grand Bassa County had agreed to the sale at so cents per acre, the price for farm land. However, when the deed was presented by appellant for attestation by the Superintendent, he was informed that the price for land in cities and townships had been ordered fixed by the President at $30.00 per lot and, therefore, the receipt from the Bureau of Internal Revenues for $5.00 was, of course, inadequate. Appellant was also told that the deed would have to recite as grantee the name of the company for whom appellant, a lawyer, was apparently acting as agent. Subsequently a new deed was delivered by appellant's secretary to the Superintendent for attestation, with a receipt from the Bureau of Internal Revenues for $1,50o.00. It was later discovered that a receipt from the Bureau for $15.00 had been altered to read $1,soo.00. The appellant was thereafter indicted for the crime of uttering a forged instrument. He was tried, convicted as charged by a jury and appealed from the judgment entered against him. The Supreme Court thoroughly examined the trial
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toinqe- g4sis of such exhaustive study declared that,..thg4tri! of forgery was committed by someone, but that there was not a scintilla of evidence to warrant the conviction of appellant. Therefore, the Supreme Court reversed the judgment and ordered the appellant discharged without day.
C. Abayomi Cassell, 0. Natty B. Davis for appellant and appellant, pro se.
Solicitor General Roland Barnes and Assistant Solicitor General Jesse Banks, Jr. for appellee.

MR. JUSTICE Court.

HORACE

delivered the opinion of the

Sometime in 1971, Counsellor Robert C. Tubman, the appellant, approached the Superintendent of Grand Bassa County, Lawrence A. Morgan, requesting he be allowed to purchase ten acres of land in Harlandsville, Lower Buchanan, Grand Bassa, to be used for the establishment of a flour mill company known as the National Milling Company of Liberia. The Superintendent of the County readily agreed to the proposition, as he felt the establishment of such a company would be beneficial to the County. Counsellor Tubman, thinking the land to be farm **land, paid into the Revenue Office of Grand Bassa County the amount of $5.00, the purchase price of ten acres of land** at fifty cents an acre. When the deed to the property was presented to the Superintendent for attestation, Counsellor Tubman was told that the President required all land in the Cities and townships to be sold at $30.00 per lot and since one acre in Grand Bassa County contained five lots, the amount to be paid was $1;5oo.00. Appellant, through his secretary, Charles Borley, supposedly paid the amount. It came out later that the revenue receipt which was presented to appellant by his secretary was forged.

When the forgery was discovered, appellant was indicted for uttering a forged instrument, on August 29, 1972. The case came up for trial on November 20, 1972, at the November 1972 Term of the Circuit Court for the Second Judicial Circuit, Grand Bassa County. A verdict of guilty was returned against appellant on November 25, 1972, by the trial jury. A motion for a new trial was made and denied and the trial court rendered final judgment against appellant on December 8, 1972, affirming the verdict of the jury and sentencing him to imprisonment for three months in the common jail. It is from this final judgment of the court below that this case is before us for review on a twenty-count bill of exceptions. Because we consider the evidence adduced at the trial of great importance, we have decided to summarize the testimony of the witnesses during the trial before dealing with the bill of exceptions. The first witness for the prosecution was Lawrence A. Morgan, Superintendent of Grand Bassa County. He testified that sometime in 1971 he was approached by appellant who wished to purchase ten acres of land in Harlandsville, Lower Buchanan, Grand Bassa County, for the purpose of establishing a flour mill. Mr. Morgan welcomed the idea but when the deed with a revenue receipt for $5.0o was presented to him, he informed appellant that, for one thing, he felt that for so much land in the heart of Buchanan, the deed should be prepared in the name of the company and not in appellant's name; and, secondly, be would have to pay for the land at $3o.00 per lot and that there were five lots to the acre. The transaction was regularized by communications between the newly appointed acting Land Commissioner and Superintendent Morgan. The new deed for the land was later presented to Mr. Morgan with a receipt for $z,5oo.00. He noted that the receipt was mutilated,

that is, there had been an addition of the word "hundred" and some of the figures had been altered. He

became concerned about the apparent irregularity but because appellant Robert C. Tubman was involved and because of the confidence he reposed in his integrity, knowing him as a colleague at the bar, he informed his agent, a clerk from appellant's office, who had been sent to collect the deed that he should tell his employer he would appreciate a certificate from the Bureau of Revenues in Monrovia to the effect that its office had made the alterations. He said further, and I quote him because of the importance of that part of his testimony, which we shall deal with later : "Anyone looking at the face of this receipt, will observe for himself the discrepancy to which I have referred. Again, Mr. Robert C. Tubman presented me the deed with the same receipt and other documents and asked me if I would have the President sign the deed since I had an appointment and I was going to see him. Again acting in good faith and reposing confidence in Mr. Tubman, I took the deed to the President and asked him to sign it." He further testified that the President ordered publication of notice of the deed because of the acreage and locality involved, and that later he learned that appellant presented the deed to the President for his signature. He also identified the revenue receipts for $5.00 and $1,5oo.00, respectively, as well as copies of correspondence exchanged between him and the Land Commissioner for Grand Bassa County. The second witness for the prosecution was Martha Dillon, who was employed as a filing cler,k in the Bureau of Revenues at Buchanan. She testified to having issued the revenue receipt for $5.00 which had been paid by appellant in the first instance for ten acres of farm land and identified her signature on said receipt. The third witness for the prosecution was Grace Harris, who was employed as Assistant Collector of Internal Revenues, Grand Bassa County, for whom the second

witness, Martha Dillon, was deputizing at the time the $s.00 revenue receipt was issued. She identified the signature of Martha Dillon on said receipt. The fourth prosecution witness was Isaac Mason, Land Commissioner of Grand Bassa County, who testified to having received a letter from the Superintendent of Grand Bassa County concerning the **land which appellant was in the process of purchasing and that after conferring with the surveyor who surveyed the land**, he wrote appellant to pay $1,soo.00 for the said land. He identified the correspondence between him and Superintendent Morgan touching this matter. Prosecution's fifth witness was J. Rudolph Johnson, at the time Commissioner of Internal Revenues. His testimony revealed that the Finance Ministry had received a letter from the President of Liberia to the effect that appellant had overpaid the Government $3o5.00 for land purchased for his clients. When the President's letter was received, a check was made and it was discovered that instead

of appellant having paid $1,5oo.00, the files of the Bureau of Internal Revenues showed that only $15.00 had been paid. A report of this fact was made to the President as a result of which, apparently, this case was commenced against appellant by the Ministry of Justice. This witness also testified that later on appellant was permitted to purchase the land for his clients and after deducting the amount of $1 s.00 already paid, the difference was paid and a revenue receipt for $1,447.5o was issued to appellant. This was after he had been indicted for uttering a forged instrument. One interesting point brought out in this witness's testimony was that the receipt for $1,5oo.00 that had been presented with the deed for the President's signature and a copy of the $15.00 receipt in the files of the Bureau of Internal Revenues bore the same number, which indicated that the $1s.00 receipt had been altered to show on its face $1,5oo.00. He identified copies of correspondence be-

tween the President and the Finance Ministry and between him and appellant. The sixth prosecution witness was Edwin Williams, Deputy Minister of Finance, who testified to having received a directive from the President to refund to appellant an apparent overpayment for some land purchased, but that when a check was made it was discovered that no refund was due appellant, and the President was duly informed of the circumstances. He identified copies of correspondence between the President and the Finance Ministry. Prosecution's seventh witness was Malissa Goll, a cashier at the Bureau of Internal Revenues at Monrovia, who identified the revenue receipt for $15.00 as the amount actually paid instead of $1,5oo.00 shown on the face of a receipt be-aring the same number. The eighth witness for the prosecution was Samuel Berry, who was called as an expert witness over the strong protest of the defense, to testify to the fact that the $1,5oo.00 receipt had actually been altered. He claimed to be a document analyst and testified to the obvious fact that the figure "is" on the receipt had been changed to $r,5oo.00. He spoke of having made a careful analysis even though the document had only been handed him that morning just before he testified. Prosecution's ninth witness was H. Boima Fahnbulleh, Assistant Minister of State for Presidential Affairs at the Executive Mansion. He testified to being responsible for processing deeds for the President's signature and that appellant had taken the deed for the land being purchased in Harlandsville for the President's signature with only a $5.00 receipt. He testified that he told appellant of the President's decision that all public lands in municipalities and townships should be purchased at $30.00 per lot and appellant promised to abide by the decision and would pay an additional amount of $1,170.00 for the 9.75 acres of land shown on the face of the deed,

and later appellant brought to him two receipts, one for $5.00 and the other for $1,5oo.00, with the deed. He had the necessary publication made. He also testified to having been called by the President on a day when appellant was with the President, and was told to bring the deed in question, which he did. He further testified that the President upon examining the deed discovered an overpayment for the land and instructed him to prepare a letter to the Ministry of Finance for the President's signature, directing a refund to appellant for the overpayment made by him, which he also did. There is a variance between this last witness's testimony and that of Superintendent Morgan. The latter testified to the fact that appellant presented him the deed with the $1,5oo.00 mutilated receipt and other related documents which he gave to the President in person, and in his presence the President instructed his Executive Secretary, Mrs. Isabel Karnga, to have the necessary publication made before he signed it, which meant that she should channel the matter to Assistant Minister Fahnbulleh who handled such things. Yet, Fahnbulleh says when the deed was presented to him by appellant it had only a $5.0o receipt attached and that the $z,5oo.00 receipt was not brought in by appellant until he had informed him about the President's decision on the purchase price of

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Aidoo v Jackson [1975] LRSC 25; 24 LLR 306 (1975) (26 June 1975)

A. K. AIDOO, Appellant, v. CHARLIE D. JACKSON, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 19, 1975. Decided June 26, 1975. I. Where evidence of title in an ejectment action is insufficient to support a finding, the Court will order the case remanded for an accurate survey by a board of arbitrators.

Appellant instituted an action in ejectment against appellee. At the trial the plaintiff was able to show a chain of title going back 40 years, but no further. The defendant produced a public land sale deed from the Republic, acquired after the start of the action. A jury trial was held and a verdict returned for the defendant. The plaintiff appealed from the judgment. The Supreme Court closely examined the evidence and found such grave inconsistencies that it declared itself unable to determine the issue of title. Therefore, the Court remanded the case and ordered the appointment of a board of arbitrators to conduct a survey of the land at issue. The judgment was vacated and the case remanded.
J. Dossen Richards for appellant. Samuel Pelham

for appellee. MR. JUSTICE HENRIES delivered the opinion of the Court. The appellant
brought an action of ejectment against the appellee in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, alleging
that the appellee had unlawfully entered upon and commenced operations
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on a parcel of land, No.
19-B, located on Clay Street in the city of Monrovia, which appellant had acquired in 1953. After calling appellee's attention to
this encroachment, and upon his refusal to vacate, appellant instituted ejectment proceedings against the appellee who allegedly
was successful in evading the service of process. Later, this action at bar was brought, and appellee appeared and answered by simply
denying the facts. He subsequently withdrew his answer and filed an amended answer together with a public land sale deed from the
Republic of Liberia. A trial was held which resulted in a verdict and judgment for the defendant, now the appellee. It is from this
judgment that appellant has appealed to this Court. The appellant filed a bill of exceptions containing four counts, but only one
issue was argued before us. That issue was whether a plaintiff in ejectment who possesses a forty - year - old title to the property
in dispute, but who is unable to trace his title to the sovereign, can recover against a defendant who obtained title from the Republic
after the inception of the action. In order to resolve this question, it was necessary that we delve into the record certified to
us, and cull therefrom the relevant evidence which would put the issue in its proper perspective. We found that the appellant acquired
a half-lot, No. 19-B, situated on Clay Street, Monrovia, from A. N. Pearson on November 26, 1953, and his deed was probated on December
8, 1953. The description of the deed follows : "Commencing at concrete monument 66 feet South 38 degrees West from the North West
corner of the adjoining lot No. 19 "b" owned by Lewis Benson and running South 38 degrees West 66 feet thence running South 52 degrees
East 82 - 1/2 feet to the place of beginning and contains the Southern half of said lot and no more, and containing one-eighth (1/8)
acre of land and no more."

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Appellant's grantor, A. N. Pearson, purchased this property from J. N. Roland and Anna Roland on August 22, 1945, and probated the deed containing the same description on August 27, 1945. Six years earlier,
in 1939, Anna Roland had bought this property from M. Nemle Russell and Williette V. Russell. This deed containing the above description
was probated on August 22, 1945. It, too, contained the above quoted description. The Russells acquired the same property from F.
G. Sirleaf and Caroline L. Sirleaf on December 12, 1933 ; and their deed was probated on December 13, 1933. Thus far the appellant's

title can be traced back to 1933, almost forty years prior to the filing of this action. In the lower court, the appellant testified, both in his statement-in-chief
and while under cross-examination, that the appellee had approached him several times to leave the property, but he had refused.
The last approach was six months before appellant was served with a notice of survey. Also, on cross-examination appellant testified
that he had earlier filed an action of ejectment against appellee, but the writ was never served on him. However, after the second
suit was filed, the appellee filed with his amended answer a public land sale deed signed by President W. R. Tolbert, Jr., dated
March 12, 1973. The deed, which was probated on March 13, 1973, calls for a parcel of land situated in the City of Monrovia, Montserrado
County, bearing the number N/N, and describes as follows : "At a point marked 'A' and running thence on Magnetic bearing South 38
degrees 32 feet West 133.5 feet to a point, thence running North 53 degrees West 66.5 feet to a point, thence running North 43 degrees
32 feet East 56 feet to a point, thence running North 43 degrees East 93 feet to a point, thence running South
44 degrees 37 minutes
East 111.5 feet to the place of

commencement and containing 17565.5 sq. feet or 1-1/a lots of land and no more." It appeared to us that the description in the appellee's deed differs considerably from that contained in the several deeds
prof erted by the appellant. We also observed that the appellee's deed calls for 1-1/2 lots, while appellant's deeds provide for
a half-lot. Moreover, the Land Commissioner's certificate, which was filed with appellee's amended answer, refers to a half-lot.
It is difficult to understand why the parties never detected these inconsistencies in the lower court or on appeal. Going still further
in the record we found the following significant cross-examination of the Land Commissioner of Montserrado County by appellant's
counsel : "Q. Mr. Witness, please tell the court and jury how or by what means you determined the piece of property as being public
land? "A. I know this because it was determined by the Surveyor of the Ministry of Public Works and Utilities that the lot in question
was part of the public domain. "Q. What official of the Department of Public Utilities determined that this particular land was public
land and did he give you that in writing? "A. Not being an encyclopedia I cannot remember everything done in my office during my
incumbency as Land Commissioner for Montserrado County. "Q. That may be quite true Mr. Witness, but do not forget that you are a
witness for the defendant and as such are subject to cross-examination. To test the veracity of your testimony. Now do you mind giving
a better answer? "A. I am indeed sorry that my answer being otherwise that I have to go and search my records. "Q. You have certified
to the President as Land

Commissioner that the **land** in question forms no part of any reserve or private
property. The statute controlling your office provides that you as **Land Commissioner must satisfy yourself that the land** is unencumbered
and not privately owned before you certify to the President. Did you as
Commissioner satisfy yourself that the **land** in question was
unencumbered and not privately owned before you certified that fact to the
President and if so, by what means did you satisfy yourself?
"A. I am not a grammarian, m satisfaction comes from a certified survey by
the President. "Q. What commissioned survey by the President
satisfied you that this **land is public land**? "A. I cannot say off-
handedly except I search the whole records. "Q. Mr. Witness, have
you ever been in the area where the **land is located? "A. No. "Q. All you know about the land being public land** is what TomTom told
you? "A. One writer says have the courage, acknowledge your ignorance than to
seek for credit under false pretense. I do not know
the meaning of TomTom. "Q. I simply mean, Mr. Witness, that no surveyor gave
you any certificate that the **land is public land**? "A. Yes, the man
who surveyed the **land gave me the certificate. "Q. Did I understand you to say that you honorably retired in 1971, as Land** Commissioner?
"A. I have the letter in my file but I cannot remember now whether it was
1971 or 1972. "Q. But can you remember whether you were
Land Commissioner in 1973?

"A. I cannot remember that except the letter that the President wrote me.
"Q. I assume that you were not a **Land** Commissioner in Montserrado
County,in March, 1973, and if my assumption is correct, say by
what authority you signed the deed as **Land** Commissioner issued by
President Tolbert on the 3rd day of March, 1 973? "A. I cannot
remember unless I got my records. "Q. Since you are conveniently forgetful
this morning, tell the court and jury what you meant when
you said 'I was employed by President and the Government of Liberia from 1955
to 1971 ?' "A. In my school days, my professor used
to tell me the very best professor makes mistakes. So I made mistake in the
day. "Q. And you could have also made a mistake in other
parts of your testimony, not so? "A. No I No I No I" We quoted this excerpt
from the record of the trial because it brings into issue
whether or not the parcel of **land the appellee is claiming is in fact public land**. The Public Lands Law, 1956 Code 32 :3, provides
as follows. "Sec. 2. Duties of **Land Commissioners. Each Land Commissioner if satisfied that public land** about to be sold is not privately
owned and is unencumbered shall issue a certificate to a prospective
purchaser to that effect." See also Section 3o of the same title.
This section has been interpreted by this Court in Harmon v. Republic,
decided May 6, 1975, as requiring that "before any public
land can be sold or before anyone claiming a certain parcel of land to be public land can buy same, the Land Commissioner must have
conducted some investigation to ascertain the exact status of same and to
determine whether the **land** involved is encum-

bered or not." It is obvious from the testimony of the **Land** Commissioner that he did not conduct such an investigation before issuing the certificate for the survey or the execution of the deed by the President. Such neglect to carry out his duties by the **Land** Commissioner does tend to cast doubt on the declaration contained in his certificate for the survey, and does appear to lend support to the appellant's contention that the parcel of **land** in dispute, located in the metropolitan area of Monrovia, could not have been public **land** in 1973, not only because the appellant had title to it, but because of the apparent difficulty in finding unencumbered **land in the city. As a result of the disharmony between the Land** Commissioner's certificate and the deed, there is an uncertainty as to whether only a half-lot or one-and-a-half lots were public **land. If we follow the Land** Commissioner's certificate, then only a half-lot was public **land** and, therefore, the President inadvertently issued a deed for more than a half-lot in favor of the appellee, because the execution of the deed must be based on the finding of the **Land** Commissioner. Since appellee's public **land** sale deed calls for 1-1/z lots, it is possible, indeed probable, that either appellant's half lot is within, or is adjoining, the appellee's 1-1/2 lots. If the former is true, then the question arises as to which of the three half-lots is public **land**, and if the latter is the case, then the appellant's title still stands. Because of the grave inconsistencies that we have discovered from the evidence contained in the certified record of the trial court, we find it unpropitious to determine at this moment the main issue argued before us with respect to which of the parties has a better title. Instead, in keeping with Freeman v. Webster, [1961] LRSC 29; 14 LLR 493 (1961), we deem it to be fair and proper that the case be remanded to the lower court with instructions that an impartial survey be made of the lands described in both

deeds, starting first at the same point and following the same course as the original survey in appellant's deed, which is older ; and afterwards following the same procedure with respect to the description in appellee's deed, assuming that there is no difficulty in following the original lines of the previous surveys. See also Salami v. Wahaab, Is LLR 32 (1962) ; Karpeh Wreh v. Bakerflzango, [1968] LRSC 16; 18 LLR 293 (1968). This survey must be conducted by a board of arbitrators composed of a chairman and two additional surveyors to be appointed and sworn to determine the metes and bounds of the **land** in dispute and tender its report to the court for further action. Each party must be given the right to nominate one arbitrator and the court must appoint the third. The resurvey must be done in the presence of the interested parties, on whom notice must be served. Costs to abide final determination of this matter. And it is hereby so

ordered.
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Judgment vacated, case remanded.

Nyumah v Kemokai [1986] LRSC 28; 34 LLR 226 (1986) (1 August 1986)

BORBOR NYUMAH, Appellant, v. **JAMES KEMOKAI**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: July 8, 1986. Decided: August 1, 1986.

1. At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on the ground that there is another action pending between the same parties for the same cause in a court in the Republic of Liberia

2. In this jurisdiction, a party is required to give notice of facts which he intends to prove.

3. Every action of ejectment imports the principle of adverse possession, an issue of mixed law and fact, irrespective of whether or not an answer has been filed.

4. A suit in ejectment involves both mixed issues of law and facts which must be tried by a jury under the direction of the judge, unless a party thereto expressly waives jury trial.

5. It is not within the power of the court to determine whether the factual issues raised in an ejectment suit are sufficient or not, for to do so would be usurping the function of the jury.

6. In an action of ejectment, the plaintiff must recover on the strength of his title and not on the weakness of his adversary, as the weakness of the defendant's title will not of itself enable plaintiff to recover.

7. Any matter not laid in the written pleadings of a case cannot be expected to receive the legal consideration of the court, and courts of justice will only decide questions of law when properly raised in the answer and pleadings.

8. The Supreme Court takes cognizance only of matters of record upon the face of certified copies of the proceedings in the lower court. Where the bill of exceptions fails to show on its face that the exceptions taken are supported by the records of the trial, the Supreme Court will not take cognizance of such exceptions

9. Although the dismissal of a defendant's pleadings places him on bare denial of the facts alleged in the complaint, it does not deprive him of the right to cross-examination as to allegations contained in his adversary's pleadings, or as to documents filed with those pleadings, nor does it give the plaintiff exemption from proving all the essential allegations set forth in the complaint. The defendant's restriction to a bare denial does not of itself decide a civil case in favor of the plaintiff.

10. A court may correct its records or judgments during term time. A court may alter its judgment at any time before it is entered or, if it is entered, before it is made final. But it should not be allowed to do so without notice to both parties.

11 . There is no principle of law more firmly established than that the judgment must follow and conform to the verdict, decision or findings in all substantial particulars. A judgment must be supported by verdict or it will be considered as irregular and erroneous although not void or inoperative.

12. The proper remedy in case a judgment does not conform to the verdict is by a motion to modify the judgment, or by appeal, or writ of error.

13. The practice of amending a verdict in matter of form is one of long standing and is based on principles of the soundest protective public policy in furtherance of justice, having nothing to do with the real merits of the case. It is limited, however, strictly to cases where the jury has expressed their meaning in an informal manner.

14. The court has no power to supply substantial omission, and the amendment in all cases must be such as to make the verdict conform to the real intent of the jury. The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute its verdict for his.

15. Whenever a verdict is sufficiently certain to enable the court to give judgment and the sheriff to deliver possession, it will be sustained. A verdict must, however, sufficiently show what was awarded to plaintiff and must not be so uncertain that a writ of possession cannot be issued upon it, and a verdict which is not in accordance with the contention of either party is erroneous.

Appellee instituted an action of ejectment against the appellant praying that the appellant be evicted from a certain parcel of **land**. Appellant's answer to the complaint was dismissed by the trial judge who ruled appellant to bare denial. At the end of the trial, the jury returned a verdict that made no reference to the **land** in dispute, but instead awarded appellee damages in the amount of $25,000.00. Except for a prayer for general damages, no damages were alleged in the complaint. The trial judge, nevertheless, entered judgment in favor of the appellee awarding him both the amount of the verdict and the parcel of **land**.

Upon appeal, the Supreme Court held, *inter alia*, that the judge's inclusion of the parcel of **land**, which was not part of the jury's verdict, in the award is a reversible error that affects the substantial right of the appellant. The Court thereupon reversed and remanded to case to the trial court with the instruction that the parties are allowed to re-plead.

J. Emmanuel R. Berry appeared for appellant. *Roland Barnes* appeared for appellee.

MR. JUSTICE BIDDLE delivered the opinion of the Court.

This case has come before us on appeal from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, on a four-count bill of exceptions. The facts in the case, according to the certified records sent to this Court, are as follows:

Johnny Barbour, Nellie Barbour-Richardson, Josiah Barbour and the late Augusta Barbour-Tarpeh sometime ago inherited a parcel of **land** from their ancestors (not named in the records) in the settlement of Gardnersville, Montserrado County. Thereafter, Augusta Barbour-Tarpeh died and her share of the property, or interest therein, descended to her surviving heir, Leona Lloyd. From all indications, this parcel of **land**, the quantity of which the record certified is devoid, seems to be held by the Barbour family as tenancy in common. We shall, for the benefit of this opinion, dwell on the seizin of said parcel of **land** later in this opinion. There is also no showing as to when the said parcel of **land** was acquired originally by the ancestors of the present tenants in common. Whether the Barbour family's ancestors acquired the said parcel of **land by a public land** sale deed from the Republic of Liberia or otherwise is not clear as the trial records sent to this Court is silent on same. Howbeit, the Barbour family continued to enjoy the possession thereof in common, in peace and harmony until sometime in 1966 when, on account of some family quarrel, 20 acres of the said family **land** was surveyed and carved out of the entire family plot and divided equally among the family members, as follows:

1. Johnny Barbour, head of the family, five acres;
2. Nellie Barbour-Richardson, five acres;
3. Leona Lloyd, daughter of the late Augusta Barbour-Tarpeh, five acres (by inheritance); and
4. Josiah Barbour, five acres.

There remains a portion of the family **land** yet undivided. But again the quantity of the remaining undivided portion of said parcel of **land**, still held in common by the family, is unknown. The records are also dehors the metes and bounds of the family **land** in question.

In 1967, appellee, plaintiff below, is said to have purchased one acre of **land** from Josiah Barbour, for which a warranty deed was issued by Josiah Barbour to appellee. According to the records, the parcel of **land** sold to plaintiff by Josiah Barbour was part of Josiah Barbour's five acres of the divided **land**.

In 1983, according to the record in this case, appellant, defendant below, purchased three lots from the Barbour family and a deed was allegedly issued to appellant, signed by three members of the Barbour family, namely: Johnny Barbour, Nellie Barbour-Richardson and Leona Lloyd, as grantors, except Josiah Barbour who, according to the testimonies of Johnny Barbour and Nellie Barbour-Richardson, was out of town when the said three lots were sold to appellant. Testimonies in the records also show that Josiah Barbour was later informed of the sale to appellant. It is likely that the parcel of **land** sold to appellant was taken out of the remaining undivided **land**.

During the September, A. D. 1984 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, appellee instituted an action of ejectment against appellant, claiming that the parcel of **land** occupied by appellant was his (appellee's) *bona fide* property, having purchased same from one Josiah Barbour. In his two-count complaint, to which a copy of his warranty deed was annexed as exhibit "A", appellee prayed to be put in possession of said **land** and also prayed to be awarded general damages.

Defendant/appellant filed a two-count answer which, for the benefit of this opinion, we hereunder quote:

"1. Defendant submits that the action be dismissed for the reason that there is another action pending in this Honourable Court between the same parties and involving the same subject matter of which defendant prays this Honourable Court to take judicial notice. Moreover, defendant further gives notice that at the trial of the issues of law, he will produce copies of the said pleadings in further substantiation of the above.

"2. That as to count 2 of the complaint, defendant says that the averments contained therein are false and misleading and he denies that ". . . without any color of right has begun and is still continuing construction work on the portion of plaintiffs said lawful property . . . " Defendant submits that the **land** he is occupying is his lawful property and he gives notice that at the trial, he will produce his title deed covering said property".

The pleadings progressed as far as the reply and rested.

Even though defendant, in count one of his answer, alleged that the suit could not be maintained on the ground of pendency of suit between the same parties, involving the same subject matter, defendant made no effort to annex to his answer proof of said pendency of suit between the same parties. However, in count 2 of his answer, defendant gave "notice that at the trial he will produce his title deed covering said property".

On January 17, 1985, the court below, with His Honour Eugene L. Hilton presiding over the December Term thereof, disposed of the law issues, We would like to mention here in passing that even though both counsels signed the notice of assignment for the disposition of law issues, Counsellor J. Emmanuel R. Berry, counsel for defendant below, failed to appear and there is no record to show the reason for such failure.

In passing on the law issues, Judge Hilton ruled as follows:

(a) That defendant, having alleged or averred in count 1 of his answer that there is another action pending before the court between the same parties and involving the same subject matter, should have proferted the necessary exhibits, such as defendant's answer in the pending suit, sheriffs returns thereof, etc., so as to give the opposite party the required legal notice. And having failed to do so, count 1 of the reply which attacked count 1 of the answer was sustained and, therefore, count 1 of the answer was dismissed.

(b) That under the same principle of due notice, count 2 of the answer which merely gave notice that defendant will produce his deed during trial (such notice)was insufficient, in that, defendant should have proferted a copy of his deed mentioned in said count 2 of the answer.

The court below went on to say:

"In this jurisdiction a party is required to give notice of facts which he intends to prove . . .

Defendant having failed to give the plaintiff the required notice by making profert of his deed upon which he would rely to establish his ownership as against the claim of ownership by the plaintiff, violates the statute of giving notice to the opposite party . . ."

He thereupon dismissed the answer and placed defendant on "a bare denial of the facts stated in the complaint".

With respect to the court's ruling dismissing count 1 of the answer, we hold that the judge did not err. Such a pleading as contained in count 1 of the said answer is based on a question of law and is a plea in bar. It therefore was incumbent upon the defendant to have proferted copies of the pleadings of such a pending suit involving the same parties and same subject matter. This would have given sufficient notice not only to plaintiff but also to the court to take judicial notice thereof. Had defendant been sincere that there is pending a suit in the same court between the same parties involving the same subject matter, he would have also moved the court to dismiss the complaint on the ground of *lis pendens* which our statutes have provided for as follows:

"At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds:

(d) That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia." Rev. Code 1: 11.2(d).

Recourse to the records in the court below certified to us reveals that as a result of the dismissal of defendant's answer, defendant was barred from introducing affirmative matters. *Saleeby Bros. v. Haikal*, [1961] LRSC 35; 14 LLR 537 (1961).

Let us review some of what transpired in the court below:

WITNESS KEMOKAI (PLAINTIFF BELOW) TESTIFIED ON CROSS EXAMINATION

Q. Isn't it a fact that when you originally laid claim to the parcel of **land**, subject of these proceedings, and on subsequent occasions the defendant, Borbor Nyumah, informed you that he is the bona fide owner of said property by virtue of the title deed which was executed to him by the original legal owner of said property, Mr. Fahnbulleh?

A. The defendant said that someone sold the place to him.

Q. Defendant Borbor Nyumah notified you that he has a title deed covering the said parcel of **land** and also notified you that he would produce said deed at the trial?

OBJECTION; GROUND: 1) The question is outside the pale of this case. THE COURT: The objection is sustained. To which Defendant excepts. DEFENDANT NYUMAH TESTIFIED ON HIS OWN BEHALF:

Q. Are you Borbor Nyumah...defendant in this case?

A. Yes sir.

Q. Are you acquainted with James Kemokai, the plaintiff in this case?

A. Yes sir.

Q. The same James Kemokai has instituted an action of ejectment against you to have you evicted from the parcel of **land** which you occupied . . . Please state for the benefit of this Honourable court and jury all you know about this matter and especially in support of your answer?

"OBJECTION: Defendant's answer has dismissed. Raising affirmative matter when defendant has no answer in court. THE COURT: Defendant has no answer before the court and therefore he cannot testify in support of his answer as given by counsel. Objection is sustained. Defendant excepts.

Q. Will you please state for the benefit of this trial all you know about the case at bar?

A. Part of 1983, I went to one Johnny Barbour and I told him that I needed **land**, he told me to go come after next week, and after one week I went back and he (Johnny Barbour) said 'we have one spot to sell to you but he alone cannot do it. He called his family together and we went to the site. It was three lots. He said 'here is the place we get to sell to you'.. . and I paid the money. They informed a surveyor to survey the place, the surveyor surveyed the place, the deed was signed and probated. I went now to develop the place and one day I saw the plaintiff, Mr. Kemokai,.. who said that the place was for him. . . I told him that I bought this **land, here is my deed . . . If you know that the land** is for you go to your grantor. . . I then went back to the family, my grantor, and told them the trouble has now come, one Kemokai said that the place is for him. The Oldman in the family said. . . 'who sold the **land** to this Kemokai', and I told the Oldman that Kemokai said that one Josiah Barbour sold the **land** to him. The Oldman then said that this **land is family land** and no individual will sell it. The Oldman went on to say, ".. . the **land** was divided and the portion we sold to you is owned by us but not Josiah Barbour . . . After that I saw a writ. I rest" (see sheet five. 10th day's jury session, March 29, 1985). This testimony was corroborated by Johnny Barbour and Nellie Barbour-Richardson, witnesses for appellant, who testified that they sold the three lots to defendant, DIRECT EXAMINATION OF DEFENDANT/APPELLANT

Q. In your statement in chief you told the court and jury that you purchased the **land** you are occupying and that you have a deed covering same. Were you to see that deed would you recognize it?

OBJECTION; GROUNDS: Introducing affirmative matter; there is no answer in court. THE COURT: As the deed was allegedly pleaded in the answer and referred to it that he will produce it at the trial, which answer has been dismissed by the court, that answer carries away with it all that exist. Therefore, the objection is sustained. To which defendant excepts."

Although defendant's deed could not be admitted for reason already stated supra, plaintiff, now appellee, made no effort to produce his grantor, Josiah Barbour, before court to defend his title in keeping with the warranty clause in plaintiffs deed; nor was there any attempt made by plaintiff to rebut defendant's testimony in chief, as herein above quoted. Other than his own testimony, appellee produced only one witness, a Sylvester Massaquoi, who testified solely to identify Josiah Barbour's signature on plaintiffs deed. Massaquoi is no kin to the Barbours, but a one time office mate of appellee.

Apparently, appellant must have been in possession of a title deed on which he relied and for which he gave notice as stated in count 2 of his answer even though there was no reason stated as to why defendant did not profert copy thereof to his answer to give "sufficient notice" to plaintiff as contended by the latter in his reply. During argument before this Court, appellee contended that the mere mention by defendant in his answer that he does posses a title deed to the disputed **land** and that same would be produced at the trial was not sufficient in law under the principle of notice. Though plausible this argument may be, we hold a different view.

A suit in ejectment involves both mixed issues of law and facts and as such must be tried by jury under the direction of the judge unless a party thereto expressly waives a jury trial. In such an instance, the judge shall then have the right to determine the factual issues therein raised after he shall have firstly passed on the law issues. It is not within the power of the court to determine whether the factual issues raised in an ejectment suit are sufficient or not, for to do so would be usurping the function of the jury. This Court has held that:

"Every action of ejectment imports the principle of adverse possession, an issue of mixed law and fact, irrespective of whether or not an answer has been filed." *Karnga v. Williams et al.[1948] LRSC 3; , 10* LLR 10 (1948).

This Court has always held and continues to hold that in an action of ejectment, especially where title is in dispute, the plaintiff must recover on the strength of his title but not on the weakness of his adversary. *Bingham v. Oliver*, 1 LLR 47, 49 (1870); *Gibson et al., v. Jones[1929] LRSC 3; ,* 3 LLR 78, 84, (1929).

This Court has also said that "the weakness of the defendant's title will not of itself enable plaintiff to recover." *Birch v. Quinn*, 1 LLR 309 (1897); *Horace v. Harris*, [1947] LRSC 14; 9 LLR 372, 375 (1947). Count one of the bill of exceptions is therefore sustained.

Count 2 of the bill of exceptions states:

"And defendant further submits that he excepted to the court's charge wherein the court, among other things, left it to the jury to determine a salient issue of law as to whether any party or co-owner of a joint property can convey title without the consent of the other party.

Recourse to the records, we observed the following from the judge's charge to the jury: "That this case is an interesting one, in that:

> 1. Two grantors to the parties to this suit belong to the same family.
> 2. The two deeds, if not for the same tract of **land**, are for two separate areas within the **land** that the grantors inherited from their ancestors.
> 3. The grantors of the defendant's deed told you that, because of the trouble plaintiffs grantor was giving them over the piece of **land**, they resorted to partitioning 20 acres of their joint property, thus leaving each of them five acres.

Inasmuch as defendant's deed was denied identification and admission by the trial judge, it was improper for said judge in his charge to the jury to have made reference to the defendant's deed and to refer same to the jury to pass upon its credibility. On the other hand, such an important issue as to whether or not a coowner of a tenancy in common can properly sell or dispose of more than his own interest without authorization cannot be legally countenanced by this Court at this time because the answer of appellant (defendant below), even though dismissed, did not raise such issue, nor was it raised in plaintiffs (now appellee) pleading. It has been held that: "any matter not laid in the written pleadings of a case cannot be expected to receive the legal consideration of the court, and courts of justice will only decide questions of law when properly raised in the answer and pleadings." *McAuley v. Madison*, *1* LLR 287, 288 (1896); *Ibid*, 259. Moreover, such defect or omission cannot be cured at the appellate level either. "The Supreme Court takes cognizance only of matters of record upon the face of certified copies of the proceedings in the lower court. . ." and "where the bill of exceptions . . . in an appeal fails to show on its face that the exceptions taken and set up in said bill of exceptions. . . conform to and are supported by the records at the trial, the appellate court will not take cognizance of such exception, upon an appeal." *Elliot v. Dent*, [1929] LRSC 8; 3 LLR 111, 113 (1929).

The gist of the complaint was that plaintiff/appellee claims lawful title to a parcel of **land** said to have been purchased from one Josiah Barbour by appellee and that defendant/appellant was allegedly withholding or occupying same without any color of right. It was therefore

incumbent upon plaintiff (appellee) to prove his title conclusively against any semblance of title, or lawful possession by defendant (appellant). Hence, in the case *Salami Bros v. Wahaab*, [1962] LRSC 6; 15 LLR 32, 38 (1962), action of ejectment, this Court, in reversing the judgment of the lower court, held:

"We would like to remark that although the dismissal of a defendant's pleadings places him on bare denial of the facts alleged in the complaint, it does not deprive him of the right to cross-examination as to allegations contained in his adversary's pleadings, or as to documents filed with those pleadings; nor does it give the plaintiff exemption from proving all the essential allegations set forth in the complaint. The defendant's restriction to a bare denial does not necessarily decide a civil case in favor of the Plaintiff."

Count two of the bill of exceptions is sustained insofar as it relates to the trial judge's charge to the jury wherein he injected the issue of seizin or status of the Barbour family's parcel of **land**.

Counts three and four of the bill of exceptions shall be treated together because both counts deal with the verdict of the empaneled jury and the final judgment thereon rendered by the trial judge.

Count three of the bill of exceptions, stated in brief, avers that the trial jury returned from its room of deliberation with a verdict awarding plaintiff $25,000.00 damages without stating whether plaintiff was, or was not, entitled to the parcel of **land** subject of the ejectment proceedings, to which defendant excepted. Count four of the bill of exceptions also avers that in spite of the jury's failure to mention in their verdict who is entitled to the **land** in question, the trial judge, while rendering final judgment on said verdict, awarded plaintiff the disputed parcel of **land**, thereby altering the verdict, to which defendant excepted. For the benefit of this opinion, we hereunder quote the jury's verdict:

"WE THE PETTY JURORS TO WHOM THE CASE: James P. Kemokai of the City of Monrovia, plaintiff, versus Borbor Nyumah also of the City of Monrovia, defendant, was submitted, after careful consideration of evidence adduced at the trial of the said case, WE DO UNANIMOUSLY AGREE that Plaintiff James P. Kemokai be awarded $25,000.00 IN THE ACTION OF EJECTMENT".

It is important to note that plaintiff, in count two of his complaint, requested the court "to eject defendant from his premises. No damages was alleged in the body of the complaint. It was only in the prayer of the complaint where plaintiff initially prayed to be put in possession of the **land**, as well as be awarded general damages.

Further perusal of the records also reveals the following in the COURT'S FINAL JUDGMENT:

"At the call of the case for trial, a jury was empaneled and plaintiff with his witnesses were qualified and deposed. Plaintiff had with him a warranty deed and other documents which were admitted into evidence and he resigned the floor. The defendant and his witnesses testified after their qualification. He has no documentary evidence admitted into evidence as his answer with all its exhibits were ruled out. Arguments were entertained and a written charge given the jurors who returned from their room of deliberation with an award of $25,000.00 as general damages for plaintiff. The verdict was recorded at the request of counsel for plaintiff, and defendant registered his exception to it.

"As defendant has made no further move besides his entry of exception to the verdict, we will now proceed to enter this judgment:

"JUDGMENT: The verdict brought in by the trial jury, being in harmony with the evidence adduced at the trial, is hereby affirmed and confirmed. It is to be noted that the verdict is silent on the point that plaintiff is entitled to his premises. Taking the award given the plaintiff by the jury as the given premises, we deduce by implication and inference that plaintiff is entitled to the subject **land**, for to hold otherwise would stifle the trial and to refuse to enter judgment solely for this silence would be injudicious. The jury could not have awarded plaintiff damages if they knew and/or agreed that he was not entitled to his **land**.

This Court hereby adjudges that plaintiff is entitled to his **land** and the $25,000.00 award given him by the trial jury. The clerk of this court is hereby ordered to issue a writ of possession to enable the sheriff of this county to put plaintiff in possession of his premises Given from our hand in open court this 23rd day of April, A. D., 1985 /s/ Frederick K. Tulay
ASSIGNED CIRCUIT JUDGE PRESIDING.

To which judgment of Your Honour, defendant excepts and prays for an appeal to the Honourable the Supreme Court, sitting in its October Term, A. D. 1985. And submits. THE COURT: Appeal noted. MATTER SUSPENDED". From the foregoing, two salient issues are presented before us:

1. Was the verdict of the jury in harmony with the evidence adduced, or conversely, can general damages in dollars and cents be a substitute for a parcel of **land** sued for in an action of ejectment?
2. Was the trial judge legally correct to award the parcel of **land** sued for in said ejectment case where the written verdict of the jury is silent on same?

We shall traverse these issues in the reverse order.

As stated *supra*, the verdict of the empaneled jury in this case was silent or did not mention the **land** in dispute and same was recorded in the minutes of court. Therefore, the awarding of ownership to said parcel of **land** to plaintiff was in effect a modification or alteration of said verdict. "It is a settled law that a court may correct its records or judgments during term time. A court may alter its judgment at any time before it is entered, or if it is entered, before it is made final. But it should not be allowed without notice to both parties." *Yangah v, Melton[1954] LRSC 37; , 12* LLR 178, 181 (1954), as also cited in *Bonah v. Kandakai*, [1971] LRSC 86; 20 LLR 677, 679 (1971). And in so doing, the Court must take into account at all times that: "There is no principle of law more firmly established than that the judgment must follow and conform to the verdict, decision or findings in all substantial particulars. A judgment must be supported by verdict . . . in the case or it will be irregular and erroneous, although not void or inoperative. . . The proper remedy in case a judgment does not conform to the verdict is by a motion to modify the judgment, or by appeal or writ of error" (33 C.J.S. 1169 (1924), as cited in the case *Cassell et al, v. Cummings[1951] LRSC 4; , 10* LLR 409, 414 (1951). In the latter case cited and the case at bar, there are certain similarities insofar as it relates to the manner in which the trial judge rendered final judgment. Both suits are in ejectment. In the *Cassell* case, the empaneled jury delivered a verdict awarding plaintiff his **land** as claimed in the complaint and, in addition to this, awarded plaintiff general damages in the amount of $650.00. But during the rendition of final judgment, the trial judge deleted or omitted the general damages award, and in that respect this Court, speaking through Mr. Justice Shannon, further held:

"The practice of amending verdict in matter of form is one of long standing and is based on principles of the soundest protective public policy in furtherance of justice, having nothing to do with the real merits of the case. It is limited, however, strictly to cases where the jury has expressed its meaning in an informal manner. The court has no power to supply substantial omission and the amendment in all cases must be such as to make the verdict conform to the real

intent of the jury. The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute his verdict for theirs . . ." *Ibid*, 413-414.

In the instant case, the trial judge instead supplied or inserted in the verdict that which the jury omitted, that is, the award of the parcel of **land** sued for in the ejectment suit.

We therefore hold that the inclusion of the award of the parcel of **land** in the jury's verdict by the trial judge constitutes a reversible error because it adversely affected a substantial right of the appellant, With respect to the other issue, we here opine that the contention of the parties to the ejectment suit in the case at bar was for the recovery of a piece of property and not for general damages only. For in all ejectment cases, the primary contention as well as the expectation of the plaintiff is to firstly obtain a verdict for the recovery of the **land** sued for. General damages in ejectment case are secondary. The omission of the parcel of **land** sued for from the verdict renders such judgment unenforceable. Our position is supported by an opinion of this Court in the case *Duncan v. Perry*, 13 LLR 510, 520 (1960) where this Court held:

"Whenever a verdict is sufficiently certain to enable the court to give judgment and the sheriff to deliver possession it will be sustained. A verdict must, however, sufficiently show what was awarded to Plaintiff, and must not be so uncertain that a writ of possession cannot be issued upon it; and a verdict which is not in accordance with the contention of either party is erroneous." Counts three and four of the bill of exceptions are hereby sustained.

The other similarity in both cases is, in the case *Cassell case supra*, the defendant, Jacob Cummings, who was representing himself, did not appear during the disposition of the law issues, nor did he appear when the trial judge rendered final judgment despite the fact that he signed all notices of assignment in said case. So also did Counsellor J. Emmanuel R. Berry, sole counsel for appellant in this case. Despite the fact that he signed the notice of assignment for the disposition of law issues, he failed to appear. And even though he participated in the trial below, he again failed to appear for the rendition of the trial court's final judgment, having also signed the notice of assignment to this effect. As a result, Counsellor S. Edward Carlor had to be designated by the trial judge to take the ruling on behalf of defendant.

We seriously frown upon such irresponsible behavior on the part of lawyers before our courts, especially Counsellors of the Supreme Court Bar who, as arm of court, ought to uphold the dignity of the legal profession in keeping with their oath and the code of ethics. Many a time,

clients who would have had their cases speedily and professionally disposed of before the courts are often disappointed by irresponsible lawyers. Consequently, clients are abandoned to their detriment by such lawyers who seem not to have any remorse of conscience, or who have no faith in their own competency to face their opponent, and in many cases such clients not only suffer financial losses, but loss of property rights, loss of liberty, and sometimes loss of life. We therefore warn that a repeat of this unfortunate and irresponsible act on the part of any lawyer before our courts will not go unpunished, for in the hands of lawyers lie the fate of clients.

Wherefore, and in view of the foregoing facts and circumstances and the law controlling, the judgment of the court below is hereby reversed and the case remanded with instruction that the parties be allowed to re-plead, commencing from the complaint and in keeping with this opinion. And it is hereby so ordered.

Judgment reversed

RL v Sone et al [1988] LRSC 43; 35 LLR 126 (1988) (29 July 1988)

REPUBLIC OF LIBERIA, by and thru the Minister of Justice, **HONOURABLE JENKINS K. Z. B. SCOTT,** Petitioner, v. **MORVE SONE, VARMUYAH CORNEH** and all those claiming under the Aborigine Grant Deed of 1931, Respondents.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 2, 1988. Decided: July 29, 1988.

1. Exceptions taken and noted during the trial of a case, but not included in the bill of exceptions, are considered as having been waived.

2. Every allegation of fact in a pleading, if not denied specifically or by implication, shall be taken as admitted.

3. Contractually, the grantor of **land** is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed, and the fact that the Republic of Liberia is one of the parties does not lessen the binding effect of the terms of the contract.

4. If the President of Liberia, acting by reason of misrepresentation, fraud, misinformation, or concealment of facts, executes a deed to transfer property which is not within the public domain, none of his successors can legally uphold such act; and since each of them is under oath to enforce the laws of the Republic, it is within their legal duty to correct any wrongs done against the interest of a citizen by their predecessor in office.

5. The constitutional guarantee that no one shall be deprived of property but by judgment of his peers was never intended to protect the unlawful ownership of property. Therefore, in order that this provision of the Constitution may be invoked by a citizen in the possession of his property, he must be able to show that his acquisition and possession are legitimate and that genuineness of his title is beyond dispute.

In 1906, the Republic of Liberia conveyed to Chief Murphy Sone and the inhabitants of Vai Town a 25 acre parcel of **land** located in Via Town. Subsequently, in 1931, President Edwin J. Barclay allegedly conveyed to Morve Sone, Varmuyah Corneh et al., of Vai Town, under an Aborigines **Land** Grant Deed, twenty-five acres of **land said to be the same parcel of land** previously conveyed to Chief Murphy Sone and the inhabitants of Vai town. Thereafter, an ongoing dispute developed between the two groups.

In 1986, in an attempt to resolve the dispute, the President of Liberia constituted a Committee to investigate the authenticity and validity of the 1906 and 1931 deeds, and to submit findings and recommendations. Following the submission of the Committee's report, the President determined that the twenty-five acres of **land** in dispute be turned over to the legal representatives of the late Chief Murphy Sone, and that all public **land** sale deeds issued after 1906 for the same parcel of **land** be cancelled. Based on the foregoing decision, the Ministry of Justice, acting for the Government of Liberia, commenced cancellation proceedings for cancellation of the 1931 Aborigines **Land** Grant Deed, stating as grounds that the deed had been secured through fraud, misrepresentation and deceit.

The respondents did not file an answer. Instead, they filed a motion to drop misjoined party, asserting that they had no objections to the cancellation of the 1931 deed and that they had never claimed title to the **land** in question. The motion was resisted by the petitioner and denied

by the trial court. Following a hearing on the facts, the trial court entered a decree cancelling the 1931 deed and ordered that the property be turned over to the representatives of the late Chief Murphy Sone. To this ruling, the appellants noted exceptions and announced an appeal to the Supreme Court.

In its judgment, the Supreme Court affirmed the decree of the trial court cancelling the 1931 deed. The Court noted that the bill of exceptions did not contain any counts challenging the final decree of the trial court. Instead, the Court observed, the entire counts in the bill of exceptions were limited to the trial court's denial of the appellants motion to be dropped as parties to the cancelling proceedings. As such, the Court opined that there was nothing before it to review as far as the trial court's decree was concerned. The Court also ruled that exceptions taken during the trial but not included in the bill of exceptions were considered as having been waived. It held accordingly that as to those exceptions, they were not cognizable before the Court.

In addition, the Court ruled that as the respondents had not denied in their motion to be dropped as party-respondents or at the trial that the 1931 deed was secured by fraud, misrepresentation and deceit, the allegations must be deemed as admitted. Moreover, the Court said, since the respondents had stated that they had no objections to the cancellation of the deed, they had suffered no harm or prejudice by the trial judge's denial of the motion. The Court therefore *affirmed* the judgment decree of the trial court.

H. Varney G. Sherman appeared for appellants. *The Ministry of Justice* appeared for appellee.

MR. JUSTICE BELLEH delivered the opinion of the Court.

In the year 1906, during the administration of President Arthur Barclay, the Government of Liberia, through the President, conveyed to Chief Murphy Sone and the inhabitants of Vai Town, Montserrado County, 25 (twenty-five) acres of **land**, situated, lying and being near the Mesurado River, Bushrod Island, Montserrado County. Subsequently, that is to say, in 1931, during the administration of President Edwin J. Barclay, he is alleged to have executed an Aborigines **Land** Grant Deed conveying the same 25 acres of **land** to Morve Sone, Varmuyah Corneh, et al., of Vai Town, Montserrado County, Liberia.

According to the records, there are two main rival groups, namely, the group claiming title to the 25 acres of **land** under the 1906 deed executed by President Arthur Barclay, and the group claiming title to the same 25 acres of **land** by virtue of the Aborigines **Land** Grand Deed, allegedly executed by the late President Edwin J. Barclay in 1931. Thus, since 1931, the two factions have challenged each other's right to ownership and possession of the 25 acres of **land**.

The records further show that in 1986, the present administration, under the leadership of Dr. Samuel K. Doe, President of Liberia, in an effort to resolve this long standing **land dispute over the 25 acres of land**, appointed a committee to investigate the authenticity and validity of the 1906 and 1931 deeds and to thereafter submit its findings and recommendations to the President so as to enable him to make a decision thereon and thus bring relief to the people of Vai Town. The committee, having investigated the circumstances surrounding the execution of the 1906 and 1931 deeds, submitted its findings and recommendations to President Samuel K. Doe, based upon which findings and recommendations, the President decided that the 25 acres of **land**, subject of the committee's report, be turned over to Boima Larty and Alhaji J. D. Lassanah et al., legal representatives of the late Chief Murphy Soni. The President also decided that all subsequent public **land sale deeds executed for the same parcel of land** after 1906 be cancelled. The President then ordered the Ministry of Justice to proceed, through the appropriate court to have the 1931 deed cancelled. It is in obedience to the President's order that the Ministry of Justice, on March 6, 1986, filed a petition in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, for cancellation of the 1931 Aborigines **Land** Grant Deed, alleging, among other things, that the 1931 Aborigines **Land** Grant Deed was procured by the grantees through fraud, misrepresentation and deceit. For the benefit of this opinion, we hereunder quote verbatim petitioner's petition:

"PETITION
Petitioner in the above entitled proceedings, respectfully petitions this Honourable Court for the cancellation of an Aborigine **Land** Grant Deed purported to have been executed in favour of respondents in 1931 by the late President Edwin J. Barclay, and for reasons showeth the following to wit:

1. Because petitioner says that the said Aborigine **Land** Grant Deed was procured by the respondents from the Republic of Liberia in 1931 through fraud, misrepresentation and deceit perpetrated by the late Chief Morve Sone and the People of Vai Town for 25 acres of **land** situated, lying and being near the Mesurado River, even though the so-called grantees knew fully well that the said 25 acres of **land** had already been conveyed to the late Chief Murphy Soni and the inhabitants of Vai Town (Vai's People), Monrovia, in the year 1906, as can more fully be seen from copies of the deed of 1931 and that of 1906 hereto attached and marked exhibits "A" and "B" respectively to form a cogent part of this petition.

2. And also because as a further apparent act of fraud and deceit committed and perpetrated by the respondents in procuring the said Aborigine **Land** Grant Deed, the said deed was allegedly signed by the late President Edwin J. Barclay, but later on the 10t h day of August, 1953, the said President Edwin J. Barclay categorically denied having at any time signed any public **land** sale deed during his tenure as President of the Republic of Liberia, unless such a deed was countersigned by the **land** commissioner, T. G. Collins. He went further to say that during his incumbency as President of Liberia, he always signed his name on deeds as "Edwin Barclay" and not "Edwin J. Barclay" as is reflected in the so called Aborigine **Land** Grant Deed of 1931. Petitioner submits that this well known practice and procedure of the late President Barclay in signing deeds is not shown on the so-called Aborigine **Land** Grant Deed. Therefore, it can be concluded that it was respondents who themselves prepared the 1931 deed and forged or signed President Barclay's signature thereon, which is an act of fraud and for which cancellation will lie.

3. And also because petitioner says that the President of Liberia, Dr. Samuel Kanyon Doe, appointed a committee to investigate the authenticity and validity of the 1906 and 1931 deeds, and concluded in his decision that the said 25 acres of **land** situated in Vai Town should be turned over to Boima Lartey and the late Chief Murphy, and that the deed of 1931 and all subsequent public **land** sale deeds executed after 1906 for the subject property should be cancelled. A copy of President Doe's decision in support of petitioner's contention, as well as his letter addressed to Mr. Lassanah, dated February 14, 1986, are hereto attached and marked in bulk Exhibit "C", to form a part of this petition."

4. And also because petitioner says that Vamuyah Corneh, and all those claiming under the purported 1931 Deed are heirs and representatives of the late Morve Sone who, through deceit, fraud and misrepresentation, procured the 1931 deed which is the subject of this dispute; and since indeed and in fact the late Morve Sone did not have title to the 25 acres of **land** in question, he could not pass same to his heirs and/or legal representatives.

Wherefore, and in view of the foregoing, petitioner prays this Honourable Court to cancel the fraudulent Aborigine **Land** Grant Deed of 1931 and make same null and void to all intents and purposes; and to grant unto petitioner such other relief which this Honourable Court in its judgment would deem legal and equitable."

There was no returns/answer filed by the respondents but the records show that on the 8'h day of April, same being the 17th day's jury session of the March Term of Court, A. D. 1986, when the

petition for cancellation was called for hearing, counsel for respondents, counsellor Robert G. W. Azango, brought to the attention of the court that they had filed a motion to drop misjoined party, growing out of the cancellation proceedings, and that said motion should first be taken up before the hearing of the cancellation proceedings. The request was granted and the Republic of Liberia, through the Ministry of Justice, by permission of the court, spread on the minutes of the court its resistance to the motion. The court then entertained arguments *pro et con* and thereafter denied respondents' motion to drop misjoined party and sustained the resistance of the petitioner.

On the 15th day of April, same being the 21St day's jury session of the March A. D. 1986 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, the court handed its decree declaring the 1931 Aborigine **Land** Grant Deed cancelled. We hereunder quote the relevant portions of the court's decree:

"In view of the facts outlined above and laws cited, said deed of Morve Sone and Varmuyah Corneh et al., allegedly issued and signed by President E. J. Barclay in 1931, is hereby cancelled and made *null* and *void* to all intents and purposes, considering the surrounding facts and circumstances revealed by oral and written evidence. The criteria for the cancellation of public **land** sale deed together with the principle of law having been considered very carefully by court, we again confirm and emphasize that said 1931 deed is hereby cancelled and made null and void to all intents and purposes. Cost(s) of court ruled against the respondents. And it is hereby so ordered.

Given under our hand and seal of court this 15' day of April, A. D.1986.
Sgd: Hall W. Badio
ASSIGNED CIRCUIT JUDGE"

And to which ruling, respondents excepts and announce an appeal to the Honourable Supreme Court of Liberia, sitting in its October Term, A. D. 1986."

The exceptions were duly noted by Court and the notice of appeal granted.

It is interesting to note that despite the exceptions taken to the court's decree cancelling the 1931 Aborigine Deed which was allegedly executed by President E. J. Barclay and the appeal announced from said ruling, there is no showing in the records certified to this Court that the said

exceptions taken by respondents to the ruling, as well as the notice of appeal to this Court by respondents from the court's final decree, are embodied in the bill of exceptions. Hence, there is nothing before us regarding the trial court's decree in the cancellation proceedings to review.

The Supreme Court has held that "exceptions taken and noted during a trial, but not included in the bill of exceptions, are considered as having been waived." *Torkor and Teetee v. Republic,* [1937] LRSC 25; 6 LLR 88 (1937). In the instant case, the bill of exceptions submitted by the respondents contains issues growing out of respondents' motion filed in the court below to drop misjoined party. That motion, in our opinion, was ancillary to the cancellation proceedings instituted by the Republic of Liberia for cancellation of the 1931 deed which was allegedly executed by President E. J. Barclay for the 25 acres of **land** situated in Vai Town, Montserrado County, Republic of Liberia.

A motion is defined as "an application made to the court or a judge for the purpose of obtaining a rule or order directing some acts to be done in favour of the appellant. It is usually made within the framework of an existing action or proceeding and is ordinarily made on notice; but some motions may be made without notice. One without notice is an *ex parte* motion. Written or oral application to court for ruling or order made before (e.g. motion to dismiss) during (e.g. motion for directed verdict) or after (e.g. motion for new trial)." BLACK'S LAW DICTIONARY 913 (5th ed).

A careful perusal of the records submitted to this Court reveals that during the hearing of the cancellation proceedings as well as in the respondents' motion to drop misjoined party, respondents did not deny that the 1931 Aborigine **Land** Grant Deed was procured through fraud, misrepresentation and deceit perpetrated against the State by the grantees, Morve Sone, Varmuyah Corneh et al., of Vai Town as alleged in the Government's petition for the cancellation of the said 1931 Aborigine **Land** Grant Deed for the 25 acres of **land**, referred to *supra.*

Moreover, in counts 3 and 8 of the respondents' motion to drop misjoined party, as well as during the oral arguments before this Court, respondents counsel emphatically stated that they were not opposed to the cancellation proceedings because, according to respondents, neither they nor their ancestors had ever claimed title to the **land under the 1931 Aborigine Land** Grant Deed.

Counts 3 and 8 of the aforesaid motion are hereunder quoted verbatim.

"COUNT 3. That movants say that neither the late Varmuyah Corneh nor any of the said movants, individually or collectively, is a proper party to these cancellation proceedings, in that whilst it is true that the late Varmuyah Corneh did hold a power of attorney to represent the Tribal Authority of Vai Town, the people and inhabitants of Vai Town in respect of the Vai Town **land** dispute against Boima Lartey, Alhaji J. D. Lansannah and others, movants submit that on no occasion did Varmuyah Corneh or any of the movants individually or collectively, or their predecessors, ever claim title to any **land** in Vai Town by virtue of a 1931 Aborigine **Land** Grant Deed as alleged by the petitioner.

COUNT 8. That movants finally say that they are not opposed to the cancellation of the 1931 Aborigine **Land** Grant Deed purportedly issued by the late President Edwin J. Barclay, but to name them as respondents in said cancellation proceedings is a misjoinder as they have never claimed title to any **land** by virtue of said 1931 Aborigine Grant Deed."

In *Cavalla River Company, Ltd. v. Pepple*, [1933] LRSC 13; 3 LLR 436 (1933), this Court held that "every allegation of fact in any pleading, if not denied specifically or by necessary implication, shall be taken as admitted." In addition to the failure to deny the petitioner's allegations, however, the respondents went further to assert in counts 3 and 8 of their motion to drop that they were not opposed to the cancellation of the 1931 Aborigine **Land** Grant Deed.

In the absence of any denial by the respondents that the deed was fraudulently procured by the grantee and in the face of the respondents' non-opposition to the cancellation of the 1931 Aborigine **Land** Grant Deed, as stated in their motion to drop misjoined party, as well as the statement made by counsel for respondents during oral argument before this Court, the Court is of the opinion that it has no other alternative but to affirm the trial court's decree granting the petition.

In the case *Davies v. Republic*, [1960] LRSC 67; 14 LLR 249 (1960), this Court held as follows: "Contractually, the grantor is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed; and the fact that the Republic of Liberia is one of the parties dues not lessen the binding effect of the terms of the contract." . . . If the President, acting by reason of misrepresentation, fraud, misinformation or concealment of facts, executes a deed to transfer property which is not within the public domain, none of his successors can legally uphold such an act; and since each of them is under oath to enforce the laws of the Republic, it would be within their legal duty to right any wrongs done against the interest of a citizen by their

predecessor in office.... The constitutional guarantee that no one shall be deprived of property but by judgment of his peers was never intended to protect the unlawful ownership of property. In order that this provision of the Constitution may be invoked by a citizen in the possession of his property, he must be able to show that his acquisition and possession are legitimate and that genuineness of his title is beyond dispute."

WHEREFORE, and in view of the foregoing, this Court is of the considered opinion that the final decree of the court below granting the petition for cancellation of the 1931 Aborigine Grant Deed for 25 acres of **land** situated in Vai Town, Montserrado County, Republic of Liberia, be and the same is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to resume jurisdiction over the case and to enforce its final decree, referred to *supra.* The respondents are ruled to all costs of these proceedings. And it is hereby so ordered.

Judgment/decree affirmed.

Johnson et al v Beysolow et al [1954] LRSC 2; 11 LLR 365 (1954) (22 January 1954)

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.
Momo/u S. Cooper for appellees. K. S. Tamba and

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, [1946] LRSC 5; 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, 195o, 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 `I.' "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 4 2. 1 " Countering these objections appellants filed an answer in which they contended : I. 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 respondentsappellants 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. "+. 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. "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 twentythree 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 `I' and 4 2 7 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 g 2 1 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: i. 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? s. 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, 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. .. . "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.

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' e 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.

Fallah v Brow et al [2001] LRSC 7; 40 LLR 414 (2001) (5 July 2001)

HENRY FALLAH, Appellant, v. MCGILL BROW, CORMAH VAH, et al., Appellees.

APPEAL FROM THE JUDGMENT OF THE NINTH JUDICIAL CIRCUIT COURT, BONG COUNTY.

Heard: March 26, 2001. Decided: July 5, 2001.

1. Nothing tend greater to disturb tranquility, to hinder industry and improvement in communities than insecurity of property, personal and real, to prevent which courts of justice are established.

The appellant, owner of one hundred acres of land, instituted an action of ejectment against the appellees to eject and evict the latter from the claimed parcel of land. **The appellees denied that the parcel of land** which they had occupied and commenced agricultural activities was a part of the appellant's one hundred acres of land. At a jury trial duly held, the jury returned a verdict in favour of the appellees, which was confirmed by the trial judge and a judgment entered thereon.

On appeal to the Supreme Court, the verdict and judgment were reversed. The Supreme Court noted that the only issues presented for determination was whether the parcel of land occupied by the appellees was part of the appellant's one hundred acres of land. The Court

opined that in order to make that determination, it was the duty of the trial judge to commission an independent surveyor to ascertain from the metes and bounds indicated on the appellant's deed whether the parcel of **land** occupied by the appellees was a part of the appellant's **land**. The Court observed that this was particularly important since the appellees had failed to present any documentary evidence to show that the **land occupied by them was different from the land** claimed by the appellant. Accordingly, the Court, in reversing the judgment of the trial court, ordered that a survey be conducted by the Ministry of Lands, Mines and Energy, at the expense of the parties, and that the appellant be placed in possession of the one hundred acres of **land** claimed by him and shown on his public **land** sale deed from the Republic of Liberia.

Benedict F. Sannoh of the Center for Law and Human Rights appeared for the appellant. Francis S. Y. Garlawulo of Garlawolo and Associates appeared ro the appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

The facts and circumstances in this case present only one pertinent issue, which is whether or not the trial judge committed a reversible error when he failed to conduct a survey to identify and place the plaintiff in possession of his lawful property. The facts in the case may be briefly stated as follows: The appellant herein, Henry Fallah, instituted an action of ejectment against the appellees on the 22nd day of June, 1998, during the August Term, A. D. 1998 of the Ninth Judicial Circuit Court, Bong County.

The appellant alleged in his complaint that he was the owner of one hundred (100) acres of **land** upon which the appellees had entered and commenced agricultural work without his will and consent. The appellant, in support of his complaint, attached thereto a public **land** sale deed from the Republic of Liberia, under the signature of the late President Samuel K. Doe. The records before us show that the appel-lant's deed was duly probated and registered in accordance with law.

Upon being served with the writ of summons and the complaint, the appellees appeared and admitted the appellant's ownership of the one hundred (100) acres of **land, but they asserted that the land** which they occupied and was in possession of was not part of the appellant's one hundred (100) acres of **land**. The appellant thereafter filed a reply, upon which pleadings rested, and following which the case was subsequently ruled to a jury trial.

During the trial of the case, the appellant produced evidence establishing his ownership to the one hundred (100) acres of **land**, traceable from the Republic of Liberia by virtue of a

public **land** sale deed. Also during the trial, the appellees, in their corroborative testimonies, testified that the parcel of **land occupied by them was different from the land** given to the appellant by the tribal authority. However, there is no record in the case indicating that the appellees ever produced a title deed to establish their ownership to the **land** which they occupied. There is also no record to show that the trial judge ever conducted a survey to identify the appellant's one hundred (100) acres of **land** so as to place him in possession thereof. What the records do show is that after arguments by both parties in the case, the trial jury returned a verdict of not liable in favor of the appellees. The trial judge confirmed the verdict of the jury in his final judgment, from which judgment the appellant appealed to this Court of last resort for appellate review and a final determination of the case.

Fallah v Kollie [2005] LRSC 14; 42 LLR 545 (2005) (1 March 2005)

HENRY FALLAH, Movant, *v*. HIS HONOUR EMMANUEL KOLLIE, Assigned Circuit Judge, Ninth Judicial Circuit, Bong County, et al., Respondents.

INFORMATION PROCEEDINGS.

Heard: December 2, 2004. Decided: March 1, 2005.

1. The Mandate of the Supreme Court shall be immediately and strictly complied with by the trial judge.
2. Mandates to the lower courts commanding the execution of judgments shall be transmitted immediately upon the adjournment of the term of court or immediately after the rendition of the opinion during the term.
3. To all Mandates of the Supreme Court returns shall be made, and they shall contain a clear statement of the manner in which they have been complied with and shall be verified, except such returns are made by judges.
4. Every judge, before the first day of the term immediately succeeding the term at which a Mandate shall be issued, unless directed to make returns to a Justice in Chambers, shall file a return showing the action taken by him in the premises.
5. Should the judge of any court fail to make a returns to the Mandate of the Supreme Court, such failure shall be recorded, and the clerk shall present the original of the returns made to the Court on the first day of the term, when a return calendar shall be read and disposed of.
6. A citizen desiring to purchase public **land** located in the hinterland shall first obtain consent of the tribal authority to have the parcel of **land** deeded to him by the

government. In consideration of such consent, he shall pay a sum of money as token of his good intention to live peacefully with the tribesmen.

7. A citizen desiring to purchase public **land** in the county area shall apply to the **land commissioner of the county in which the land** is located, and the **land** commissioner if satisfied that the **land** in question is not privately owned and is unencumbered, shall issue a certificate to that effect.

8. An applicant for the purchase of public **land**, having received from the district commissioner or **land** commissioner a certificate, shall pay into the Bureau of Revenues the value of the **land** he desires at the minimum rate of fifty cents per acre.

The Informant filed a bill of information before the Supreme court alleging that the co-respondent judge presiding over the Circuit Court for the Ninth Judicial Circuit, Bong County, had refused to enforce the mandate of the Supreme Court in having one hundred acres of **land** in the said county surveyed and turned over the informant, as had been mandated by the Supreme Court in its judgment. The respondents denied that there had been any refusal by the co-respondent judge to enforce the mandate to the Supreme Court. They exhibited documents showing that the enforcement of the Supreme Court's mandate was proceeding and they accused the infor-mant of being the one creating obstacles to the enforcement of mandate.

The Supreme Court although reiterating its holding that judges of lower courts are under a duty to enforce the mandate of the higher court, it noted that in the instant case the records showed that the lower court judge was proceeding with the enforcement rather than refusing to enforce same. It observed that indeed the trial judge had submitted returns to the Supreme Court indicating the manner in which he was proceeding with the enforcement of the Court's mandate, and that the records indicated that surveyors were appointed by the judge to conduct the survey as mandated by the Supreme Court in its judgment. The Court noted that while the trial judge had experienced difficulties in enforcing the mandate, including issuing a writ of possession when the survey had not been concluded, there was no evidence of a refusal by the trial judge to enforce the Supreme Court's mandate. Under the cir-cumstance, the Court said, it could not uphold the information and it therefore accordingly denied same.

Emmanuel M. Mabande of the Center for Law and Human Rights appeared for the informant. *Francis Y. S. Garlawolu* appeared for the respondent.

MR. CHIEF JUSTICE COOPER delivered the opinion of the Court.

Informant, Henry Fallah, filed this information before the Supreme Court on February 6, 2003, growing out of the alleged refusal of the Circuit Court Judge of the 9th Judicial Circuit, Bong County, to enforce the mandate of the Supreme Court in its judgment in an action of ejectment case, rendered during the March Term, A. D, 2001 of the Supreme Court, on July 5, 2001. The relevant part of the judgment is quoted hereunder.

"That the judgment of the trial court is hereby reversed and the case is remanded to the court below with the instructions that an impartia1 survey paid for by the parties through the court *shall be conducted by the Ministry of Lands, Mines and Energy of the 100 acres of* ***land*** *described by the metes and bounds in the public* ***land*** *sale deed from the Republic of Liberia to Henry Fallah in the presence of all interested parties, and that the trial court should subsequently place him in possession thereof."* (Emphasis added).
The informant, in his bill of information, reported to this court that "...the mandate was read in open court . . . by orders of the judge, a writ of possession was issued and served on the concerned parties, they (defendants) vehemently not only resisted the contents of said writ of possession, but challenged and defied the authority of the judge of the Ninth Judicial Circuit Court as well as the judgment of this Honourable Supreme Court." The informant also stated that the matter was reported to the trial judge who, in the opinion of informant, "has not exerted any effort in carrying out your mandate to the fullest extent, most likely because his judgment was reversed by Your Honour". The informant therefore requested this Court to have the trial judge appear to show reasons for his alleged refusal to execute the Supreme Court's mandate and for this Court to compel the respondent judge to enforce its mandate.

In their returns to the bill of information, the respondents alleged that the information with respect to the judge's failure to execute the said mandate was false and misleading. The respondents reported that consistent with the mandate of the Court, the judge directed the county surveyor of Bong County to conduct a survey of the property in question and to submit a report to the circuit court; that while conducting the survey, the surveyor discovered that the 100 acres of **land** did not exist as described in the deed; that the work of the surveyor was obstructed by informant/plaintiff; and that this matter had been reported by defendant to the trial judge who found that indeed the alleged obstruction had occurred. The respondents also stated that following further investigation conducted by the trial judge, he ordered the informant/plaintiff to cease carrying out any activities in the disputed area pending the completion of the execution of the Supreme Court's mandate; and it was after such ruling of the trial judge that the infor-mant filed the information. The respondents argued that since it was the informant who circumvented the enforcement of this Court's mandates, he is *estopped* from seeking relief from this Court. The respondents further argued that it was impossi-ble to completely enforce the mandate of this Court by placing informant in possession of the 100 acres of **land, "because said land** does not physically exist on the ground." The respondents prayed the Court to modify its opinion, relying on the case *Chase Manhattan Bank v. Baker*, 37 LLR 203 (1993).
The issue to be decided in this case is whether or not the respondent trial judge refused to execute and enforce the mandate of the Supreme Court, so that information will lie.

This Court says, in response to the request of the respon-dents to modify its opinion, that the *Chase Manhattan Bank* case, relied on by respondents, was a petition for re-argument, and this Court held therein that its authority to modify its own judgment and grant a re-hearing was being exercised before a mandate had been issued and the matter remanded to the trial court. We therefore conclude that the holding in that case cannot be applied in this matter, since a mandate was long ago sent to the trial court, immediately following the issuance of the Court's judgment on July 5, 2001.
According to the Rules of Court, the mandate of the Supreme Court shall be immediately and strictly complied with by the trial judge. Mandates to the lower courts commanding the

execution of judgments shall be transmitted immediately upon the adjournment of the term of court or immediately after the rendition of the opinion during the term. To all mandates of this Court, returns shall be made, and they shall contain a clear statement of the manner in which they have been complied with, and shall be verified, except such returns are made by judges. Every judge, before the first day of the term immediately succeeding the term at which a mandate shall be issued, unless directed to make returns to a Justice in Chambers, shall file returns showing the action taken by him in the premises. Should the judge of any court fail to make a return, such failure shall be recorded, and the clerk shall present the original of the returns made to the Court on the first day of the term, when a return calendar shall be read and disposed of. Rule XII, Mandates & Returns, Rules of Court (1999), 74.
A review of the Supreme Court records shows that returns to assignment, dated October 23, 2001, for the August A. D. 2001 Term of Court, were filed in the Office of the Chief Justice by the then assigned circuit judge, His Honour Emmanuel M. Kollie. The returns show that the Supreme Court's mandate in this case had been ordered read in open court and the clerk had been ordered to prepare a "writ of possession after the survey of plaintiff's **land** in keeping with his title deed by the Ministry of Lands, Mines and Energy."

The records show that following the reading of the man-date, the trial judge appointed the resident county surveyor for Bong County, Ministry of **Land**, Mines and Energy, to carry out a survey of the property, as ordered by this Court. Herein below are excerpts from the report of the Surveyor, dated January 21, 2002, which was filed on January 23, 2002, as follows:

"Per the Court's mandate at 2:00 PM on Friday, 4th of January, A. D. 2002, that I proceed and re-survey one hundred (100) acres of farm **land** in Salala District in favor of Mr. Henry Fallah, according to the metes & bound of his deed, *and all related documents* and that the disputed parties were informed of the survey...."

****

"I briefed the parties on the Court's mandate and later asked Mr. Henry Fallah for his documents. *He presented a deed containing (100) one hundred acres and a Tribal Certificate for one hundred (100*) acres and named one Mr. Henry K. Lamadine, resident surveyor of Margibi County as his representative."

"I then asked Mr. Henry Fallah to identify his commencement point. He took us to the Northwestern corner of S. Edward Peal's property marked by a concrete monument (S.E.P.) near the Febenkpala Creek and *said his one hundred (100) acres commenced from there. The Elders & Citizens of Salala District* were asked if they are aware of the point identified by Mr. Henry Fallah. They all *agreed with Mr. Henry Fallah's commencement point.*"

"Since the deed and the certificate mentioned S. Edward Peal's property, I commenced the survey with the re-opening of S. Edward Peal's boundary line."

"*The interpretation of these documents (deed, certificate*) to ground started on Thursday. The certificate says the one hundred (100) acres given Mr. Henry Fallah is situated between Febenkpala Creek and Nyanfor Creek, touching S. Edward Peal's property and the deed says the

one hundred (100) acres commenced 1,719.46 from the Northwestern corner of S. Edward Peal's property and runs along said S. Edward Peal's property."

"The South 87 East line of Mr. Henry Fallah which divides the disputed area also most in half was cut and measured giving a distance of 3,000 feet instead of 2,653.61 feet per deed's description."

"I then came to the Northwestern corner of S. Edward Peal and commenced the location of the Febenkpala Creek *in order to give a clearer picture of the Tribal Certificate's description."*

"Mr. Henry Fallah, his wife, daughter and sons came and stopped me from the detailing on grounds that I was not mandated by the Court to do so and his deed described the area as being developed."

"I then asked Mr. Henry Fallah for the owner of the area of which they stopped me. He said that area belongs to the late Collins and the rubbers were planted by him, and if the Salala citizens want the area, they can have it but pay for his rubber trees." (Emphasis added)
The surveyor observed that the area in dispute comprises about 200 acres of **land** and he concluded by recommending to the Court that the administrator of the estate of the late Collins be cited to court to give some clarifications deemed necessary for continuing the survey. It is not clear from the records before us what happened after the surveyor's report was submitted, but the records show that on February 20, 2002, following investigation of a complaint on information filed by the other respondents in this matter, the co-respondent judge found that the informant herein had been carrying out activities within the disputed area and he issued an order forbidding such activities, pending completion of enforcement or execution of this Court's mandate. The trial judge also pronounced that the court will "serve and monitor on the said parties involved to ascertain complete neutrality on the part of all parties from causing any inconveniences or disturbance until this matter is finally determined by court."

The records show that on March 6, 2002, the respondent judge ordered the issuance, by the clerk of court of a writ of possession whereby the sheriff was "commanded to remove McGill Brown, Gormah Vah, Madam Kortoe, Alfanso, Fahnlon, Binda Darkor and Flomo Gbakin, the above named defendants to be identified, from the below described deeded property of the above named plaintiff and put said plaintiff, Henry Fallah, into possession of said property containing the hundred (100) acres of **land** and no more, based upon the mandate of the Honourable Supreme Court of Liberia, dated 5th day of July, A. D. 2001, in the above entitled cause of action, on the 8th day of March, A. D. 2002, from sun rise to sun set." There followed in the writ of possession the description of the 100 acres of **land** described by metes and bounds. The sheriff's return shows that he served the writ on the parties, but that some of the respondents/defendants refused to be removed and made threats to harm him.
Based on the information and arguments of counsels for both sides before this Court, it does not appear that the trial judge is refusing or had refused to carry out the Mandate of the Supreme Court, and we so hold. It does appear, however, that the trial judge experienced much difficulty in executing the Court's mandate. We understand the mandate to have required the trial judge to (1) have conducted an impartial survey of the property according to the deed, and (2) that after completion of the survey, to put informant in possession of his 100 acres of **land**. Since the

records show that the impartial survey had never been completed due to several causes, including interference by the informant, it is not clear to this Court what led the respondent judge to order the issuance of the above mentioned writ of possession. Perhaps he did so out of frustration, resulting from the acts of either one or both parties. Whatever the reason or reasons, it does not appear that this Court's mandate has been completely enforced since it is apparent that the informant is still not in complete possession of his 100 acres of **land**.

This Court takes judicial notice of Chapter 3, Section 30 of the Public **Land** Law. Vol. 3. Title 32 of the LCL (1956). This law provides, as follows:

"*A citizen desiring to purchase public **land** located in the hinterland shall first obtain consent of the tribal authority to have the parcel of **land** deeded to him by the government*. In consideration of such consent, he shall pay a sum of money as token of his good intention to live peacefully with the tribesmen. The paramount or clan chief shall sign the certificate, which the purchaser shall take to the office of the district commissioner who acts as **land** commissioner for the area. *The district commis-sioner shall satisfy himself that the parcel of **land** in question is not a portion of the tribal reserve, and that it is not otherwise owned or occupied by another person and that it therefore may be deeded to the applicant*. He shall thereupon issue a certificate to that effect."

"A citizen desiring to purchase public **land** in the county area shall apply to the **land** commissioner of the county in which the **land** is located, and the **land commissioner, *if satisfied that the land*** *in question is not privately owned and is unencumbered*, shall issue a certificate to that effect."

"An applicant for the purchase of public **land**, having received from the district commissioner or **land** commissioner a certificate as provided in the foregoing paragraphs, shall pay into the Bureau of Revenues the value of the **land** he desires at the minimum rate of fifty cents per acre. He shall obtain an official receipt from the Bureau of Revenues which he shall attach to this applica-tion to the President for an order directed to the surveyor of that locality to have the **land** surveyed. If the President shall approve the application, he shall issue the order to the surveyor to have the **land** surveyed. The applicant shall then present the order to the named surveyor who shall do the work. The applicant shall pay him all his fees. A deed shall thereafter be drawn up in the office of the **land** commissioner, authenticated by him, and given to the purchaser who shall submit it with all the accompanying certificates to the President for signature. The deed shall then be probated." (Emphasis added)
We have mentioned the above quoted Section of the Public **Land** Law, which is still applicable in Liberia, to show that it is the clear intention of the Legislature that care must be taken by public officers not to execute any Public **Land** Sale Deed except upon prior investigation and confirmation by competent tribal and/or local authorities that the **land** to be sold (in the words of the statute just quoted) "is not otherwise owned or occupied... and that it therefore may be deeded to the applicant", the consent of the tribal or local authorities to be firstly obtained in each such case.

It does not go unnoticed that at the start of the survey, appellant Fallah presented to the surveyor both his title deed and the relevant tribal certificate. This Court is of the belief that if the

provisions of the quoted statute have been fully complied with in this case, the government county surveyor in the absence of the interferences and disturbances from any party or parties, under court supervision, will properly conduct and complete the required impartial survey. In this connection, notice is taken of the order of the co-respondent judge enjoining any such interferences or disturbances by all parties. Notice is also taken of the surveyor's recommendation to the court to cite the adjoining property owners to appear at the survey with clarification of certain matters relating to the survey. This Court believes that in the context of what has been brought to the attention of this Court and with judicial notice taken of the above quoted law, an impartial survey of the **land** that is in dispute, according to the metes and bounds of the deed of the informant, as was ordered in the Court's mandate, can only be possible if the surveyor appointed by the court is permitted to carry out a fair and impartial survey to the end without any interference or disturbance by either of the parties.

The operative word in the mandate has to be "impartial". The parties must recognize that county surveyors are trained and learned professionals, persons having experience sufficient to suggest a high degree of expertise in their field of work. Our surveyors must be presumed to be familiar with the relevant laws, regulations and policies of government relating to their profession, including methods of adjudicating **land** disputes involving unclear descriptions in deeds. We therefore expect that upon completion of the survey the trial judge will receive a comprehensive report from the surveyor, whose contents will permit the court to bring this mater to a close.

In view of the above, we have decided that the trial judge has not refused to enforce the Court's mandate, as alleged. We see that this trial judge has experienced difficulties in enforcing the said mandate. We therefore consider it most important that in continuing to enforce the mandate, impartiality or fairness should be emphasized in the conduct of the entire enforcement proceedings, including the survey, before any writ of possession is re-issued; and the surveyor(s) should be given wide latitude to conduct and complete their duties without any interferences or disturbances from any party, as the trial judge has already ordered.

Wherefore, and in view of the laws that we have cited, the bill of information is denied. The Clerk of this Court is therefore ordered to send a further mandate to the judge presiding in the 9th Judicial Circuit Court to resume juris-diction in this matter, to quash the writ of possession already issued, and to order the continuation or re-conducting of the impartial survey of 100 acres of **land** in favor of informant Fallah, as earlier mandated by this Court, to a logical conclusion. Costs are disallowed. And it is hereby so ordered.

Information denied.

RL v Massaquoi [1950] LRSC 9; 10 LLR 350 (1950) (8 June 1950)

REPUBLIC OF LIBERIA, Appellant, v. RACHEL E. T. MASSAQUOI ET AL., Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Argued March 21, 1950. Decided June 8, 1950. 1. It is a fundamental principle of chancery courts finally to dispose of litigation, making as complete a decision on all the points embraced in a cause as the nature of the case will admit so as to preclude all further litigation of the subject matter between the parties. 2. If there is a cloud on title as a result of an indefinite description in the deed of the pertinent acreage, the proper procedure is a prayer for the removal of said cloud by reformation or rescission of the deed in a court of equity. 3. Only a court of equity can determine whether a deed containing a description of fifty acres "more or less" entitles the title holder to the remaining seventeen acres in the parcel. 4. It is the duty of the Attorney General to advise in the public interest when requested to do so, but such advice is not binding on a court of equity.

Plaintiffs, appellees herein, filed a bill in equity against the Republic, appellant herein, for the cancellation of an instrument to remove a cloud on the title of real property belonging to plaintiffs. Apparently the lower court judge dismissed the 'answer and took no further action. On appeal from said ruling whereby the appellant asks that a final decree be rendered, judgment reversed and remanded. The Attorney General for appellant. wood for appellees. R. F. D. Small-

MR. Court.

JUSTICE

REEVES delivered the opinion of the

Rachel E. T. Massaquoi, et al., plaintiffs, descendants and heirs of the late Elijah Johnson, filed a bill in equity for the cancellation of a voidable instrument to remove a cloud on a title, against the Republic of Liberia by and

through C. Abayomi Cassell, Attorney General for the Republic of Liberia, Defendant, in the Equity Division of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, September term, 1948, complaining as follows : "That in the year 1839, during the colonial days of this Republic, Elijah Johnson, their great grandfather, purchased from the colonial Government, through Thomas Buchanan, the then Governor of said colony, a parcel of **land** more fully and sufficiently described in the title deed, executed to him by said Governor; a copy of this deed is herewith filed, marked exhibit 'A' and made a part thereof. According to the recital of quantity in this deed . .. the parcel of **land therein conveyed, contains fifty acres of land** more or less which indicated that the number of acres of the **land** did not enter into the essence of the contract, but that the selling was in gross and that all the

land within the boundaries set out, was intended to be conveyed. Plaintiffs submit further that the title to said land has come to them and said **land** is now rightly their posesssion. And this the Plaintiffs are ready to prove. 2. And Plaintiffs further complain that Joseph F. Dunbar, **land Commissioner for Montserrado County and Government land** Surveyor for said county, declares that his survey and the survey of his son, another surveyor for Montserrado, of the parcel of **land** so descended to plaintiffs and bearing on the authentic plot of Monrovia and Sinkor the number 11za, convince him that the parcel of **land contains more than so acres of land**. That it contains seventy-two acres of **land** hence he would take away from the Johnson's heirs, plaintiffs herein, twenty-two acres of the parcel purchased by and conveyed to as herein set forth, their ancestor Elijah Johnson and held by him and his heirs as their property for these one hundred and nine years "

which is not only unjust but to the prejudice and injury of plaintiffs. And this the plaintiffs are ready to prove. "3. And Plaintiffs further complain that said Joseph F. Dunbar, **land** Commissioner for Montserrado County and Government **Land** Surveyor for said county, to further his intention to deprive plaintiffs of their lands and give his acts an official appearance obtained from the Honourable C. Abayomi Cassell, Attorney General of Liberia, an instrument being a communication to the said Joseph F. Dunbar, **land Commission[er] and land** Surveyor for Montserrado County, dated i3th April 1948 which not only contains his opinion that all the lands in said parcel above so acres should be taken away from plaintiffs but the following peremptory order : `You are therefore directed to allocate to the heirs of the late Elijah Johnson fifty (so) acres of **land** in one single block and no more.' A copy of which instrument is herewith marked 'B' and made a part thereof. This instrument plaintiffs contend may be and is intended to be vexatiously and injuriously employed against their interest, throw a cloud of suspicion over their title to said property and interest therein will, if allowed to stand, cause plaintiffs to in future suffer injury, and that plaintiffs are without a plain and adequate remedy at law against said instrument. And this the plaintiffs are ready to prove. "Wherefore, plaintiffs pray that this Honourable Court sitting in Equity in view of the premises above set out will intervene and protect them and remove the cloud of suspicion thus created against their title by directing and ordering that this instrument containing these directions and orders of the Attorney General to the said Joseph F. Dunbar, **land Commissioner and land** Surveyor for Montserrado County,

being both vexatious and injurious to the interest of plaintiffs aforesaid [be] cancelled. That Your Honour may and will grant any other

further relief to which you will find plaintiffs in equity and justice entitled. All of which the said plaintiffs are ready to prove."
With this complaint a copy of said deed and instrument was filed. The defendant appeared by the Attorney General filing its appearance and thereafter an answer, joining issue with said plaintiffs' complaint, eleven counts raising pleas in abatement and traversals, five of which we quote :
Count 7:

"And also because defendant submits that plaintiffs are only entitled to fifty acres of land as allotted to them by the deed which is supported by the Opinion of the Attorney General as shown in Exhibit 'A' and the use of the words 'more or less' does not give them the said plaintiffs the right to any greater quantity of land ; such are words only used to cover mere inaccuracies or discrepancies ; wherefore defendant says or asserts that plaintiffs suit is without legal or equitable foundation and should therefore be dismissed, and defendant so prays with cost against plaintiffs. And this the defendant is ready to prove.
Count 8:

"And also because defendant says and asserts that the quantitative recital or description of the metes and bounds in the title deed of plaintiffs is so vague and uncertain that it became necessary for Joseph F. Dunbar, land Commissioner for Montserrado County, upon instruction of His Excellency the President of Liberia to seek an opinion as to exactly how much land plaintiffs were entitled to by such deed resulting in the exhaustive opinion of the Attorney General, C. Abayomi Cassell, having been given, in which it is

most clearly set out that the said quantitative recital or description of the metes and bounds of the property in said title deed provides no means whereby an exact quantity of land can be considered as being or having been conveyed. Where resort to the quantity therein stated had to be had in keeping with the principles of the law, which are fifty acres to which alone plaintiffs are entitled ; wherefore defendant denies that plaintiffs are entitled under the law to any greater quantity than fifty acres of land stated in their title deed in consideration of which defendant prays the dismissal of this suit with cost against plaintiffs. And this the defendant is ready to prove."
Count 9:

"And also because defendant says and asserts that plaintiffs' claim and pretensions to title to and in a greater quantity of land is without foundation in fact, for plaintiffs themselves by their own admissions, that is in their complaint do not assert title to any quantity of **land greater than fifty acres of land**, for if they desire or desired to do so they have not stated same in their complaint; wherefore for their failure or neglect to assert title to any specific quantity

of land other than the fifty acres shown in their deed defendant prays dismissal of this suit with costs against plaintiffs. And this defendant is ready to prove."
Count Io:

"And also because defendant says and asserts that the desire of plaintiffs to assert title over a parcel of **land over and above their fifty acres of land conveyed by their title deed said surplus land** cannot be taken to be conveyed by said deed because the additional portion of **land is unreasonably great being approximately seventeen acres of land** in excess of that conveyed and is not a discrepancy cured by the use of the words 'more or less' as sought to be asserted by plain-

tiffs as a sale in gross, for the quantitative recital or description of the metes and bounds of said **land do not make clear that such unreasonably great portion of land** was conveyed. Wherefore defendant prays the dismissal of this suit with costs against plaintiffs. And this the defendant is ready to prove."
Count II:

"And also because defendant says and asserts that plaintiffs have illegally and unwarrantedly exceeded the rights conveyed to them by their title deed having failed to determine by survey the exact metes and bounds of their **land until the said Joseph F. Dunbar, land** Commissioner for Montserrado County, called their attention to their encroachment upon the public domain when a joint survey was undertaken which clearly disclosed that the **land** over which they were asserting title was far in excess to which they were entitled and an unreasonably greater quantity than their deed called for, upon the survey of the area over which plaintiffs sought to assert title their own surveyor in person of one Adolphus N. Ajavon, one of the plaintiffs herein, it was found by his survey that a surplus might exist as shown by his letter to plaintiffs dated November 15, 1947 in which he states :-- `if there should be a surplus it should be on one side or the other along the bank of the river or the sea beach, but not in the middle of the parcel of **land** now in question,' which clearly supports the position of the **land** Commissioner Joseph F. Dunbar : vide exhibit a hereto annexed and made a part hereof; wherefore defendant prays the dismissal of the suit with costs against plaintiffs. And this the defendant is ready to prove." To this answer plaintiffs filed a reply and the pleadings rested. According to the minutes of the court of Monday,

February 7, 1949, the court met and when Judge King observed that counsel for both parties concerned were present he ordered the case called ; but

said minutes omit to state the purpose of the call showing that thereafter "by orders of the Judge, matter was suspended." It appears further, according to the minutes of Wednesday, February 9, 1949, that the court met again, to wit: "By orders of the Judge this court sitting in its Equity Division stands open for the transaction of business. The minutes of yesterday's session stand approved with the necessary corrections.
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Trial case resumes : Case, Rachel Massaquoi, et al-- Petitioners versus the Government of Liberia
etc --Respondents--Bill in Equity to remove cloud of title called. "At this stage of the case, the Attorney General of Liberia excepted] to the ruling of His Honour the Judge and prayed an appeal to the Honourable Supreme Court of Liberia. Matter suspended." Strange to say that these minutes of the court omit to show that the court considered the pleadings in said case and ruled thereon. Courts are masters of their records and such careless and indifferent keeping of their minutes should be discountenanced, for as guardians of their records they should be correctly and intelligently kept, especially for the benefit of appellate courts. In the records certified to this Court, we find listed therein the court's ruling on the pleadings. Certainly the judge must have heard arguments by counsel thereon before making said ruling, yet no mention is made in said minutes of them, or of the court's ruling. This is indeed negligent, and to make it more confounding, the minutes of February 9 state that the Attorney General excepted to the court's ruling and announced an appeal to this

Court. This is a strange happening. We must here again sound a note of warning to judges and counsel not to expect this Court to do for them what they should do for themselves. As an appellate court, we must be guided by the records of the court below certified to us in considering appeals. Therefore it is essential that such omission not occur. An inspection of the ruling of the court below impresses us that the minutes it permitted to be kept omitting mention of the making of said ruling was predictive, for said ruling, though lengthy, only dealt with the answer, dis missed same, and took no further action in the matter. Appellant in the fourteenth count of her brief, which is very pertinent and explicit, simplifies the position : "Appellant respectfully submits that the ruling handed down by the learned trial Judge is a nullity and of no legal effect whatsoever since it does not determine the case one way or the other merely stating erroneous conclusions of law and assumption of facts, and finally only dismissing the answer of your appellant without giving any relief to appellees whatsoever or even purporting to do so. "Appellant submits that the said ruling does nothing but seek to condemn the opinion of the Attorney General whilst it is supposed to cancel the same in order to remove a cloud from over the title of appellees, a legal impossibility, and that where a fair and legal trial had been had of the premises of this suit it would have been completely and absolutely dismissed because of this fact alone. "Appellant further submits that where

the learned trial Judge intended in any way to fully follow through to the end, the objective of the suit he should have not only dismissed the answer but have either proceeded to hear evidence or to render a final decree of some sort whereby the suit would have come to an end."

The submissions of appellant quoted above are supported by legal authority. In American Jurisprudence this is recorded : "The rule is that equity will not enter a partial or incomplete decree. Having taken cognizance of a cause for any purpose, a court of equity will ordinarily retain jurisdiction for all purposes; decide all issues which are involved by the subject matter of the dispute between the litigants; award relief which is complete and finally dispose of the litigation so as to make performance of the court's decree perfectly safe to those who may be compelled to obey it; accomplish full justice between the parties litigant; and prevent future litigation. All persons who are interested in the subject matter of dispute will be brought before the court in order that there may be entered and enforced a complete and effective decree which will finally adjust the rights of all concerned. . . ." 19 Id. 126 (1 939). "It is a fundamental principle of chancery courts finally to dispose of litigation, making as complete a decision on all the points embraced in a cause as the nature of the case will admit, so as to preclude not only all further litigation between the same parties, but also the possibility that the parties may at any future period be disturbed or harassed by the claim of any other person, as well as the possibility of any danger of injustice being done to other persons who are not before the court in the present proceedings. Acting pursuant to this principle, courts of equity require not only that the pleadings shall so present all the matters in controversy that they may be properly adjudicated, but also that, so far as practicable, all persons having any interest in the subject matter of the controversy be made parties, to the end that their rights may be ascertained, their claims adjudged, or their titles bound. The extent of the relief that the

court will grant is therefore commensurate with the rights, duties, claims, and titles of all the parties to the suit, so far as those rights, duties, claims and titles appear in the pleadings and are established by the proof. "The decree should be adapted to the circumstances and necessities of each case and should be so designed as to put an end to the litigation, and not to foster it. A final decree which undertakes to dispose of the whole cause should include a disposition of issues which are raised by a cross bill and answer as well as those which are presented by the pleadings in chief. "Where several parties, being all those interested in a legal controversy, are before the court asking that

their respective rights be determined, and such rights are capable of ascertainment, a decree, based upon indefinite findings, which does not determine the essential rights of all the parties and leaves a material part of the controversy undetermined, is insufficient and will not be upheld on appeal. Id. at 281. From the above cited conclusions of authorities on the law of equity, it can clearly be seen that the judge of the court below erred when he ruled out the answer of appellant and took no further action in the premises, for that was not in conformity with the requirements of equity principles. The parties had gone into equity seeking relief but unfortunately obtained none. The purported cancellation of the opinion of the Attorney General in such a manner could not remove the cloud from appellees' title. If there is a cloud over appellees' title, it came into existence at the time of execution of the deed of title, one hundred and eleven years ago, and the proper procedure to adopt would be to go into the court sitting in equity and pray for the removal of said cloud by rescission or reformation. The court of equity is the only forum authorized by law to say whether or not a deed of such metes or description with the words "more or less" calling for fifty acres of

land
could entitle appellees to the remaining acres of **land discovered to be in said tract or block of land** ; and until this is finally adjusted by said court, it is apparent that said cloud will ever remain over said title. It is the duty of the Attorney General to advise in the public interest when requested to do so, and when he does conscientiously give his views on the law, that is his official prerogative ; but these views are not conclusive and binding upon third parties. It is the equity court's decree in the premises that is conclusive, final, and binding, unless reversed by this Court of dernier ressort. In view of the principles of equity that control the case, we find ourselves compelled to reverse the ruling of the judge in the court below and remand the case with instructions that the trial judge resume jurisdiction and hear and determine the case as the principles of equity law require ; and it is hereby so ordered. Reversed.

Freeman et al v Webster [1961] LRSC 29; 14 LLR 493 (1961) (15 December 1961)

VARNIE FREEMAN, SALAME, LIVINGSTON GOA WARE, and LARSANNA, Appellants, v. THOMAS L. WEBSTER, Appellee.
APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 14, 1961. Decided December 15, 1961. 1. Where a plaintiff in

an ejectment action has relied upon a deed to establish title, the defendant cannot properly raise a new issue of fact for the first time on appeal by contending that the deed was fraudulently procured. The appropriate remedy for such fraudulent procurement would be a suit in equity for cancellation of the deed. 2. In an appeal from a judgment in an ejectment action, where evidence of title is insufficient to support the judgment, the case may be remanded for an impartial survey of the land in question.

In an ejectment action in 1948, the court below rendered judgment by default in favor of the plaintiff (deceased at the time of the instant appeal, but named as appellee herein) , and also ordered execution of a new deed in place of one which constituted evidence of plaintiff's title and which was adjudged lost or destroyed. Thereafter, a new deed was executed by the President, for the Republic of Liberia, as original grantor of the land in question. Subsequently the appellants, inhabitants of a tribal village, contested the validity of the new deed, and contended that, in any event, the **land occupied by their village was not part of the land** subject to the judgment in the ejectment action, as described in the deed executed by the President of Liberia. The Supreme Court remanded the action and ordered that the land in question be resurveyed.
J. C. N. Howard for appellants. Law Firm for appellees. R. F. D. Smallwood

MR.
CHIEF the Court.

JUSTICE WILSON

delivered the opinion of

In the settlement of Pennsylvania known as Mount Olive, on the Farmington River, in the Territory of Marshall, there resided one Daniel Webster, now deceased, the father of Thomas L. Webster, now also deceased, who was husband and father of Mary K. Webster and Bernice Webster respectively. A deed which it is alleged gave fee title ownership in said premises to the said late Daniel Webster was destroyed by fire; whereupon a diligent search was made by the late Benjamin Freeman, counsel to the Firestone Plantations Company, but without avail. A certificate was therefore obtained from the State Department of Liberia stating that the deed could not be found or traced in the archives of the department. A petition was thereafter made to the Circuit Court of the Sixth Judicial Cirsuit, Montserrado County for the issuance of a new deed in favor of the said Thomas L. Webster, son of the late Daniel Webster. At a sitting of the said circuit court presided over by the late Circuit Judge Monroe Phelps, the said petition was disposed of. Final judgment thereon was entered at the November, 1948, term of said court in favor of petitioner, now appellee and a new deed ordered issued in substitution of the destroyed one.
Counsel for appellee alleges that a copy of the petition had been served on the State, and that the proceeding was uncontested. The

new deed having been executed by the President of Liberia on May 1o, 1949, was duly probated and registered on May II, 1949. By the processing of this new deed the rightful ownership of Lot Number 26B, containing so acres of land situated in the settlement known as Mount Olive, Pennsylvania, on the Farmington River, in the Territory of Marshall, Montserrado County, became vested in appellee. Appellants in this case, whilst not contesting the acquiring of said property by deed from the Republic of Liberia, contend that the procurement of this title deed was by fraudulent means, that is to say, by excluding the peo-

ple of the Mamban tribe, since the lost or destroyed deed substituted by the one last executed, probated and registered did include the said Mamban tribesmen. This contention would seem to be well taken, and the title on which appellees rely would be void if the alleged fraud had been complained of through a court of Chancery and the deed cancelled. This not having been done, the legal genuineness of appellee's renewed deed is unaffected. Count "4" of appellants' answer therefore raises an issue not subject to review by this Court. The appellants, however, further contended that the so acres of land covered by this renewed deed formed a part of a lease grant under the government's 99-year planting agreement with the Firestone Plantations Company; and hence, title for said land has been transferred to the government of Liberia and no longer vested in appellee. Though not specifically laid and raised in the pleadings to make same reviewable by this Court, during the course of argument before us we could not escape judicial notice of this all-important issue, the consideration of which is indispensable to an equitable and just conclusion of this matter, since, under our ejectment statutes, a party seeking to evict from property claimed by him to be his must rely on the strength of his own title, and not on the weakness of his adversary's title. This principle of law has been upheld by this Court as follows : "Plaintiffs in ejectment must recover upon the strength of their own title and not upon the weakness of the defendant's title." Bingham v. Oliver, i L.L.R. 47 (1870), Syllabus 3. Thus, if it has been established at a trial that appellee, though vested by title deed from the Republic of Liberia in his fee simple right in and to the said so acres of land, thereafter retransferred it to the Republic of Liberia under its planting agreement with the Firestone Plantations Company, it follows as a natural sequence that appellee's right to said property ceased to exist. The record does not show the retransfer of title of the

said so acres of land; nor has the Republic of Liberia, which would be the rightful owner under the circumstances, contested appellee's right to said property; nor has the Firestone Plantations Company complained of any intrusion on its planting rights. Counsel on both sides were pressed from this bench to make clarification

in a substantive manner on this point. The only effort made was by speculative measurement of distances from the site on which is erected the central office of the Harbel Firestone Area to a village known as Dolo Town, the place where appellants reside, and from which appellee seeks to evict them. This was not helpful in determining whether or not there had been a retransfer of said property; whether the Dolo Town falls within the Firestone Plantation Reserve Area; and whether Lot Number 26B includes the said Dolo Town.
With respect to Dolo Town in which appellants lived, appellee contends that, at the time his late father, Daniel Webster, acquired title to this land, Dolo Town did not exist, and that the original settlers thereof sought and obtained permission to appellee's father to live in this area for which they had been paying rent until influenced by persons whose names were not mentioned to desist from such payment. We find it necessary to quote the testimony of some of the witnesses on this point; but before doing so, it may be of interest to mention that appellee claims that the name, Dolo Town, was given because the leader of the original settlers was called Dolo. We have a record of the following question and answer propounded to and answered by one Joseph Tisdell, testifying on behalf of appellee : "Q. Thomas L. Webster, plaintiff, has instituted an action of ejectment against the defendants, and you have been summoned as a witness to testify for the plaintiff. You will now, for the benefit of the court and jury, state all facts and circumstances

which may lie within your certain knowledge touching the said action. "A. As far as I know, in the years 1914-15 I was living with Mrs. Nora Reeves, a school teacher in the City of Marshall, a public school teacher during the 1914 World War. We had nothing to eat at Marshall, and we had to go to Paynesville, to one Mr. Daniel Webster, for subsistence such as cassava, eddoes, yams, plantains, etc. Mr. Daniel Webster took us to his farm from time to time. There we used to go for subsistence until the war ended. After that, I had no cause to go back. In 1936-37, I was sent to Mr. Thomas Webster to collect revenue tax from the same place. He then took me to the same spot; there he had this camp ; Dolo was the town master; to let them know that he had been sued for the taxes of the said place in order to give him some assistance. On the other hand, whereas I referred to 1937, the late Honorable B. G. Freeman, lawyer from Firestone Company, went to Marshall with the late S. B. Williams on behalf of Firestone for the same parcel of land in Pennsylvania. I was sent by Honorable Williams to Pennsylvania to call Mr. Webster to notify him that the Firestone Plantations Company wants a parcel of land. Well, we went to Marshall ; of course the other part was personal. But, as far as I know they took all the land except Dolo's camp because there was a low marsh between Dolo Town and the part they took. That is all I know about this matter." Another witness who testified on behalf of appellants was one Fred Johnson; and we quote hereunder the following question propounded to him and the answer he made. "Q. The former has instituted an action of ejectment

against the
latter, and you have been brought here as a witness for the defendants. Will you tell the court and jury all facts and circumstances
that lie within your certain knowledge touching the said cause of action? "A. Once I knew one Mr. Thomas L. Webster, living in Dolo
Town, Robertsfield Area, Marshall Territory. He claimed that he is the owner of Dolo Town ; that it is his property; that he has
been getting in dispute between him and the Dolo Town people, as I know he takes the matter. The defendants say that he is not the
rightful owner of the property; but the owner is one Tappian Garway. The matter was reported to the President of Liberia, and Mr.
Webster, the plaintiff, was called up by the President of Liberia. The President asked Mr. Webster to produce his deed ; otherwise
he would not be regarded as the owner of the property in dispute. The following day he returned to the President, and he was again
asked to bring the deed down with the other people. The defendants came to Monrovia, and Mr. Webster failed to produce his deed.
The President asked him not to interfere with the property until he got his deed. From that time, the plaintiff, Mr. Webster, vacated
the place in dispute. Then, in 1954, he took a surveyor to the spot, and the citizens objected to the same, saying that since you
cannot produce your deed you have no right to survey. According to this, he did not survey the land; in that time, the citizens of
Dolo Town sent for the alleged owner of the land by the name of Tappian Garway. Upon his arrival he came to Monrovia, and the President
not having returned, he did not go into the matter but stated that when it was convenient he would do so. He wrote a letter upon
the President's re-

quest to Honorable Okai alleging that he is the owner of the place. From that time,
nothing has been said about this matter until now." Several other witnesses also testified on both sides at the trial. But we do
not deem it necessary to recite the testimony of all of those witnesses, since the main issue by which we are controlled in this
action is the establishment of title and the right to evict appellants by appellee. The testimony of witness Joseph Tisdell, and
that of witness Fred Johnson, quoted supra, when taken along with the title deed of appellee and the circumstances which followed
its execution, probation and registration, would seem to lay a premise by which a conclusion could be reached in this matter. Before
summarizing on the overall and main issue in this case, let us recite, word for word, the final judgment of His Honor, Judge Phelps,
which is predicated on a petition made to court for an order to decree the issuance of a new title deed in substitution of the lost
one: "Thomas L. Webster, son and legal heir of the late Daniel Webster, filed a petition before this court in the March, 194.8, term,
alleging that his father, who lived in the Township of Pennsylvania, otherwise known as Mount Olive, on the Farmington River, Montserrado

County, died seized in fee simple of .5o acres of land situated in the township of Mount Olive bearing the number 26B ; he acquired title to said land from the President of Liberia and the deed for said property was destroyed. A search was made in the archives of the Department of State, but the deed could not be found. "At the call of the case, Stephen S. Togba appeared for the petitioner, and Tilman Dunbar, Revenue Solicitor of the Department of Justice, appeared for the Republic of Liberia, upon whom copies of the proceedings had been served. No resistance to the petition had been filed, nor did counsel for the Republic

of Liberia enter any objections on the record to the petition being sustained. "The court ordered the witnesses to be qualified, and the petitioner testified in strong terms supporting the allegations contained in the petition. At the close of the testimony, he submitted written evidence as follows : " i. A certificate with affidavit annexed from J. J. Powell, E. B. Simpson and G. H. Tay, all of the Territory of Marshall, who upon their oath verified that, to their knowledge, the 5o acres of land described by the petitioner was legally the property of the late Daniel Webster, and that the petitioner was born on the said land and had been living thereon for 40 years prior to the execution of the certificate which is dated January 28, 1937. A certificate from the Department of State "2. signed by the Secretary of State, Gabriel L. Dennis. "3. A surveyor's certificate signed by Charles G. Cheeks, civil engineer, January 8, 1948, describing the place and situation of said land. "4. A deed of lease between the Republic of Liberia, represented by Henry R. Cooper, Secretary of the Interior, and the heirs of the late Daniel Webster for the said piece of land ; which deed of lease was dated February 26, 1 937. "It having appeared to the court from the foregoing oral and written evidence that the allegations of the petitioner are true and correct, and that the heirs of the late Daniel 'Webster, aforesaid, are the persons to whom the said property lawfully descends, and that further, the Republic of Liberia parted with the ownership with the said plot of ground by the transfer of title to the late Daniel Webster, father of the petitioner, therefore it is decreed : that Daniel Webster,

 late of the Township of Mount Olive in Montserrado County, died seized in fee simple ownership of Lot Number 26B situated in said township and covering 5o acres of land ; that the deed therefor has been destroyed; and that proof thereof has been made on the records of this court by oral and written evidence to the satisfaction of the court. That petitioner is the lawful surviving heir entitled to the inheritance of said property. "Wherefore the Registrar of Deeds of Montserrado County is hereby ordered to issue a new deed to the petitioner in virtue of this decree for the signature of the President of Liberia; and said deed when issued, probated and registered, shall be valid in judicature and thereout. And it is so ordered." "Given under my hand and the seal of court at the City of Monrovia, this zoth day of January, 1948. [Sgd.] MONROE PHELPS, zissigned Judge."

Under authority of this final judgment, President William V. S. Tubman on May 1o,
1949, executed an executive deed in favor of appellee, which deed was probated and registered May 11, 1949; the text of said deed is as follows : "To all to whom these presents may come: "Know ye, that pursuant to Chapter One, Article Two, of the Revised Statutes of the Republic of Liberia, and in consideration of the sum of $1.00 paid the Republic of Liberia, and of the various duties of citizenship hereinafter expressively stipulated to be legally performed, I, William V. S. Tubman, President of the Republic of Liberia, for myself and my successors in office, subject to reserving the possession of all minerals prescribed in Article Two, Section Two of the Act approved February 4, 1924, contained in the subsoil of land hereby granted, have granted and by these presents do give, grant and confirm unto

the said Thomas L. Webster, his heirs, executors, administrators and assigns forever, all
that piece and parcel of land lying and being in the settlement of Pennsylvania, or Mount Olive, Montserrado County, Republic of Liberia, and bearing in the record of Pennsylvania, or Mount Olive, Montserrado County, the number 26B and bounded and described as follows: "Commencing at the northeast corner of Lot Number 25, Second Tier; thence running south 70 degrees, west 12Y2 chains; thence running south 20 degrees, east 4o chains; thence running north 70 degrees, east 12% chains; thence running north 20 degrees, west 4o chains. This deed is being issued in pursuance of a decree of the equity division of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, dated
January 2o, 1949, to release a warranty deed of Daniel Webster, father of Thomas L. Webster, said deed having been burned accidentally in 1928; and no records thereof being available at the Department of State. To the place of commencement and contained fifty (5o) acres of land, and no more." "The duties of citizenship which the grantee has covenanted with the grantor to perform are: that he will cultivate the land hereby granted by planting thereon from time to time of such agricultural products as may be prescribed by government regulation. That N (one-fourth) of the land hereby granted shall be maintained as forest reservation; and that the grantee shall at all times conform to the sanitary regulations prescribed by law or regulation. Failing the performance of this obligation, this warrant shall become null and void otherwise to remain in full force and virtue. "To have and to hold the above granted premises, together with all and singular the buildings, improvements and appurtenances thereof and thereunto be-

longing to the said Thomas L. Webster, his heirs, executors, and assigns forever; and I, William V. S. Tubman, President, as aforesaid

for myself and successors in my office, do covenant to and with the said Thomas L. Webster, his heirs, executors, administrators and assigns, that at the time of the execution of this instrument, I, the said William V. S. Tubman, President as aforesaid by virtue of my office, had good right and authority to convey the aforesaid premises in fee simple. And I, the said William V. S. Tubman, President as aforesaid, my successors in office, subject to the reservation herein expressed, will forever defend said Thomas L. Webster, his heirs, executors, administrators and assigns against the lawful claims of all persons whomsoever to any of the above premises. "In witness whereof, I have hereunto set my hand and caused the seal of the Republic to be hereto affixed this loth day of May, 1949 and of the Republic the one hundred and second. [Sgd.] WILLIAM V. S. TUBMAN,
President of Liberia.

[Sgd.] REUBEN B.
LOGAN,
Registrar. "Endorsement:

"Public **Land** Grant from the Republic of Liberia to Thomas L. Webster "Lot Number 26B, situated in Pennsylvania on Mount Olive. "Let this be registered [Sgd.] J. A. GITTENS, Judge of the Probate Division, Circuit Court, Commissioner of Probate, Montserrado County.

Probated this rah day of May, 1949. [Sgd.] J. E. BULL,
"Clerk of Court.

"Registered in Volume 62,
page 244."

The form of public **land** sale deed then in use obligated grantee to make certain improvements on public **land** so granted ; failing which the grant becomes null and void. The legal inconsistency of such a fee simple transfer of title being apparent, President Tubman has abolished this form; hence it is not in use at the present time. But, regardless of whether the legal sufficiency of such a form could be accepted, there is, in any event, nothing in the record to show that grantee failed to comply with any of the conditions contained in said deed or grant. Therefore the form is not an issue for review by this Court herein. Next for our consideration is whether or not this title right of appellee has by any means been altered or made void in view of Subparagraph Four of the court's final judgment which reads as follows : "A deed of lease between the Republic of Liberia, represented by Henry R. Cooper, Secretary of the Interior, and the heirs of the late Daniel Webster, for said piece of **land**, which deed of lease is dated the 25th day of February, 1957." Missing, it would seem, as this is not included in the record, is the deed of lease between the Republic of Liberia and the late Daniel Webster, father of appellee, a lease which appellants' counsel stressed

when arguing before this Court. It is this property, the description of which is laid out in the renewed title deed of the President of Liberia, calling for fifty (5o) acres of land,
Lot Number 26B. By reference to Count "5" of plaintiff's reply, appellee contends that the property described in the deed entrusted
to the late Counsellor Garwo Freeman relates to a 3o-acre block of land in the name of the late Daniel Webster and his Mamban people,
and not the fifty (56) acre block of land, Lot Number 26B, which is the title on which he relies in the ejectment case now under
review. This contention of appellee, he endeavored to buttress by a

certificate dated June 6, 1946,
over the signature of one Charles S. Coleman who was clerk of the late L. Garwo Freeman, the text of which certificate we quote as
follows : "This certificate is given to Thomas L. Webster upon his request in connection with a certain transaction between himself
as client and Counsellor L. G. Freeman, his lawyer, now deceased, to wit: i. The undersigned knows for certainty, being clerk of
Counsellor L. G. Freeman in the year 1937 upon his death, that the said Thomas L. Webster delivered over to him, Counsellor L. G.
Freeman, sundry documents including deeds for land situated on the Farmington River, being tribal reserve block and otherwise of
Webster's father and people of the Mamban tribe upon the request of his lawyer. z. Subsequent to the above transaction, Counsellor
L. G. Freeman died in Harper, Cape Palmas, in early January, 1939. Upon his death, the deeds delivered by Webster had not been returned
to him. "3. During the said transaction, among the documents hereinbef ore referred to was a lease agreement between the said Thomas
L. Webster and the Firestone Plantations Company, which happened to have been entrusted with the undersigned by Counsellor Freeman;
and upon his death, Mr. Webster applied to the law office of Counsellor Freeman for his documents, when, being satisfied that the
agreement was urgently demanded and needed, same was in person delivered to him by the undersigned. The deeds remained undelivered
subject to the administration of his estate. "The undersigned has been approached by Mr. Thomas L. Webster for a certificate in respect
of the foregoing transaction, since, as he states, the Superin" "

tendent of Marshall Territory has
demanded of him his deeds for further Government registration, and in order to petition the monthly and probate court for the immediate
procurement of said deeds. It is upon the foregoing reasons this certificate is given in good faith. [Sgd.] CHARLES S. COLEMAN."
We have made a detailed survey of some of the facts testified to at the trial with a view to try and reconcile the controversial
contention that the land covered by the title deed to Lot Number 26B, that is to say the 50-acre block, was jointly vested in appellee's
late father and the Mamban people and consists also of land leased to the Firestone Plantations Company by appellee; as against the

contention by the testimony which is recorded and the certificate just referred to, that the deed for the **land** leased to the Firestone Plantations Company is that which is contained in a 3o-acre block, the deed to which was turned over to the late Counsellor L. G. Freeman and has not been retrieved from the late Counsellor L. G. Freeman's estate. Faced with this situation, and because it was not possible for counsel on both sides to give the clarification that could make easy a final conclusion or solution of this matter, we will here remark that, whilst we must recognize as genuine and legal the deed executed by the President of Liberia in 1949, reviving the title of said property in the said Thomas L. Webster, son of the late Daniel Webster, in view of the decree of court providing for said revival it still remains to be sufficiently established whether or not the Town of Dolo, the village from which appellee seeks to evict appellants, actually falls within the 5o-acre Lot Number 26B which, if it did, would place said Dolo Town within the property right of appellee and justify this eviction by ejectment if they cannot establish by title deed the right to continue in occupation of said Dolo Town. It is therefore our considered legal opinion, and this in

the name of fair and impartial justice, that the case be remanded to the court from which said appeal was taken, with instructions that an impartial survey be made of the **land** described by metes and bounds in said public **land deed from the Republic of Liberia to Thomas L. Webster for so acres of land** in Lot Number 26B situated at Pennsylvania or Mount Olive, to determine whether or not said metes and bounds take in and include the settlement of Dolo Town, now occupied by appellants. This certificate of survey must be made through the Division of Surveys of the Department of Public Works and Utilities, and in the presence of the interested parties, on whom notice must be served, and in the presence of a disinterested party to be named by the court. Costs to abide the final determination of this matter. And it is so ordered.
Remanded.

Kamara et al v Kindi et al [1986] LRSC 24; 34 LLR 203 (1986) (31 July 1986)

ARMAH KAMARA and **HENRY KOLLIE**, Appellants, v. **BINDU KINDI**, **TERNI KINDI, et. al.**, Lineal Heirs of the late FAHN KINDI, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard July 9 & 10, 1986. Decided August 1, 1986.

1. The interest of a tribe in lands is converted into communal holdings upon proper application to government. The chiefs and elders, as tribal authorities, are then designated as trustees of said communal lands for the tribe.
2. As trustees, the Chiefs or Tribal Authorities have not power to convey fee simple title in such **land** to any other person outside the tribal community designated therein.
3. In no such case was a deed granted in fee simple to any family of the tribe for an area of more than twenty-five acres.

A deed conveying 204 acres of **land** from the Republic of Liberia to Chief Fahn Kendeh (also spelled Kindi) and Families of Kendeh town, now the area of Paynesville, was executed by President Daniel E. Howard on March 7, 1916. Because of a dispute between the heirs of Chief Fahn Kendeh and other families of the then Kendeh town, appellees, representing the heirs of the said chief filed a petition for declaratory judgment before the Sixth Judicial Circuit. The trial judge ruled that the **land** grant conferred an absolute fee simple estate on Chief Fahn Kendeh and his lineal heirs alone, to the exclusion of any and all other families of Kendeh Town.

The Supreme Court, looking at the *habendum* clause of the disputed deed as well as statutory laws affecting tribal lands, held that the subject **land** is communal property belonging in common to the family of Chief Kendeh and other families of Kendeh at the time of the grant. Accordingly, the ruling of the lower court was *reversed.*

Toye C. Bernard appeared for appellees. *M Fahnbulleh Jones* appeared for appellants.

MR. JUSTICE JANGABA delivered the opinion of the Court.

The genesis of these proceedings is rooted back in a deed issued by the Republic of Liberia, under the signature of President Daniel E. Howard to one Chief Fahn Kendeh and Families of Kendeh Town, now in the area of Paynesville, on March 7, A. D. 1916, in the 69th year of this Republic. Thereafter, it was probated and registered on March 14, 1916 in the Monthly and Probate Court, Montserrado County. The records revealed that the parties on this appeal had quarreled over the plot of **land** granted in the said deed by the Republic of Liberia, to the extent that in A. D. 1981, they had to resort to the judicial process to determine the truth of their disputed rights to the said plot of **land**.

Consequently, appellees sought relief, at the time, in the People's Civil Law Court, the Sixth Judicial Circuit, Montserrado County sitting in its December Term, A. D. 1981. They prayed for

a declaratory judgment to construe and interpret the **land** grant and to rightly determine which of the parties on this appeal is properly entitled to the said piece of property consisting of about 204 acres of **land**.

In their answer, appellants contended, as now, that the said piece of property was not only granted by the Republic of Liberia to Chief Fahn Kendeh and his lineal families of Kendeh Town, but also to all other families that happened to have lived in Kendeh Town, in order to give them a chance to vote and to contest elections under the law. Appellants maintained that ifthe grant was meant only for the family of Chief Fahn Kendeh, then it would not have exceeded 25 acres to which a family plot is limited for aborigines under the law; and the fact that said **land** grant exceeded 25 acres and went as far as 204 acres, indicates that the grant was meant to be a community grant under the law in order to extend the franchise to aborigines that had accepted civilization. As evidence of said community ownership they proferted two warranty deeds showing how both parties had jointly issued the same as joint owners over these years, albeit they contended that said community property cannot legally be alienated.

Appellees, on the other hand, contended, as now, that the property granted in said deed by President Howard was for Chief Fahn Kendeh and his lineal heirs alone, considering that the *habendum* clause in the instrument referred only to the Chief and his heirs, and successors in the singular and therefore was intended merely for the Chief and his lineal heirs in fee simple. They maintained that the warranty deeds proferted by appellant could not have been issued in 1958 by Chief Fahn Kendeh who, it was established, passed away earlier in 1957, even though no death certificate was proferted along with the pleadings and even though appellees failed to sufficiently rebut appellants' contention that a family grant would not have exceeded 25 acres.

From what we gather from this matter there is only one issue for our determination here: whether or not the Aborigines **Land** Grant Deed issued by President Daniel E. Howard in 1916 to Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, was in fact a community grant in fee or a mere individual family grant to said Chief and his family?

It is interesting to note that this was the identical issue confronting the trial judge in the lower court, and he ruled that, in fact, the deed in question was an individual family plot to Chief Kendeh and his heirs, for otherwise "the word "their" instead of "his" would have been used in referring to heirs, administrators, etc." His Honour therefore ruled that the plot of 204 acres in Kendeh Town, the subject of this litigation, is properly the property of the lineal heirs and administrators of the intestate estate of the late Chief Fahn Kendeh of Kendeh Town.

Hence, this appeal on which appellants still maintain their position: that the said property was community property in which all families of Kendeh Town equally shared.

Our determination of this appeal and this issue is limited to the authority of the Aborigines **Land** Grant issued by President Daniel E. Howard in 1916, and which authority will be further properly augmented by our notice of historical circumstances of the said **land** grant.

The premises of said **land** grant states thus: "TO ALL TO WHOM THESE PRESENTS SHALL COME, Whereas, it is the policy of this government to induce the aborigines ofthis country to adopt civilization and become loyal citizens of the Republic and, whereas, one of the best things thereto is to grant **land** in fee simple to all those themselves to be entrusted with the rights and duties of the full citizenship as voters Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, Montserrado County, Republic of Liberia have shown themselves fit to be entrusted with said rights and duties," (emphasis ours). The habendum clause states thus:

"To have and to hold the above granted premises (Fam **Land**) together with all and singular the buildings, improvements and appurtenances thereto and thereof belonging to the said Chief Fahn Kendeh and Families of Kendeh Town, his heirs, executors, administrator, and assigns as aforesaid forever. And I, the said Daniel E. Howard President aforesaid, for myself and my successors in office do covenant to and with the said Chief Fahn Kendeh, his heirs, executors, administrators, and assigns that the ensealing of hereof I, the said Daniel E. Howard, President aforesaid and my successors in office will forever warrant and defend the said Chief Fahn Kendeh and families, legal heirs, executors, administrators and assigns against the lawful claims and demand of all persons above granted premises. (emphasis ours).

It was based on the two clauses cited above that the learned judge referred to below as conferring an absolute fee simple estate on Chief Fahn Kendeh and his lineal heirs alone, to the exclusion of any and all other families of Kendeh Town.

We of this Bench unanimously hold otherwise and do hereby rule that the said instrument conferred a communal **land** grant on all the families that had settled in Kendeh Town at that time, including the family of Chief Fahn Kendeh who, in our opinion, was father and representative, or agent of all the other families settled in Kendeh Town at that time. Hence, apparently there were no quarrels over said piece of property from 1916 when it was granted and at a time when chiefs merely obtained such grants in order to acquire civil status for their

followers, until 1981, long after the death of Chief Fahn Kendeh, when **land** had become something else, and our aborigines no longer thought in a traditional African way, but rather, in such western ways as "fee simple" and "lineal heirs" when it comes to **land** ownership.

In each of the two clauses cited above, the premises and the habendum clauses, we have particularly noticed, emphasized and underlined two important provisions to justify our holding in this case which will be further bolstered by other authorities.

In the premises of the said Aborigines **Land** Grant Deed cited supra, reference is made to the policy of the Liberian Government at the time "to induce the aborigines of this country to adopt civilization and become loyal citizens of the Republic..." and "it is pointed out that the government considered it best to grant all said aborigines **land** who are to be entrusted with citizenship rights, to allow them to exercise the franchise. Just following all that stipulation we have emphasized and underlined the following conclusion to the premises: "Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, Montserrado County, Republic of Liberia have shown themselves fit to be entrusted with said rights and duties." (emphasis ours).

In particular, we have taken note of the portion of the latter citation which reads as follows:

. . . ."have shown themselves fit to be entrusted with said rights and duties." (emphasis)ours)

No doubt this statement refers to none other than all the settled families of Kendeh Town at that time, including Chief Fahn Kendeh and his lineal heirs. They had shown themselves fit to be entrusted with said rights and duties, the rights and duties of citizenship, and therefore, upon the representation of their chiefs and elders led by Chief Fahn Kendeh, the government of President Howard, in 1916, granted them a community holding in fee, as tenants in common, to allow each and every family in said town the privilege of voting, which was then conferred on aborigines only upon proof of a fee simple holding in **land**.
Next, the habendum clause and what we have underlined and emphasized therein:

"....that at the ensealing of hereof I, the said Daniel E. Howard, President, as aforesaid and my successors in office will forever warrant and defend the said Chief Fahn Kendeh and Families, legal heirs, executors, administrators and assigns against the lawful claims and demands of all persons above granted premises.

This stipulation in general refers not to a single family, but to a community headed by Chief Fahn Kendeh. Particular note should be made of the stipulation which says in part that the President and his successors in office will forever warrant and defend "The said Chief Fahn Kendeh and Families, legal heirs, executors, administrators and assigns against...." Here this instrument does not speak of Chief Fahn Kendeh and "his" heirs but speaks of protecting and defending "Chief Fahn Kendeh and Families, legal heirs, executors etc which indicates that the warranty is, in fact, for the Chief and families and their heirs, the heirs of all the families of Kendeh Town in general.

Our holding, as hinted earlier, is bolstered by other authorities. As late as 1957, and deriving from the historic Hinterland Regulations, the interest of a tribe in lands was usually converted into communal holdings, upon proper application to government, and the applicant/tribe usually bore the expense of the survey of such a communal holding. In such cases, the chiefs and elders whom we usually refer to as tribal authorities were designated as trustees of said communal lands for the tribe. As trustees, said chiefs or authorities had no power to convey fee simple title in said **land** to any other person outside the tribal community designated therein. Aborigines Law, 1956 Code 1:271, under *Communal Holdings.*

We are convinced that the 204 acres of farm **land** granted to Chief Fahn Kendeh and Families of Kendeh Town, Paynesville Settlement, by President Howard in 1916, was meant to be a communal holding for the families of that Township and not a fee simple single family holding meant for Chief Fahn Kendeh and his lineal heirs or his family alone as the trial judge would have us believe.

Admittedly, individual family holdings were also granted to worthy aborigine families, where a tribe had become sufficiently advanced in civilization and petitioned government for division of the tribal **land** into family holdings. However, in no such case was a deed granted in fee simple to any family of the tribe for an area of more than twenty-five acres. Aborigines Law, 1956 Code 1: 272. Consequently, in the absence of some other convincing evidence, we refuse to subscribe to the idea that an Aborigine **Land** Grant to an individual would have exceeded 25 acres for any justifiable reason, even in the case of a chief.

Considering what we have said herein, the judgment of the lower court is hereby reversed, and the Clerk of this Court is ordered to send a mandate below to the effect that the **land** in question is communal property belonging in common to the Kendeh family of Kendeh Town and to the families in Kendeh Town in 1916, Settlement of Paynesville and their heirs and

successors. We further mandate that whoever produces evidence showing that his family was resident in Kendeh Town in 1916 at the time of said grant is entitled to share in the common undivided ownership of said **land** in fee until an otherwise proper petition is made to government to have said communal tribal holding divided into individual family holdings in fee as is required by law. Costs ruled against appellees. And it is so hereby ordered.

Judgment reversed

Ministry of Foreign Affairs v Sartee et al [2002] LRSC 31; 41 LLR 285 (2002) (13 December 2002)

THE MINISTRY OF FOREIGN AFFAIRS, R.L., by and thru the MINISTRY OF JUSTICE, R.L., Appellant, *v.* THE INTESTATE ESTATE OF THE LATE JARBO SARTEE, represented by its Administrators, ROBERT SARTEE and PETER SARTEE, Appellee.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 13, 2002. Decided: December 13, 2002.

1. The Supreme Court may address itself to only those issues it deems determinative of the controversy presented.
2. Under general principles of law, the entity which gives has the right to take back what it has given; thus the authority which issues a document has the same authority to revoke or recall what it has issued.
3. Collusion, double conveyance, and fraud are sufficient bases to cancel a deed.
4. After the President of the Republic signs a deed, the deed is probated and registered, and in case of mutilation, damage, loss, or destruction to the said deed, the probation or registration records would provide evidence sufficient to establish its existence, and it is from those records that genuine copies can be reconstructed.
5. Where documents are lost or destroyed, the proper thing to do is to have the Bureau of Archives, Ministry of Foreign Affairs, make a true and certified copy from the registration records.
6. Where the Ministry of Foreign Affairs issues certified copies of a deed to real property, it does not have to seek and obtain the prior approval of the President in order to revoke the instrument or to commence cancellation proceedings to cancel the instruments which it issued.

7. The Ministry of Foreign Affairs has the authority to revoke instruments issued by it upon discovery that the instruments were issued under circumstances tainted with fraud or mistaken belief.
8. Where the Ministry of Foreign Affairs issues certified copies to an instrument or deed, it has standing to sue for the cancellation of the said instrument, and does not need the approval of the President to confer such standing.
9. To establish fraud, it is not necessary to prove same by direct or positive evidence. Circumstances altogether inclusive may by their number and joint operation be sufficient to constitute conclusive proof.
10. While it is a general principle of law that the burden of proof rests on the party who maintains the affirmative, where the facts lie peculiarly within the knowledge of a party to the cause, he shall be held to prove the negative.
11. Where a party alleges the genuineness of its certified deeds, the burden of proof is on the party to prove at the trial the fact alleged.
12. In general, incredible testimony and testimony that is so clearly and manifestly improbable should be disregarded.
13. The Liberian Constitution confers appellate jurisdiction upon the Supreme Court in all cases, both as to law and facts.
14. A court to which an appeal is taken may affirm, reverse, or modify, wholly or in part, any judgment before it, as to any party; and it may render such final determination, or where necessary or proper, remand the case to the lower court for further proceedings.
15. It is a principle of Liberian constitutional law that the Supreme Court of Liberia has final authority, both as to law and facts, in all appeals; hence, the Court, in a valid and proper exercise of its constitutional mandate, may vacate, reverse, modify, or substitute the verdict of an empanelled jury and the final judgment on which the verdict is based.
16. The Supreme Court may vacate the judgment of the trial court and substitute the same with that which, in its opinion, should have been handed down based on the evidence adduced at the trial.

The Ministry of Foreign Affairs of Liberia, by and through the Ministry of Justice, instituted cancellations proceedings against the appellee, the Intestate Estate of the late Jarbo Sartee, to cancel the certified copies of three deeds issued by the Ministry of Foreign Affairs. The Ministry alleged that the certified copies of the deeds were issued by one of its personnel under circumstances tainted with fraud and deceit, and that the certified copies purported that the original copies were issued pursuant to laws which were not in existence at the time the deeds purported they were in existence. The Ministry had conducted its own internal investigation of the circumstances leading to the issuance of the certified copies, had concluded that fraud was involved, that the deeds referred to in the certified copies never existed, that the certified copies were fake copies and it had, accordingly, revoked the said certified copies of the deeds.
The appellee, in the cancellation proceedings, contended that the Ministry did not have standing to bring the action, and that it was without authority to institute the said action without the prior approval of the President of Liberia, since it was the President that had issued the deed in favour of the appellee decedent.

The jury returned a verdict in favour of the appellee, which verdict was confirmed by the trial judge and a final judgment entered thereon. From this verdict and judgment, the Ministry appealed to the Supreme Court for a review and determination.

The Supreme Court held that the trial judge erred in confirming the verdict of the jury, in the face of the evidence presented by the appellant and the failure of the appellee to rebut the said evidence. The Court opined, firstly, that the Ministry did have standing to seek cancellation of the certified copies since it was the Ministry that had issued the instruments. The Court held that the Ministry did not have to seek presidential approval to commence the action, noting that a party which issues an instrument has the authority to revoke or seek cancellation of the instrument. As the certified copies were not issued by the President of the Republic, no approval was needed from him to have the copies cancelled.

The Court observed that not only were the description of the property illogical, but that each of the three certified copies of the deed, which purported to be for the same property, contained different descriptions to the property, stated that the property had no number when, in fact, at the time of the issuance of the alleged original deed, Monrovia was laid out and each plot of **land** was numbered. The Court observed further that some of the instruments even indicated that the property referred to therein was located in the ocean.

The Court, after reviewing the evidence, concluded that the appellant had sufficiently shown that the instruments were issued under circumstances tainted with fraud, and that in such situations, cancellation is appropriate. It noted that the appellee had failed to refute or rebut the evidence presented by the appellant, and that as such the jury should have brought a verdict in favor of the appellant. The Court then proceeded to reverse the verdict and judgment of the lower court, and to render a new judgment in favour of the appellant, holding that it was constitutionally vested with the authority, as the appellate court of final resort, to render such judgment as the lower court should have rendered. Accordingly, the Court ordered the certified copies of the purported deed cancelled and voided, and of no further legal affect.

Theophilus C. Gould, Deputy Minister For Legal Affairs of the Ministry of Justice, and *James E. Pierre* of Pierre Tweh and Associates Law Firm, appeared for the appellant. *Ishmael Pailay Campbell* of the Legal Aid Incorporated Law Firm appeared for the appellee.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

The Ministry of Foreign Affairs, by and thru the Ministry of Justice of the Republic of Liberia, filed an eleven-count petition on February 10, 2001 praying the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to cancel three (3) certified copies of property deeds in favour of the late Jarbo Sartee, Sr., covering ten (10) acres of **land** or forty (40) lots located at Mamba Point, Monrovia.

The appellant/petitioner alleged that the three deeds were issued in circumstances tainted with fraud and forgery by the Bureau of Archives. The appellee/respondent, the Intestate Es-tate of the late Jarbo Sartee represented by its administrators, Robert Sartee, and Peter Sartee, filed a twenty-nine (29) count returns defending or justifying the issuance of the three certified copies of the challenged deeds and asserting that there was no fraud involved. The appellee contended that

their original deed had gotten lost during the 1980 military coup and that the administrator of the Intestate Estate of the late Jarbo Sartee, Sr. had obtained a certified copy of the said deed in 1982 from the Ministry of Foreign Affairs. It asserted that this certified copy was also destroyed during the April 6, 1996 crises in Monrovia and, hence, the administrators had obtained another certified copy from the Foreign Affairs Ministry on April 17, 2000. The appellee argued that after the 2000 certified copy was issued, the administrators discovered a photocopy of the 1982 certified copy and upon comparing the two certified copies, there were differences and contradictions between the two, and therefore they returned to the Foreign Ministry, where a third certified copy was issued to correct the inconsistencies in the two previous certified copies.

Pleadings were exchanged and rested. Several motions and a bill of information were filed and disposed of, as well as a petition for the writ of certiorari, following which the main case was ruled to trial. A jury was empanelled to hear the facts and make a determination. At the conclusion of the trial, the jury returned a verdict of liable against the appellant and in favor of the appellee, thereby denying the cancellation of the three certified copies of the deeds. The appellant announced and perfected its appeal to this Court of dernier resort, raising three basic issues:

> 1. Whether presidential authorization is required for the institution of proceedings to cancel certified copies of public **land** deeds when there is a showing that the originals never existed and that the certified copies are based on fraudulent insertions in the public records of the Ministry of Foreign Affairs?
> 2. Whether the verdict and final judgment rendered by the trial court in favor of the appellee were in harmony with and supported by the evidence adduced at the trial?
> 3. Whether the Supreme Court of Liberia has the authority to vacate a verdict of an empanelled jury, reverse the judgment on which it is based, and enter the proper judgment which should have been made based on the evidence adduced at the trial?

On the other hand, the appellee submitted five issues for consideration and determination by this Honourable Court:

> 1. Whether or not the verdict of the empanelled jury was contrary to the weight of evidence adduced at the trial?
> 2. Whether or not the judge erred in denying the motion for new trial filed by the appellant and entering final judgment based on the unanimous verdict of the empanelled jury in favor of the appellee?
> 3. Whether or not a document which was not pleaded, or marked and confirmed by court, can be offered into evidence by a witness on the stand?
> 4. Whether or not the judge erred when she sustained the objections of the appellee's counsel as found on sheet six of the minutes of court of September 24, 2002, 8th day's jury session, and sheet eight of the minutes of court, September 26, 2002, 10th day's jury session?
> 5. Whether or not cancellation proceedings can be had to cancel a deed for **land** from the public domain duly signed by the President of Liberia in the absence of an order from the President?

This Court, in keeping with its stated practice, will address itself to only those issues deemed determinative of the controversy presented. *Lamco J. V. Operating Company v. Verdier*, [1978]

LRSC 9; 26 LLR 445 (1978), text at 448; *Mathies and FIMA Capital Corporation, Ltd. v. Alpha International Investment, Ltd.*, 40 LLR 565 (2001), decided at the March Term 2001 of this Court; and *Knuckles v. The Liberia Trading and Develop-ment Company (TRADEVCO),* [2000] LRSC 6; 40 LLR 49 (2001); *Knuckles v. The Liberia Trading and Development Company (TRADEVCO*), 40 LLR 515 (2001).

The first issue to be addressed is the standing of the Ministry of Foreign of Affairs; in other words, did the Foreign Ministry have the legal capacity to institute these cancellation proceedings without an order from the President of Liberia?

The appellee, on the one hand, contended that President Daniel B. Warner, being agent of the Government of Liberia, signed the deed for ten (10) acres of **land** in favor of Jarbo Sartee, Sr. in 1865 while serving as President of Liberia, and that his signature to the deed executed and made perfect during the legal existence of his term of office is binding and of legal effect as it was based on the Rules and Regulations of June 26, 1820. The appellee maintained that in the absence of collusion, double conveyance, or fraud, the deed issued to Jarbo Sartee, Sr. cannot be cancelled under the law, and also cannot be cancelled by a court based on a petition of any individual or institution of government without the authority of the President of the Republic of Liberia. Appellee relied on *Davies v. Republic*, [1960] LRSC 67; 14 LLR 249 (19, text at 257-258.

On the other hand, the appellant contended that while as a matter of law and procedure all valid public **land** deeds emanate directly from the Republic of Liberia and are signed by the President of Liberia, and it follows that the cancellation, correction or modification of such public deeds would normal-ly have to be approved by the President, the original authori-zing authority, this was not applicable to the instant case. It cited the following examples to buttress the contention:

> 1. Where the deed had been inadvertently signed by the President under the mistaken and erroneous assumption and/or information that the **land was public land**, and when the facts subsequently show that the **land was encumbered and not public land**; and
> 2. Where errors appear on the face of the deed in the description or location of the property.

The appellant argued that in the cases cited, the deeds had originally and actually been signed by a President of Liberia, whereas in the instant case, President Daniel B. Warner did not execute any deeds on April 15, 1865 in favor of Jarbo Sartee for ten (10) acres of **land** in Mamba Point. It maintained, however, that the appellee's three (3) certified copies were not based on any authentic or genuine historical documents but were the products of recent and improper insertions into the public records of the Bureau of the Archives, which therefore placed them within the scope of its administrative authority and removed the need to obtain the prior approval of the President of Liberia to authorize:

(a) an investigation into irregular activities conducted by employees of one of its sub-divisions;

(b) acceptance and implementation of the findings of the investigation and revoke the deed;

(c) action or request the Ministry of Justice to cancel the deeds.

Under general principles, the entity which gives has the right to take back what has been given; the authority which issues a document has the same authority to revoke or recall what it has

issued. The appellee agreed that collusion, double conveyance, and fraud are sufficient basis to cancel a deed.

In the instant case, the appellant contended that there was never an original deed signed by President Daniel B. Warner and that what were purported to be certified copies of a deed were the product of collusion and fraud. The appellant contended that had an original deed been actually signed by President Warner, then the appellant, the Ministry of Foreign Affairs, would have had to seek and obtain prior Presidential approval to be able to cancel the said deed, but that there was never any such original deed. Hence, as there was never such a deed, the copies which were based on fraud do not require any presidential order to have them cancelled.
The appellant's argument then shifted the burden of proof to the appellee to produce evidence to show that its deed actually existed. The failure to produce such evidence left nothing before the court but mere allegation.
We note that after the President signs a deed, that deed is probated and registered, and that in case of mutilation, damage, loss or destruction to said deed, the probation records or registration records would provide evidence sufficient to establish its existence and, in fact, it would be from these probation or registration records that genuine copies can be reconstructed. In the instant case, the appellee claimed that it was issued an original deed in 1865 and that it survived until the 1980 military coup in Monrovia, some one hundred fifteen years. Normally, and the proper thing to do (which appellee says they did in 1982) was to go to Bureau of the Archives. Ministry Foreign Affairs, and request a true and certified copy from the registration records. The appellant said that what the appellee had produced as its deed is based on falsified and manufactured records, which rendered the said deed fraudulent and a fit subject for cancellation.

We hold therefore that the Foreign Ministry did not have to seek and obtain prior Presidential approval to commence these cancellation proceedings since it was the Ministry, on its own, that issued the certified copy. The Ministry was therefore legally vested with the authority to revoke the documents it had issued once it was discovered that the documents were issued under fraudulent circumstances and mistaken belief. The Ministry did not require prior presidential approval to issue the certified copy and as such equally did not need prior presidential approval to revoke and cancel the certified copy that it had issued where the circumstances evidenced the perpetration of fraud. If the fraud was alleged to have been perpetrated at the signing of the deed itself by the President, then his approval would have been required. But the fraud is alleged to have consisted of causing the issuance of certified copies of a deed by the Ministry when there was never any original. Hence, the Ministry revoked, and now seeks to cancel, what it issued and not what President Warner is said to have signed. As stated earlier, the burden of proof then shifted to the appellee to prove the existence of its original deed said to have been signed by President Warner. That burden was not met by the appellee. We therefore hold and hereby rule that the Ministry of Foreign Affairs had legal standing to sue and did not need prior Presidential approval or authority to institute the cancellation proceedings to cancel the three certified copies of the deed of the late Jarbo Sartee, Sr.
The second issue we are called upon to address, and which in our view is the real bone of contention in deciding this appeal, is whether or not the verdict and final judgment in the lower court are in harmony with, and supported by, the evi-dence adduced at the trial. The answer to this question decides this case.
The appellant alleged that there was fraud and collusion within the Bureau of the Archives which

resulted into the issuance of three separate certified copies of the deed that the appellant contended made the appellee's title documents to the ten (10) acres of **land** a fabrication. The question for this Court to determine is whether the petitioner successfully proved the fraud which it alleged led to the issuance of the three deeds. In order to answer that, we have to take recourse to the evidence that was adduced at the trial. To prove its allegations, the appellant produced six (6) witnesses, four of whom were regular witnesses who produced direct evidence, and two (2) as rebuttal witnesses.

The appellant's first witness was Brimah M. Dawon, Acting Director of the Bureau of the Archives, Ministry of Foreign Affairs. He testified and confirmed the findings of the internal investigation conducted by the Ministry of Foreign Affairs, done at the instance and direction of Counsellor Lavela Koboi Johnson, then Deputy Minister/Legal Counsel-lor. The findings were that the appellee's three (3) certified copies of the alleged deed had been irregularly inserted into the records of the Bureau of the Archives. Based on the aforesaid findings, the three (3) copies were subsequently revoked by the Ministry. The witness also testified that the Ministry of Foreign Affairs had written to the Ministry of Justice to institute legal proceedings to have the three certified copies of a deed allegedly issued to the Intestate Estate of the Late Jarbo Sartee cancelled.
The appellant's second witness was Counsellor L. Koboi Johnson who confirmed the testimony of the first witness and further testified and identified James Mayson, then acting director of the Bureau of the Archives, as the individual who was responsible for the fabrications. Counsellor Johnson testified that Mr. Mayson was disciplined for his actions and was no longer in the employ of the Ministry of Foreign Affairs. Counsellor Johnson also testified that the investigation was ordered because the Ministry of Foreign Affairs had received numerous complaints of irregularities committed by employees of the Bureau of the Archives in the issuance of certified copies of deeds and that one of these involved the certified copies issued in favour of the late Jarbo Sartee. The Jarbo Sartee investigation was of particular importance to the Ministry because, based on three (3) certified copies issued by the Bureau of the Archives, the Jarbo Sartee Intestate Estate was laying claim to a ten (10) acre block of **land** in the Mamba Point section of the City of Monrovia. This area included the diplomatic enclave, consisting of the United States Embassy facilities and the former British Embassy, which the United States Government currently leases from the Liberian Govern-ment through the appellant. The property is used as the official residence of the United States Ambassador. The area also includes premises leased by United Nations agencies.
Counsellor Johnson further testified and confirmed that the findings of the investigation concluded that the appellee's three (3) certified copies had been fabricated. He stated that as a result of the Sartee investigations, a new system was put in place requiring the involvement of the Ministry of Lands, Mines, & Energy.

The appellants's third witness was Mr. William R. Davies, a recognized expert on Liberian historical documents, who testified that the appellee's three certified copies could not have been based on any authentic historical documents because: (1) The Republic of Liberia did not exist prior to July 26, 1847, and hence, it was impossible for the appellee's three certified copies to be based on a law of the Republic of Liberia of June 26, 1820 and (2) Historically, central Monrovia was laid out and all the lots were assigned numbers. It was also therefore impossible for the appellee's certified copies to identify the property as being "N/N"-i.e., Not Numbered or No

Number.
The appellant's fourth witness was Mr. Charles B. DeShield, a veteran cadastral surveyor and long time former employee of the Ministry of Lands, Mines and Energy. As an expert witness, he testified that in his opinion, the appellee's three (3) certified copies were not authentic. He based his opinion and conclusion on the following factors:

1. That a public **land sale deed and a public land** grant deed are completely different instruments; the former is grant-ed by the Republic of Liberia to a grantee in considera-tion of a cash payment made into the Government treasury, whereas the latter is given to an individual for services rendered the State.
2. That the number N/N placed on the deeds are incorrect because **land** in the Monrovia area had been laid out and numbered.
3. That the metes and bounds stated in the certified copies could not physically refer to property located in the Mamba Point area, and that based on the descriptions in the documents, the property is located in the direction of the Mesurado River
4. That from a technical standpoint, the metes and bounds describing the property do not make any technical sense because the descriptions on the certified copies do not close the property and from the point of commencement, as indicated, it appears to be in the Atlantic Ocean.

Based on this witness' testimony, it was observed that one of appellee's certified copies, the Government grant, had a description that alleged that the property commenced from the "NE side of the Atlantic Ocean" and initially runs South, then North, then South, and finally again South "to the point of beginning." Clearly this description creates some doubt and makes no sense because to properly close the property, the metes and bounds should have finally continued North to the point of commencement from where it initially began.

In addition, the appellant contended, and we agree, that the description contained in appellee's certified copies do not provide any demarcation points from which a survey of the property could be conducted. It is common knowledge that the Atlantic Ocean borders the Republic of Liberia from cape Mount to Cape Palmas. A description which states that the property commences from the N.E. side of the Atlantic Ocean and continues South "to the point of beginning" is completely meaningless and makes it impossible to identify the property. Thus, it appears that all the appellee did was to arbitrarily select a portion of Mamba Point which had already been developed over the years and has laid claim to it. Moreover, no deeds could have been obtained based on an alleged 1820 law of the Republic of Liberia prior to the Declaration of Indepen-dence of the Republic of Liberia in 1847. According to history, in 1820, this part of Africa was called "The Grain Coast."
In summarizing the oral and documentary evidence which was admitted at the trial, we observed that the appellant's evidence demonstrated why the appellee's three (3) alleged certified copies were not authentic copies of any original recordings in the records of the Ministry of Foreign Affairs, but were in actuality recent fabrications improperly inserted in the records of the Ministry. In past times, a public **land** grant deed was given by the Republic of Liberia to a grantee for services rendered the State, with the most common example being a bounty **land** deed for military services rendered. Such consideration is normally recited in the deed. The appellee's certified copies of its deeds # 1 & #3, which purport to be of this type do not conform to these requirements.

A public **land** sale deed — appellee's certified copy of deed #2 — did not exist prior to the enactment by the Legislature on January 5, 1850 of the Act Regulating the Sale of Public Lands. This provides that for a grantee to obtain unencum-bered real property—or public **land**— from the Republic of Liberia, cash payment should be made by the grantee to the Republic of Liberia as consideration, such payment to be a cash consideration of fifty cents per acre. Recourse to appellee's deed #2 also shows that it did not conform to this statutory requirement.

Each of the appellee's three (3) certified copies recited that the property grant was predicated on a "law of June 26, 1820 promulgated by the Republic of Liberia." The appellant said that: (a) the Republic of Liberia could not have promulgated a law on June 26, 1820 because the Republic of Liberia did not exist until July 26, 1847; and (b) that the Colony of Liberia, which was the precursor to the Republic of Liberia, could not have promulgated a law on 26, 1820 because the Colony of Liberia did not exist before 1822. These are basic undisputed historical facts known to every Liberian. In addition, we observed that the metes and bounds, which purported to describe the property, were not identical on each of the three (3) copies and differed from one certified copy to the other. Therefore these could not have been three copies of one deed, as appellee would have had us believe.
Although the initial certified copy (Deed # 1), on which the appellee relied stated that the 1865 deed was originally registered and recorded in Volume 91 F at the Bureau of Archives, the testimony of the acting director of the Bureau confirmed, however, that according to the records of the Bureau's inventory of ledgers, Volume 91F contains deeds registered for the year 1965, not a hundred years earlier in 1865. The documentary evidence submitted into evidence were consistent with this testimony and confirmed that deeds for the year 1865 are registered in Volume 24, not Volume 9lF. Indeed, a recourse to the history of the Republic revealed that from the initial settlement in Monrovia, all the lots in the Mamba Point section of the City of Monrovia were numbered, whereas the three (3) copies of the appellee's deed were identified the lots as NN — i.e. NO NUMBER. All these facts were testified to and corroborated by the appellant's witnesses during the trial. And the records confirmed that the sole witness who appeared for the appellee did not even attempt to discredit, contradict or rebut the evidence. In the case *Weeks et al. v. Weeks et al.*[*[1981] LRSC 33*; , 29 LLR 332, Syl 8 (1981), text at 340, this Court said: "To establish fraud, it is not necessary to prove by direct or positive evidence. Circumstances, altogether inclu-sive, may by their number and joint operation be sufficient to constitute conclusive proof."

The appellant contended that it clearly and legally established that the certified copies of the appellee's alleged deed were the product of fraud. The appellant argued that it defied logic and reason that anyone could suggest, or that any rational person could believe that President Daniel B. Warner would have signed three separate deeds, each calling for ten (10) acres of public **land** for the identical piece of property in favour of the same Jarbo Sartee on the same day, April 15, 1865. Why would there be a need for him to have done so? We agree with this argument of the appellant and state further that it would also have been irrational and illogical for President Warner to have on the same day in 1865 signed the three (3) deeds for the identical ten (10) acres of public **land**, to the same Jarbo Sartee, especially since the deeds all have different titles, i.e., categories of conveyances. Deed # 1 is entitled public **land** grant from the Republic of Liberia for ten (10) acres of **land** in Mamba Point. Deed # 2 is entitled public **land** sale deed from the Republic of Liberia for ten (10) acres of **land** in Mamba

Point. Deed # 3 is entitled a government grant from the Republic of Liberia for ten acres of **land** in Mamba Point.
The certified copies of the three (3) different title deeds purport to grant the same Jarbo Sartee the identical ten (10) acre piece of property in Mamba Point. This Honourable Court held in the case *Flo v. Republic*, [1981] LRSC 1; 29 LLR 3 (1981), text at pages 13-14, that: "While it is a general principle of law that the burden of proof rests on the party who maintains the affirmative, etc., where the facts lie peculiarly to the knowledge of a party to a cause, he shall be held to prove the negative."
With this observation then, as a matter of law, since the appellee alleges that the three certified copies of its deed were genuine, the burden of proof was on the Jarbo Estate to prove that fact. In addition to the contradictions and inconsistencies pointed out by the appellant's witnesses in their testimonies, the appellee was also obligated to have provided sufficient and satisfactory answers to the following basic questions.

1. If indeed President Warner did sign the deeds on April 15, 1865, as is contended by the appellee, why was there a need for him to have signed three (3) different deeds on the same day in 1865 for the identical piece of property in favour of the one and the same Jarbo Sartee?
2. Why do the descriptions of the identical piece of property differ from one certified copy to another certified copy?

These were some of the questions which formed the basis for the appellant's findings and the conclusions that led to the revocation of the certified copies issued by the Bureau of the Archives. The appellee had the burden of establishing that title to the subject property was in the decedent, the late Jarbo Sartee. It failed and neglected to do so. The testimony provi-ded by its sole witness made no attempt to explain or clarify the contradictions and inconsistencies enumerated above.
Robert Sartee, one of the appellee's administrators, was the only witness who was called to testify for the appellee. His testimony can be summarized as follows:

1. That the late Jarbo Sartee, Sr. acquired the 10 acres of **land** in the year 1865. In the year 1980, due to the civil crisis, the true and correct certified copy of the deed was destroyed. It is important to note the historical fact that in 1980 there was a coup d'etat and not a civil war, and that there was no destruction of property in the Mamba Point area where the appellee's representative, Robert Sartee, claim to have been living. Therefore, his testimony that the certified copy of the deed was destroyed by the events of 1980 is without any foundation.
2. That in 1982 another true and correct certified copy was issued, replacing the certified copy which had allegedly gotten missing in 1980. However, the 1982 copy was again alleged to have gotten missing in 1996, during the April 6th crisis.
3. That the administrators applied to the Ministry of Foreign Affairs for the issuance of another certified copy. and that on April 17, 2000 another certified copy was issued to them.
4. That they, as administrators, discovered that there were errors in the two certified copies and therefore applied for another certified copy to be issued in their favor.
5. That the Ministry of Foreign Affairs issued another certified copy, which they took to their lawyer and that he advised them that the Ministry of Foreign Affairs had no authority to make such correction and that they should therefore take the deed back to the Ministry, and that after the documents were returned to the Ministry, their lawyer filed a petition for correction of the deed before the Civil Law Court.

This was the sum total of the testimony of the appellee's sole witness. It was never corroborated, and, as stated earlier, the witness failed to address or rebut any of the obvious contradictions and inconsistencies in the title documents which had been pointed out by the appellant's witnesses. It is an accepted principle of law that: "In general, incredible testimony and testimony that is so clearly and mani-festly improbable should be disregarded. To be incredible, evidence must be either so manifestly false that reasonable men ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable men should not differ." 29 A AM JUR2d. *Evidence*, § 1447.

On the cross examination, Mr. Robert Sartee testified that he lived in the Mamba Point area for a period of twenty-five (25) years. The appellant gave notice and did present a rebuttal witness to rebut this fact. Ita first rebuttal witness was Mr. Gyude Bryant. He was called for the purpose of rebutting the appellee's witness testimony that he has lived in the Mamba Point area for twenty-five (25) years. Mr. Bryant testified that he was 53 years old and had lived his entire life in the subject area. He further testified that he did not know Mr. Robert Sartee and was unaware that Mr. Sartee had ever lived in the Mamba Point area. Even during arguments before this Bench, the appellee's counsel could not state who some of the neighbors with adjoining properties were. On the cross examination, Mr. Robert Sartee was asked the following question:

> Q. Mr. Witness, you spoke of the Adjudication Division of the Ministry of Lands, Mines and Energy. Say if you know whether or not the area of Mamba Point has been adjudicated?"
> A. I like to inform this Honourable Court and the jury that I cannot speak for all persons living around my grand parents property. What I do know (is) that the ten acres has been adjudicated by the Bureau of Adjudication, Ministry of Lands, Mines, and Energy, and the ten (10) acres, according to records of the Adjudication Division of the Ministry of Lands, Mines & Energy, my area fall in adjudication area No. 2. And the property has a claim number; that record is with the Adjudication Division of the Bureau of Lands, Mines and Energy."

Appellant's second rebuttal witness was Mr. Jonathan Monger. He was called to rebut the appellee's witness testimony that the ten (10) acres of **land** had been adjudicated in favor of the Sartee's Estate. Mr. Monger rebuttal testimony was to clarify that no such adjudication had been done in favor of the Sartee's Estate. Mr. Monger is head of the Adjudication Division of the Ministry of Lands, Mines, & Energy, which was established pursuant to the Registered **Land** Law of 1974. In his rebuttal testimony, he confirmed and corroborated the prior testimony of the appellant's witnesses that the ten (10) acre parcel of **land** had been assigned a number and lies within the area designated as adjudication area 2 of the City of Monrovia. However, he denied that any **land** in adjudication Area 2 has been demarcated in favor of Mr. Robert Sartee, or the Sartee's Estate.

We observe from the trial records that although appellee's counsel had the opportunity to cross examine, impeach, and discredit the testimony of appellant's two (2) rebuttal wit-nesses, he failed to do so.

We now turn to the next issue, which we shall address in this opinion, and that issue relates to the authority of the Supreme Court of Liberia to render the judgment which ought to have been rendered by the trial court where the Supreme Court disagrees with the judgment of the lower court.

Article 65 of the Liberia Constitution gives the Supreme Court of Liberia " final appellate jurisdiction in all cases ... both as to law and facts ...." Section 51.17 of the Civil Procedure Law - *"Disposition of Appeal",* provides:

"A court to which an appeal is taken may reverse, affirm, or modify, wholly or in part, any judgment before it, as to any party. The Court shall render a final determi-nation or, where necessary or proper, remand to the lower court for further proceedings."

It is a basic elementary and generally accepted principle of constitutional law that the Supreme Court of Liberia has final authority, both as to law and facts, in all appellate matters. Consistent with this principle, the Court, in a valid and proper exercise of its constitutional mandate, may vacate, reverse, modify or substitute the verdict of an empaneled jury and the final judgment on which such verdict is based.

Prior decisions of this Court have affirmed this principle of law that on appeal the Supreme Court may vacate the judg-ment of a trial court and substitute the same with that which, in its opinion, should have been handed down based on the evidence adduced at the trial.

The Supreme Court has repeatedly and consistently enun-ciated and reconfirmed this principle of law in a long line of cases, commencing with *White v. Russell and Ware*, [1930] LRSC 9; 3 LLR 198 (1930). The most recent Supreme Court opinion re-affirming this principle is *Sibley v. Bility*, [1985] LRSC 55; 33 LLR 548 (1985). In addition to the *White and Sibley* cases, referred to herein, other Supreme Court cases enunciating and confirming this principles include the following: *Townsend v. Cooper*, [1951] LRSC 16; 11 LLR 52 (1951); *John v. Republic*, 13 LLR 143 (1958); *Williams and Williams v. Tubman*, [1960] LRSC 47; 14 LLR 109 (1960). *Lamco J. V. Operating Company v. Rogers and Wesseh*, [1981] LRSC 24; 29 LLR 259, Syl. 4 (1981), text at 267.

The basis for the appellant's application for this Court to vacate the trial jury's verdict and reverse the judgment on which it is based is in harmony with and fully supported by the Supreme Court's holding in all the cases cited. For example, in the *Townsend* case, this Court ruled as follows:

"To remand this case with instructions that a jury assess the amount of damages would, in our opinion, only mean a delay of justice. Since, therefore, all of the facts that a jury would have to consider in assessing the damages are now before us, and have been carefully studied by us, and since it is within our province, according to the provisions of our statutes, to render such judgment as should have been rendered by the court below, we hereby find that the appellant, from the facts given in evidence and the law controlling, is entitled to recover from the appellee; and therefore we hereby reverse the judgment of the court below." *Id.*, text at 6 1-62.

In the *Sibley* case, this Court ruled as follows:

"During the arguments, the appellant's counsel vehe-mently contended that the jury's verdict, which the trial court affirmed, was against the weight of the evidence, and that... this Court should reverse the judgment of the lower court and render such judgment as the lower court should have rendered. Applying the request of appellant to the facts of the case, we are of the opinion that it warrants our favorable consideration, especially since the law confers on this Court the right, upon examination of the records in any given case, to render such other judgment as in its opinion will best produce the ends of law, justice and equity".

It is therefore our candid opinion, and we so hold, that the judgment of the court below be and the same is hereby reversed, set aside and made null and void to all intents and purposes. It is also our further judgment that considering the facts of the case, as well as the evidence, both oral and documentary, the plaintiff in the court below, appellant in this Court, is entitled to the

land. . . .” *Id.,* text at 555-556.
Considering the evidence produced by appellant, which were not rebutted and uncontroverted by the appellee, it seems clear to us and beyond any doubt that there was sufficient evidence for the trial jury to have returned a verdict in favor of the appellant and against the appellee. In our minds, fraud was established by the appellant, for which it was entitled to a verdict and judgment thereon. We hold that it was an error for the jury to ignore such clear and cogent evidence and for the trial judge to affirm such erroneous verdict, which we hereby declare to have been clearly against the weight of the evidence and hence reversible.

Wherefore, and in view of all the laws cited and relied upon, as well as the facts presented during the trial, and deeply considering all the circumstances attending this case, it is the considered opinion of the Honourable Court that the final judgment of the trial court be and the same is hereby reversed, and the jury’s verdict upon which it was based be and is hereby vacated and set aside for being contrary to the weight of the evidence adduced during the trial. Accordingly, this Court, consistent with its authority as the final arbiter of all justiciable matters, including the authority to enter the ruling which ought to have been entered in the trial court, now hereby rules that the petition for cancellation filed by the appellant having been sufficiently established by clear, cogent, and convincing evidence, ought to have been and is hereby granted and the three certified copies of the appellant’s property deeds are hereby cancelled and declared null and void for fraud, and are henceforth of no legal force, effect, and validity, as if they had never been issued. All claims, rights, and interests, whether legal, equitable. or otherwise, which the appellee may have had or asserted, are all hereby forever extinguished.
The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, commanding the judge therein presiding to resume jurisdiction over the case and give effect to this opinion. Costs are disallowed. And it is hereby so ordered.

Judgment reversed.

Sibley v Bility [1985] LRSC 55; 33 LLR 548 (1985) (18 December 1985)

MADAM LORPU SIBLEY, Appellant, ***v.*** **MUSA BILITY**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard December 9, 1985. Decided: December 18, 1985.

1. In an action involving a dispute for real property, the oldest deed is determined from the date of probation and registration.
2. Where a person who fails to have an instrument affecting or relating to real property probated and registered within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property which is duly probated and registered. 1956 Code 29:1014 (6).
3. A court to which an appeal is taken may reverse, affirm, modify, in whole or in part, any judgment before it, as to any party.
4. An appellate court has the power to examine upon its merits, both as to law and facts, every proceeding or decision of an inferior tribunal.
5. The appellate court or the Supreme Court is authorized, under the law and upon examination of the records, to render what-ever judgment as the court below should have rendered, and which in its opinion will best conduce to the ends of law, justice and equity.

Plaintiff/appellant instituted an action of ejectment against the defendant/appellee, claiming that the defendant had constructed his kitchen upon **land** owned by the plaintiff. After two trials in which a verdict was returned for plaintiff but which the trial judge had set aside, the case was transferred to a new venue where, after the trial, a verdict was returned in favor of the defendant. From a judgment rendered confirming the said ver-dict, plaintiff appealed to the Supreme Court for a final determi-nation.

The Supreme Court reversed, holding that not only had the plaintiff established title to the **land** in question, but also that her deed carried an older probation and registration date than that of the defendant, and that as such, the plaintiff's deed had pre-ference over that of the defendant. The Court opined that the jury's verdict being contrary to the evidence, the trial court should have set the verdict aside and award a new trial.
The Court observed, however, that as the law vested it with the authority to reversed, affirm or modify any judgment of the lower court, and to render such judgment as the lower court should have rendered, if upon examination of the records it felt justified in doing so, in the best interest of law, justice, and equity. Acting upon this authority, the Court, convinced that the evidence favored the plaintiff, *reversed* the judgment of the trial court, declared the same to be *null and void* to all intents and purposes, *entered* judgment in favor of the plaintiff, and *ordered* that she be placed in possession of the disputed property.

Francis Garlawulo and *Richard Flomo* appeared for the appellant. *Francis Torpor* appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The history of this case reveals that the plaintiff and the defendant are contesting ownership to a piece of land situated and lying in Gbarnga City, Bong County. The plaintiff has alleged that she bought one quarter of a lot upon which the defendant commenced building a kitchen and that although she had called defendant's attention to this fact, he had paid her no heed. We shall quote the testimonies of the plaintiff, the defendant, and some of the witnesses who testified at the trial. It was argued before us that this case was tried twice in Gbarnga at the Ninth Judicial Circuit Court, and that in each case a verdict was brought in favor of plaintiff. However, after each verdict, a new trial was awarded. The defendant then moved the court for a change of venue and the case was sent to the Second Judicial Circuit Court, Grand Bassa County, where, after a trial, final judgment was entered in favor of the defendant.
This is the testimony of the plaintiff, as per record:

"In 1976, I got a quarter lot from one Mr. T. T. Harris which was surveyed for me. At the time of the survey, the surveyor informed the defendant that his kitchen was on my piece of land and he should remove it. The defendant refused to remove his kitchen. I said to him 'you have two lots here, why must you not remove your kitchen from my quarter lot?' He told me that if he removed his kitchen, then I have seen Kpelle people occupying frontage in all Gbarnga City. I asked him to show me what he was depending on for saying that and he told me that if he got off that place then he is not a Mandingo man. So I said, I will carry the matter to court. The defendant then gave his counsel four hundred dollars to give me in order to give him the place, but I told the lawyer that I will not give up the place even if they give me one thousand dollars. The lawyer then told me that if I fail to accept the money, he will make a run after my case until I die. So every time the case comes up for trial, verdict is brought in for me but the case is always redocketed. The defendant is not evicted from my land while he collects money from the tenants who live in the house he built on my land, which money he uses to fight me. This case is therefore brought to you people to hear and determine it for me, I rest. As I tried to state and which statement was not recorded, when this case was assigned for trial, I received message that my daughter had an operation at JFK Medical Center and on my way to visit her I was involved in a motor vehicle accident, for which I spent two months in the hospital. Since the accident, I have not recovered my valise in which I had my deed for this piece of land. I am however glad that my counsel have a photo copy of said deed."
These are few of the questions put to the plaintiff by the defendant and the court:

"Q. Madam witness, according to your testimony in chief, you got a quarter lot in 1976 from T. T. Harris. Please state the reason why the name of Josiah Page is written on the photo copy of the deed presented to court?

A. A. The deed carries Josiah Page's name because he was land commissioner. When the defendant continued troubling me for the same plot of land, I saw the Land commissioner, Mr. Page, and he sent a surveyor to resurvey the place, at which time the defendant was told that he was on my land.

Q. Q. Madam witness, can you tell the court and jury, if you can, when the defendant built the house which is on your land?

A. A. In 1976, I got this track of land and the defendant immediately started fighting me for it. He built up a kitchen on the premises and even though he was told to remove the kitchen, he did not. Every time we put our corners, he will move them because he said I was in front of him.

Q. Q. Do you have any house on your own land now in dispute?

A. A. No because the defendant has nearly occupied all the land."

This is the testimony of witness Isaac Gbarbea with questions and answers put to him:

"Q. Madam Sibley is complainant before this court in an ejectment suit against the defendant for a track of land situated in Gbarnga, Bong County allegedly trespassed upon by the defendant. In support to her allegation, she has cited you as one of her witnesses to tell this court and jury what facts you know touch-ing the cause upon your oath?

A. A. It was sometime in 1976 when I was employed with the Ministry of Lands and Mines, Bureau of Lands and Survey, Gbarnga. At this time, I saw an order from the land commissioner of Bong County, the then Honourable Josiah K. Page, to my chief, the resident surveyor, James B. Flomo, ordering him to go and resurvey one-half lot in favor of Madam Lorpu Sibley according to the metes and bound of her deed and the laid out map of the area. Mr. Flomo then asked me to go and associate with him. Notices were served to the adjacent parties, including Mr. Bility, for the survey. At the date and time of the survey, the parties concerned were all present and we conducted the survey. In the surveying we found out that Mr. Bility had erected a newly stick building house which he had just started. My chief, then the resident surveyor, made his report to the land commissioner of all that were seen on the land. It was at this time that the land commissioner ordered Mr. Bility in writing to desist all improvements on the land at that time. This is all I know.

Q. Q. Mr. witness, refresh your memory and say if you remember seeing plaintiff deed prior to the resurvey?

A. A. Yes, I saw the deed and it was the deed that we went by.

Q. Q. Were you to see a photo copy of the said deed would you recognize it?

A. A. Yes. I will.

Q. Q. Mr. witness, I hand you instrument identified, confirmed and marked by this court LS/MB-1, take it and tell this court what you recognize it to be?

A. A. Yes, this is the deed.

Q. Q. Mr witness, I hand you instrument marks by court LS/MB-1 which you have identified, take it and tell this court and jury if you know in whose favor it was executed?

A. A. It was executed in favor of Madam Lorpu Sibley."

Having taken the stand, the defendant deposed as follows:

"At one time, I approached Mr. T. T. Harris to give me a place on the road to build my tailor shop and he carried me to a place and showed me an area which he told me was a public land. I told him that I wanted the place but he told me that the area contained only half lot. I accepted it and paid him the $75.00 he asked me to pay. He surveyed the place and put my corners up. Six months thereafter, Mr. Joseph Wennah came to me to say that he was the owner of the area and he rooted up my blocks. I carried the matter before Mr. T. T. Harris, who sent me to call Mr. Wennah and when we appeared before Mr. T. T. Harris, Mr. Wennah said the area

was for him, but he was not able to show any paper title to Mr. Harris. He said the place was for him because they are the people of Gbarnga and the **land** is their own. Because I did not want any further trouble, I asked Mr. Wennah to tell me how much money he will take for the place and he charged me $200.00. I paid him the $200.00 in the presence of Mr. T. T. Harris. From that day Mr. Wennah had never disturbed me again for that spot of **land**. Then Mr. Harris surveyed a public **land sale Deed and gave it to me for the land**. The deed was sent for the signature of the President of Liberia. This was in President Tubman's time. He did not sign it until he took sick and died. Mr. Harris told me that another deed had to be prepared which he did and I sent it to President Tolbert who signed it. While my deed was at the Mansion awaiting the signature of the President, I built one house on the spot but before I finished it, the President signed my deed. I therefore decided to complete the building I had started and said to myself that I will build a small concrete house on the remaining **land** in front of the first house.

Since I procured my deed, I have been living on the premises and I have been paying taxes for the property for which I got receipts. The deed and receipts I referred to are all here to prove to the court that the spot belongs to me. Long after that, Mr. Josiah Page who was **land** commission-er came to me and asked that I give him the frontage of my house on which I have planned to put my concrete building, for him to build a booth for his sister who is plaintiff in this case, but I refused. Mr. Josiah Page was **land** commissioner and James Flomo was the surveyor and plaintiff in this case is his sister. I took all my deeds and gave them to my old father to keep. While I was away, Mr. Josiah Page went to my father as **land** commissioner and demanded the deed from him. My father gave him the deed and he took the number of my deed. When I returned my father told me what had happened and I said to him that Mr. Josiah Page had taken the particulars on my deed to prepare another deed in favor of his sister. Since that time, plaintiff and her people have carried me to the circuit court for my own track of **land**. The two lawyers in the case are Kpelle people, the plaintiff is a Kpelle, and the people in Gbarnga are Kpelle, so I have not been able to get my right for my track of **land**. This is why I said the case should come to different area where the people before whom we will appear will not know any of us and we are before you now. Every time the case comes for trial, plaintiff will bring different witnesses. Mr. Wennah who has received $200.00 from me for the same place has now appeared as witness for the plaintiff, and the other man who has been in Monrovia all the time has also appeared to be witness for the plaintiff. I am now swimming on the ocean and nobody but God can save me for my truth. All what I have said, if I lie, motor car should kill me before I get back home. I rest."
This is what the one and only witness for the defendant said:

"Q. As stated on the record earlier that you are cited to explain to the court and jury the acquisition by the defendant of the **land** in question and the delay in the signing of the public **land** deed. You may explain for the benefit of the court and jury?

A. A. As to the acquisition of the **land** and the prolonging, of the signing of the deed, I cannot say that I knew of such transaction. If at all there is a deed and other relevant documents touching said **land**, they will speak for themselves. And this is all I know."

Counsel for defendant gives notice that they rest with the witness with usual reservation. Having quoted the pertinent testimonies of the witnesses as well as the testimonies of the plaintiff and the defendant, we shall now look at the two deeds. Plaintiff's deed was signed by the late President William R. Tolbert on the 23rd day of September 1975 for ¼ of a lot and was duly probated and registered on the 8th day of April, 1976. The defendant's deed was signed by the late President William R. Tolbert on the 15th day of September 1975 for ½ lot, probated and registered on the 10th day of December 1976. According to our statute the oldest deed is determined from the date of probation and registration. This is the relevant statute on the issue:

"Failure to probate and register. If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this chapter within four months after its execution, his title to such real proper-ty shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered." 1956 Code 29:6.

According to the testimonies of the parties and their witnesses (plaintiff and defendant with their witnesses), plaintiff did establish title to the **land** in question. In addition, the plaintiff has the oldest deed, according to the statute as provided in title 1956 Code, 29:1014, *supra*. We are therefore amazed at the conclusion reached by the jury's verdict and affirmed by the court. The court should have awarded a new trial and should not have affirmed such a verdict which was against the weight of the evidence. Our statute provides that, "a court to which an appeal is taken may reverse, affirm or modify wholly or in part, any judgment before it as to any party. The court shall render a final determination or where necessary or proper remand to the lower court for further proceedings." Civil Procedure Law, Rev. Code 1:51.17, *Disposition of appeal*.

In *White v. Russell and Ware*, this Court held that "an appeals court has power to examine upon its merits, both as to law and facts, every proceeding or decision of an inferior tribunal." *White v. Russell and Ware*, [1930] LRSC 9; 3 LLR 198, (1930). This Court has since thereafter consistently held that in keeping with law, an appellate court or the Supreme Court is authorized to render whatever judgment the court below should have rendered. *Townsend v. Cooper*, [1951] LRSC 16; 11 LLR 52, 61-62 (1951), *John v. Republic*, 13 LLR 143, Syl 3 (1958); and *Williams and Williams v. Tubman*, [1960] LRSC 47; 14 LLR 109, (1960), 114 - 115.

During the arguments, the appellant's counsel vehemently contended that the jury's verdict, which the trial judge affirmed, was against the weight of the evidence, and that since this case has been pending too long, this Court should reverse the judg-ment of the lower court and render such judgment as the lower court should have rendered. Applying the request of appellant to the facts of the case, we are of the opinion that it warrants our favorable consideration, especially since the law confers on this Court the right, upon the examination of the records in any given case, to render such other judgment as in its opinion will best conduce the ends of law, justice and equity.

It is therefore our candid opinion, and we so hold, that the judgment of the court below be and the same is hereby reversed, set aside and made null and void to all intent and purpose. It is also our further judgment that considering the facts of the case, as well as the evidence, both oral and documentary, the plaintiff in the court below, appellant in this Court, is entitled to the **land**, subject of this appeal case. Costs are ruled against the appellee. The judge of the trial court is instructed to resume jurisdiction over said case and execute this judgment by placing plaintiff Lorpu Sibley in possession of the said property in dispute. And it is hereby so ordered.

Judgment reversed.

Lewis et al v Tulay et al [1986] LRSC 23; 34 LLR 188 (1986) (31 July 1986)

NATHANIEL LEWIS, G. BOYEE TOGBA et al., Petitioners/Appellants, v. **HIS HONOUR FREDERICK K. TULAY**, Resident Judge, Sixth Judicial Circuit, Montserrado County, **JOHN G. T. NAGBE** and **THE MINISTRY OF JUSTICE**, Respondents/Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR A WRIT OF CERTIORARI.

Heard: June 26, 1986. Decided: July 31, 1986.

1. If the petitioner in a certiorari proceeding does not pay the accrued costs, as provided by the statute, the Supreme Court will refuse jurisdiction and thereby not order the issuance of the writ.
2. Certiorari does not lie to review final judgment. It is only used to review intermediate order or interlocutory judgment of a lower tribunal.

Appellants were ordered evicted from certain parcels of **land** upon judgment of the trial court. Although appellant did not appeal from the judgment of the trial court, when the court sought to enforce its judgment the appellants filed a bill of information before the same trial court, apparently in an attempt to have the trial judge reverse his judgment. When the trial judge denied the bill of information, the appellant petitioned the Chambers Justice for a writ of certiorari. Upon denial of the petition by the Chambers Justice, the appellant appealed to the full bench. The Supreme Court upheld the ruling of the Chambers Justice, dismissing the petition.

Flaagwaa R. McFarland appeared for the petitioners/ appellants. *M Kron Yangbe* appeared for the respondents/ appellees.

MR. JUSTICE BIDDLE delivered the opinion of the Court.

This is an appeal from the ruling of His Honour, Chambers Justice Boimah K. Morris in a certiorari proceedings now before the bench *en banc*. We shall come to the facts in the case as per records certified to us later on in this opinion. But for the moment, we would like to unfold the many, if not unnecessary, judicial processes resorted to by the parties in these proceedings which could have been avoided by the exercise of ordinary prudence.

Firstly, there was a request or application made to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for the enforcement of an Executive Ordinance or Decree no. 80; secondly, a writ of possession for the enforcement of the Executive Ordinance or Decree no. 80 aforesaid; thirdly, a bill of information before the circuit court which issued out the writ of possession, to stay the enforcement of the writ of possession; fourthly; a petition in certiorari to review the final judgment in the information proceedings, and fifthly, while appeal in the certiorari ruling from the Chambers Justice was pending before the full bench, appellees in certiorari filed a bill of information before the bench *en banc* against respondents/appellants in certiorari. In order to avoid unnecessary cost or delay in the final determination of this matter, the various suits or proceedings therein, as brought before us, were consolidated. See Civil Procedure Law, Rev. Code 1: 6.3.

Perhaps had the Constitutional Advisory Assembly which met in Gbarnga City, Bong County in 1983 to review the Draft Constitution for the return of this Country to civilian democratic rule, not wisely deleted the Ombudsman Commission in the Draft Constitution during its deliberation, this case or for that matter, any other case brought before this Court after January 6, 1986, would go on *ad infinitum.* But thank God for that deletion. These legal battles, if not entanglements, were apparently instituted not for the purpose of seeking final determination of the main issue but to cause unnecessary delay and frustrate the ends of justice.

From the records certified to us, the following facts were revealed: In August of 1983, the Minister of Justice received directives through a letter from the then Head of State and Chairman of the then People's Redemption Council, Dr. Samuel Kanyon Doe, now President of Liberia, authorizing and empowering the said Minister of Justice to take necessary legal steps to place the heirs of the late G. Koffa Nagbe of Bushrod Island, Montserrado County, in possession of their additional 54 acres of **land** situated on Bushrod Island, by the St. Paul River. In said directives, it was re-emphasized that the Minister of Justice must "ensure that the Nagbe heirs take immediate possession of the said 54 acres of **land** . . ." Attached to these directives were the following documents:

(a) Executive Ordinance Number 10-A or Decree no. 80;

(b) copy of a true and correct copy of a public **land** Sale deed from the Republic of Liberia to G. Koffa Nagbe for 42.5 acres of **land**;

(c) copy of a true and correct copy of Public **Land** Sale Deed in favor of G. Koffa Nagbe and Gaswa Johnson for 54 acres of **land**, both situated in Montserrado County; and

(d) letter from Capt. J. P. Beh, then Acting Minister of Internal Affairs, dated February 25, 1982.

For the benefit of this opinion, we hereunder quote these documents which we consider relevant to the determination of this case:

LETTER TO THE MINISTER OF JUSTICE
"PRC-IV/DG-C/273/183 August 29, 1983 Mr. Minister:

In keeping with a decision rendered by President Barclay, you are hereby authorized and empowered to take the necessary legal steps to place the late G. Koffa Nagbe's heirs, represented by John Gmanten T. Nagbe, in possession of the 54 acres of **land** which lie adjacent to the 42.5 that has already been turned over to them. Meanwhile, you are directed to ensure that the Nagbe heirs take immediate possession of the said 54 acres of **land** and have all squatters vacate the same in four weeks upon receipt of this directive.

Attached you will find a copy of Nagbe's deed and other supporting documents.
IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES!
Cordially yours, /s/ CIC Samuel K. Doe
HEAD OF STATE & CHAIRMAN, PRC Major Jenkins Scott Minister of Justice Ministry of Justice Monrovia, Liberia

cc: John Gmanten T. Nagbe." "EXECUTIVE ORDINANCE NO. TEN-A (DECREE NO. 80)

"WHEREAS, in keeping with testimonies heard and recommendations submitted by authorized Government, the late Gabriel L. Dennis, Moore's heirs and the late G. Koffa Nagbe's heirs involving 42.5 acres of **land** situated and lying between the St. Paul River and the Stockton Creek (now referred to as the Fallah Varney Bridge Community); and

WHEREAS, in 1943 the late President Edwin J. Bar-clay, acting in his capacity as President of the Republic of Liberia, did appoint and constitute a three-man Commission to thoroughly and meticulously investigate and consider the issues involved in the said case, which committee's findings and recommendations were made in favor of the heirs of the late G. Koffa Nagbe; and

WHEREAS, the late President Edwin J. Barclay, in his capacity as Chief Executive of the Republic of Liberia, did uphold and approve the recommendations of the said Committee; and

WHEREAS, request was made by the late Gabriel L. Dennis on behalf of himself and the Moore Family for a two- year grace period to vacate the premises which was granted but never implemented after the grace period expired; and

WHEREAS, the Ministry of Lands, Mines and Energy, acting on authority of the Head of State, recently conducted a comprehensive survey of the area in question, identified the 42.5 acres of **land** which is the *bona fide* property of the late G. Koffa Nagbe; and which now descends to his surviving heir, Mr. John G. T. Nagbe.

NOW THEREFORE, I, SAMUEL KANYON DOE, Head of State, Chairman of the People's Redemption Council, and Commander-in-Chief of the Armed Forces of Liberia, by virtue of the authority in me vested, do hereby declare and proclaim that the late G. Koffa Nagbe's heirs, represented by John G. T. Nagbe, are the legitimate and rightful owners of the 42.5 acres of **land** including the area connecting Stockton Creek, East, and the St. Paul River, West, and all the rights and privileges appertaining thereto; and by so doing, the said **land** is hereby restored to them by the Government of the Republic of Liberia in perpetuity.

Furthermore, the Nagbe heirs are to take immediate possession of same; and all the rights and privileges of the Dennis'/Moore's heirs hereinbefore accorded them are hereby declared null and void and immediately cease to exist; which requires them to immediately vacate the said 42.5 acres of **land**.

Under the prevailing circumstances, the Ministry of Justice is hereby authorized and empowered to defend, safeguard and protect the rights and interests of the Nagbe's heirs in any litigation or dispute pertaining to the said **land**; and the Judge of the Civil Law Court of Montserrado County is hereby authorized to order the sheriff for Montserrado County to evict the Dennis'/Moore's heirs from the said property and all other illegal occupants and squatters, and inform the general public through the news media of the Nagbe's ownership of the said property.

In view of the aforementioned, the Ministry of Justice is hereby further ordered and mandated., through this Executive Ordinance, to issue a Bill of Equity and enter into legal proceedings against the Dennis'/Moore's heirs for the cancellation of their deeds and any other deeds claiming said area which is hereby restored to the Nagbe heirs.

"GIVEN UNDER MY HAND AND SEAL THIS 9TH DAY OF FEBRUARY, A.D. 1983.
/s/ CIC Samuel K. Doe
/t/ CIC Samuel K. Doe
CHAIRMAN, PEOPLE'S REDEMPTION COUNCIL AND HEAD OF STATE".

"AMA/10-G/167/203/182 February 25, 1982 Rev. Isaac Tugbeh Chairman Fallah G. Varney Bridge Community Bushrod Island Monrovia, Liberia Mr. Chairman:
This Ministry has received complaint against you by two families, namely: the Dennis family and Mr. John Nagbe who are jointly claiming ownership of the 85 acres of the **land** around Fallah Varney Bridge which your community has asked the Ministry of Local Government to grant you squatter's rights and/or to allow you to undertake development projects in the area.

We wish to direct that in view of the dispute over the ownership of this **land**, and in view of the head of State's letter, Ref. No. PRC/II/167/203/t82 dated January 11, 1982 to Maj. Fodee Kromah, Minister of Lands & Mines in connection with the immediate settlement of this dispute between these two families for the establishment of the right ownership of this **land**, we cannot grant you the right to squat on this **land** or allow you to undertake any development

project thereon. In case the rightful owner of this **land** is determined by the Liberian Government, negotiation could be made by the community with that owner for the possibility of buying piece or portion of this **land** by your community.

Thanks for your kind and usual cooperation.

IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES." Very truly yours, /s/ Capt. John P. Beh /t/ Capt. John P. Beh ACTING MINISTER".

These attachments were, in our opinion, to aid the Ministry of Justice in carrying out the directives herein above mentioned.

Predicated upon this letter, the Ministry of Justice appeared before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, during its December 1983 Term, presided over by His Honour Frederick K. Tulay, then Circuit Judge, and made records. Whereupon the judge cited the members of the Fallah Varney Bridge Community, appellants in the case at bar, to appear before court on a day certain. They appeared and in their presence the Decree or Executive Ordinance was read, and because the members of the Fallah Varney Bridge Community had no paper title, the court ordered the issuance of a writ of possession to place John G. T. Nagbe et al., heirs of G. Koffa Nagbe, in possession of the 54 and 42.5 acres of **land** covered by their late father two deeds. Petitioners herein were physically evicted, and the sheriff made his returns accordingly. But immediately thereafter petitioners re-entered the premises in question by force and subsequently fled to the circuit court and filed what they termed a bill of information in which they substantially averred:

(a) That they are aware of the issuance of Executive Ordinance no. 10-A or Decree no. 80 by the then PRC in 1983, signed by CIC, Dr. Samuel K. Doe, then Chairman, "People's Redemption Council and Head of State of the Republic of Liberia, granting respondent Nagbe and his heirs 42.5 acres of **land** . .”

“(b) But that where informants are presently occupying "does not fall within the said 42.5 acres of **land**..."

(c) That a Board of Arbitrators be appointed to confirm their contention that they were not occupying respondent Nagbe's premises; and

(d) That where informants were presently occupying was public **land** and that the Executive Ordinance or Decree in question does not apply to squatters on public **land** (see count 5 of bill of information).

The records are dehors of any returns to this bill of in-formation, even though the presiding judge did issue a judge's appellee was the rightful owner of a parcel of **land** described in the writ of possession, claimed that where they were occupying "was public **land** and did not fall within the **land**" owned by appellee Nagbe. The informants are also the same petitioners in certiorari who, in count 1 of their petition, claimed to be "title holders to the very parcel of **land** they are still occupying. What an anomaly! The application was granted and the alternative writ issued, commanding respondent to file his returns.

In his returns, respondent Nagbe contended that: (a) the judgment sought to be reviewed by these certiorari proceedings was final, in that, a writ of possession after final judgment had already been served on the petitioners, now appellants, and therefore certiorari would not lie, and (b) that petitioners, having failed to comply with the provision of the statute controlling certiorari, are barred and estopped from seeking the benefit thereunder provided.

Since these inconsistencies and other procedural blunders have been thoroughly dealt with by the Chambers Justice, we deem it unnecessary to traverse them in details. However, we shall pass upon certain aspects of the petition which we deem necessary for the benefit of this opinion. And because of our agreement with the ruling of the said Chambers Justice, we hereunder quote said ruling:

"RULING

"The four-count petition for certiorari filed by the petitioners state in substance that petitioners are defendants in an eviction mandate from the Ministry of Justice to His Honour Judge Frederick K. Tulay to have the petitioners evicted from the **land** because it is claimed that their **land** falls within the 42.5 acres of **land** granted to the late G. Koffa Nagbe which has descended to his heir John G. T. Nagbe. The petitioners further claim that they filed

information before the respondent judge contending that they have titles to the area occupied by them and that the said area is not within the 42.5 acres of **land** belonging to the late Koffa Nagbe. The petitioners therefore requested for an arbitration comprising of surveyors to go and survey Koffa Nagbe's 42.5 acres of **land** but the judge ignored order commanding the clerk to summon respondent Nagbe and the Minister of Justice to appear in the information proceedings.

The bill of information, filed for the obvious purpose of seeking to have the trial judge reverse his own judgment against which there was no appeal, was disposed of against informants. According to informants, they were denied an appeal to the Supreme Court from the ruling in the information proceedings by the court below "in open court". In other words, appellants were present in court when the bill of information was disposed of This assertion is contained in their petition for a writ of certiorari which we shall shortly deal with.

Richardson v Gabbidon [1963] LRSC 44; 15 LLR 434 (1963) (10 May 1963)

NATHANIEL R. RICHARDSON, Appellant, v. EDWIN J. GABBIDON, by his Attorney-in-Fact, SAMUEL B. GABBIDON, Appellee.
APPEAL FROM THE
CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 20, 21, 22, 1962. Decided May 10, 1963. 1. A court of equity may decree cancellation of administrator's deeds where the conveyances are shown to be invalid, and where title to real property purportedly conveyed by such deeds is shown to have been acquired by the petitioner seeking cancellation, and not by the grantee named in the deeds. 2. Where the language of a will describes a descendant of the testator as "my grandson," and the descendant so described is a legitimate son of a purported daughter of the testator, the legitimacy of the purported daughter will be conclusively presumed for purposes of adjudication of the right of the descendant to acquire real property by inheritance from the testator.

On appeal, a decree ordering cancellation of administrator's deeds, and upholding the claim of appellee, petitioner below, to title to real property described in the deeds, was affirmed.
Momolu S. Cooper, A. Gargar Richardson, Lawrence A. Morgan and 0. Natty B. Davis for appellant. Henries Law Firm for appellee.

MR. CHIEF the Court.

JUSTICE WILSON

delivered the opinion of

The will of
Thomas Smith, who died in 1900, provided as follows in its tenth clause: "All the rest and residue of my estate real, personal and
mixed of which I shall die seized and possessed or to which I shall be entitled at my decease, I give, devise and bequeath to my
beloved daughter Maria A. E. Richardson for life, and after her death it is my wish that whatever of my estate may be left by her
not
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disposed of shall be divided thus into two parts viz : two-thirds of all the balance shall be
divided between her three children, namely, John T. Richardson, Deborah F. Richardson and Toussaint L. Richardson and the remaining
one-third to be divided between Charles Smith, A. B. Stubblefield, Sarah Curd, Rosalind Siscoe and Angeline Campbell." Although Thomas
Smith's daughter, Maria A. E. Richardson, was named executrix of his will, the residuary estate was never actually divided among
her three children. Nevertheless, because all three of the heirs were of the body of Maria, none of them objected to the joint occupation
of the property by the others. Maria died in 1914. In her will, she attempted to dispose of some of the property of the estate to
which her three children were entitled under the will of her father, Thomas Smith. Although said children knew that this attempted
disposition was in violation of the will of their maternal grandfather, they raised no objection. In 1932, John T. Richardson, the
eldest of Maria's three children, died intestate, leaving no heirs of his body, and no realty over which he possessed outright legal
title. Therefore, it goes without saying that whatever property he controlled from the estate of his maternal grandfather, descended
to Deborah and Toussaint, his brother and sister, the heirs of his mother. There is no showing that John T. Richardson's estate was
legally administered. However, the records show that Deborah and Toussaint subsequently assumed control of the property; for on February
15, 1937, they jointly concluded a lease agreement with Oost Africankansche Compagnie covering Lot Number 323 in the City of Monrovia,
the same being a portion of the land which came into their possession as aforesaid by the will of Thomas Smith. Deborah died in 1938.
In her will, she attempted to devise to third parties some of the real property which had been devised to her and her two brothers
by the will
,

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of their grandfather. Subsequently Toussaint, the sole survivor of the three children
of Maria, objected to the probation of his sister Deborah's will in a case which travelled to the Supreme Court, where Mr. Chief

Justice Grimes, speaking for this Court in an elaborate and comprehensive opinion, declared the estate held by John, Deborah and Toussaint Richardson an estate in common, and
declared both the will of Marie E. Richardson and the will of Deborah Stubblefield inadmissible to probate. (See Richardson v. Stubblefield, [1940] LRSC 5; 7 L.L.R. 107 [1940].) Obviously, then, all properties which remained from the two-thirds of Thomas Smith's estate which had been shared by the
three children of Thomas Smith's daughter, Marie Smith-Richardson--John, Deborah and Toussaint --descended to Toussaint as sole survivor
of the three. In 1945, Toussaint L. Richardson died, leaving a will in which he devised sundry tracts of the aforesaid estate to
several persons, including the appellant, who was a paternal relative, and whom he nominated as one of his executors. He also devised
several parcels of land to his grandson, Joshua Edwin Gabbidon, whom he expressly described as such in his will. The residuary clause
of said will provided as follows: (I . . . all the rest, residue and remainder of my property, I do hereby give, and devise, being
either mixed or real, which has not been herein before devised or bequeathed, to him [Joshua Edwin Gabbidon] and his use and behoof
forever." After said will had been probated and registered, the executors of the estate of Toussaint L. Richardson proceeded to administer
the estate, and carried out the directions of the testator, except as to the above-quoted provision of the residuary clause. In 1955,
some 23 years after the death of John T. Richardson, and during the administration of Toussaint L. Richardson's estate, Rebecca M. Richardson, the widow

of John T. Richardson, tendered to appellant the following document: "This is to certify that I, Rebecca M. Richardson, widow of the late John T. Richardson of the Settlement of Virginia, Montserrado County,
Republic of Liberia, who died intestate in said county, and who, before his death, handed me several deeds for parcels of land to
hold and possess for my natural life, and thereafter, or before my death, I, the said Rebecca M. Richardson aforesaid, should surrender
such deeds unto Nathaniel R. Richardson, for himself and his heirs to possess and hold forever, hereby in keeping with my said late
husband's instructions, do surrender unto the said Nathaniel R. Richardson the following deeds bearing the names of grantors and
numbers as follows : "Administrator's deed from Charles Henry Capehard to Robert B. Richardson, probated and registered in Volume
31, page 562, Lot Number 5. "Warranty deed from Thomas W. Haynes to Maria A. Richardson, probated and registered in Volume z8, page
448, Lot Number 2. "Administrator's deed from John T. Richardson, administrator of the estate of Robert B. Richardson, to Deborah
F. R. Stubblefield, registered December 7, 1914, given back to John T. Richardson by his sister above-named, Lot Number 2--Third
Range, Virginia--I5 acres of land. "Transfer deed from George Lewis and wife to Thomas Smith, grandfather of John T. Richardson,
probated and registered in Volume 12, page 325, Block Number 3, commencing at the southwest angle of the adjoining io acres of Block
Number 2, on Mesurado River, containing 3o acres of land.
"Administrator's deed from Edward Howard of

the estate of Jack Howard to Thomas Smith, grandfather of John T. Richardson, Lot Number 5, containing 15 acres of land on the Mesurado River, registered in Volume 3, page 62, September 1862. "William Williams and Mary Jane, his wife, to Thomas Smith, grandfather of John T. Richardson, Lot Number 6, being a portion of Block Number 3, on Mesurado River, containing 15 acres of land. Probated and registered in Volume 9, page 520, August 1862. "Warranty deed from Maria A. Richardson to John T. Richardson, probated and registered April 1, 1901 in Volume 28, page 305, Lot Number 8-- Third Range--containing five acres of land. "Deed from J. S. Smith, Acting President of Liberia, to Richardson Buck whose services were engaged in the insurrection of Gaytonba, 1839-40 under the command of J. J. Roberts, situated in the Settlement of Mesurado River, Number 2, bearing in the authentic records of said settlement the number 9, containing ten acres of land. Dated November 17, 1870. "Deed from Edward Jones, dated September 7, 1857, to Thomas Smith, grandfather of John T. Richardson, Lot Number 1, Block Number 2, Mesurado River, containing loo acres of land. Registered according to law in Volume 9, page 522, August 1862. Adjoining ten acres Block Number 2 (marked of brander) runs : North 45 degrees, East 40, North intervats [word illegible] 6450 E. 25 6450 W. 40, North 45 degrees, West 25, being a rectangle of wo acres of land--Second Range. [Sgd.] Benj. Anderson, Surveyor, Montserrado County, March 5, 1881. "I, the said Rebecca M. Richardson, widow of aforesaid, further certify that because I was given these

deeds to hold the parcels of land for my natural life, I did not make out a quitclaim deed in my favor, but rather kept them safely to be handed over to Nathaniel R. Richardson, cousin of my late husband, J. T. Richardson, as aforesaid, for himself and his heirs forever as aforesaid.
[Sgd.] "REBECCA M. RICHARDSON, Widow of the late John T. Richardson of the Settlement of Virginia, Montserrado County."

The estate which was administered by James L. Richardson, who transferred to appellant property of Thomas Smith, deceased, was never shared or divided as was intended, and was transferred only three days after the letters of administration were issued by the Monthly and Probate Court of Montserrado County, without any consideration for the widow, nor in keeping with the statute controlling the premises. The foregoing historical summary covers the passage of the estate from Thomas Smith to Toussaint L. Richardson, from whom the appellee claims title to the property in question, he having been recognized and declared by the said Toussaint L. Richardson as his grandchild. The whole case seems now to revolve around two basic claims : (r) the claim of Edwin J. Gabbidon, the

present appellee, based on descent from Toussaint L. Richardson, his grandfather; and (2) the claim of Nathaniel R. Richardson, the present appellant, based on transfer to him of certain tracts of **land** by deeds listed in the above-quoted certificate. Rebecca M. Richardson concluded the above-quoted certificate by stating that, because she was given the deeds described therein to hold for her natural life, she had not executed a quitclaim deed in her own favor, but had kept said deeds to be delivered to the appellant, whom she referred to as the cousin of her late husband, John T. Richardson, for himself and his heirs forever. Although said

certificate bears no date of issuance, it appears from its face that same was presented to the Monthly and Probate Court of Montserra.do County in the month of May, 1956, because Probate Commissioner I. Van Fiske ordered a letter of administration dated May 7, 1956, issued in favor of James L. Richardson, brother of the appellant. Under the administration of James L. Richardson, the following transfers of property were made to the appellant: 1. Administrator's deed from James L. Richardson, administrator of the estate of John T. Richardson, to Nathaniel R. Richardson, dated May 10, 1956, for wo acres of **land** in Sinkor, Monrovia, situated on the Mesurado River. 2. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May 10, 1956, for so acres of **land** situated on the Mesurado River. 3. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May Jo, 1956, for 15 acres of **land** situated on the Mesurado River. 4. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May Jo, 1956, for 3o acres of **land** situated on the Mesurado River. 5. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May 10, 1956, for 5 acres of **land. All the tracts of land** which were transferred to appellant had been the fee simple property of Thomas Smith. It is very peculiar and strange, as well as contrary to law that, on May I°, 1956, only three days after appellant's brother had received letters of administration from the probate court, he executed and delivered to the appellant the above-described administrator's deeds of Thomas Smith's property without even considering the widow of the testator or any claim against the estate.

On October 21, 1959, appellee, claiming title to twothirds of the estate of Thomas Smith by descent from appellee's grandfather, Toussaint L. Richardson, and alleging that transfer of such property to the appellant was illegal, fraudulent and ineffective, filed a bill which reads, in its body, as follows : "1. Petitioner says that Samuel D. Gabbidon, of the County of Montserrado and Republic aforesaid, is the lawful attorney-in-fact of Edwin J. Gabbidon of the City of Monrovia,

Montserrado County, and that by virtue of a power of attorney duly executed by the said Edwin J. Gabbidon, Samuel B. Gabbidon has lawful and sufficient authority to institute this suit in behalf of the said Edwin J. Gabbidon, who intends traveling to foreign parts, as is evidenced by petitioner's Exhibits A and B, hereto attached to form parts of this bill. "2. And petitioner further petitions that the late Thomas Smith of the City of Monrovia, County and Republic aforesaid, at the time of his death was the owner of and possessed in fee simple certain realty which he devised to his daughter, Maria A. E. Richardson, for life; and after her death, two-thirds of said land to go to said Maria A. E. Richardson's three children, namely: John T. Richardson, Deborah F. Richardson, and Toussaint L. Richardson, jointly, as more fully appears from Paragraph Ten of the will of said Thomas Smith, hereto attached, marked Exhibit C to form a part of this bill. "3. And petitioner further petitions that, as to said Maria A. E. Richardson, one of the devisees of the will of said Thomas Smith, after her death said two-thirds of the property, as referred to in Paragraph Ten of the will of said Thomas Smith, and the rest and residue of all the lands not otherwise disposed of in the will of said Maria A. E.

Richardson, inclusive, came to said three children, viz: John T. Richardson, Deborah F. Stubblefield, by marriage, and Toussaint L. Richardson, as more fully appears from Paragraph Eight of said will of Maria A. E. Richardson, hereto attached, marked Exhibit D to form a part of this bill. "4. And petitioner further petitions that Toussaint L. Richardson, one of the devisees of the wills of Thomas Smith and Marie A. E. Richardson, was the last who died, and by operation of law, and in keeping with the doctrine of survivorship, said Toussaint L. Richardson devised in fee to his natural grandson, Edwin J. Gabbidon hereinabove named, as more fully appears from Clauses Ninth and Eleventh of the will of said Toussaint L. Richardson, hereto attached and marked Exhibit B to form a part of this bill. "s. And petitioner further petitions that, notwithstanding the premises hereinabove asserted, it has come to his certain knowledge recently that false administrator's deeds were illegally, fraudulently and wrongfully executed conveying certain land from the estate of John T. Richardson, one of the aforesaid devisees of the wills of Thomas Smith and Maria A. E. Richardson, to Nathaniel R. Richardson, respondent in these proceedings, which parts and parcels of land, indeed and in truth, are actually parts and parcels of the estate hereinabove referred to in Counts 1, 2, 3 and 4, and also the property of said Edwin J. Gabbidon in fee, as already stated in Count 4, and as more fully appears from said false administrator's deeds hereto attached, marked Exhibits F through K, to form parts of this bill." Countering the foregoing, appellant alleges that appellee's mother, by whom he was born to Toussaint L.

Richardson, was not born in wedlock nor was she ever legitimized ; and that consequently,
title to John T. Richardson's property could not have descended through her to appellee. Since this allegation does not impugn Toussaint
L. Richardson's right of title by survivorship, descent to an heir of his body seems to be conceded, although appellant contends
that appellee is not such an heir. Appellee on the other hand, alleges that appellant derived no title whatsoever from either John T. Richardson or Toussaint
L. Richardson, the surviving heir of John T. Richardson who recognized appellee as his grandson in the above-quoted residuary clause
of his will. Before resolving the issue presented by appellant's challenge to the legitimacy of appellee's mother, let us examine
the means by which appellant acquired possession of the property in question. Unlike the appellee, the appellant has asserted no
claim of title by descent or devise, but rests his claim primarily on delivery of deeds to him by Rebecca M. Richardson, pursuant
to what she described in the undated certificate quoted supra as the instructions of her late husband, John T. Richardson. Said certificate was admitted to probate; and on the strength thereof, letters of administration were issued in favor of James L. Richardson, appellant's brother, who had requested the opening of the estate more than 23 years after the decedent's death, contrary to the statutory requirement
that, except for foreign debts, all intestate estates must be closed within one year after the death of the intestate decedent. Appellee's
title to the property in question has been challenged by appellant on the ground that appellee is not of heritable blood because
his mother, through whom he claims to have acquired title, was born out of wedlock, was not thereafter legitimized, and consequently
never inherited from her natural father. The extent to which this allegation has been proved is not shown in the record, but appellant's
counsel took the position in oral argument

before this Court that appellee had failed to make denial
thereof. Although no express denial appears to have been entered, the record does show that appellee asserted ownership of the property
by virtue of the will of his grandfather, Toussaint L. Richardson, who appellant alleged was the sole survivor of a joint tenancy
created by the will of Thomas Smith. Since this Court has held in Richardson v. Stubblefield, supra, that said estate was not a joint
tenancy, we must turn to appellant's allegation, that appellee is not of heritable blood in view of his mother's alleged illegitimacy.
Neither the appellant nor any collateral heir of Toussaint L. Richardson has produced any evidence of non-heritable blood with respect
to appellee or his mother. But such evidence would be required to rebut the acknowledgment of appellee by Toussaint L. Richardson
as his legitimate grandson. Absent such evidence, there is no ground on which this Court could hold that appellee is not the heir

of Toussaint L. Richardson, when appellee was described by Toussaint L. Richardson himself, in his will, as his grandson. We therefore conclude and hold that appellee is the legitimate grandson, next of kin, and surviving heir of Toussaint L. Richardson, and as such is entitled to the property of Thomas Smith. We further hold that the deeds in question should be ordered cancelled as prayed for by appellee. In addition, we have decided to dismiss the appeal filed in this court during the October, 196o, term in the ejectment action of J. N. Togba, M. V. Privilegi and Nathaniel T. Richardson, appellants, v. Joshua Edwin Gabbidon, appellee, since said case relates to a portion of the identical property covered by the deeds ordered in the instant case. The judgment of the court below is hereby affirmed with the amendments stated, supra. Affirmed.

with whom MR. JUSTICE WARDSWORTH concurs, dissenting. This case was argued and submitted last March, but was not decided. Now, after more than a year of deliberation, the majority of our colleagues have voted to affirm the judgment of the court below. Mr. Justice Wardsworth and I disagree with this decision, and have voted to reverse the judgment for reasons discussed in this dissenting opinion. We might mention, however, that at the time when we voted in Chambers, the position taken by our colleagues was that the case should be remanded because neither of the parties was entitled to the property covered by the deeds which the suit was brought to cancel, since Nathaniel R. Richardson was not related to Thomas Smith, and Edwin J. Gabbidon had not denied his lack of heritable blood as alleged in Nathaniel R. Richardson's answer. But our colleagues have now elected to change their position without notice to us who voted in the minority. We were not favored with a copy of the majority opinion, and have not been given a copy up to the present time, although the majority opinion binds all members of the Supreme Court. I have decided to review the issues of this case in some detail, not only because of their importance in this case, and in future cases, but also because they bear on certain customs as to transfer of property, as practiced by the old families of this country. It was the custom among the old families that a man wanting to give a piece of property to his son, or to a relative, or to someone who might have found favor in his sight, would physically deliver the deed for the property, intending thereby to donate the land, transfer the fee, and vest the title in such recipient. We know, today, that such a method of transferring property is contrary to the

strict requirements of the law of real property, as well as conducive to confusion, and that it affords opportunity for land-hungry strangers to invade unsuspecting family circles, and to try to enforce claims to property not legally protected by the execution of proper deeds of transfer. It is significant, however,

that this unusual custom has not produced much litigation in the past; and this must be due to the fact that the custom was well known to all of the early families, and was practiced and respected by them all. For instance if Tom, a servant reared in the Jones family, was given a deed for a lot on which he built his house, although that deed was still in the name of the head of the family, and Tom was without a transfer to vest the title in himself, no member of that family would ever attempt to question or disturb his peaceful occupation, even down to his children's use of it after his death. Every member of that family, and every relative thereof, would respect the decision of the head of the house or eldest in the family. This custom has been exemplified in the present case.

To say a little more about this custom, where relatives had such respect for these decisions, it was unheard of to violate the wishes of the donor, and it was unknown for strangers to intrude into the sacred affairs of the family circle. But as time has passed by, with it has gone many of the customs known to and practiced by our fathers; customs which so honorably and so innocently portrayed an abiding faith and confidence in the strength of the bonds which held family ties together; bonds almost unknown in family circles today. Gradually, people have begun to realize that with enlightenment, progress and improvement have come treachery, deceit and avarice; and therefore the necessity has arisen for individual members of families to protect their property, not only against the strangers and the graspers, but also against each other. This has also been exemplified in the present case, even to the extent that Thomas Smith's right to devise his own

property to chosen individuals has now been made the subject of heated court litigation by a person who can claim no more legal relationship to the testator than can the other party in the case. Such is the extent to which land-hungry people are prepared to go today.

During our deliberations in Chambers, it was suggested that this case should be remanded either for a new trial or for the parties to replead. We disagreed with this view because there is no evidence not already in the record which could conceivably be introduced under new pleadings, or which could cure the laches which had already attached when appellee filed his bill in 1959. And if laches should have barred him then, how much more barred would not he, or any other person, be who filed suit later to cancel the same deeds? No new evidence could now rebut the admission of appellee contained in the two letters he wrote to the President of Liberia acknowledging appellant's ownership of John T. Richardson's property after he had inspected the deeds. And if his written admission could estop him, in 1959, from seeking to repudiate his own acts, how could he now properly contend that he would not be so estopped for all time in the future? We cannot perceive how a remand of this case could be productive of results different from those which the circumstances appearing in the record would dictate in keeping with the law. Remand of the case could not give appellee that heritable blood the absence of which was alleged in appellant's answer and rejoinder, and not denied by appellee

in subsequent pleadings; nor could it cure the neglect of the appellee to object to the probation of the deeds at the proper time.
So to what purpose a new trial, except to delay an inevitable ending of a plain case, or to avoid applying clear and elementary principles of law? The same documents upon which the old pleadings were drawn would still have to be used in drafting new pleadings, or in the trial of the issues raised by the

pleadings. No position not already taken could be taken in another trial of the same issues based on the same evidence. All the circumstances which have influenced our decision for a reversal of the present judgment would remain the same, and so must have the same influence upon any other decision. And since the issues herein are issues of law, another trial could not correct fundamental legal errors committed in the application of elementary legal principles to the facts out of which this case has arisen. The tenth clause of Thomas Smith's will directed that two-thirds of his real property not disposed of by his daughter should pass in fee to his three grandchildren, one of whom was John T. Richardson. No new document or new trial could change that; nor could any new document or new trial change the universally accepted principle that wills are interpreted literally and not by implication. According to our colleagues, indeed, the appellant is not related to Thomas Smith; but the prop-

erty covered by the deeds sought to be cancelled is no longer Thomas Smith's property, he having willed it to his grandson, John T. Richardson who, as the record shows, has left it to his collateral relative, the appellant. John T. Richardson had as much right to leave his property to his cousin as Thomas Smith had to leave his to his grandson ; so of what benefit would another trial have been, except to close our eyes to performing a duty dictated by the law and the facts appearing in the record?
These are the plain and simple grounds of our disagreement with the views of our colleagues; and it is also for these reasons that we believe that the judgment of the court below should have been unconditionally reversed. We shall therefore proceed to review the circumstances out of which this case has grown, as we have been able to cull them from the record before us, and we shall also cite and quote the law as we understand it, and thereby demonstrate the legal grounds upon which we have relied in voting to reverse the judgment.

The late Thomas Smith of Montserrado County died in 1898, leaving real and personal property which he disposed of by a will which was duly probated and is registered in the archives of Montserrado County. He left a daughter, Maria, who became the wife of the late Robert Richardson, and unto whom were born three children : John T. Richardson, Deborah F.

Richardson, and Toussaint L. Richardson. The tenth clause of said will reads as follows : "All the rest and residue of my estate real, personal and mixed of which I shall die seized and possessed or to which I should be entitled at my decease, I give, devise and bequeath to my beloved daughter Maria A. E. Richardson for life, and after her death it is my wish that whatever of my estate may be left by her not disposed of shall be divided thus into two parts viz : two-thirds of all the balance shall be divided between her three children, namely, John T. Richardson, Deborah F. Richardson and Toussaint L. Richardson and the remaining one-third to be divided between Charles Smith, A. B. Stubblefield, Sarah Curd, Rosalind Siscoe and Angeline Campbell." Thus, by express provision and not by implication, that is to say, by the actual wording of the above-quoted clause of his will, Thomas Smith directed the transfer to the Richardson family of two-thirds of the remainder of his real property not disposed of by his daughter Maria. And if, in 1898, it was Thomas Smith's intention that his property should be owned by the Richardsons who were not related to him, I fail to see upon what legal or equitable ground anyone could question his right to give his property to any family he named in his will. Therefore, the contention of our colleagues that appellant, being a relative, was not entitled to the testator's property, is in our opinion, without proper legal or reasonable basis in view of the expressed intent of said testator. Maria lived for 16 years after her father's death, and

then died, leaving three children who were to benefit, with others, after her death, under the above-quoted clause of Thomas Smith's will. She was named sole executrix of said will ; and in executing the above-quoted tenth clause thereof, she is alleged to have given to each of her three children a number of her father's deeds for the two-thirds remainder property which should have come to them as residuary legatees. Certain deeds were given to John T. Richardson ; and we shall see later in this opinion what property they cover. Other deeds were given to Deborah, and still others were given to Toussaint, the youngest child. There is nothing in the record which proves that Maria physically delivered these deeds; but if she did, she followed the usual custom. Of course, in order to effectuate the division of the property among John, Deborah and Toussaint, Maria should have issued executor's deeds to each, or they should have executed quitclaim deeds to each other. Failure to execute such deeds could have left all of the three separate portions of the vested remainder property undistributed even after the original deeds had been physically delivered. In other words, even though an attempt had been made to execute the above-quoted provisions of the will of Thomas Smith literally, by physical delivery of the old deeds, no legally valid conveyance was thereby effected, since title to the respective pieces of property was still vested in the estate of the testator instead of in the legatees named in his will. It nevertheless remains questionable whether the failure to execute either executor's deeds by the executrix or quitclaim deeds by the residuary legatees nullified any practical division Maria might

have made in her attempt to carry out the terms of her father's will. Since the ultimate object of the above-quoted provisions of the will was to enable Thomas Smith's three grandchildren to share the two-thirds remainder property after Maria's death, the literal as well as the legal interpretation of the specific words used could conceivably

apply, depending of course, on agreement of the legatees at the time of the practical division. But this legal issue is not before us; and I have only mentioned it in passing. It is significant, in the light of subsequent events, that the three legatees occupied the deed-controlled portions of their grandfather's property without dispute or contention for 31 years after their mother's death in 1914, and until the death of Toussaint, the last survivor, in 1945. It is further significant that, although John T. Richardson died without issue in 1932, some 18 years after his mother's delivery of the deeds of the property, and although his brother and sister survived him, neither of them attempted, in his or her will, to dispose of that portion of Thomas Smith's property alleged to have been conveyed to their brother through physical delivery of deeds by their mother. This has left me with the impression that Maria's division and apportionment of the property may well have been agreed to by her children. The possibility of such an agreement is further indicated by the fact that each of the children eventually disposed of the portion of their grandfather's property covered by deeds he or she held, in such a manner as to suit his or her fancy, without quitclaim deeds from the others. The two elder of Maria's three children died without issue; but to Toussaint, the youngest, one daughter is alleged to have been born. She married Samuel Gabbidon, the attorney-in-fact in this case, and unto their union was born Edwin J. Gabbidon, the appellee. Toussaint, the grandfather of the appellee, died in 1945, and willed most of his real property to the appellee whom he described in the will as his "grandson." Perhaps it was not coincidental that both the attorney-in-fact and the appellant were named as executors of Toussaint's will; and they distributed the legacies to the appellee. The circumstances out of which this case arose really go back to a letter written by appellant on March 11, 1957. The letter reads as follows:

"MR. SAMUEL B. GABBIDON MONROVIA "DEAR SIR: "I find that the 25 acres of land situated in Sinkor that was misunderstood to have been the property of the late Mr. T. L. Richardson is not his land. The 25 acres fall within Blocks Number i and 2. The 25 acres that were given to me in satisfaction of a debt of the estate were also erroneously described. Mr. [Toussaint] Richardson's will calls for Block Number 3, Mesurado River. You will recall that the deed that you issued to the late Lewis McCauley had to be changed. Blocks Number 1 and 2 have been legally turned over to the undersigned by the administrator of the estate of the late John

T. Richardson, late of the Settlement of Virginia, which properties are probated and registered and taxes paid in keeping with law.
"If you will have 25 acres surveyed out of Block Number 3 in the Niepay Town area for yourself, I will sign the deed as one of the
executors. This will be for your own safety and that of your heirs and assigns. It was good that you did not probate the deed that
was signed by us, nor did you make any improvements thereon. "Very truly yours, [Sgd.] "NATHANIEL R. RICHARDSON." It would seem that
this letter was forwarded by the recipient to his lawyer, Counsellor Richard Henries, who, in April, 1957, wrote the following letter
to appellant in respect to the land covered by the deeds in question:
"NATHANIEL R. RICHARDSON, ESQ. SINKOR, MONROVIA "DEAR SIR:
"Your letter of March 11, 1957, addressed to Mr. Samuel B. Gabbidon, has been referred to me for my attention and legal advice. "Please
be good enough to exhibit to me the title

under which you are claiming the properties of the late John
T. Richardson. "With kindest regards, "Very truly yours, [Sgd.] "RICHARD HENRIES,
Counsellor at law."

Appellant replied to the above
letter the same day, April 2, 1957; and here is what he wrote in reply:
"COUNSELLOR R. A. HENRIES MONROVIA, LIBERIA "DEAR COUNSELLOR
HENRIES: "In response to your request in the interest of Mr. Samuel B. Gabbidon, I am forwarding to you the title deeds under which
I claim the properties of the late John T. Richardson of the Settlement of Virginia, Montserrado County. It 1. Title deed calling
for zoo acres of land, **Block Number 1, Mesurado River. lt 2. Title deed Number 2, 3o acres of land**, Block Number 2. "3. Title deed Number 3, Block Number 3, so
acres. " f. Title deed Number s, is acres. 5. Title deed Number 6, is acres. "These titles are accompanied with receipts for taxes
duly paid. I have also certain title deeds for lands of the late John T. Richardson, situated in the Settlement of Virginia, as well
as his books, large mirror and life-size photograph, which I think that Mr. Gabbidon might want to claim. "Sincerely yours, [Sgd.]
"NATHANIEL R. RICHARDSON." It should be observed that a list of the deeds is included in the above-quoted reply. Thus, as far back
as April, 1957, appellee's attorney-in-fact and appellee's lawyer had known of appellant's claim to John T. Richardson's property,
and had even inspected the deeds. What effect

this was to have on subsequent developments will be seen
later in this opinion. After the above-quoted exchange of correspondence, there seems to have been a lull until May 27, 1959, when
appellant and appellee's attorneyin-fact jointly addressed to the President of Liberia the following letter : "PRESIDENT WILLIAM

V. S. TUBMAN THE EXECUTIVE MANSION MONROVIA, "DEAR MR. PRESIDENT : "We take pleasure to jointly inform you that we accept the report of the Director, Division of Surveys, in connection with the area of land expropriated by Act of the Legislature, passed and approved February 21, 1959, representing property from the estates of John T. Richardson and Toussaint L. Richardson now owned by the undersigned as per original and transfer deeds submitted by us to the Department of Public Works and Utilities, Division of Surveys. "We respectfully request that you will kindly direct the issuance of the title deed or deeds to Government, and authorize the payment in equal proportion to the parties concerned. "We wish to express thanks and appreciation to you and to the Department of Public Works and Utilities, Division of Surveys, for the efficient manner in which the survey has been terminated. "We remain yours truly,
[Sgd.] "JOSHUA E.
GABBIDON.

[Sgd.] "NATHANIEL R. RICHARDSON." Again, on June 6, 1959, appellant and appellee's attorney-in-fact jointly addressed to the President a letter, which reads as follows : "DEAR MR. PRESIDENT : "We would appreciate it very much if you would kindly authorize the Treasury to give each of us an

advance payment in the sum of $6,000 on the land that has been expropriated by the Government for the new cemetery, and make final payment at the signing of the deed to the Government, to enable us to prosecute building now in progress and for other urgent needs. "Thanking you very much for your kind consideration, "We are, very truly yours,
[Sgd.] "JOSHUA E. GABBIDON. [Sgd.] "NATHANIEL R. RICHARDSON." A few months after the above letters had been addressed to the President, the appellee, through his father, Samuel B. Gabbidon, as his attorney-in-fact, brought this suit to cancel a number of administrator's deeds which had been duly executed and delivered to appellant for property of John T. Richardson. Included among these deeds were four which had originally belonged to the late Thomas Smith, grandfather of John T. Richardson, and two others for property devised to John T. Richardson by his mother, but not from the Thomas Smith property. I might mention here that appellee's acknowledgment of appellant's claim to John T. Richardson's property, as expressed in the two above-quoted letters to the President, was made the subject of special traverse in the bill of exceptions. It would seem necessary, if we are to proceed intelligently, that we examine the deeds which appellee petitioned the court to cancel. For, under the pleadings filed in this case, we would appear to have jurisdiction only over those deeds which purport to convey real property owned by Thomas Smith before his death and devised as part of the two-thirds share in which he gave his daughter a life estate, with remainder to her three children. Of the six deeds mentioned in the petition for cancellation, however, four cover Thomas Smith's property as mentioned

before, and two cover property never owned by Thomas Smith and which came into Maria's possession only after his death. The latter two are described as follows : 1. Exhibit G, for so acres of land, from T. W. Haynes to Maria Richardson, and from Maria Richardson to John T. Richardson. This deed was issued to Maria on May 29, 1901, after Thomas Smith's death. 2. Exhibit K, fors acres of land, from T. W. Haynes to Maria Richardson. This deed was issued on May 17, 1901, also after Thomas Smith's death. It therefore seems clear that among the six deeds made profert with the bill for cancellation are two which could not be material to the issues in this case, and consequently we would be without authority to render any judgment concerning them. Moreover, among the deeds delivered to Nathaniel R. Richardson by John T. Richardson's widow, are some which came into John T. Richardson's possession and cover property not from his mother's side, but from Robert B. Richardson who bears no relationship to Thomas Smith. One of these is the administrator's deed from Charles Henry Capehart to Robert B. Richardson, mentioned in the list of deeds handed over by John T. Richardson's widow. The petition for cancellation set forth, in substance, the following grounds: 1. That a joint tenancy was created by the tenth clause of Thomas Smith's will under which the property in question was left to Maria for life and to her three children after her death; and in such an estate the principle of survivorship would control. This was laid in the bill and insisted upon in the reply. 2. That Edwin Gabbidon, being the only child of the last surviving heir of the late Thomas Smith, should take under said estate in joint tenancy, and is entitled to hold all that was left of the two-thirds

remainder property covered by the tenth clause of Thomas Smith's will. This was the position taken and insisted upon by petitioner throughout his pleadings. 3. That the administrator's deeds for John T. Richardson's property which came to him from his grandfather, Thomas Smith, executed by the probate court in favor of Nathaniel R. Richardson, should be cancelled for having been fraudulently obtained. The bill alleges that the said Nathaniel R. Richardson concealed these deeds for Thomas Smith's property which he found when he administered the estate of the late Toussaint L. Richardson; and that it was for property covered by these concealed deeds that the administrator of John T. Richardson's estate had issued administrator's deeds to Nathaniel R. Richardson. In the answer which appellant filed, the following points, among others, were pleaded : i. That the bill failed to state with particularity the nature of the fraud alleged to have been committed in the issuance of the deeds; or by whom and in what manner such fraud was committed. 2. That the power of attorney executed in favor of Samuel Gabbidon by his son, the appellee, was a nullity, since the said appellee was of age and residing in the Country, and under no disability to act

for himself. 3. That appellant was not in possession of any property belonging to Toussaint L. Richardson, or to which appellee could claim any rights under the principle of survivorship ; but that, according to the division directed in Thomas Smith's will and carried out by his executrix, Toussaint, as one of the legatees, had been given certain specific pieces of property enumerated in Count 5 of the answer; and that the property covered by the several deeds

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sought to be cancelled formed no part of any of the several pieces so given to Toussaint and therefore could not belong to the appellee in fee, as had been alleged in the complaint. 4. That appellant had acquired title to John T. Richardson's share of Thomas Smith's property through the probate court, according to law and with the full knowledge of appellee and his attorney-in-fact who had interposed no objections, but had acknowledged appellant's ownership of the said property by letters to the President of Liberia. These letters were made profert and have already been quoted in this opinion. 5. That the appellee, being born of an illegitimate child of the late Toussaint L. Richardson, youngest of Maria's three children, could not legally inherit any property belonging to Thomas Smith beyond what was willed to him by Toussaint, his purported grandfather; so that his claim to legal right of the rest of the property left to Maria's three children under the principle of survivorship was without legal foundation. Although the pleadings continued up to and including the surrejoinder, no new issues upon which a decision could justly turn were raised subsequent to those appearing in the petition and the answer. The foregoing, therefore, in addition to the question of estoppel, which was argued from the briefs on both sides, would seem to constitute the important issues presented for our consideration and final decision. The several issues of law raised on both sides were passed upon by Judge Findley in a lengthy ruling. Reading through this document which must have been intended to guide the trial court, and upon which evidence should have been taken, we must say that, instead of the simplifiaction of complicated· issues of law -which is more or less expected in such rulings, the law issues in this case

were even more complicated and confused by the learned judge's elaborate ruling. In that mass of legal erudition the parties on both sides found themselves--and we on this bench were no less unfortunate--confused and lost in a labyrinth of strange interpretations of old and wellfounded legal principles. This has necessitated our having to pass again and unnecessarily, on the entire pleadings together with the record of the testimony on the trial ; and so we do here what should have been done in the court below. The bill of exceptions upon which this case has come up to us contains 22 counts, most

of which related to the appellant's overruled exceptions to the introduction of testimony. However, we have found ourselves compelled to review the entire case as aforesaid, including passing upon the merits or demerits of the several legal positions taken in the pleadings and bill of exceptions. It would appear that John T. Richardson, before his death, had instructed his wife to keep and deliver to his cousin, the appellant, a number of deeds for property which had been left to him by his mother and other relatives. It is also alleged that some of these deeds covered property which constituted his portion of the two-thirds remainder property left to Maria, his mother, and thereafter to her three children in keeping with the terms of Thomas Smith's will. According to what came out at the trial and appears in the record, John T. Richardson told his wife before his death; and she carried out his wishes and delivered to appellant all the deeds of property of which her husband died possessed. The record shows that John- T. Richardson died in 1932 and that the deeds were not delivered to appellant until 195s. Upon receiving the deeds, he requested his cousin's widow to certify the conditions under which she has given him these documents, an act which was to become of the greatest importance within a few years from that time. This certificate is registered in the archives of Montserrado

County; it was received into evidence under the signature of the Secretary of State, and seal of the Republic ; it stands unchallenged as a written document; and it constitutes a valid instrument which should be given legal effect. It is significant that, pursuant to this certificate, not only deeds from Thomas Smith, but deeds from other sources, were delivered to appellant. In this connection, the appellee might have claimed a right to these other properties as well, since they also belonged to John T. Richardson, his grandfather's brother; and if, under the principle of survivorship, he could claim real property of this relative on the maternal side, he should be able to claim from the paternal side of the same relative under the same principle. However, this is in passing. It is also significant that the physical delivery of deeds to appellant by John T. Richardson's widow in 1955 followed the same pattern alleged to have been adopted by Maria in 1914. in the physical delivery of her father's deeds to her three children. But unlike what had been done by Maria's children in respect to Thomas Smith's property covered by the deeds which are supposed to have been divided among them, appellant petitioned for letters of administration which were duly issued to James L. Richardson by the probate court on May 7, 1956. The record further reveals that, although the intestate estate of John T. Richardson remained under administration of the probate court for a period of more than a year, yet no objections were raised, either to the court's handling of this estate after the unusual lapse of so many years, or to the transfer of the property to appellant or to the probation and registration of the administrator's deeds issued during that period of authority of the probate court. This is strange indeed, in view of the fact that both the appellee and his attorney-in-fact

were resident within the jurisdiction of the probate court and are not shown to have been under any legal disability which could have pre-

vented them from questioning the acts of the administrator of the intestate estate of John T. Richardson and/or the probate court. "A party who, being under no legal disability at the time stands by and permits property, which he claims, to pass into the possession of another without objecting thereto at the time, is presumed to have assented to the transaction and is estopped from afterwards raising claims thereto." McAuley v. Madison, 1 L.L.R. 287 (1896), Syllabus 5. This point was stressed in Count 7 of appellant's brief and forcefully argued before us. Could it be that appellee did not know at the time that he was the only heir of the last surviving grandchild of Thomas Smith? Or could it be because he had already acknowledged appellant's rights in letters to the President of Liberia? But no matter what the reason, the appellee's silence at this important time is significantly peculiar in the light of present circumstances. The record reveals that it was not until more than three years after administrator's deeds for John T. Richardson's intestate estate had been issued, and the estate closed, that appellee, through his father as his attorney-in-fact, instituted proceedings to cancel said deeds. Reference has been already made to the fact that appellee, as well as his attorney-in-fact and his lawyer, knew as far back as April, 1957, that appellee had come into possession of all of John T. Richardson's real and personal property and that deeds transferring title to said property had been duly executed, probated and registered according to law. This knowledge is shown by letters quoted supra; and no questions seem to have been raised at the time. Two years later, that is to say in 1959, appellee was to acknowledge appellant's right to ownership of the land in the two letters written to the President of Liberia quoted supra.

Under our law, voluntary admissions of parties are binding; and they are all the more binding when such admissions have been reduced to writing. "Voluntary admission made by a party is evidence against such party making same and where it does not appear that said admission was made from threat, fear or inducement, it is evidence of no low grade." Dennis V. Republic, [1928] LRSC 12; 3 L.L.R. 4.5 (1928), Syllabus 1. "All admissions made by a party himself or by his agent acting within the scope of his authority are competent evidence." 1956 Code, tit. 6, § 691. Appellant has contended that not only do the appellees' own admissions as contained in the two letters quoted supra estop him from disclaiming acts the legal completion of which he admitted ; but the completion of these acts

being the result of judicial proceedings, he is estopped from denying the legality thereof. Here are quotations of authority on the point: "The plea of estoppel is a good plea, and will prevent a party from denying his own acts, if well founded ; neither law nor equity will permit a party to disclaim his acts. The same rule applies to privies." Clark v. Lewis, [1929] LRSC 5; 3 L.L.R. 95 (1929), Syllabus 2. "In the broad sense of the term 'estoppel' is a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled by the acts and proceedings of judicial or legislative officers, or by the acts of the party himself, either by conventional writing or by representations, expressed or implied, in pais." 16 CYC. 679 Estoppel. "When a party, with knowledge of facts entitling him to recission of a contract or conveyance, afterward, without fraud or duress, ratifies the same, he has no claim to the relief of cancellation. An express ratification is not required in order to thus defeat his

remedy; any acts of recognition of the contract as subsisting or any conduct inconsistent with an intention of avoiding it, have the effect of an election to affirm." 6 CYC. 297 Cancellation of Instruments. Prior to writing the letters to the President of Liberia in 1959, appellee's ignorance of the true facts might have constituted a strong defense against the plea of estoppel interposed by appellant. But in this case, it was shown that, two years before, appellant had put his cards on top of the table and without objections, by exhibiting the deeds which gave him legal title, which deeds were shown to have been lawfully executed, probated and registered. ". . A deed, lawfully executed, is evidence against all parties to it and it is evidence of all title or rights transferable by it." Smith v. Hill, 1 L.L.R. 157 (1882), Syllabus 1. Appellee certainly must be said to have admitted the existence of appellant's title in the letters to the President acknowledging that the property was indeed appellant's. Under the principle of estoppel, how could appellee be permitted to repudiate such an admission? "Knowledge of the truth as to the material facts represented or concealed is generally indispensable to the application of the doctrine of equitable estoppel. It is not, however, indispensable that the knowledge should be actual if the circumstances are such that a knowledge of the truth is necessarily imputed to the party sought to be estopped ; or if he has actively and recklessly interfered to the prejudice of another; or if his ignorance is due to culpable negligence." 16 CYC. 730 732 Estoppel. Even if appellee could have claimed ignorance of the true facts regarding the disposition of John T. Richardson's property, the negligence which is so apparent on his part, or on the part of his principals before him, in not having John T. Richardson's estate administered and

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closed during all of the 24 years preceding the delivery of John T. Richardson's deeds to appellant would estop appellee from challenging the validity of those deeds. "Ignorance or mistake if it appears from culpable negligence will not prevent an estoppel." 16 CYC. 734 Estoppel. There is so much legal authority to support our position with regard to estoppel that we need not dwell further on this well-established doctrine. We shall next advert to the question of joint tenancy. One of the main issues to be decided in this case is whether the estate created by the tenth clause of Thomas Smith's will was an estate in joint tenancy or an estate in common. In order to arrive at a proper solution of this question, it might be well to go back and review the fundamental principles of inheritance and of descent of property, not only in the common law as it has come down from the early English land tenures, but also as our fathers applied these principles to given cases according to their understanding, and as their application has persisted from the earliest days of the Republic. Going back to the old land tenures of England from which the Americans derived most of their laws on related subjects, and which our fathers in turn brought with them to their new home in Africa, there are several classes of estates. In this case, we are most concerned with one group of the several species, and we shall confine ourselves to that one with its attending branches ; that is to say, freehold estates in general, and particularly those in remainder, severalty, joint tenancy, coparcenary, and common. Lands in most countries like ours are, in the majority of cases, held as estates which come either by descent or by purchase; the latter of these two being that under which the tenth clause of Thomas Smith's will falls. It needs no great deal of literary explanation or legal erudition to show that, by Thomas Smith's will, his daughter

Maria was left with a life estate in the whole property; and at her death what was not disposed of would go to remaindermen in the following proportions : one-third to be shared equally among Charles Smith, A. B. Stubblefield, Sarah Curd, Roselind Siscoe, and Angeline Campbell, and two-thirds to be shared equally among John, Deborah and Toussaint, the children of his daughter, Maria. Thus the will of Thomas Smith created an estate in possession for life in his daughter, with remainder vested interest in fee to be enjoyed at her death by the remaindermen named hereinabove. The all-important question still remains : was the remainder estate which was left to John, Deborah and Toussaint, an estate in joint tenancy or an estate in common? Before answering this important question, we might mention, in passing, that it is very singular that, although no transfer deeds were ever issued to any of the legatees under Thomas Smith's will, yet only the property covered by the deeds left to one of the remaindermen seems to have become the subject of contention.

John T. Richardson's portion of the property, the deeds for which are the subject of this suit, was devised to him under his grandfather's will; and it was devised at the same time, in the same manner, under the same conditions, and in the same instrument as Deborah's and Toussaint's shares of the same property, not to mention the one-third portion shared by five other remaindermen. If the principle of survivorship controlled the disposition of John T. Richardson's share of the property, we wonder why the same principle was not applied to the property disposed of by Deborah, since she also predeceased Toussaint. She disposed of such property in her lifetime, yet no quitclaim deeds were ever executed by the remaindermen, and no executor's deeds were issued by the executrix. How did Deborah, or for that matter, any of the other remaindermen, dispose of joint property held under deeds delivered to them by Maria, without transfer or quitclaim deeds, and without

the hue and cry which has attended the disposition of John T. Richardson's share of the same property? But let us continue our very interesting discussion of joint tenancy. Estates in joint tenancy and estates in common are defined as follows by Blackstone : "An estate in joint-tenancy is where lands or tenements are granted to two or more persons, to hold in fee-simple, fee-tail, for life, for years, or at will. "The creation of an estate in joint-tenancy depends on the wording of the deed or devise, by which the tenants claim title : for this estate can only arise by purchase or grant, that is, by the act of the parties, and never by the mere act of law. "The properties of a joint estate are derived from its unity, which is fourfold ; the unity of interest, the unity of title, the unity of time, and the unity of possession; or in other words, joint-tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession." "Tenants in common are such as hold by several and distinct titles, but by unity of possession ; because none knoweth his own severalty, and therefore they all occupy promiscuously. This tenancy therefore happens where there is a unity of possession merely, but perhaps an entire disunion of interest, of title, and of time." BL. Comm., Bk. II, Ch. XII.
Applying these universally accepted definitions to the tenth clause of Thomas Smith's will, we have no hesitancy in declaring that an estate in common was created, and not an estate in joint tenancy as is contended in the bill for cancellation. One of the outstanding requirements in

joint tenancy is that there be no division, expressed or implied, in the grant to the tenants. Any words implying a division of the grant makes the estate an estate in common, even though the testator might have intended to create a different kind of estate. Therefore it would seem that, if the will had not specifically required that there be a division

among the remaindermen, an estate for life with joint remainder fee vested in John, Deborah and Toussaint would have been created.
But when the testator indicated his desire for the remainder property to be divided, he thereby destroyed the possibility of a joint
tenancy because, with this division, the unities of interest and title were immediately eliminated. As Mr. Justice Grimes, speaking
for this Court, said in Richardson v. Stubblefield, [1940] LRSC 5; 7 L.L.R. 107, I14 (1940) : "As soon as the idea of a division enters, the whole
concept of joint tenancy is dispelled. It is our opinion, therefore,
that the intention of testator, as expressed in the last will and testament of the late Thomas Smith, was to bestow upon his daughter
Maria a life estate, with two-thirds of the remainder vested in her three children to take effect after death, at which time they
should hold one part each of said two-thirds devised to them as tenants in common." It must be concluded, then, that the tenth clause
of Thomas Smith's will devised a remainder in common to John, Deborah and Toussaint after termination of Maria's life estate. So
intricate, and yet consistently beautiful, is the law of inheritance. There has been much contention as to the power of attorney
executed by Edwin J. Gabbidon to his father, who has sued herein as attorney-in-fact. The appellant has contended that, since the
appellee was of age and under no legal disability to act for himself, his father could not act for him. We have not been able to
agree with this contention; for it is our opinion that no one can legally question the right of a party to the services of an

agent or attorney; and it does not matter that the principal is of age and able to act for himself. It was
also alleged by appellant that Counsellor Richard Henries and certain members of his law firm--which firm is of counsel for the appellee--acquired
portions of the property in question from the appellee whilst this case was still pending before the courts. The appellant has relied
upon Rule io of the Code of Moral and Professional Ethics promulgated by this Court in 1958, which reads as follows : "No lawyer
should acquire interest in the subject matter of a litigation which he is conducting, either by purchase or otherwise, which said
interest he did not hold or own prior to the institution of the suit." Laid down in the rules governing the ethical conduct of lawyers
in Liberia is a procedure which entitles every member of the profession to defend himself against any charges of unethical conduct
alleged against him. According to this procedure, every lawyer has a right to be regularly charged, confronted with his accusers,
and tried, and is entitled to appeals if dissatisfied with the decision of the Grievance Committee in the first instance, and with
that of the National Bar Association in the second. In any case, discipline of a lawyer for professional misconduct can only legally
be applied and enforced by the Supreme Court sitting en banc; and then only after the matter has been appealed from decisions of
the two bodies named herinabove. This Court should not be expected to set the improper and immoral precedent of violating its own
rules. The circuit court was not the proper forum where such an issue should have been raised. We come now to consider another important

point in this case--a point which was raised in the answer of the appellant, and was not denied or traversed in subsequent pleadings filed by the appellee. Appellant alleged that appellee was born of an illegitimate child of Toussaint L. Richardson, and that said child was never legitimatized

so as to give appellee that heritable blood which alone could entitle him to benefit under the principle of survivorship asserted in his pleadings. Although this allegation was not denied by appellee, the learned judge, in ruling the case to trial, sought to pass upon the issue in language which has left us uncertain as to his legal meaning, but which implied that because Toussaint L. Richardson referred to Edwin J. Gabbidon as his grandson in his will, that was legally sufficient to indicate his acceptance of him as a descendant of the Thomas Smith line. If that is indeed what the judge meant, we find ourselves unable to agree. An illegitimate child being nullius filius, no independent act of a putative father can answer the all-important question of what illicit union resulted in conception. Only the mother of such a child could, legally, or with any amount of certainty or reasonableness, designate the man whose carnal association with her resulted in the physical condition out of which her bastard child was born. And so our law requires that, in order to legalize the birth of an illegitimate child, the mother must swear upon affidavit that John Brown is the father of her child. Only upon petition backed by such an affidavit of the mother, would a judge in the probate court be authorized to issue a decree of legitimation. Only then would such a child's advent into the world be regularized, so as to enable society to accept it. Only then could such a child be legally entitled to the same rights and benefits as children born in wedlock. This practice of our political society goes back to Biblical times; for in the Eleventh Chapter of the Book of Judges it is written in the second verse : "Thou shalt not inherit in our father's house; for thou art the son of a strange woman." The only other means of correcting the births of such children known to our law, is where the putative father and the mother of the child married after the child's birth.

(See Prout v. Cooper, [1937] LRSC 11; 5 L.L.R. 412 [1937]). But when an attempt was made to raise this question on crossexamination during the trial, objections were interposed and sustained. All students of the law know what effect the issue of illegitimacy of a party can have on a case involving the inheritance of property. Failure to deny or traverse appellant's allegation must be deemed an admission of appellee's lack of heritable blood ; and appellee could not thereafter recover under the principle of survivorship without disturbing the vested rights of those who stood in a more secure position. His failure to deny this allegation set forth in the answer established that appellee was a stranger

to the Thomas Smith bloodstream. That being so, appellee could not sustain his claim to the property of John T. Richardson on the ground that he was the last surviving heir of Thomas Smith. It was within Toussaint's legal right to have willed his property to a total stranger, no matter by what name he elected to call such stranger in his will. But how could such a devise of Toussaint give such a stranger blood-ties with any of his relatives on his mother's side? Appellee alleged that he is entitled under survivorship based upon blood relationship with the Thomas Smith line; and once taken, that position must be maintained throughout to final determination of the case. Although the bill for cancellation of the deeds, and all of the record made by appellee in the lower court, was based upon the principle of joint tenancy, the brief which appellee's counsel filed and argued in this Court took the position that the tenth clause of Thomas Smith's will had created an estate in common and not in joint tenancy. We therefore inquired of counsel whether the departure in his brief from the position he had taken and maintained in his pleadings was intentional or inadvertent. To this question, repeatedly put to counsel, no satisfactory answer was returned. In fact, counsel deliberately evaded a di-

rect answer. It should not have been expected that this Court of last resort would have countenanced such a departure.
In condemning a similar praclice by Counsellor A. B. Ricks, this Court said, in Smart v. Daniels, [1937] LRSC 4; 5, L.L.R. 369, 371 (1937) "Such practices by some lawyers affect the reputation of the profession and may have a tendency to make the courts of the country appear in a bad light if not promptly checked." A party's brief must support the position taken by him in his pleadings.
Counsel should not in fairness insist upon anything contrary to grounds relied upon in the court below. Because John T. Richardson is alleged to have requested his widow to hand over all his deeds to his cousin, the appellant, without making a written will to dispose of his property, it was suggested that this method of leaving property might have been intended as a nuncupative will. Great stress was laid on this during the arguments here; but as much as we tried to get counsel to connect any of. the circumstances in this case with the legal requirements for a nuncupative will, no clarification of the question was provided. It is our opinion that nuncupative wills : (r) must show that the testator was in extremis or in the last stages of critical illness when he orally directed disposition of his property; (2) must have been executed under conditions which rendered it impossible for the testator to have reduced his desire to writing before he died ; (3) must have been reduced to writing within a certain number of days after having been expressed ; and (4) cannot devise real property, but only bequeath personalty. It should be clear, therefore, that the various legal requirements necessary to constitute a nuncupative will are absent in this case. It has not been shown that John T. Richardson's request that his deeds be delivered to appellant was made during the illness which occasioned his

death, or at some time previous to such illness ; nor has it been shown that any attempt was ever made to reduce his request to writing within the time required by law. And in any event, since this class of wills cannot devise real property, the delivery of the deeds to the appellant could not constitute a conveyance under a nuncupative will. We now come to consider the main point which forms the basis of this suit. The bill for cancellation alleged that, during appellant's administration of Toussaint L. Richardson's estate, he found a number of deeds belonging to John T. Richardson, for property left to him by his grandfather, Thomas Smith ; that appellant fraudulently concealed those deeds and subsequently had the probate court issue administrator's deeds from them in his favor; that the said concealment of the deeds constituted fraud; and that the act of the probate court in issuing administrator's deeds to appellant was therefore wrongful and illegal. And so the bill was filed to cancel these deeds based upon fraud. According to the record before us, John T. Richardson died intestate and without issue in the County of Montserrado in 1932. His estate was not administered, even though a brother and sister, cotenants with him under their grandfather's will, survived him, and although our probate laws gave anyone interested the right to letters of administration. In 1955, John T. Richardson's widow is alleged to have taken a batch of deeds belonging to her late husband to appellant, his collateral relative, and to have informed him that it was her late husband's request that she should deliver these instruments to him before her death. Upon the receipt of these deeds, it would appear from the record that appellant put John T. Rich ardson's intestate estate in court for administration some 24 years after John T. Richardson's death and one year after appellant had received- the deeds. Said administration continued for more than a year, and until the probate court ordered the estate closed.

We have tried in vain to connect these circumstances with anything which could be regarded as fraudulent. We have examined the procedure adopted in the administration of this intestate estate and have not found that it is contrary to what should have been done in the handling of the said estate either by the court or by the administrator. As shown hereinabove, we have referred to the testimony of several witnesses who deposed at the trial in the court of origin; and we are still without evidence of any fraud committed by either the appellant or the administrator. It is not sufficient that fraud should merely be alleged ; the circumstances of the alleged fraud must be stated with particularity and must be affirmatively proved. Our statute provides : "In all averments of fraud or mistake the circumstances constituting the fraud or mistake shall be stated with particularity." 1956 Code,

tit. 6, § 258 (2). This Court is on record as upholding the requirement that fraud must be affirmatively proved. "Upon an allegation that a party has committed fraud, every species of evidence tending to establish said allegation should be adduced at the trial. "In the absence of evidence in support of the allegations, the decree of the court in favor of plaintiff will be reversed." Henrichsen v. Moore, 5 L.L.R. 60 (1936), Syllabi 1 and 2. In the pleadings, as well as in argument before this bar appellee's counsel maintained that appellant, as co-executor of Toussaint L. Richardson's will, had found and taken into his custody all of the deeds belonging to the appellee, together with other papers left by the late Toussaint L. Richardson, and that it was this collection of documents from which the appellant had taken the deeds, the subject of this case, and concealed them. Besides being clearly contrary to the certificate filed by John T. Richardson's widow, this allegation is also in conflict with the

testimony of several witnesses which we have referred to, supra. Now let us see how it agrees with a letter found in the record certified to us from the court below, addressed to John T. Richardson by Frank Stewart, son of Nancy Richardson, widow of Toussaint L. Richardson. The letter says : "This is to confirm to you that, immediately after the death of the late T. L. Richardson, the trunk containing his deeds and other documents was delivered by me to Mr. Samuel B. Gabbidon, on the instructions of my late mother, Mrs. Nancy L. Richardson." It should be remembered that the Samuel B. Gabbidon referred to in this letter, not only was one of the late Toussaint L. Richardson's executors, but is also the father of the appellee, and the attorney-in-fact who filed this bill for the cancellation of the deeds. A bill in equity to cancel a deed on the ground of fraud must allege with particularity the artifice, deception or cheat employed by the defendant; and these must be proved at the trial in such a manner as to remove the last vestiges of uncertainty concerning the fraud alleged to have been perpetrated. In Nassre and Saleby v. Elias Brothers, 5 L.L.R. 168 (1936), a similar case of cancellation based upon fraud, a judgment in favor of the plaintiff was reversed on some of the same points which appear herein. In the instant case, although fraud has been alleged : ( ) in the acquisition of the deeds of John T. Richardson for property devised by Thomas Smith ; (2) in the presentation of those deeds to the probate court, on the ground that they having been the fruit of concealment, the issuance of administrator's deeds thereon was illegal ; (3) on the theory that the administration of John T. Richardson's estate, even though ordered by the probate court, was illegal because it was without appellee's knowledge; and (4) that these several acts being fraudulent and illegal, are proper grounds for cancellation of the deeds. Although these allegations have been made, yet nowhere

in the pleadings is anything positively pleaded which could taint any one of these several acts with fraud. And nowhere in the testimony of any of the witnesses who deposed at the trial is there any evidence of concealment, deception, artifice, or cheating in the performance of any one of the several acts enumerated above. In matters of fraud, there is a strict procedure which the law requires to be observed. Fraudulent transactions, being basically dishonest, must be revealed; and redress against them must be sought at the earliest possible moment after discovery of the fraud. The fact that the victimized party had knowledge of the fraudulent character of the transaction, yet failed to seek redress against it immediately, destroys the weight and effectiveness of the plea of fraud when raised out of reasonable time. This Court has held : "In cases of fraud, the party complaining must apply for redress at the earliest convenient moment after the fraudulent character of the transaction comes to his knowledge, or the court will refuse to grant relief." Page v. Jackson, 2 L.L.R. 77 (1912), Syllabus 2. The circumstances in the Page case, supra, are much like those of the present case. In that case, although one of the parties had knowledge of the alteration in a document, but although said alteration was against his interest he failed and neglected to stop its probation and registration, and also neglected for three years to seek cancellation of the said document. Similarly, in the present case, although the deeds in question were probated in May, 1956, these cancellation proceedings were not filed until October 20, 1959--some three years and five months thereafter. The two cases being identical on this point, we are firmly of the opinion that the position of this Court in the Page case, supra, should have controlled the decision in the present case. In Bryant v. Harmon, 12 L.L.R. 405 (1957) , this

Court also held that laches will bar a party's recovery in equity when actual knowledge of all the facts surrounding the institution of the suit can be imputed and proved. Appellant having alleged in his answer, as well as in his rejoinder, that appellee is guilty of laches for allowing more than three years to elapse before instituting action based on fraud to cancel the deeds in question, and said plea not having been denied or traversed by appellee, this Court should have given every consideration to appellant's reliance upon laches as a defense. Thus, in view of the principle of estoppel which we have discussed in this dissenting opinion, as it applies to the two letters jointly addressed by the parties herein to the President of Liberia ; and also in view of the inapplicability of the principle of survivorship, as in joint tenancy, upon which the appellee rested his case; and in view of the failure of appellee to deny the allegation of his mother's illegitimacy, which failure constituted an admission that appellant was a stranger to the Thomas Smith bloodstream and therefore unable to inherit from that line, and in view of the

patent departure involved in the appellee's reliance upon a ground in conflict with that which he had relied upon in all of his pleadings in the court below, and also in view of the failure of appellee to have proved any acts of fraud committed by appellant in his acquisition of the deeds, and finally, in view of the unreasonable delay of more than three years before appellee filed his bill to cancel, which delay, in keeping with several previous decisions of this Court, should have barred this suit for laches, Mr. Justice Wardsworth and I have dissented from our colleagues' decision, and have withheld our signatures from the judgment herein.

Hne v RL [1985] LRSC 37; 33 LLR 235 (1985) (21 June 1985)

JOSEPH HNE, Appellant, *v.* **REPUBLIC OF LIBERIA,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES "B", MONTSERRADO COUNTY.

Heard: May 16, 1985. Decided: June 21, 1985.

1. Under the revised Penal Law, a person commits criminal trespass when he enters and surreptitiously remains in any building or occupied structure, or separately secures or occupies portion thereof with knowledge that he is not licensed or privileges to do so.
2. Knowledge of restriction, constituting an element of criminal trespass, may be communicated to the actor, or it may be given a postal as prescribed by law, or reasonably placed as to be seen by intruders, or it may simply be a fencing designed to exclude intruders.
3. Criminal trespass is not a felony; it is merely a misdemeanor.
4. The offense of criminal trespass is committed when a person, without effective consent, enters or remains on property or in the building of another, knowingly or intentionally or recklessly, when he had notice to depart but failed to do so.
5. Criminal trespass cannot be committed by one who claims title or ownership to the **land**.
6. The 1976 Penal Law was not intended to evict persons claiming rights adverse to the ownership of realty by other persons; nor was it intended to settle conflicting claims to ownership of realty.
7. A person cannot be charged and tried for an offense under a repealed statute when the offense was committed subsequent to the repealed statute.
8. Criminal trespass is not the proper cause of action opened to one whose **land** is encroached upon by another who claims title or ownership thereto.

9. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Hence, it may be brought where title and possession to real property are in dispute.

10. Prior notice is not necessary to commence an ejectment action against a person if (a) there is unlawful dispossession, ouster, trespass or tortuous entry by a tenant at suffrage or by a mere occupant without color or right or title after expiration of the term of a lease or of rightful or permissible possession; or (b) there is a wrongful entry or possession of a mere trespasser or intruder.

11. While a charge of criminal trespass could have the miscreant fined and/or imprisoned, it cannot demarcate the rights of the rival claimants to real property; and a conviction of the offense leaves the disputed **land** ownership unresolved.

The appellant appealed from a conviction of criminal trespass by the Circuit Court for the First Judicial Circuit, Criminal Assizes "B", Montserrado County. The appellant, Joseph Hne, and the private prosecutor, John S. Tamba, were both occupiers of a parcel of **land**, the ownership of which was claimed by one Williette Coleman and to whom they paid rent. When appellant suspected that the **land in question was public land**, he ceased making payment to Ms. Coleman, and instead began to deposit the rent into the government revenues. The private prosecutor continued to pay rent to Ms. Coleman, who eventually deeded to the private prosecutor the property occupied by him. Thereafter, when a survey of the property showed that a part of appellant's structure was on the parcel sold to the private prosecutor, the latter requested the former to remove the part of the structure claimed to be on the private prosecutor's property. When the appellant refused to comply with the request, the matter was reported to the office of the County Attorney for Montserrado County. Thereafter, the appellant was charged, under the provisions of the 1969 Penal Law, with criminal trespass and convicted.

On appeal to the Supreme Court, two issues were presen-ted: Whether the appellant could be convicted under the 1969 Penal Code which had been repealed at the time of the commission of the act complained of, and whether criminal trespass was the appropriate remedy for the resolution of disputed claims to real property. The Court answered in the negative to both questions. The Court held as to the first issue that a person could not be charged or convicted under a statute which had ben repealed and replaced with a new statute prior to the commission of the act complained of by the private prosecutor. The Court opined that as the 1969 statute had already been repealed and replaced by the new 1976 Penal Law when the alleged act was committed, a conviction under the previous law was illegal and therefore null and void.

In addition, the Court observed that even if the appellant had been charged under the 1976 Penal Code, the action was the wrong remedy to settle or determine disputed claims to real property, the correct action being one for ejectment. Criminal trespass, the Court said, could not be committed by a person who claimed title, ownership or the right of possession to **land**. The Penal statute was not intended to evict or oust persons claiming rights in real property adverse to the title or owner-ship claimed by other persons. It was error, the Court said, to charge and convict the appellant under the circumstances. The Court therefore reversed the judgment of the trial court and ordered the appellants discharged.

George Tulay appeared for the appellant. *S. Momolu Kiawu* of the Ministry of Justice appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Two citizens, Joseph Hne, now appellant, and John S. Tamba, now private prosecutor, lived on a parcel of **land** in Plumkor, Sinkor, since 1965. The **land** on which they so lived belonged to one Williette Coleman to whom they paid rent. Both parties developed the portion of the **land** occupied by them, built houses thereon and continued to regard said Williette Coleman as their landlady.
Subsequently, however, appellant discovered that the **land** occupied by him and John S. Tamba (the private prosecutor) was in fact public **land**. Having ascertained that fact, appellant began paying for it into government revenue as is required of public lands. The private prosecutor, John S. Tamba, on the other hand, still continued to recognize Williette Coleman as his landlady, and later purchased from her the portion of the **land** he occupied, obtaining from her a warranty deed therefor. Mr. Tamba then went ahead to have his portion of said **land** surveyed and demarcated, at which time it was allegedly discovered that appellant's kitchen and toilet had been built thereon. Mr. Tamba asked appellant to vacate his **land** but appellant refused to recognize the deed issued by Williette Coleman. Appellant also refused to demolish his structures and stopped the private prosecutor's workers from getting on what appellant considered his portion of the **land** which Mr. Tamba now claimed for himself.

At this juncture the private prosecutor, John S. Tamba, proceeded to the office of the county attorney for Montserrado County where, in 1983, he lodged a complaint against the appellant. Thus in 1983, an indictment was brought against appellant, charging him with the offense of criminal trespass. The indictment was based upon the 1969 criminal statute which had been repealed in 1976. The 1969 criminal statute, under which appellant was indicted reads:

"Criminal Trespass: Any person who shall enter upon, occupy and improve real property not having fee simple title thereto, or permission of the owner shall be guilty of a felony and shall upon conviction in the circuit court be punishable by imprisonment for a period of not less than one, nor more than three years."
The 1976 statute which was in force when appellant was tried essentially stipulates that a person commits criminal trespass when he enters or surreptitiously remains in any build-ing or occupied structure, or separately secured or occupied portion thereof with knowledge that he is not licensed or privileged to do so. Knowledge of such restrictions as constitute criminal trespass may personally be communicated to the actor, or it may be given a postal as prescribed by law, or reasonably placed as to be seen by intruders, or it may simply be a fencing designed to exclude intruders. Under this statute criminal trespass is not a felony, but merely a misdemeanor. Penal Laws, Rev. Code, 26: 15.21 (1) and (2).
Predicated upon the former statute of 1969, appellant was tried and convicted of the crime of criminal trespass and sentenced to three months imprisonment, whereupon he an-nounced and

perfected this appeal.
The issues presented by these facts are: (1) Whether or not criminal trespass can be committed under our statute by one who claims ownership to the **land**; (2) Whether or not criminal trespass is the proper remedy available to one whose **land** is encroached upon by another who claims it adversely; and (3) Whether or not a conviction can be had under a repealed criminal statute.

Black's Law Dictionary defines criminal trespass as the offense committed by one who, without license or privilege to do so enters or surreptitiously remains in any building or occupied structure. The offense is committed when a person, without effective consent, enters or remains on property or in building of another, knowingly or intentionally or recklessly, when he had notice to depart but failed to do so. BLACK'S LAW DICTIONARY 337 (5th ed.). This definition clearly sounds like our 1976 New Penal Law, referred to *supra.* Both the definition from Black's Law Dictionary and that of our Penal Law, Rev. Code, 26: 15.21 define criminal trespass not in terms of claims of ownership, but in terms of a mere entry into a building or other occupied structure, with knowledge that one is unwanted or uninvited. This was the law in vogue at the time Mr. Hne was charged with criminal trespass in 1983. On the other hand, the statute of 1969 stipulated that criminal trespass is committed by one who enters upon, occupies and improves real property without the consent of the owner. Under that statute the offense was a felony.
But the appellant, having been indicted in 1983 for criminal trespass, could not have been properly tried and convicted under the 1969 Penal Law since it was repealed in 1976.
Under the 1976 statute which is the current Penal Law in this jurisdiction, criminal trespass cannot be committed by one who claims ownership to **land**, but applies only to one who enters the building and other occupied structures. This law was certainly intended to protect the peace and quiet of owners of dwelling houses and other occupied structures.

The law intended to prevent intrusions into their privacy and to protect their properties and persons from members of the public who might even turn out to be dangerous, both to life and property sometimes. The law guarantees that owners or occupiers of dwellings and other buildings will be able to restrict unwanted strangers or other visitors as they wish. However, one cannot reasonably infer that the 1976 Penal Law was also intended to evict persons claiming rights adverse to the ownership of realty by other persons; nor was it intended to settle any conflicting claims to ownership of realty as in the instant case. The criminal statute of 1969, on the other hand, was intended to protect **land** owners from unnecessary civil litigation where perfect strangers merely occupied and developed **land** without due considerations of ownership. It could properly be called the penal law designed to discourage squatters. Probably Mr. Hne would have been convicted under that old law at the time when it was in force, but he certainly could not be tried and convicted under the 1969 code when he was in fact charged in 1983, seven years after the former statute ceased to exist as law.
It is surprising, however, that neither the judge in the court below nor the prosecuting attorneys recognized the blunder in using the repealed law to convict appellant in 1983. They failed to realize that even under the old law, appellant's initial entry was not unlawful, he having entered by the permission of Williette Coleman, whom both he and the private prosecutor regarded as the owner of the disputed **land**, and paid rent to her until appellant realized that the **land** in question was public property. He continued to live on and develop the **land**, but failed to

recognize Williette Coleman as landlady. Instead, he started making payments for the **land** into government revenue as was required of public **land** occupiers who desired to purchase such **land**. His adversary, on the other hand, continued to pay rent to Williette Coleman, and subsequently bought the property from her. It was at that time that his (Mr. Tamba's) surveyors found out that his **land** extended into the portion claimed by appellant. The question presented in the dispute therefore was one of ownership. Disputed ownership of realty in this jurisdiction is certainly not determinable by the action of criminal trespass, there being no question of criminal intent in such cases; instead, the original entry and subsequent stay were not unlawful, or tied up with intent, gathered from the circumstances, to commit a crime.

Having held that criminal trespass cannot lie against one claiming title to ownership of realty, we have no doubt that the action of criminal trespass is not the proper cause of action open to one whose **land** is encroached upon by another who claims ownership to it. Our statute provides that any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to real property as well as the right to possession thereof is disputed. In such cases, prior notice to vacate is not necessary when (a) there is unlawful dispossession, ouster, trespass, or tortuous entry by a tenant at sufferance or by a mere occupant without color or right or title after expiration of the term of a lease or of rightful or permissive possession; or (b) there is a wrongful entry or possession of a mere trespasser or intruder. Civil Procedure Law, Rev. Code 1: 62.1, 62.2.
Therefore, the proper cause of action to have been taken against appellant when private prosecutor discovered that his **land** was encroached upon by the former's toilet and kitchen, the latter also claiming ownership to it, was the civil action of ejectment as required by our law. Under our present Penal Law, cited *supra*, criminal trespass cannot lie against an adverse claimant to determine ownership.
In fact, while a charge of criminal trespass could have the miscreant fined and/or imprisoned, it cannot demarcate the rights of the rival claimants to property. More than that, a conviction of the offense leaves the disputed **land** ownership unresolved, as in the instant case. The lower court sentenced appellant to three months' imprisonment, but it did not evict him from the area claimed by the private prosecutor; nor did it award same to the latter. Rather, the problem of the disputed ownership in this case remained unresolved. Criminal trespass, as defined under our new Penal Law, punishes the offender and protects occupiers of premises from undue public interference. That is all it does, leaving the action of ejectment to decide property rights between rival claimants undecided. This Court has held and maintained that ejectment is the proper cause of action for evicting one who lays adverse claim to property purportedly belonging to another. *Duncan v. Perry*, 13 LLR 510 (1960); *Beavans v. Jurs*, [1928] LRSC 8; 3 LLR 28 (1928).

Finally, is it proper for conviction to be had under a repealed statute? Black's Law Dictionary defines the word "repeal" as the abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated (which is called "express" repeal), or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force(called "implied" repeal). BLACK'S LAW DICTIONARY 1167 (5th ed). Another authority maintains that where two acts are repugnant to or in conflict with each other, the last one enacted will go-vern, control or prevail and supersede and impliedly repeal the earlier Act, although it

contains no repealing clause. 82 C. J. S. *Statutes*, § 291.
The 1969 Penal Law, under which appellant was tried and convicted, is clearly repugnant to the 1976 Penal Law on the law of criminal trespass. The 1976 statute therefore impliedly repealed the 1969 statute, and it therefore prevails over and supersedes the latter, even though it contains no such repealing clause. The two statutes are indeed at variance with each other. The 1969 statute outlaws and punishes as a felony the un-permitted use of another person's **land** for settlement and development. The 1976 statute merely outlaws and punishes as a misdemeanor any un-permitted entry into and or stay in a building or other occupied structures.
Under the 1976 statute, the unlawful entry and stay on another's premises is criminal trespass, but under the 1969 statute, it is not the unlawful entry and stay that is criminal trespass, but the occupation and development of another's **land** without his permission.

Therefore, the 1976 statute supersedes and repeals the 1969 statute. By repealing the latter statue, the 1976 statute revoked it and completely got rid of same as though it never existed in our jurisdiction, and it relegated it to the annals of our judicial history. The appellant could not therefore have been properly tried and convicted under a law that is no longer recognized as binding. The New Penal Law of 1976, being the law in force in 1983, the time appellant was indicted, was the law properly applicable to his case. Under that law, however, as pointed out earlier, appellant committed no act of criminal trespass simply because he built on **land** which he considered public **land** and which he had paid for; nor did he commit criminal trespass under our law because he refused to demolish his structures on said **land**, and refused to yield in to workers sent on that **land** by a rival claimant.
Considering what we said earlier, we are of the opinion that the positions of Messrs, Hne and Tamba before this action was commenced cannot be lawfully altered by an institution of criminal proceedings under the new Penal Law; nor can conviction be had under the 1969 statute since it ceased to exist in 1976.
THEREFORE, in view of all that we have said in this opinion, the judgment of the trial court is reversed, and the appellant discharged without day from further answering to the charge of criminal trespass.

Judgment reversed.

Lib. Trading Corp. et al v Cole [1972] LRSC 22; 21 LLR 176 (1972) (19 May 1972)

LIBERIA TRADING CORPORATION and the widow and heirs of S. DAVID COLEMAN, deceased, represented by ETTA COLEMAN and OTHELLO COLEMAN, Appellants, v. SAMUEL B. COLE, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 4, 1972. Decided May 19, 1972. 1. Though the trial judge in his capacity as presiding judicial officer has broad powers in controlling

the conduct of a trial, he must not only be circumspect in his language and conduct, but should not usurp the functions of counsel under the requirement that he must always refrain from actions which may prejudice the rights of parties. 2. Proceedings in arbitration must be conducted strictly in accord with their statutory requirements. 3. Where the trial record indicates, as in the present case, confusion and uncertainty in the facts elicited so that the appellate court finds no factual base upon which to predicate its opinion, the case will be remanded to the lower court for proper clarification. 4. The trial court may not arbitrarily refuse issuance of letters rogatory.

An action in ejectment was commenced by appellee against lessee of property claimed by him, years after the agreement to lease was first signed. The heirs of the lessor intervened after this first suit in ejectment as defendants. It appears that the common grantor first conveyed the acreage at issue in 1931 and 1935, subsequent to which the grantee protested in 1952 that a survey indicated an insufficiency of land according to description and that the conveyance lacked three lots of the four and three-quarter acres sold. It was out of the same acreage apparently that the common grantor fifteen years later conveyed two lots to plaintiff, on which structures of the lessee allegedly encroached. The first action in ejectment commenced in 1961, and resulted in a verdict for plaintiff, including damages. An appeal was taken and

the Supreme Court reversed the judgment for failure to permit intervention and remanded the case for retrial. In 1964, another action in ejectment was commenced, and in connection therewith a board of arbitrators was appointed. Again, a verdict for plaintiff was returned and an appeal was taken. The Supreme Court reversed the judgment, based on the inconclusiveness of two reports of the board and the case was remanded to be retried again. In 1967 the case was tried for the third time. No further survey had been made and the board of arbitrators was apparently never reconstituted. The same irresolution, therefore, resulted by virtue of the same two reports. In addition, the defendants contended, and the Supreme Court agreed therewith, that the trial judge at times did not appear impartial, favoring the plaintiff's case by his advocacy. A verdict was again returned for plaintiff, including damages, and an appeal again was taken from the judgment. The Supreme Court reversed the lower court's judgment and remanded the case to the lower court to be retried with explicit instructions for a new board of arbitrators to conduct a new survey to resolve the prior inconclusiveness. Morgan, Grimes and Harmon for appellants. uel B. Cole, pro se. Sam-

MR. JUSTICE AZANGO delivered the opinion of the

Court. Prior to 1931 litigation had occurred between C. C. Burke of the City of Monrovia and the heirs of JohnsonMoore Worrel, concerning a certain parcel of land situated in the City

of Monrovia, in the area now called Sinkor. C. C. Burke was represented by the late counsellor S. David Coleman. After the successful determination of the suit, C. C. Burke, out of gratitude for the able

legal services rendered by counsellor Coleman, sold to Coleman three and three-fourths acres of land in 1931, and in 1935 another one acre of the same property, totaling four and three-fourths acres of land sold to S. David Coleman, for which warranty deeds were executed, probated, and registered without objections. In 1952, S. David Coleman executed a lease agreement to the Liberia Trading Corporation for one-half acre of said land, on which the company constructed two buildings. On one acre of land S. D. Coleman constructed another house for himself, leaving the balance of three and one-quarter acres. On September to, 1964, appellee, Samuel B. Cole, entered an action of ejectment against the Liberia Trading Corporation, claiming that the corporation had encroached upon the beach portion of the two lots purchased from C. C. Burke by him. But prior to the inception of the action Cole, having learned in 1952 that Coleman was about to lease a portion of the land he had purchased from C. C. Burke which included the beach portion of the land owned by Cole, sent a letter to the Harmon law offices. "The Harmon Law Offices, Carey Street, Monrovia. "Gentlemen: "The undersigned have been creditably informed from very reliable sources that a Lease Agreement has been drafted and about to be signed and entered into between Hon. S. David Coleman and the Manager of the Liberia Trading Company of Monrovia, for a block of land situated within the vicinity of Sinkor and adjoining the block owned by Hon. G. L. Dennis now occupied by the Spanish Minister. "The undersigned wish to herewith inform your office that Hon. S. David Coleman does not hold a deed for that portion of land **and therefore cannot legally lease said land** to anyone. Three lots from said block

179 of land were bought and the deed probated by Samuel B. Cole, one of the undersigned and the other portion inherited by operation of a Will by Miss Etta Cassar, heir of the late Mrs. C. C. Burke, the other of the undersigned. "In order to satisfy' yourself of the real owner of the parcel of land referred to, we will be glad if you will convene a conference and examine our titles and that of Hon. S. D. Coleman and see who has title to this parcel of land before signing any lease agreement. "Very truly yours, ETTA CASSAR, heir of the late C. C. BURKE, SAMUEL B. COLE." According to Cole, a conference was arranged between him and Coleman at which the latter told him that he did not know that Cole owned land within the vicinity, but assured him that he would investigate and if found to be true he would delete such portion before signing the agreement. In 1958 Cole learned in the course of inspection before leasing his beach **land to a prospective lessee, that a portion of appellant's building was erected on his parcel of land**. In 1961, he instituted an action of ejectment against the Liberia Trading Corporation. According to appellant's counsel, Cole produced an

undated deed given to him by C. C. Burke in 195o for two lots in the same area covered by Coleman's deeds. This deed was probated in 1952. After trial Cole was awarded $8,000.00 for the many years defendant encroached upon his land. An appeal was announced and prosecuted and argument was held before this bar. As a result of the Circuit Court's denial of the Coleman heirs' application to intervene as party defendants, the case was remanded with instructions that the Coleman heirs be joined as party defendants and that the parties replead and the case be tried de novo. The case was thereupon refiled by the plaintiff against the company and

the heirs of S. David Coleman, starting with a new complaint in 1964, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Defendant filed an answer attacking the complaint which necessitated its withdrawal and the filing of an amended complaint by Cole, but in doing so he failed to pay the entire costs which defendant noted in their amended answer. Pleadings progressed as far as the rejoinder. Several issues of law were raised in the amended answer and rejoinder. They included : (a) the failure of plaintiff to reimburse defendant for their costs; (b) that the plaintiff's deed was fraudulent on the face of the records; (c) that acquisition by purchase of the land in question was first made by defendant; as well as, (d) plaintiff's failure to venue his reply in any term of court as is required by the statutes in such cases made and provided. According to appellants, the trial judge, Hon. James W. Hunter, entered a ruling on the issues of law, leaving the issues of fact undisposed of, contrary to law. After the court had entered the aforesaid ruling, the parties proposed the appointment of surveyors to go on the spot and conduct an investigation to determine whether the defendants had encroached upon the plaintiff's **land and if so, to what extent, as well as such other facts relating to the land** in question which would be pertinent to the issues involved in the ejectment suit. Three surveyors were appointed, who, after having gone to the spot, reported to court their findings. They all took the stand and were examined and cross-examined on their report. Whereupon the defendants filed written objections to the findings made by the surveyors, setting up that the findings were inconclusive. The Court conceded this, and ordered the surveyors to reinvestigate and to prepare a conclusive report. But they never returned to the field and merely prepared another report. They again, however, took the stand, and were examined and

cross-examined but failed to introduce the report. The plaintiff who had taken the original of the second report from the surveyors, retained the document in his brief bag. Despite this, the case was submitted to the jury, and a verdict was brought in favor of plaintiff

and final judgment rendered. The case was appealed to this Court and on June 16, 1967, we ordered the case remanded for failure to introduce into the record the two reports, which rendered the proceedings inconclusive. In keeping with the mandate of this Court, the case again came up for trial at the June 1967 Term of the Civil Law Court for the County of Montserrado, with Hon. Joseph P. H. Findley presiding. According to appellants, upon the call of the case, although there were no indications in the record that the Board of Surveyors was ever reconstituted for the purpose of determining the facts in keeping with the mandate from the Supreme Court, a new trial was ordered. Nor was there any evidence of the Board of Surveyors giving notice to the parties to be present for a determination of the facts in the field survey. The trial was, however, commenced by the reading to the jury of the plaintiff's complaint and the so-called arbitrators' report which the plaintiff had been keeping in his brief bag. Thereafter, plaintiff was called to the stand to testify. When defendants protested against this and sought to show that the report was new to them, without any comment from the plaintiff who obviously conceded this, the court interrupted and declared that since defendants had not objected to the report they were estopped from contesting it. Appellants have contended that the trial judge appeared to be biased and played the part more of counsel than of judge, submitting some illustrations from the record of rulings without prior objections. According to the record the parties agreed that the

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deeds held by the Colemans comprised, in all, title to four and three-fourths acres of land and that the Colemans had possession of the land prior to 1950 and up to the present. What is obviously inconsistent therewith is the assumption of the surveyors that plaintiff should be given priority to the land in the face of what they found, as set forth. "When we made our first report we said that the point of commencement does not agree with the place in question. Mr. Cole's lots which are disputed commenced from his first lot, and Mr. Cole's first lot commenced at the Northeastern corner of Carey Thomas; and the Northeastern corner of Carey Thomas's lot is on the Old Congo Town Road. If we commence our survey from Mr. Cole's first lot then his three lots would not reach the beach; that is the reason why we said the place of commencement of Mr. Cole's lots do not correspond with marks shown to us by him on the ground, but we did our survey according to points shown to us on the ground. The whole area in question, Mr. S. David Coleman's land, commenced from the Johnson's heirs and this we could not locate--that is to say, the place of commencement. And also Mr. Coleman's one acre we could not locate because Mrs. Coleman failed to show us the one acre of land deed given to us when we went on the scene for the survey; she only showed us the place for the three and three-fourths acres of land according to her deed given us." The two reports of the surveyors submitted by appellants reflect more completely the same inconclusiveness of their findings as shown in the portion quoted above. It is obvious, the appellants contend, that the original deed of the mutual

grantor was never consulted to determine the area in question, nor was consideration given to the prior acquisition of the property by the late S. David Coleman from the grantor, nor to defendant's prior pos-

session of the premises.
It is also significant that the trial judge appeared to be resistant to any evidence which related to the merits of the claims to title. In their efforts to prove the inconsistencies and defects in the testimony of the surveyors who took the stand to justify their reports, the defendants applied for letters rogatory to obtain from Othello Coleman maps and diagrams previously made of the area, showing the exact starting points and metes and bounds, Othello Coleman at the time was employed in the United States where he then resided. This application was denied by the trial judge. The map and diagram are now in the possession of appellants, Othello Coleman having returned to Liberia, but they were deprived of their use at the trial. The proceedings culminated in a verdict against the appellants, and a final judgment in which plaintiff was not only declared the owner of the land, but was awarded damages in the sum of $12,000.00. A motion for a new trial was filed and denied. Hence, this appeal based on a bill of exceptions containing twenty-three counts duly approved by the trial judge, without any reservations, despite the caution urged on trial judges by this Court in Cooper v. Alamendine in the November 1971 Term, reported in [1971] LRSC 54; 20 LLR 416. From our point of view when on June 16, 1967, this Court adjudged that by virtue of the circumstances in the court below, in respect of the admissibility and admission into evidence of the two surveyors' reports and their plats, it found that the record before it was inconclusive and, therefore, made it impossible to arrive at a proper determination of the issues presented. In the circumstances this Court found itself compelled to remand the case for a new trial of the issues of fact. It meant, in clear language, reexamination of the entire issues of fact in the same court by trial. And obviously, this included examination of all of the issues, according to the law of the land, of the facts or law put in issue in the cause

for the purpose of determining the rights of the parties. According to the record before us, when the case was on Thursday, August 3, 1967, called for hearing, it disclosed this opening entry. "Plaintiff's complaint and the Report of Arbitrators ;were ordered read to the jury for their benefit. Thereafter the plaintiff outlined the theory of his case and asked for the qualification of his witnesses. This having been done, the trial proceeded with his testimony." He was examined and cross-examined. But peculiarly, even though Samuel B. Cole had alleged in his complaint that he brought the suit against the defendants for the recovery of property, and respectfully prayed that the court would render judgment placing him in possession of his property, and award him such damages as justice demanded for his deprivation

thereof by defendants, yet at the trial there is no indication that he insisted on the recovery of the property. Rather in his testimony to the jury, he only requested them to compensate him for the many years he had been deprived of the property. What is not prayed for and proven at the trial shall not be granted, is an old legal maxim that should not have been overlooked in this case. We note further from the record that almost if not all of the questions that were propounded under cross-examination to Cole were disallowed by the court, as was observed earlier in this opinion. It would seem from the attitude and conduct of the trial judge at this point that the exposition of the facts that would have led to the adequate determination of the rights of the parties in this case was not likely. It is of great importance that the courts should be free from reproach or the suspicion of unfairness. The party may be interested only that his particular suit should be justly determined, but the state, the community, is con-

cerned not only for that, but that the judiciary shall enjoy an elevated rank in the estimation of mankind. "When a witness has been examined in chief, the other party has the right to cross-examine for the purpose of ascertaining and exhibiting the situation of the witness with respect to the parties and to the subject of the litigation, his interest, his motive, his inclinations, his prejudices, his means of obtaining a correct and certain knowledge of the facts to which he has borne testimony, the manner in which he has used those means, his powers of discernment, memory and description. The purpose of this, of course, is to break down the testimony of the witness favorable to the opposite side and to bring out facts and circumstances favorable to the examiner. . . . If the opposing party is deprived of the opportunity of a crossexamination without fault upon his part . . . it is generally held that he is entitled to have the direct testimony stricken from the records. This doctrine rests on the common law rule that no evidence should be admitted but what was or might be under the examination of both parties and that ex parte statements are too uncertain and unreliable to be considered in the investigation of controverted acts." 28 R.C.L. 600. The trial judge should have borne in mind that one of the issues highly emphasized by appellants in these proceedings has been that of superiority of title or better title. That is to say, appellants have contended that as far back as 1931 and 1935 they have been in actual occupation of the property at issue and have openly and continuously been in possession under deeds describing it by metes and bounds. Moreover, on August 2, 1952, counsellor S. David Coleman made it known to Samuel B. Cole, in a letter from the Harmon law office, that even though C. C.

Burke sold him a parcel of **land in the Sinkor area, yet his surveyors could not find sufficient land** in the area surveyed to account for the deeds and that the shortage was more than four and one-half lots. He demanded the **land** or he would institute appropriate action in court for recovery thereof in case he did not get it. The question that would occur to any reasonable person is, if as far back as 1931 or 1935, C. C. Burke's conveyance by deed fell short four and one-half lots on survey by Coleman, how could, fifteen years later Burke have sold to Cole three lots from that same parcel? Hence, in our opinion, to have disallowed questions on cross-examination which tended to show who the first purchaser was of the **land** now in dispute, as well as to establish all the facts and circumstances at the trial, was most irregular, and the judge, therefore, erred in ruling as he did. Continuing our examination of the record, we note that the next witness to testify for plaintiff was William J. McBorrough. He stated in answer to questions on direct examination that he was employed by the Government of Liberia in the capacity of surveyor; that he was acquainted with the plaintiff in this case; that he was a member of the Board of Arbitrators in a matter between plaintiff and the Liberia Trading Corporation. He testified that the Board made a report and identified the signatures of J. Pleh Reeves, J. K. T. Scotland, and himself appearing thereon and stated that that report was rejected. Other questions were put to him on direct examination. "Q. I pass you this document, please look at it and say what you recognize it to be? "A. This plan accompanied the subsequent report which was presented to this court and carried the signature of the members of the Board. I observed that the second plan does not carry the report which was submitted alone.

"Q. Please say, if you can recall whether or not a deed submitted by the heirs of the late S. David Coleman and that submitted by Samuel B. Cole, called for the same tract of **land**? "A. As far as I can remember, the heirs of the late S. David Coleman presented a deed for one acre of **land**, whereas Mr. Samuel B. Cole presented a deed for half of an acre, and were for the same place." In view of the last answer of McBorrough, how can we possibly accept as true the testimony of plaintiff when he said, "in conclusion, I beg to submit to court the deed in support of what I have stated, a deed showing my title to said **land** is genuine and that my said parcel of **land** is separate and distinct from these claimed by the heirs of S. David Coleman and L.T.C. (Liberia Trading Corp.)" Moreover, questions were also propounded by the court to McBorrough. "Q. I pass you these documents marked by court PNT/3 and PNT/4. Please tell this court and jury whether you are saying that PNT/4 is your real report and not PNT/3 ? "A. The report marked PNT/3 was first submitted by the Board and objected to by the defendant and rejected by court on grounds that it did not give

the court enough evidence to act on. The Board was ordered to return and make another report. This report is the one marked PNT/4.
"Q. May I suggest, sir, that you have things absolutely mixed up and you are mistaken. Now jog your memory and say if PNT/4 is not
the document objected to by defendants in keeping with the objections filed October 26, 1965, to this your very report of count one
of which objection you comment on the Coleman heirs' deed : `This board finds it difficult to say whether or not this deed covers the area in question. . .

upon which you were redirected to make a subsequent report after the court had rejected this report? "A. It has been
a long time and I would like to look at PNT/3 again. "Q. Here is PNT/3. Please explain. "A. When we were recalled to this court,
I only found PNT/4 in my file and not PNT/3. "Q. But you admit that you signed PNT/3. Not so? "A. Yes. I did sign PNT/3 as well as
PNT/4 and examining both documents I have found PNT/4 to be the subsequent report which was presented by the Board." At this juncture
we would like to remark that, admittedly, the judge conducting a jury trial is not a mere moderator, but is the governor of the trial
for the purpose of assuring its proper conduct and the fair and impartial administration of justice between the parties to the litigation.
The wide discretionary powers vested in him are to be exercised so that abuses of justice shall not be accomplished under forms of
law. He may, within reason, take all steps necessary to see that the trial is conducted in an orderly manner and kept within bounds
prescribed by decency and ordinary rules of good conduct. Statutes which tend to restrict the powers of the judge in controlling
the trial are usually given a strict construction. We admit also that a trial judge has power within proper limits to impose limitations
upon the number of witnesses, and to propound questions to, and examine, witnesses for the purpose of eliciting facts material to
the case at bar. That he may in a particular case be justified in examining some witnesses at considerable length, in an effort to
bring out the true facts for consideration by the jury; but he should not by the form, manner, or extent of his questioning indicate
to the jury his opinion as to the merits of the case. For upon him rests the responsibility

of striving
for an atmosphere of impartiality. His conduct in trying a case must be fair to both sides, and he should refrain from remarks that
may injure a litigant. He should not usurp the function of a counsel in the case. He should be cautious and circumspect in his language
and conduct before the jury. He should and must be fair to both sides, and the extent to which he may go in comments and remarks
during the trial is governed by the fundamental principle that nothing should be said or done by him which will prejudice the rights

of the parties litigant. Especially should he refrain from any remarks that are calculated in any way to influence the minds of the jury or to prejudice a litigant. The jury has great respect for him and can be easily influenced by the slightest suggestion coming from the court, whether it is a nod of the head, a smile, a frown, or a spoken word. It is therefore imperative that a trial judge conduct himself with the utmost caution in order that the unusual power he possesses shall not be abused. All judges should take note of the foregoing. We shall continue. The last of the witnesses for plaintiff was J. Pleh Reeves, another member of the Board of Arbitrators. He identified documents marked by the Court PNT/3 and PNT/4 as being the reports made by them. He admitted that at the time he and the committee went on the property in question to conduct the survey concerning which a report was made, the plaintiff and defendant each presented their deeds. But when reminded on crossexamination that his report stated, inter alia, in count 4 thereof that the heirs of S. David Coleman could not present any deed of the area in dispute, this question was promptly disallowed by the court on the ground that it was asked for the purpose of entrapping the witness. The area in question was the res of the proceedings, so the report therefore found for Cole. He admitted also that there was only one survey made of the area. When

asked, "Isn't this the only report you have submitted to this Court?" he answered, "no." But when further asked on cross-examination how many reports had they submitted to court, the question was again disallowed by the court on the grounds of immateriality and irrelevancy. As said earlier in this opinion, we believe that every opportunity should have been given the defendants in developing the cross-examination to the extent that the whole truth appertaining to these ejectment proceedings would have been made crystal clear before the jurors in aiding them to arrive at a just verdict. Another unusual aspect of the trial is that J. K. T. Scotland, the third surveyor and a constituted member of the Board of Arbitrators, did not testify. Since it is the award by which plaintiff's claim to title was maintained and judgment rendered in his favor for $12,000.00, it is important to determine if the statutes applicable to arbitration were adhered to. "The award of arbitrators appointed by the court must be in writing and signed by the arbitrators or a majority of them." Civil Procedure Law, 1956 Code 6:I282. "A copy of an arbitration award shall be served on the parties to the arbitration, who shall have not less than four days thereafter to file written objections to the award. The objections may be based on any one or more of the following grounds only: corruption of the arbitrators; gross partiality; want of notice of the time or place of the proceedings; or error of law apparent on the face of the award. Written objections except to errors of law shall be verified by affidavit." Id., § 1283. "The court shall appoint an early day for hearing objections to an arbitration award, giving reasonable notice thereof to the parties. They shall be heard in a summary manner without a jury and the issues decided by the court on the evidence adduced.

court may either confirm the award or set it aside, as it deems just. If the court sets it aside,
it may send the case back to the same or to other arbitrators with or without instructions or it may cause the case to be tried by
a jury." Id., § 1284. "If at the end of four days after service of a copy of the award on each party no exceptions or objections
have been filed or objections thereto have been overruled, it shall be confirmed. Whenever an award is confirmed, judgment may be
entered thereon at any time." Id., § 1285. "In any action upon an award in an arbitration had on order of a court the reference and
signature of the arbitrator must be proved. "After judgment has been entered upon an award, it shall have the same status as a verdict
and shall be proof of the facts stated therein against all parties to the arbitration." Id., § 1286. Carefully reading the record
of the trial in this case, we see there is no evidence before us to show that a copy of any report or award was served upon appellants
in this case, and that they were notified that within four days they should file any written objections thereto if they so desired,
and that a day was designated by the court for the hearing of the objections to the arbitration award, thus giving them reasonable
notice. Nor is there any indication that, after the four days provided, no objections or exceptions having been filed and overruled,
the award was confirmed by the court. Further, there is no evidence before us to show that the signatures of the arbitrators were
ever proven. From our point of view, to uphold the reports of the surveyors concluding that "the disputed area belonged to Samuel
B. Cole, because the dimensions stated in appellee's deed agreed with their findings on the ground," without strict compliance with
the statutes relating to arbitration awards would be depriving parties of prop-

erty without due process
of law. It would be unconstitutionally conferring judicial powers on private individuals; it would be violating constitutional provisions
vesting judicial power in constituted courts; and would be ousting the courts of their jurisdiction. And above all, it should be remembered that the object of the statutes
on arbitration proceedings is not to impair, but rather strengthen, the obligations of contracts. The contention of appellants to
the effect that the two reports submitted by the surveyors reflect bias and prejudice because the conclusions reached by them are
patently inconsistent with the deeds, maps, and facts in this case should be upheld, especially so when there is no evidence that
the Board of Surveyors was ever reconstituted for the purpose of determining the facts in keeping with the instruction of this Court
that a new trial be had. Nor is there any indication that appellants were notified to be present when the survey was being conducted.

Further, there is no evidence indicating that the two reports were legally introduced into evidence in keeping with trial procedure.
What is more, from a further scrutiny of the record before us, no evidence produced by appellee has disclosed the quantum of his land allegedly encroached upon by appellants and continued to be wrongfully occupied. This has not even been shown by a report of the surveyors; neither is there any indication of the quantity of the beach portion of the two lots allegedly taken by the appellants.
Appellants have contended further that they were denied an application for letters rogatory to be served on one of the defendants, a material and indispensable witness, in the person of S. Othello Coleman, who was outside the country and had knowledge pertinent to appellants' defense. "If the witness whose testimony is desired resides

or is out of the Republic of Liberia, the party desiring his testimony shall file with the clerk of the court in which the case is pending written interrogatories with an application for a commission to be directed to some person residing at the same place as the witness, naming the commissioner in the application; and he shall serve copies of the interrogatories and the application on the other parties. The opposing parties have four days to file cross-interrogatories in writing and name their commissioners. If they fail to do so, the judge shall issue a commission to the commissioner of the first applicant, and such commission shall be forwarded to him without cross-interrogatories. A commission may by consent be issued to one commissioner." Civil Procedure Law, 1956 Code 6:761. "If the witness resides in a country where the execution of commissions is not allowed, the court or judge may send interrogatories and cross-interrogatories with a letter rogatory addressed to the proper authority requesting such authority to take the depositions and answers of the witnesses." Id., § 762. The requirement to issue letters rogatory being imposed by statute, the denial thereof was error, nor was there any inhibition in the court's power. lt . . it has frequently been asserted that the power to issue such letters is inherent in courts of justice, without distinguishing in this respect as between courts of law and courts of equity. . . . The power inherent in a court to issue letters rogatory can be exercised only in aid of a cause or proceeding pending in the court which issues the letters." 16 Am. JuR., Depositions, § 27. In view of the foregoing, the judgment is hereby reversed and the case remanded for a new trial in accordance therewith. We are also ordering that a new survey of the lands in question be made by a new board

of arbitrators, made up of three Government surveyors other than those who served before, to be appointed by the parties and by the court. Costs shall abide the final determination of this case. It is so ordered.

Reversed and remanded.

Harmon v RL [1975] LRSC 11; 24 LLR 176 (1975) (6 May 1975)

DAWODA HARMON, Appellant, v. REPUBLIC OF LIBERIA, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 9 and 10, 1975. Decided May 6, 1975. 1. The constitutional privilege against self-incrimination cannot be invoked on the ground that an answer would tend to degrade or embarrass the witness, for a person can only invoke the privilege when answering a question which might subject him to criminal responsibility. 2. Fraud is a false representation of fact, made with a knowledge of its falsity, or recklessly, without belief in its truth with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it to his damage. 3. When fraud is alleged it need not be proved directly but may be presumed from the circumstances surrounding the transaction. 4. There is no legal time beyond which the Republic might not bring an action to cancel a deed it executed by misinformation, mistake, concealment of fact, or deception on the part of the grantee. 5. Generally, it is unnecessary to prove the execution of a document more than thirty years old if it is proved genuine and to have been found in the rightful possession of a person. 6. The Supreme Court will at all times affirm a decree ordering cancellation of a deed when the record clearly shows that there had been fraud in its execution.

A public land sale deed was executed by appellee after appellant had made representation that the land was free of encumbrances. As a matter of fact, the appellant had resided for some time with relatives in the very town of which a portion had been granted to him. The Republic thereafter commenced suit for cancellation of the public land sale deed, to thus reinstate a prior deed given to the forebears of the present inhabitants of the town. The petition was granted, a final decree entered, and the appellant's deed ordered cancelled. The respondent appealed from said final decree. The Supreme Court agreed with the lower court's position, emphasizing that the appellant was not an innocent party and that the suit, moreover, did not involve only
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private parties, the petitioner in the lower court being the Republic. The judgment was affirmed.
Stephen Dunbar for the appellant. Jesse Banks, Jr., of the Ministry of Justice, and M. Fahnbulleh Jones for

the appellee. MR. JUSTICE HORACE delivered the opinion of the Court. In an action for the cancellation of a public land sale deed brought by the Republic of Liberia against Dawoda Harmon, the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, upon finding in favor of petitioner after a trial on the merits of the cause, decreed cancellation of the said deed. In the case before us, appellant attacks the soundness of the trial court's decision and prays for its reversal. We gather from the record certified to us that on April 25, 1973, the Republic of Liberia filed a bill in equity for cancellation of a public land sale deed which appellee had executed in favor of appellant. The grounds upon which the bill was predicated were alleged misrepresentation and fraud and deceit by appellant. To the petition appellant filed an eight-count answer, mainly attacking the sufficiency of the writ of summons, the petition and the affidavit to the petition for lack of revenue stamps ; which also questioned the validity of appellee's deed for alleged nonprobation, even though the deed in question was obtained from the archives at the Ministry of Foreign Affairs under the seal of said Ministry. Appellee filed a reply. In the disposition of issues of law, appellant's answer was dismissed and he was placed on a bare denial of the facts stated in the complaint and reply. The issues of law having been thus disposed of, the trial

took place. Evidence, both written and oral, was introduced by both sides, and upon completion of the trial the judge, acting without a jury, the case being one in equity, rendered a decree cancelling the public land sale deed, executed by the Republic of Liberia in favor of Dawoda Harmon, and declared it to be null and void, on the grounds that it had been sufficiently proven by the evidence that appellant had misrepresented to appellee that the land involved was unencumbered, and that appellant had perpetrated fraud upon appellee which resulted in the execution to him of a public land sale deed for land which appellee had many decades earlier conveyed to others of the citizens. It is from the final decree cancelling the public land sale deed that this case is now before us on a twelvecount bill of exceptions. Counts one through eleven of the bill of exceptions deal with alleged errors of the trial court in disallowing certain questions asked by appellant, in overruling certain

objections raised by him, and in deying admission of two of appellant's exhibits into evidence. An examination of the record shows that most of the trial judge's rulings on the issues raised were correct, and that although we do not agree with one or two of his rulings, we do not think those rulings to be of sufficient magnitude to constitute reversible error so as to warrant reversal of the trial court's final decree. Before traversing the last count of the bill of exceptions, we think it necessary to set forth and comment on count seven of the bill of exceptions, because it involves invoking the constitutional safeguard against self-incrimination. "7. And also because on the 16th day of October, 1973, the following question was put on cross-examination

to respondent Dawoda Harmon; 'Mr. Witness, the 15 acres of land that you surveyed, does it not include houses of Foday Kaidi and Varney Kaidi, E. B. Burphy, Molley Gray?' To which

respondent objected on the ground : unconstitutional, which objection Your Honor did not sustain, to which respondent then and there excepted." The Constitution is the supreme law of the land and when issues are raised as to the constitutionality of an act, courts treat them with prime importance. The privilege against self-incrimination raised here by appellant dates back to seventeenth-century England and its crominal procedure. In our own jurisdiction, the privilege is as old as the Constitution. For in Huberich's Legislative History of Liberia it is stated : "No person shall be compelled to give evidence against himself." See Vol. I, page 643, § 12. "The privilege against self-incrimination is not restricted to criminal cases, but applies alike to civil and criminal proceedings wherever the answer to a question put to a witness might tend to subject him to criminal responsibility. . . . The privilege protects an individual not only from giving answers that are in themselves directly incriminating, but also from giving answers that may provide a link in the chain of evidence against him." 21 AM. JUR., 2d, Criminal Law, § 353 (1965). The appellant here invoked the privilege but it cannot apply to the question posed to him. He did answer the question, and it is clear that the answer does not subject appellant to any criminal responsibility. From the circumstances, it seems that appellant's reluctance to answer the question is founded on the notion that it would degrade or embarrass him, but the Constitution does not protect one against such embarrassment under the circumstances, the reason being that one can only refuse to answer a question and invoke the privilege when answering such a question may subject him to punishment for a crime. We come now to the count of the bill of exceptions that we deem to be of great importance, the resolution of

which would determine the issues before us. Count twelve of the bill of exceptions, therefore, is set forth. "12. And also because on the 5th day of November, 1973, Your Honor proceeded to hand down your final decree, ordering the cancellation of respondent's deed, and made same null and void to all intents and purposes, to which final decree respondent then and there excepted to and announced an appeal before the Supreme Court at its March Term of Court." The question which we are called upon to deal with is whether misrepresentation or fraud was sufficiently shown in the evidence adduced at the trial to warrant the trial court's decreeing the cancellation of appellant's public land sale deed. Fraud, according to precedent set by our Supreme Court, is where a party intentionally or by design misrepresents a material fact or produces a false impression, in order to mislead another or to obtain undue advantage of him. Murdock v. U.S.T.C.,

[1932] LRSC 4; 3 LLR 288 (1932). It is a "false representation of fact, made with a knowledge of its falsehood, or recklessly, without belief in its truth,
with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it to his damage."
Davies v. Republic, [1960] LRSC 67; 14 LLR 249, 255 (1960). In CORPUS JURIS SECUNDUM, fraud is defined as any false representation, deceit, devices, or artifice used by one person
with the intent or for the purpose of deceiving or misleading another to his injury ; deception brought about by misrepresentation
of fact or silence when good faith requires expression, resulting in material damage to one who with right so to do relies on same
; false representation of fact, made with knowledge of its falsity, or recklessly without belief in its truth, with intention that
another shall act thereon, and actually inducing him to do so to his injury ; deception practiced in order to induce another to part
with property or to sur-

render some legal right and which accomplishes the end designed. 37 C.J.S., Fraud, § 1. From the definitions hereinabove given, one basic point seems to emerge. To constitute fraud some misrepresentation must
have been made. The representation need not be deliberate. Even the most innocent representation may, under appropriate circumstances,
be sufficient to warrant cancellation of an instrument. See Am. JUR., 2d, Cancellation of Instruments, § 16. It is a universal rule
of evidence that where fraud is alleged it need not be proved directly but may be adduced or presumed from the circumstances surrounding
the transaction. In equity, fraud may be presumed from circumstances, but in law it must be proved. Alston v. Castro, [1928] LRSC 1; 3 LLR 3 (1928). Let us now examine the evidence produced at the trial in order to ascertain whether the circumstances surrounding the execution
of the public land sale deed were sufficient to warrant the trial judge's sustaining the appellee's allegation of fraud. At the trial
of this case in the court below, appellee exhibited a native township grant deed, evidencing that on July 3, 1888, President Hilary
R. W. Johnson, acting on behalf of the Republic of Liberia, for himself and his successors in office, conveyed in fee simple to Basie,
Hawah Ghai, and the residents of Fanima Town 25.8 acres of land in the area known and described in said deed as "Fanima Town." In
addition, appellee also produced witnesses, heirs of Basie, Hawah Ghai, and the residents of Fanima Town, who testified that as far
back as the early 188o's, even before the execution of the native township grant deed, their ancestors, Bassie, Hawah Ghai, and the
then residents of Fanima Town, had inhabited the said town without any molestation or harrassment from anyone whomsoever, and that
they, the heirs aforesaid, had also enjoyed quiet and peaceful possession of Fanima Town until 1951, when the peaceful

enjoyment was disturbed and interrupted by the appellant, who, although knowing fully well that the area known as Fanima Town was encumbered, nevertheless falsely represented to the then President of Liberia, William V. S. Tubman, that the said town area was unencumbered, by which false representation and deception appellant was able to have a public land sale deed issued in his favor by President Tubman for fifteen acres of said parcel of land granted to Basie, Hawah Ghai, and the residents of Fanima Town in 1888, by President Hilary R. W. Johnson. Appellant, it was brought out in the evidence, is a distant relative of some of the residents of Fanima Town, who had come to live there in the 1930's. Because of the consanguinal relationship existing between him and the aforesaid residents of Fanima Town, he was welcomed by them and given a place to reside. Having resided with the people of Fanima Town for a number of years and fully knowing that the land belonged to those people, being the heirs of Basie, Hawah Ghai, and the other residents of the town, and that the place was occupied by those persons who had constructed houses on the said land long before his arrival, the appellant nevertheless proceeded to the office of the **Land Commissioner and falsely informed him that the land** was unencumbered. It was upon this false statement and misrepresentation by appellant that the Land Commissioner, without any investigation into the truthfulness of said statement, had a certificate issued for the survey of the land in question. Our statute specifying the duties of the **Land Commissioner states that "each Land Commissioner if satisfied that Public land** to be sold is not privately owned and is unencumbered shall issue a certificate to a prospective purchaser to that effect." 1956 Code 32.82. We interpret the above quoted section to mean that before any public **land can be sold or before anyone claiming a certain parcel of land to be public land** can buy it, the **Land**

Commissioner must have conducted some investigation to determine whether the land involved is encumbered or not. This, however, according to the record before us, was never done before the issuance of the certificate for the survey or the execution of the deed by the President. It is worthy to note that the land in question was actually encumbered and that appellant at the time of his misrepresentation to the President that the land was not encumbered, had knowledge thereof. As evidence of such knowledge by appellant, we quote a portion of his testimony on cross-examination. "Q. When you attempted to procure a deed for the area which you claim as yours, were there buildings or houses or inhabitants living within that area which you surveyed prior to your survey? "A. Yes. "Q. Mr. Witness, the 15 acres of land which you surveyed, does it include houses of Foday Kaidi and Varney Kaidi, E.

B. Burphy and Molley Gray? "A. Yes, it is true, Old Man Varney Kaidi and Molley Gray." Additionally, the appellant even acknowledged living in Fanima Town for a number of years ; and according to the testimony of some of appellee's witnesses, appellant even lived for a few years in the house of the very persons he sought to oust from the premises. Appellant's counsel in his argument before us contended that the parties in whose interest appellee brought this action were guilty of laches because they lay supinely while the survey for the **land was being made, nor did they object to the probation and registration of appellant's public land** sale deed. In this connection it should be remembered that this is not an action between two private individuals or parties. It is an action brought by the Government of Liberia against one who had obtained title to a portion of what was alleged as part of the public

domain by misrepresentation. Further, the Republic of Liberia being the grantor, she is contractually bound by perpetual obligation to defend the grantee's ownership of property transferred by deed. Moreover, laches will not run against the Republic where it becomes necessary to file suit to fulfill her obligations under the terms of a contract, and especially where it is shown that she has been led into breaching her obligation, by deceptive acts. It is for this reason that there is no legal time within which the Republic might not bring an action to cancel a deed it executed by misinformation, mistake, concealment of fact, or deception on the part of the grantee. Davies v. Republic, [1960] LRSC 67; 14 LLR 249 (1960). Appellant's counsel also contended in his argument before this Court, that there was no showing that the native township grant deed had ever been probated. We consider this line of argument quite weak, because in the first place the native township grant deed dated July 3,

1888, and made profert with appellee's petition in the court below, shows that it was extracted from the authentic records of the archives at the Foreign Ministry of the Republic of Liberia, and duly authenticated by a certificate to that effect signed by the Minister of Foreign Affairs, with the seal of the Ministry affixed to it. Besides, our Civil Procedure Law applies. "It shall be unnecessary to prove the execution of a document more than thirty years old which is proved to have been found in the possession of a person who may reasonably be supposed to have possession of it if it is genuine and which is attended by no circumstances tending to throw suspicion on it." Rev. Code :27.17(5). In view of the facts and circumstances, as hereinabove stated, and the prevailing law, we are firmly of the conviction that the trial judge was correct in cancelling the public **land** sale deed executed in favor of appellant by the Republic of Liberia, the appellee. Indeed, it is

generally accepted that the validity
of a deed is affected by the existence of fraud or deception in its
procurement or by deception practiced or fraudulent inducement
held out to gain title. 23 AM. JR., znd, Deed, § 142. And in "an equitable
suit or recision or cancellation of a (deed) on the ground
of fraud, it is generally considered immaterial that the false representation
including execution of the contract (deed) was made
innocently rather than with the knowledge of its falsity. . . . The basis of
a suit in equity to rescind is not actual fraud, nor
whether the party making the statement knew it to be false, but whether the
statement made as true was believed to be true and, therefore,
if false deceived the person to whom it was made." 13 AM. JuR., 2d,
Cancellation of Instruments,§ 19. The Court will at all times
affirm a decree ordering cancellation of a deed where the record clearly
shows that there was fraud in its execution. Mombo v. Nah,
15 LLR 491 (1964). The position of this Court on the question was
unequivocally expressed in Davies v. Republic, [1960] LRSC 67; 14 LLR 249,
256 (196o), when Mr. Justice Pierre, now Chief Justice Pierre, spoke for the
Court. "Generally, a deed procured through fraud perpetrated
upon the grantor, even though not void at law, is voidable in equity; and as
against the grantee and his privies, and those chargeable
with knowledge of the fraud, the grantor may elect to rescind and be restored
to his original position. As has been said, upon no
other ground is jurisdiction in equity so readily entertained and freely
exercised as in the case of fraud. The jurisdiction of courts
of equity to decree cancellation or recision of conveyances procured by fraud
or false representation is well established and frequently
exercised. The mere fact that the transaction has been executed does not
prevent the court from annulling a deed."

Having carefully considered the facts and the law, it is our holding that the
final decree of the trial court be and
the same is hereby affirmed, and the Clerk of this Court is hereby directed
to send a mandate to the court below to the effect of
this decision. Costs disallowed. And it is so ordered.
ziffirmed.

Pratt et al v Smith [1977] LRSC 32; 26 LLR 160 (1977) (8 July 1977)

JOHN T. PRATT, Vice Grebo Governor, et al., representing the Grebos and Krus
of Fanima, Claratown, Bushrod Island, Monrovia, Informants,

v. FRANK W. SMITH, Circuit Court Judge, and BOYMAH KROMA, et al., representing the Vais of Fanima, Claratown, Bushrod Island, Monrovia, Respondents.
INFORMATION PROCEEDINGS.

Argued June 2, 1977. Decided July 8, 1977.

I. The Supreme Court will refuse in information proceedings to decide who is in rightful possession of real property where such a decision would necessitate the hearing of evidence, since the Court is not authorized to exercise original jurisdiction in such cases. A bill of information, dismissed for lack of jurisdiction over the respondents, may be reinstituted so long as no mandate was issued under the first bill. It is error for the judge of a lower court, under a mandate of the. Supreme Court ordering cancellation of a deed, to issue a writ of possession to the land in question, and the official eviction of the occupants of that land under authority of such writ is wrongful. On cancellation of a deed to real property, the title reverts to those owning the land before issuance of the deed, who may then institute action to evict trespassers.

2. 3.

4.

In an action by the Republic of Liberia against Dawoda Harmon for cancellation of a deed for fraud for land situated in Fanima Town, the Supreme Court affirmed the decree of the lower court ordering the deed cancelled. The lower court judge, however, in addition to ordering the deed cancelled, also had issued a writ of possession directed to the informants in the proceedings now before the Court which were instituted by members of the Grebo and Kru tribes who claimed the right to possession of part of the land for which the writ of possession was issued and who alleged that they were forcibly evicted therefrom by officers acting under the writ. They prayed enforcement of the mandate of the Supreme Court in the Dawoda Harmon case in strict conformity

with its terms. Respondents answered that the issuance of the writ of possession by the lower court was lawful and proper because informants were illegally occupying the 15 acres of land for which the deed had been cancelled. The Supreme Court held that the writ of possession was improperly issued by the lower court, but that while the eviction of the informants under that writ was wrongful, the right to the land in question could not be determined by the Court, since it could not exercise original jurisdiction to hear evidence. Any intruders on the land could have been ousted by the true owners through action in the courts. The Court ordered that the original mandate in the cancellation proceedings should be completed and the order of the lower court issuing a writ of

possession should be revoked. The information was sustained in part. Joseph J. F. Chesson for informants. Jones for respondents.
MR. JUSTICE HORACE

M. Fahnbulleh

delivered the opinion of the

Court. During the March 1975 Term of the Supreme Court, the Court passed on an appeal before it in cancellation proceedings for fraud brought by the Republic of Liberia against Dawoda Harmon for 15 acres of land situated at Fanima Town, Bushrod Island. The judge in the court below had ordered the deed cancelled, and this decision was affirmed in an opinion of this Court handed down on May 6, 1975. Harmon v. Republic, [1975] LRSC 11; 24 LLR 176 (1975). The decision of this Court was that the final decree of the trial court be affirmed, and a mandate was ordered .sent down to the court below to the effect of that decision. During the October 1976 Term of the Supreme Court the owners of the area known as Fanima Town filed in-

formation before this Court to the effect that Dawoda Harmon had attempted to obstruct the enforcement of the mandate of the Supreme Court by sending a radiogram to the President of Liberia stating that this Court had deprived him of his legitimate title to land purchased from the government of Liberia. The matter was referred to the Ministry of Justice to investigate the truthfulness of this allegation of Dawoda Harmon, and the Minister of Justice wrote the President informing him of the correctness of the Supreme Court's position in the matter. When the matter was heard by us it was decided that Dawoda Harmon, the respondent in the information proceedings had indeed tried to stop the execution of this Court's mandate, thereby delaying and impeding the administration of justice, and his act in this regard was declared contemptuous, for which he was fined. Republic v. Harmon, [1976] LRSC 72; 25 LLR 348 (1976) . On November 25, 1976, Judge Frank W. Smith, Assigned Circuit Judge presiding over the September 1976 Term of the Civil Law Court, Montserrado County, in executing the mandate of this Court, aside from ordering the public land sale deed of Dawoda Harmon cancelled, had a writ of possession issued to informants in the information growing out of the cancellation proceedings. In attempting to execute the writ of possession, it seems that properties of some people were damaged and destroyed. Because of the way the writ of possession was being executed, John T. Pratt, Vice Grebo Governor, William P. Tye, Community Chairman, Anthony B. Gepleh, Deputy Community Chairman, representing the Grebo and Kru citizens, residents of Fanima, Claratown, Bushrod Island, Monrovia, by and through their counsel filed a bill of information before this Court against Boymah Kroma, Foday Kiadii, Oldman Gray, and others representing the Vais of Fanima, growing out of the proceedings against

Dawoda Harmon. After filing a return to the information, respondents moved to dismiss mainly on the ground that they had not been brought under the jurisdiction of the court by service on them of any citation or other process. This case was heard by us and an opinion handed down on April 29, 1977. The information was dismissed because respondents had not been brought under the jurisdiction of the Court. Pratt v. Kroma, [1977] LRSC 21; 26 LLR 64 (1977). After paying the costs of court in the information proceedings that were dismissed, the same informants, that is John T. Pratt and co-informants, on May 18, 1977, filed another bill of information against the same respondents, Boymah Kroma and co-respondents, but this time including Judge Frank W. Smith, the Circuit Judge presiding by assignment over the September 1976 Term of the Sixth Judicial Circuit Court. The main points of the information may be stated as follows : 1. That informants are members of the Grebo and Kru tribes who have for more than 21 years settled on a piece of swampy public land reclaimed by them, near the Messurado River, Fanima Town, next to the Vais in that area. 2. That by virtue of the Supreme Court's decision cancelling the deed of Dawoda Harmon for 15 acres of land in Fanima Town, in the executing of the mandate of the Supreme Court, His Honor Frank W. Smith presiding over the September 1976 Term of the Sixth Judicial Circuit Court erroneously ordered the issuance of a writ of possession to the Vais of Fanima Town was contrary to the opinion, judgment, and mandate of the Supreme Court. 3. That in executing the writ of possession illegally issued out of the Sixth Judicial Circuit Court, the sheriff for Montserrado County with the help of police officers forcibly evicted and ejected members of the

Grebo and other tribal groups, breaking down, damaging, and sacking their premises in the process, to the extent that counsel for informants had to report the depredatory acts of the sheriff and police officers to the Ministry of Justice. 4. That nowhere in the opinion, judgment, and mandate of the Supreme Court was it stated that a writ of possession should be issued, and that although the case in which judgment was rendered related to 15 acres of land, the writ of possession was issued for 25.8 acres of land. Informants therefore prayed that respondents should be cited to show cause why the mandate of the Supreme Court should not be enforced in strict conformity with the decree of the judge of the lower court, which was affirmed by this Court in Harmon v. Republic, supra. To this bill of information respondents filed an eighteencount return. The main points of the return may be summarized as follows : i. That the advance opinion of this Court on the bill of information filed by the same informants against the same respondents put a finality to the issue, and it is a strange innovation in our practice and procedure for one to reinstate in this Court the same proceeding after it has been dismissed either in special proceedings or

on appeal. 2. That respondents and their counsel should be held in contempt for introducing this procedure, which tends to bring this Court into disrepute, and that these special proceedings are a challenge to the integrity of this Court especially so since respondents had to bring Dawoda Harmon, who is one of the informants in these proceedings on information to this Court, and he was held in contempt and fined for obstructing the mandate of the Court. 3. They deny that informants reclaimed any portion of the land known as Fanima Town.

4. That one Lami Coleman as agent for Dawoda Harmon had the Grebo people and their Chief together with the respondents sued as defendants in an action of ejectment in the Civil Law Court. How then can informants say they constructed their houses on public land? 5. That the same counsel for respondents filed for, and on behalf of, Dawoda Harmon information proceedings in the trial court against respondents as well as the Grebo and Kru citizens of Fanima Town as corespondents. 6. That at an investigation held by the Attorney General in 1970 it was shown that the Grebo people never held title to any land in that area. 7. That since the bill of information avers that it was the sheriff for Montserrado County with police officers who evicted informants upon order of the judge, these persons should have been respondents in these proceedings and not the persons named. 8. That they deny ever destroying any property of informants, especially the houses of those named in the bill of information. 9. That the trial judge did not err in ordering the issuance of a writ of possession and eviction of informants because the area on which the said informants had constructed their houses fell within the 15 acres of land for which the public land sale deed had been cancelled. io. That because (1) the informants are no party to the original suit; (z) they had knowledge of the pendency of the suit of cancellation in the Circuit Court; (3) they had a right to intervene if they felt their interest was being adversely affected ; and (4) they have no proof that the area on which their houses are built is public land, they are estopped from raising any issue as to how the writ of possession was executed. I. That the Supreme Court in its opinion in these

proceedings should direct the lower court to appoint a board of surveyors to carve out the 25.8 acres of land alienated to Hawa Gbai, Bassie, and the inhabitants of Fanima by President H. R. W. Johnson in a native township grant deed in 1888. These are the salient points raised in the bill of information and return. Informants filed an answering affidavit, mostly traversing the issues raised in the return, but presenting no new matter. In the first place we must state that we do not feel we can pass on most of the points raised in the bill of information and return because

that would necessitate our hearing evidence and thus taking original jurisdiction, which by law we cannot do. Constitution of Liberia, Article IV, Section znd. Our concern is with the question of whether or not our mandate has been properly executed in the cancellation proceedings, and if not, why not. Respondents have raised the issue that the contents of the first bill of information on which we dismissed on May 29, 1977, and the one now before us are almost identical and that the parties are the same. They contend that since this Court dismissed the first bill of information, which is in the nature of a special proceeding, it is not only novel but contemptuous to reinstitute the same suit. We would agree with respondents if this was not a matter touching the execution of a mandate of this Court. In the decision in Pratt v. Kroma, supra, no mandate was ordered sent down, and we only dismissed the information on the ground that respondents had not been brought under the jurisdiction of the Court. Furthermore, there have been instances where information has been brought on special proceedings pending either before the Justice in chambers or the full bench. This very day we are passing on information growing out of certiorari proceedings before the full bench. Nasser v. Smith, 26 LLR

So we see information cannot be dealt with as other special proceedings, such as those named in the statutes. Moreover, we feel that we should pass on the information before us because it relates to what informants have alleged is an improper manner in executing our mandate, for not to pass on it would leave the mandate hanging in the air which could lead to perhaps irreparable damage or injury.

Let us now consider the point of whether the mandate in the cancellation proceedings has been properly executed. The final decree that the mandate commanded the lower court to enforce reads as follows : "The said deed of the respondent Dawoda Harmon issued unto him by the late' W. V. S. Tubman, President of the Republic of Liberia, on the aforementioned date, is hereby cancelled and made null and void to all intents and purposes in view of the surrounding facts and circumstances as the evidence in this case revealed. The real test and criteria for the cancellation of public land sale deeds and other deeds together with the principles of law in such cases made and provided, having been taken into consideration by the court in this final decree, and not from any other evidence, whatsoever. And it is therefore so decreed. Given under my hand in open court this 5th day of November, 1973. "[Sgd.] JOHN A. DENNIS, Assigned Circuit Judge." It will be observed that there is nothing in the above quoted final decree of November 5, 1973, about a writ of possession. As a matter of fact the court could not have ordered a writ of possession in cancellation proceedings because it is not a possessory action.

During the argument before us it was brought out by respondents' counsel that the issuance of the writ of possession was based upon a letter from the Supreme Court. Since no such letter was in the record before us, we sent

for the original
file of the trial court, but we still could not find any letter. This tactic
to involve the Supreme Court in an irregularity in executing
its mandate we seriously frown upon. It was error for the trial judge
executing the mandate of this Court to have ordered the issuance
of a writ of possession to the respondenls in these proceedings. It was also
error to have ousted and evicted the persons residing
in Fanima Town in the manner it was done if what has been alleged in the bill
of information is true. Our opinion is that when the
public **land sale deed of Dawoda Harmon for 15 acres of land** in Fanima was
cancelled because of misrepresentation and fraud, the ownership
of the **land** reverted to status quo ante, that is to say, the title and
ownership vested in the descendants of Hawa Gbai, Bassie,
and the inhabitants of Fanima at the time the 25.8 acres of **land** were
granted them by President W. R. W. Johnson in 1888. All other
persons living on the 25.8 acres of **land** except by permission of the
owners are intruders, and it is the right of the owners to evict
such trespassers by due process of law. The argument has been advanced that
in equity proceedings a complete remedy should be given
in order to avoid a multiplicity of suits. We agree with that principle, but
we feel that when the court decreed the cancellation
of Dawoda Harmon's deed, it went as far as it could go in cancellation
proceedings because, as already stated, that placed title
and ownership clearly in the legal owners of the 25.8 acres of **land** on
the strength of the native township grant deed. Both parties
have asked us to have the Court order a survey made of the 25.8 acres of
land comprising Fanima Town in order to avoid future conflict.
We do not feel we could do this in the proceedings before us. The **land**
belongs to the descendants of Hawa Gbai, Bassie, and the inhabitants
of Fanima under the 1888 deed issued to them and it is their right to have
the said tract of **land** surveyed

and trespassers found thereon evicted. Our duty has been performed in
confirming the cancellation of the deed. The owners have
their duty to perform in conserving their rights. It is our view that the
trial judge erred in ordering the issuance of a writ of
possession in cancellation proceedings, and therefore that part of his ruling
in executing the mandate of the Supreme Court is hereby
revoked. With respect to that part of the information which alleges that
informants are occupying a piece of reclaimed swampy **land**
in the area, we feel that if they have title or other possessory rights,
those rights should be exercised legally through the courts
but not by information with respect to a suit already concluded to which they
were not parties. Let it be made clear that whatever,
they do must not interfere with the execution of the Supremf Court's mandate.
It is our holding that, in otder-tp put a finality
to this matter, the judge presiding over the Civil Law Court for the Sixth
judicial Circuit for Monfserrado County at its June 1977

Term should:PrOceecrat once to complete the execution of the mandate of the Supreme Court in Harmon v. Republic, decided May 6, 1975, and make returns as to how this has been done immediately. The Clerk of this Court is hereby ordered to send a mandate to the court below to the effect of this decision. Costs disallowed. And it is hereby so ordered. Information sustained in part.

Reynolds v Garfuah [2003] LRSC 5; 41 LLR 362 (2003) (9 May 2003)

MATTIE REYNOLDS, Appellant, *v.* MADAM KORPU GARFUAH, Appellee.

APPEAL FROM A JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 20, 2003. Decided: May 9, 2003.

1. The perfection of an appeal to the Supreme Court from a final judgment of a trial court divests the lower court of its jurisdiction over the case, since the Supreme Court has acquired jurisdiction over the parties and the subject matter.
2. Where final judgment is rendered in a cause of action the cause cannot be relitigated, especially where an appeal from the judgment is pending resolution by the Supreme Court.
3. A court estoppel by judgment is a bar which precludes the parties to an action from relitigating the same cause after final judgment or ground of defense, or any fact determined by the judgment.
4. An action is not barred by a plea of *res judicata* unless the prior adjudication was on the merits of the case. The action is barred if it involves the same parties and the same subject matter, and which has been decided on the merits.
5. A trial judge is precluded from entertaining and disposing of a matter previously determined by the court and which is on appeal for appellate review, and he commits contempt in doing so.
6. A plaintiff in an ejectment action is required by law in this jurisdiction to make an imperfect judgment perfect by the production of evidence to prove and establish his or her title to the property in dispute.
7. On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default and the amount due.

8. A plaintiff in an action of ejectment is statutorily required to give facts constituting the claim to the property upon the granting of his application for judgment by default.
9. In an action of ejectment, a plaintiff's title is not presumed but must be established.
10. Allegations in pleadings only set forth in a logical manner the points constituting the offense complained of, and if not supported by evidence can in no case amount to proof.
11. Evidence alone enables a court to pronounce with certainty concerning the matter in dispute. A fundamental rule is that evidence must support the allegations or averments.
12. The Government of Liberia is the grantor of squatters' rights/permits of public **land** to its citizens to temporarily squat. The right is revocable and subject to investigation by the appropriate agency of government.
13. The Monrovia City Corporation is clothed with the authority and power to investigate a market ground dispute between marketers claiming squatters' right and a private **land** owner to determine the ownership thereof.
14. A party cannot challenge the jurisdiction of the channel chosen by him or her, or the findings and recommendations on that ground.

The appellant and the appellee both claimed ownership to a parcel of **land** in Monrovia, the former on the basis of a war-ranty deed from a grantor who had secured the property from the Republic of Liberia under a public **land** sale deed and the latter on the basis of an alleged squatters' right grant from the Mayor of the Monrovia City Corporation to the marketers. Following the resolution of the dispute by the Ministry of Internal Affairs and the endorsement of its findings and recommendations by the President of Liberia in favor of the appellee, the appellant commenced an action of ejectment against the appellee for the said parcel of **land**. Default judg-ment was secured by the appellee when the appellant failed to appear; and, after the presentation of evidence by the appellee, a verdict was returned in her favor and final judgment was rendered thereon. From this judgment of the lower court, the appellant announced an appeal to the Supreme Court.
Notwithstanding the pendency of the appeal before the Supreme Court, the appellee proceeded two years later to commence another action of ejectment in the trial court. As before, she secured a judgment in her favor. From this judgment, the appellant again appealed to the Supreme Court, contending in substance that the latter trial was a legal nullity since the trial court did not have the authority to entertain another action for the same property, involving the same parties, the same subject matter, and the same issues as the case which was pending before the Supreme Court; and that once an appeal had been taken and perfected in the first case, the trial court lost jurisdiction over the subject matter.

The Supreme Court sustained the contentions of the appellant and declared the judgment rendered by the trial court in the second case to be null and void, holding that as of the taking of the appeal from the first judgment, only the Supreme Court and not the trial court retained jurisdiction to dispose of the dispute. It declared the action by the trial judge in entertaining the latter suit while the first case remained pending before the Supreme Court as an act of contempt. With regard to the judgment rendered in the first case which was awaiting disposition, the Supreme Court held that although other witnesses had testified to the ownership of the property by the appellee, the appellee had failed to establish her legal title to the property by her failure to personally testify to her ownership of said property, and that therefore the verdict of the jury was contrary to the weight of the evidence. The Court noted also that the appellee had failed to state the quantity of **land** involved and that the jury's verdict had in like manner not stated the

quantity of **land** which was awarded to the appellee. It rejected the appellee's contention that the proceedings held by the Ministry of Internal Affairs were extra judicial as the Ministry did not have jurisdiction over disputes involving title to **land**, noting that it was the appellee that had elected to take the matter to the Ministry and hence was precluded from challenging the course adopted by her. Further, the Court said, as the appellee, for the marketers, relied upon the squatters **land** grant from the Mayor of the Monrovia City Corporation to assert title to the **land**, the records and findings of the Ministry of Internal investigation were important and admissible at the trial since it showed that the Mayor never made such grant and hence the appellee was without title to the **land** in dispute, as compared to the appellant who had two title deeds to the said **land**. Accordingly, the Court adjudged the appellant to be the owner of the property in dispute.

Flaawgaa R. McFarland and *Francis S. Korkpor, Sr.* appeared for the appellant. *Snonsio E. Nigba* appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

The parties before us claim ownership of a parcel of **land** lying and located in Point 4, Bushrod Island, Monrovia, Liberia. The records in the case revealed that Appellee Korpu Garfuah, for and on behalf of the Marketeers of Bushrod Island, filed a formal complaint with the then Head of State and President of the defunct Interim Assembly of Liberia against Appellant Mattie Reynolds. In the complaint, the plaintiff alleged that the marketeers had acquired the subject property from the then Mayor of the Monrovia City Corpora-tion for market purposes, but that Mattie Reynolds under claim of ownership of the subject property, was moles-ting and harassing them. The matter was forwarded by the Head of State to the Ministry of Internal Affairs for an investigation.

The investigative report, submitted in January 1985, indicated that Appellant Mattie Reynolds had acquired the subject property in fee simple; that Appellee Korpu Garfuah and other marketeers were never given squatter's right by the then City Major; and that Appellee Korpu Garfuah and others had been given 30 days to vacate the premises of Mattie Reynolds. The records also showed that on the 26th day of March, 1986, the then President of Liberia, His Excellency Samuel K. Doe, endorsed the Findings and Recommendations of the Ministry of Internal Affairs and instructed the said Ministry to ensure that Appellant Reynolds was placed in possession of her property.

Three years thereafter, Appellee Korpu Garfuah instituted an action of ejectment before the Civil Law Court against Appellant Mattie Reynolds, claiming ownership to the afore-mentioned property. Judgment was entered in favor of the appellee when the appellant failed to appear for the hearing of the case. The court appointed counsel announced an appeal for the appellant to this Honourable Court. Thereafter, the appel-lee filed a motion before this Court to dismiss the appellant's appeal.

Two years later, while the appeal and motion to dismiss were still pending, the appellant commenced a new action of ejectment against the appellee and others, claiming that they were occupying a parcel of **land** owned by her. The appellee filed an eight-count answer to the complaint, counts 1, 5, 6 and 7 of which this Court deems relevant and hereunder states for the benefit of this opinion.

> 1. That Her Honour C. Aimesa Reeves, Assigned Circuit, rendered final judgment against Defendant Reynolds in the first suit, awarding Plaintiff Garfuah $10,000.00 (TEN THOUSAND DOLLARS). Because of the absence of Defendant Reynolds' counsel, Attorney F. Pailer Campbell, now Counsellor-At-Law of the Honourable Supreme Court, was appointed to take the ruling for and on behalf of Defendant Reynolds. The appointed counsel excepted to the ruling of the Honourable Judge, Her Honour Judge C. Aimesa Reeves, and announced an appeal therefrom on behalf of Defendant Reynolds, consistent with the laws extant in this jurisdiction.
> 5. That the records in case #1, Garfuah v. Reynolds, further revealed that following the final judgment in the said case, counsel for Defendant Reynolds filed his bill of exceptions which was approved by Her Honour C. Aimesa Reeves.
> 6. That on May 16, 1990, Plaintiff Korpu Garfuah, by and through her counsel, filed a two count motion to dismiss Defendant Reynolds' appeal on the grounds that the defendant had failed to file her bill of exceptions, appeal bond and notice of the completion of appeal within the time prescribed by statute. Hence, the motion to dismiss the appeal of Defendant Reynolds in case #1, Garfuah v. Reynolds, now before this Honourable Court.
> 7. That while the motion to dismiss appellant's appeal was pending before this Court undetermined, Mattie Rey-nolds, defendant in case #1, Garfuah v. Reynolds, on April 14, 1992, instituted another eight (8) counts action of ejectment against Madam Korpu Garfuah, Alfred Collins, the Korean, by and through its president and authorized agent, Jung Dal Park, one Mr. Moses, owner of a Tire Shop on the vicinity, and a Miss Zelle, owner of a Provision Shop, all privies of Madam Korpu Garfuah. In the complaint, Reynolds claimed three (3) acres of **land**, which she asserted the named defendants were occupying.

To the plaintiff's 8 counts complaint, in case #2, Reynolds v. Garfuah et al. (hereinafter referred to for easy reference) defendants, filed an 8 counts answer, firstly requesting the court to refuse jurisdiction over the subject matter and defen-dants because the said case was pending before this Honour-able Supreme Court undetermined; and secondly, asserting that it was contemptuous for the Civil Law Court to resurrect a case that is pending before this Honourable Supreme Court *en banc*.

In response to Defendants Garfuah et al. answer, Plaintiff Reynolds filed a six (6) count reply. The law issues were disposed of and the case rule to trial, principally on the grounds that Defendants Garfuah et al. did not attach a copy of madam Garfuah's deed to the answer for the court to determine whether or not it was the identical three (3) acres sued for in case #1, Garfuah v. Reynolds. Hence, the court said, the doctrine of *res judicata* was not applicable.

That subsequent to the disposition of the law issues, De-fendants Garfuah et al., on September 28, 1992 filed a bill of information before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, attaching thereto relevant documents with respect to the pendency of the matter before the Honourable Supreme Court and prayed the trial court to refuse jurisdiction over the case. The bill of information was resisted, heard and denied, and the case ruled to trial.

Both parties presented evidence, including witnesses who were cross-examined. Following closing arguments, the jurors were charged and sent to their room of deliberations, from whence

they returned a verdict in favour of Plaintiff Reynolds in case #2, Reynolds v. Garfuah et al. The verdict of the jury was confirmed by the trial judge in a judgment rendered subsequently. Defendants Gaufuah et al. excepted to the judg-ment and announced an appeal to this Honourable Court.
There are two salient issues which are determinative of this case. They are:

1. Whether or not the final judgment of March 16, 1990 is in harmony with the law and the facts and circumstances in this case?
2. Whether or not the Supreme Court acquired jurisdiction over the parties and the subject matter prior to the filing of the second action in 1992?

We shall decide the issues stated above in the reverse order.
During the arguments on whether the court had jurisdiction over the parties and subject matter dispute prior to the filing of the second action, the appellee strongly contended that the case is before us on appeal by Mattie Reynolds from the final judgment of 1990 involving the very subject matter of the suit subsequently instituted by the appellant; that by virtue of an appeal having been taken from the trial court's judgment in the first case, the Supreme Court acquired jurisdiction over the parties and the subject matter prior to the institution of the second action in 1992 by the appellant; and that the trial court did not have jurisdiction to entertain the second action since the appeal taken to the Supreme Court remained undetermined at the time.

We agree with the contentions and arguments of the appellee with regard to the issues stated above and therefore we answer the question arising from the issue of this Court's jurisdiction in the affirmative. We hold therefore that it was erroneous and unlawful for the appellant to commence a second action while the appeal taken to this Court in the first action was still pending disposition by this Court. The perfect-ion of the appellant's appeal to the Supreme Court in that action divested the trial court of its jurisdiction since this Court of denier resort had acquired jurisdiction over the parties and the subject matter for its appellate review and determination. Where final judgment is rendered, as in the instant case, the cause of action cannot be relitigated anew by either party, especially where an appeal from such judgment is pending before the highest Court of this Republic. *Wahad v. Helou Brothers,* [1975] LRSC 20; 24 LLR 250 (1975), Syl. 3. It is also a universal principle of law that a "court estoppel by judgment is a bar which precludes the parties to an action to relitigate, after final judgment, the same cause of action or ground of defense, or any fact determined by the judgment." 16 CYC. 680 (1905). In *Kontar v. Mouwaffak,* [1966] LRSC 18; 17 LLR 259 (1966), Syl. 6, this court held that an "action is not barred by a plea of *res judicata* unless the prior adjudication was on the merits." In the case at bar, the trial court had previously adjudicated the case on its merits, as evidenced by its final judgment of March 16, 1990. Thus, the second action, instituted in 1992, is there-fore barred by the doctrine of *res judicata* since it involved the same parties and the same subject matter. We strongly frown on the trial judge for entertaining and disposing of this matter previously determined by the very court, especially while the matter was pending before us for our appellate review and determination. The act of the trial judge was not only unlaw-ful, illegal and erroneous, but it was a direct affront to the appellate authority of the Supreme Court, conferred upon it by statute and the Constitution of Liberia, and therefore contemptuous. We herewith sound a strong warning to judges of our subordinate courts that henceforth a repetition of such interference by any inferior court with the statutory and constitutional functions of the Supreme Court will leave this Court with no alternative but to take serious disciplinary action

against the judges of such courts. Hence, the action of 1992, as well the appeal taken therefrom, are hereby declared a legal nullity and therefore null and avoid *ab initio*.
Considering the peculiar facts and circumstances obtaining in this case, we deem it expedient not to dispose of appellee's motion to dismiss appellant's appeal but to delve into the merits of said appeal from the final judgment of March 16, 1990. Hence, we proceed to determine the second issue of whether or not the final judgment of March 16, 1990 of the trial court is in harmony with the law and the facts and circumstances in this case.

The appellant contended that the final judgment of March 16, 1990 cannot legally be enforced under the law within the Liberian jurisdiction, in that, Appellee Korpu Garfuah never testified in the trial court as to the number of acres or lots of **land** she had instituted an action of ejectment for. The appellant also argued that the final judgment confirming the verdict did not state or make any reference to how much **land** the judgment was authorizing the clerk to issue the writ of possession for. The appellant maintained that the final judgment of March 16, 1990 was uncertain and therefore unenforceable under the law and by any court within the 43,000 square miles jurisdiction of the Republic of Liberia.
We shall now examine the final judgment rendered on March 16, 1990 in favor of Appellee Korpu Garfuah so as to ascertain the tenability of appellant's contentions regarding the uncertainty and unenforceability of the judgment. We observed on sheet one, paragraph one, of the final judgment that the "plaintiff instituted this action of ejectment against the defendant for a parcel of **land** situated in this county." On sheet two, paragraph one thereof, it is also stated in part that "the first witness named above testified that he bought the **land** from Bulu Yallah in 1982 and that the latter (seller) pur-chased the said property from the Government of Liberia by virtue of a public **land** sale deed dated 1951". The trial judge, on sheet three of said judgment, then concluded as follows:

"Wherefore and in view of the above, the clerk of this court is hereby ordered to prepare a bill of costs and place same in the hands of the sheriff according to law for service. The clerk shall further issue a writ of possession in favour of plaintiff to be served on the defendant. AND IT IS HEREBY SO ORDERED."

We shall comment on the final judgment later in this opinion. For now, we shall peruse the evidence adduced at the trial. The records in the case shows that the trial judge dis-posed of the law issues on Friday, February 2, 1990, 32nd day's jury session, December Term, A. D, 1989. The records also reveal that Appellee Korpu Garfuah never testified as a principal witness on Friday, March 9, 1990, 4th day's chamber session, March Term, A. D. 1990. We observed further from the records before us that Eldred Collins of Caldwell testified, on sheets one and two, to the effect that the appellee owned a parcel of **land** adjacent to his, and that the appellee had entered into a lease agreement with the Korean Garage in September, 1989. The third witness was Attorney F. Musa Kamara, then legal counsel of the Ministry of Justice, who testified on sheet five that she had investigated a complaint between the appellee and the appellant and declared the appellee to be the proper and legal owner of the property in question. The appellee, plaintiff in the ejectment action, was required by the law in this jurisdiction to make her imperfect judgment perfect by the production of evidence to prove and establish her title to the property in dispute. Section 42.6 of the Civil Procedure Law, Rev. Code 1, I LCLR 216, clearly provides that "[on] an application for judgment by default, the applicant shall file

proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default and the amount due." In the case at bar, the plaintiff, who was the principal witness in the litigation, did not testify to establish her ownership to the property. A plaintiff in an action of ejectment is statutorily required to give proof of the facts constituting his or her claim to the property upon the granting of his application for judgment by default. In the case Cooper-*King v. Cooper-Scott*, [1963] LRSC 38; 15 LLR 390 (1963), Syl.6, this Court held that "[in] an ejectment action, the plaintiff's title is not presumed, but must be established." This Court holds that the plaintiff cannot presume her ownership to the property, but must have established her title to the aforesaid property during trial of the case on Friday, February 9, 1990 upon default of the defendant. In *Levin v. Juvico Supermarket*, [1975] LRSC 12; 24 LLR 187 (1975), Syl. 7, text at 194. this Court held that "allegations in pleadings only set forth in a logical manner the points constituting the offense complained of, and if not supported by evidence can in no case amount to proof." In the *Levin* case the Supreme Court also held in part that "[e]vidence alone enables the court to pronounce with certainty concerning the matter in dispute."

As to the final judgment of the trial court, this Court observes that the court confirmed the verdict of the jury awarding the property to the appellee notwithstanding her failure to prove and establish her legal title to the aforesaid property. We also observe that the final judgment does not state the quantity of **land** awarded to the appellee. We can perceive of no parity of legal reason upon which the trial judge confirmed the verdict of the jury which was contrary to the weight of the evidence adduced at the trial, and to render final judgment without any indication as to the number of acres or lots awarded the appellee. In the case *Jogensen v. Knowland*, 1 LLR 267 (1895), this Court held that "the want of proof must defeat the best laid action." The trial judge therefore committed a reversible error when he confirmed the verdict of the trial jury in the absence of proof.

This Court holds that the ejectment suit instituted by the appellee was defeated by her failure to testify and establish her ownership to the disputed property. In *Houston v. Fischer*, 1 LLR 434, 436 (1904), this Court held that "[a] fundamental rule of pleading and practice is that evidence must support the allegations or averments..."

In count 7 of the appellee's reply, she stated, *inter alia*, that "plaintiff says that the case alluded to herein relates to a market ground that was exclusively situated in the proximity of Logan Town, where defendant was again claiming owner-ship to a market ground and not the area where the defendant is presently occupying and for which plaintiff holds a deed. Hence, that case was related to the marketeers of Bushrod Island and defendant; and the case not being an action of ejectment over which the administrative agency of govern-ment has jurisdiction, it cannot be legally enforceable by this Honourable Court in the proper action of ejectment. Plaintiff summits therefore that defendant's exhibit "C" in its entirety, being extra judicial proceeding, indeed is inadmissible in an action of ejectment, especially so when the Ministry of Inter-nal Affairs had no jurisdiction to try and dispose of an action of ejectment. It is a universally accepted principle of law that if a tribunal acts without jurisdiction its judgment or finding is null and void *ab initio*, especially so when the controversy evolves around the determination of title to real property"

Appellee, plaintiff in the court below, admitted in count 7 of her reply that there was a **land** dispute between the marketeers of Bushrod Island and the appellant, which dispute was investigated by the Ministry of Internal Affairs for a market ground in Logan Town, but she

contended that the **land** in dispute was not the parcel of **land** located in Point Four. The appellee also contended that the Ministry of Internal Affairs does not have jurisdiction to hear and dispose of any matter involving title to real property, and that as such the findings of said Ministry was inadmissible and is unenforce-able. Count 6 of the findings of the Ministry of Internal Affairs indicates that "our investigation further revealed that the said **land** was also investigated by the National Rent Control Commission (NRCC) and the Commission ruled that the parcel of **land** in question is a lawful property of Mrs. Mattie Reynolds, and that if the Point Four marketeers were interested in doing business on said parcel of **land** they should negotiate with Mrs. Reynolds, but that was not done, except that a subsequent complaint was filed against Mrs. Mattie Reynolds to the Head of State."
Count 6 of the findings negates the allegation of the appellee that the **land** dispute, subject of the investigation by the Ministry of Internal Affairs, related to a market ground in Logan Town instead of Point Four where the appellee is claiming ownership to a parcel of **land**. We observed from count 6 of the findings that the Point Four marketeers entered upon and operated on the premises of the appellant for market purposes without negotiating with her for the use thereof, and for which they were advised by the then National Rent Control Commission to negotiate with the appellant

However, the Point Four marketeers ignored the advice and subsequently filed a complaint with the then Head of States and President of the Interim Assembly against the appellant, which complaint was forwarded to the Ministry of Internal Affairs for investigation. We observed from the findings of the investigation that the appellant had established her title to the subject property and that the marketeers had failed to prove their claim of ownership to the subject premis-es. The findings further revealed that former Monrovia City Mayor Gayflor Johnson never gave Complainant Korpu et al. squatters' rights or any permit to operate their market on the parcel of **land** in question. We observed from the investiga-tion that the basis of the Point Four marketeers' complaint to the then Head of State was predicated upon an allege acquisi-tion of the premises from the then City Major of the Monrovia City Corporation. This was the basis upon which the market-eers requested the then Head of State of Liberia to intervene and protect the squatters' right allegedly given to them to operate on the disputed premises. It was on the strength of the alleged squatters' right that the marketeers considered the parcel of **land** to be owned by the Government of Liberia rather than a private property. We therefore dis-agree with the contention of appellee that the finding of the Ministry of Internal Affairs, arising from the complaint of the marketeers against the appellant, is inadmissible and unenforceable.
The Government of Liberia is the grantor of squatter's right to public **land** to its citizens to temporarily squat thereon. Such right is revocable and is subject to investigation by the appropriate agency of the government. Thus, the Monrovia City Corporation was clothed with the authority and power to investigate the market ground dispute between the marketeers and the appellant and to determine the ownership thereof.
Further, the investigation conducted by the Ministry of Internal Affairs, by directive of the then Head of State and President of the National Interim Assembly, was predicated upon the subsequent complaint of the marketeers to the former Chief Executive of this Republic. The appellee, as shown by the records before us, filed said complaint for and on behalf of the marketeers. Hence, she cannot challenge her own channel of jurisdiction. Accordingly, the Findings and Recommenda-tions of the investigation approved by the then Chief Executive of the Republic of Liberia is *prima facie* evidence that the marketeers of Point Four operated on the

premises of the appellant without any color of right, and that the said marketeers, including Appellee Korpu Garfuah, were therefore subject to eviction by the court upon their failure to vacate said property.

There is a memorandum dated December 22, 1989 from the Ministry of Justice to the appellant, which also claimed our attention, and which we hereunder quote for the benefit of this opinion

"REPUBLIC OF LIBERIA

MINISTRY OF JUSTICE

MONROVIA

MEMORANDUM

TO: Mrs. Mettie Reynolds,

Fayah Musa and Charles Monger

FROM: Eugene A. Cooper

Deputy Minister of Justice for Codification/ Development Planning

DATE: December 22, 1989

Based upon the appeal from high ranking government officials, we have agreed that the owner of the Korean Garage be permitted to secure their vehicles and other personal belongings within the fence until December 27, 1989. This humanitarian concession was necessitated by the Christmas Season when petty criminals are roaming the streets.

Kind regards."

As stated earlier in this opinion, the then Chief Executive of the Republic of Liberia, His Excellency Samuel Kanyon Doe, directed on March 26, 1986 that the property in dispute should be turned over to the appellant along with every infrastructure development thereon. This memorandum is also indicative of the Ministry of Justice's recognition of the appellants' ownership of the parcel of **land** upon which the Korean Garage operated and regarding which the high ranking officials of the said Ministry requested the appellant to allow and permit the owner of the Korean Garage to keep his vehicles and other personal effects within the fence until December 27, 1989. A careful perusal of the records before us clearly indicates that the appellee and other marketeers failed to produce any title to the market ground to warrant the use of the said property by the Point Four marketeers. The appellee also failed to establish title to the disputed property on February 9, 1990. Considering the duration of the pendency of this matter before this Court, as well as the facts and circum-stances in the case, we will exercise our appellate authority to render a judgment which the trial court should have rendered on March 16, 1990 in accordance with the precedence in our pervious decisions in *Townsend v. Cooper,* [1951]

LRSC 16; 11 LLR 52 (1951), Syl. 4, and *Williams v. Tubman*, [1960] LRSC 47; 14 LLR 109 (1960), Syl.2, text at 114.

This Court holds that in the absent of any proof by the Point Four marketeers and the appellee that they held title to the disputed property, the judgment of the trial court was not in conformity and consistent with the law, facts and circum-stances in this case. It is therefore our holding that the appel-lant is the legitimate and rightful owner of the three acres of **land** located and lying in Point Four, Bushrod Island, as contained in her two title deeds of 1949 and 1958, respective-ly. The testimony of Mr. Collins on February 9, 1990 indicates that the appellee leased the subject property to the owner of the Korean Garage in 1989. It is upon this basis that the Ministry of Justice wrote the appellant on December 22, 1989 to request the appellant to allow the owner of the Garage to secure his vehicles and other personal effects in the fence of the said property until December 27, 1989.

Wherefore, and in view of the foregoing, it is the opinion of this Court that the judgment of the trial court is hereby reversed. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the case, oust the appellee from the premises, and place the appellant in possession of her three (3) acres of **land**. The appellee is also ordered to pay to appellant all rents collected and received from the Korean Garage from 1989 up to and including the date of execution of this Court's judgment, and all other persons who have operated on the premises. The trial court is further mandated to determine such rents collected and received by appellee from all persons operating on the premises of the appellant. Costs are disallowed. And it is hereby so ordered.

Judgment reversed.

Salifu v Larssannah [1936] LRSC 13; 5 LLR 152 (1936) (24 April 1936)

ABRAHAM S. SALIFU, Appellant, v. DUARBOR LAS SANNAH, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 8, 9, 13, 1936. Decided April 24, 1936. 1. In an action of ejectment the plaintiff shall recover, if at all, upon the strength of his own title, and not upon the weakness of defendant's. 2. Plaintiff is precluded from insisting that his adversary cannot set up an outstanding title, or that defendant is a mere trespasser ; and if neither party has any legal title plaintiff cannot recover. 3. If any person shall fail to have any instrument relating to real estate probated and registered within four months after its execution, his title to such real estate shall be null and void against any party holding a subsequent deed for property which was probated and registered within four months. 4. Probation is a legal prerequisite to registration of title to real estate, and a deed which is registered without having been probated is voidable.

The appellant herein, plaintiff below, filed a complaint in ejectment in the Circuit Court of the First Judicial Circuit, Montserrado County, against the appellee. Judgment was rendered for the defendant, and plaintiff has appealed to this Court. Judgment affirmed. A. B. Ricks, M. Dukuly, and Anthony Barclay for appellant. P. Gbe Wolo for appellee. MR. JUSTICE DIXON delivered the opinion of the Court. This cause comes up on appeal to this Court from the Circuit Court of the First Judicial Circuit, Montserrado County. From the records filed here this Court makes the following discovery, to wit: That there lives in the settlement of Caldwell, Montserrado County, one b, H. Lynch who claimed a certain tract of land which -fie said was situated in the settlement of Caldwell, Montserrado County. The records show that he "pawned" this piece of land to some

natives against a loan of three pounds to be paid within a given time, but that at the expiration of said time, Lynch failed to refund said loan, whereupon a dispute arose between him and these people. Duarbor Lassannah, the defendant, in the court below, now appellee, who is related to the said natives who were the pawnees, arrived in the town just at the time of the dispute between Mr. Lynch and the said natives, and through his influence and by his advice, he succeeded in harmonizing the matter between Mr. Lynch and his people, by having the said Lynch agree to sell the said natives a portion of said land. Inasmuch as said natives were not able to give said Lynch the purchase money of twelve pounds which he had charged for one half of the block of land claimed by him, Lynch became displeased, and threatened their removal therefrom ; but Duarbor Lassannah, nephew of the parties who were purchasing the land, again happened to be present on that occasion and paid the sum of ten shillings to Mr. Lynch as a "good best" on behalf of his relatives, which amount Lynch accepted, and he then promised to pay the difference within a month. When the month had expired, the balance against the land had not been paid by these folks; they thereupon appealed to Duarbor Lassannah, their nephew, the appellee, to buy the land for them. To this arrangement Lynch agreed, and allowed Duarbor Lassannah three months within which to pay the balance of the purchase money for one half of said block of land. Before the expiration of the three months within which--Duarbor Lassannah was to pay the balance of nine pounds, Lynch having given them credit for the three pounds he had borrowed from them, Lynch offered Duarbor Lassannah the remaining half of the block, whereupon Duarbor Lassannah paid Lynch the full sum of twenty-one pounds sterling for the whole parcel of land. From time to time Duarbor Lassannah would ask Lynch for the deed, but Lynch would always put him off. However Duarbor Lassannah continued to improve

the property to the extent

of planting a large cane farm thereon. On one occasion after this transaction between Duarbor Lassannah and Lynch, Sarmuka alias Selifu, the plaintiff, met Lassannah, defendant, and said to him that the **land** on which he was operating had been sold to him, Sarmuka, by James Lynch. Duarbor Lassannah then made Sarmuka to understand that inasmuch as he had paid Lynch for the **land**, and Lynch had not been able to give, or would not give him a deed, he had been to the **Land** Commissioner and obtained an order, and had had a surveyor to survey the **land for which he then held a deed from President C. D. B. King for the tract of sixty acres of land**, for him and his people, which **land** was situated in Barnersville, and not in Caldwell, as claimed by Lynch. Thereafter, on April i8th, 1934, Abraham S. Selifu alias Sarmuka, plaintiff, filed a complaint in the Circuit Court of the First Judicial Circuit, Montserrado County, against Duarbor Lassannah, defendant, praying the court to eject the said Duarbor Lassannah, defendant, from a forty-five acre block of **land** to which he was entitled by purchase in manner following: Five acres from J. B. Wilson and wife who claimed same under the transfer of James H. Lynch, and forty acres from James H. Lynch himself who claimed to have inherited said parcel of **land** from his late father Robert Lynch, which the said defendant,, he therein alleged, detains from him. Duarbor Lassannah on the 17th day of April, 1934, filed an answer to the above complaint in which he contends, among other pleas which are not enumerated herein, as they do not seem to this Court to deserve serious consideration: "1. That the deed from President W. D. Coleman to Robert Lynch dated loth February, 1897, copy of which is filed in these proceedings and made exhibit 'A,' has never been probated but simply shows that it was registered by one F. James Bull

of recent tenure of office as Registrar for the County of Montserrado. That he, defendant, does not detain any **land, the property of plaintiff, but that the land** defendant occupies is a bona file property of himself and his people under law by which lands are granted to natives for native reserve and that as such he holds for himself and his people an authentic deed from the President of Liberia under date February 22nd A.D., 1923 for sixty acres of **land** in the Settlement of Barnersville in the county and Republic aforesaid, copy of which is herewith filed and made exhibit 'I' and forms a part of this answer. "3. That the **land which he and his people occupy being in the Settlement of Barnersville and the land** for which this suit is brought being in the Settlement of Caldwell there is no identity of the property in dispute." The plaintiff in his reply sets up that the defendant's answer should be expunged from these proceedings since upon inspection of the copy of the deed filed by defendant in this suit, there appears to be no lot number in exhibit marked by defendant "i" bearing on the authentic records of Barnersville or any other settlement in the Republic. The cause was tried and determined at the February term of the said court, and a verdict and judgment were rendered for the defendant; to which verdict and judgment the plaintiff in the court below having taken exceptions has brought the proceedings before this Court for review. The bill of exceptions submitted contains five counts as follows: Because,

when during the trial of said cause the plaintiff proved his case by submitting in evidence the original deed signed by President Coleman for the forty-five acres of land situated at Cald-

well, from which deed transfers were duly executed and admitted in evidence in this case, marked by the Court A, B, C, and D ; still the Petit Jury brought in a verdict to the effect that plaintiff cannot recover the land in question, upon which Your Honour rendered final judgment (see final judgment), to which the said plaintiff excepts. And also because, when during the trial of said cause, Your Honour absolutely overruled all questions put to the witnesses in reference to boundary delimitation existing between the two settlements, Caldwell and Barnersville, which, if put, would have had the tendency to clarify the minds of the jury as a matter of fact, in ascertaining that the land in dispute is situated at Caldwell and not Barnersville; to which final judgment plaintiff excepts. " 3. And also because, when during the trial of said cause defendant exhibited a deed from the Republic of Liberia which though registered and probated yet, did not have number nor the correct and proper descriptions so as to fully convince the court and jury as to better title, yet Your Honour permitted same to be submitted as evidence in the case upon which the jury brought in a verdict that plaintiff cannot recover the land in dispute, upon which Your Honour tendered final judgment; to which plaintiff excepts. "4- And also because, when during the trial of said cause, Your Honour in charging the jury said inter alia, 'where the rights and wrongs of both plaintiff and defendant are equal, the benefit of any doubt operates in favour of the defendant,' which as a matter of fact does not apply in this case, it being one of ejectment to be proven by title deeds ; this oral charge of Your Honour

being misdirected, prejudiced the minds of the jury. in the case who brought in a verdict to the effect that plaintiff cannot recover ; upon which Your Honour rendered final judgment, to which plaintiff excepts. "5. And also because, when during the trial of said cause, plaintiff filed a motion for New Trial, setting forth the legal reasons why said motion should be granted (see motion for New Trial) yet Your Honour overruled said motion and rendered final judgment in the case; to which plaintiff excepts." This Court having carefully studied the issues raised in each count of the bill of exceptions finds it necessary to pass only upon count three which contains an issue singularly important to the decision of this case. It is contended in said count that "during the trial the defendant exhibited a deed from the Republic of Liberia which though registered and probated, yet it did not have a lot number nor the correct and proper description so as to fully convince the court and jury

as to better title; yet Your Honour permitted same to be submitted as evidence in the case upon which the jury brought a verdict that plaintiff cannot recover the land in dispute, upon which Your Honour rendered final judgment against him." The decision of the trial court in this respect was, in our opinion, in accordance with the facts brought out during the trial, and in harmony with the principle of the law in ejectment. For, so long ago as in 1871, our Supreme Court decided in the case Savage v. Dennis that: "In an action of ejectment the plaintiff shall recover upon the strength of his own title and not upon the weakness of the defendant's title." r L.L.R. 5 r (1871). "In actions of ejectment it has been laid down as a rule, both by ancient and modern law writers, that it is necessary in ejectment for the plaintiff to show in

himself legal proof ; i.e., a good and sufficient title to the land in dispute, against the whole world. He must not only have a title, but he must be clothed with the legal title to such lands; an equitable title, as a general rule, will not answer; he must recover, if at all, on the strength of his own title and not on the defects in that of his adversary's. This is an elementary principle in actions of ejectment and it has been reiterated over and again by this court, as possession only gives a right against every person who cannot establish a better right." Birch v. Quinn, I L.L.R. 309, 310 (1897). More recently these principles have been so enlarged upon that we find in Ruling Case Law the following: "Generally speaking, whatever shows that the plaintiff is not entitled to the immediate possession of the premises claimed constitutes a good and valid defense in an action to recover the possession. Since, as already seen, the plaintiff in an action of ejectment must as a general rule recover, if a recovery may be had, on the strength of his own title and not from the weakness or want of title of his adversary, the defendant, unless estopped from controverting the plaintiff's title, may rest on his possession, and attack the title under which the plaintiff claims." 9 R.C.L. 868, § 35. "Plaintiff must recover, if at all, on the strength of his own title, and not because of the weakness or want of title in defendant. Plaintiff is also precluded from insisting that his adversary cannot set up an outstanding title or that defendant is a trespasser; and if neither party has any legal title plaintiff cannot recover." 5 Cyc. zo, subsec. c. The deed from the Republic of Liberia to Robert Lynch was not probated at all, nor was it registered within four months; hence the basis of the action was unfounded. Another element which apparently supports conclusively the dismissal of the action was that the plain-

tiff's deed called for forty-five acres of land in the settlement of Caldwell while the defendant's apparently calls for sixty acres of land in Barnesville, each, with different corners and with a different description. The action should have been dismissed without

reference to the jury. "If any person shall fail to have any instrument relating to real estate probated and registered, as herein provided, within four months after its execution, his title to such real property shall be null and void as against any party holding a subsequent instrument relating to such property, which is duly probated and registered." 2 Rev. Stat. 196, § 1302. The said deed was further voidable in that it was registered without having been probated. It is a legal requirement that all deeds, conveyances, etc. should be probated previous to registration, and the Registrar is subject to a fine in the event he should register such a document before it has been probated. "The Registrar shall perform the following duties: "1. He shall record all instruments relating to real estate upon the probate of the same, and all other instruments under seal, such as assignments for the benefit of creditors. . . . Any Registrar who shall register any instrument relating to real estate before the probate of the same shall be liable to be dismissed from office and to pay a fine of not less than ten nor more than one hundred dollars, recoverable before any Court of competent jurisdiction." z Rev. Stat. § 1305, subsec. 1. As to the locality of the land in dispute, there was a preponderance of evidence on the part of the defendant, for there testified on behalf of the defense three witnesses who had lived in Barnersville for over forty years, and during said period this place had been known to be Barnersville and that it was situated between two properties in Barnersville. The natives living on the place had been responsible to work the public roads of Barners-

\rifle, not Caldwell.
Another witness, William Dunson, who lives in Caldwell, testified to the fact that he knew the place to be located in Barnersville.
The plaintiff introduced one witness by the name of T. F. Gibson, who testified that when he was a tax collector for Caldwell he collected taxes from Mr. Lynch. This statement, however, was not corroborated by anyone except Mr. Lynch himself. Keeping the above enunciated principles in mind we desire to say by way of summing up: ( ) Lynch, the privy of appellant, having accepted from appellees ,t21 as payment in full for the land appellant now claims that he himself subsequently purchased from Lynch, he the said appellant, as a privy of the said Lynch, would seem to be estopped from raising the point that his privy, the said Lynch, did not convey the title to the **land of appellee, but to appellant, from whom he also received money in payment for said land**, as: "It is well settled that where a person is responsible over to another, either by operation of law or express contract, and he is duly notified of the pendency of the suit against the person to whom he is liable over, and full opportunity is afforded him to defend the action, the judgment, if obtained without fraud or collusion, will be conclusive against him, whether he appeared or not. . . ." Is R.C.L. 1017, § 489.
and (2) Inasmuch as both appellant through his privy, the said Lynch, claims title from the Republic of Liberia by virtue of a deed from said Republic to Robert Lynch, and appellee also claims title from the Republic by a direct grant to himself and his people, and the deed of the former was never probated nor was it registered within the time prescribed by law, his deed, though of prior

date, was correctly considered void in accordance with the 5th section of the enactment of our Legislature above quoted which provides:
i` . . . and should such estate or estates, in conse-

quence of the non-probation or registration of
any deeds, mortgages or other conveyances appertaining thereto, be brought into litigation thereafter, such prior claim or ownership
shall be null and void." Laws 1861, 90, § S. The jury was therefore by the evidence justified in the verdict they returned, and the
judge could not but affirm said verdict with the corresponding judgment, which judgment this Court is of opinion should be affirmed
with costs against appellant; and it is so ordered.

2=4/firmed.

Bassa Brotherhood v Dennis [1971] LRSC 60; 20 LLR 443 (1971) (25 November 1971)

THE BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY, by and through TOM N. BESTMAN, WILMOT R. DIGGS, YITO BESTMAN, WHIEHMAH, TEETEE, JOSEPH S. LOGAN, THOMAS PRITCHARD, JAMES C. WARD, MARY URFREY, and WILMOT G. GROSS, Petitioner, v. HON. JOHN A. DENNIS, Circuit Judge presiding over the December 1968 Term of the Sixth Judicial Circuit, Montserrado County, et al., Respondents.
APPLICATION FOR WRIT
OF CERTIORARI TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 8, 1971. Decided November 26, 1971.
1. The President of Liberia when appointing a lawyer to public office, may grant those privileges he deems necessary attendant to
such appointment, under the same executive power by which he appoints, without violating public policy thereby. Invocation of the
violation of public policy is not called for, unless the acts of the public official contemplate injury to the public good or are
against the public interest, as determined by the judgment of legislative enactments or, in their absence, by judicial decision.
A judgment of the Supreme Court signed by less than a constitutional quorum for the transaction of its business, is invalid and cannot
be legally enforced. Upon the death of a party litigant, a motion should be made for substitution by a proper party. Certiorari cannot
be used to perform the functions of an ordinary appeal. An internal dispute over the membership of a corporate body is a question
to be resolved by the corporation and not by the courts in an ejectment action, when the right of possession is clearly in the corporate
body and the legal issue before the court thereby determined.

2.

3.

4. 5. 6.

As a result of dissension in the membership of the
petitioning incorporated Society, a tangled skein of litigation resulted.
These certiorari proceedings arose as a consequence of
an action in ejectment brought by one
faction, decided in favor of the petitioner herein by a
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final
decree in the lower court, but a portion of which was objectionable to it.
However, no appeal was taken therefrom by the plaintiff
in the action. The defendant did appeal, but the appeal was subsequently
withdrawn. Thereafter, the plaintiff, in unexplainable moves,
sought certiorari by way of relief from the judgment and while the matter was
pending before the Supreme Court, moved to enforce
the same judgment in the lower court. A writ of possession was in the circuit
court, to place the petitioner in possession, which
appears to have been largely frustrated because of the controversy which
raged over who were the proper members of the Society incorporated
by legislative act in 1925. Many matters were thusly presented to the Supreme
Court for determination, and the Court expressed its
regret that the form of relief sought precluded any full treatment of such
issues, as could have been done if an appeal from the
judgment had been taken. Therefore, the full bench, by the opinion of the
Chief Justice, denied a peremptory writ and ordered the
lower court to enforce its judgment, on which the writ of possession was
based, with the modification that the lower court was, in
effect, to place the corporation in possession of the land in dispute
without regard to the internal bickering over membership. The
Supreme Court concluded by ruling that the extraordinary remedy of certiorari
is not available where ordinary appellate procedure
could have been used, nor will certiorari be dealt with by the Court in such
manner that it usurps the functions of an appeal. Petition
denied. Nete-Sie Brownell and T. Gybli Collins for petitioner. Lawrence A.
Morgan for respondents.

MR. CHIEF JUSTICE PIERRE delivered
the opinion of the Court.

For some unknown reason which is not apparent, there has been no motion filed for substitution of party defendant, although defendant Horton has died since the commencement of the suit in 1964. So, when the case was called at this bar, we inquired of counsel on both sides as to whom judgment would be rendered against should the Court decide in plaintiff-petitioners' favor.

The parties, thereafter, agreed that A. Romeo Horton, eldest son of the deceased defendant, was to be substituted for his father.

For authority, see Glaydor v. Freeman et al.[1945] LRSC 5; , 9 LLR 43 (1945). The significance of this requirement is dealt with later in this opinion. When argument was commenced in this case, counsellor Nete-Sie Brownell, one of the counsel for the plaintiffs in ejectment and petitioners in certiorari, contended that it was against public policy for counsellor Lawrence Morgan to represent the respondents in certiorari, because he had only a short time before been appointed by the President as Superintendent for Grand Bassa County. Counsellor Morgan replied, explaining that before his appointment and after he had had notice of the appointment, he had informed the Chief Executive that there were a few important cases which were still in his office and which he desired to complete. He sought from the President, and was granted, permission to complete these unfinished cases. He also had informed the Supreme Court that the permission which had been granted him in respect of these cases extended to the instant case, and the Court had allowed him to represent his client in this matter, beginning in chambers, earlier this year. In the ruling which we entered denying the argument of disqualification, we took the position that the counsellor, as Superintendent, was representative of the President in that county; as such, it was within the province of the Chief Executive to grant, or to refuse to grant such permission. In such a circumstance, the principle of

violation of public policy did not seem to us to be applicable. We, therefore, allowed counsellor Morgan to continue to represent his clients' interest, in view of the President's permission. In addition, we would like to observe in passing, that lawyers who engage in the practice for a living, are under ethical obligations to their clients. A moral responsibility ensues which cannot be lightly brushed aside, without doing great harm and irreparable injury to many a client in distress. The question of whether or not the public good is best served, or its interests better preserved, by the appointment to executive office of a practicing lawyer, is a question for the Chief Executive, under our system. Since we repose our trust and confidence in him, the President may, under his supreme executive power appoint to the office of Superintendent, or any other executive office, any citizen, including a lawyer. He may also, under the same power, allow the lawyer time to clear his desk before entering upon the duties of the office; or he may condition the appointment

on certain restrictions or allowances, in his discretion. This is not, in our opinion, contrary to public policy, because allowing such time, or fixing such conditions, do not necessarily hurt the public interest. Law writers are agreed that public policy simply means the doing of any act by the citizen which is against the public good or injures public interest. Judge Bouvier has said that "public policy is manifested by public acts, legislative and judicial, and not by private opinion, however eminent. . . . It is said to be determined from legislative declarations, or in their absence, from judicial decisions." In the Public Employment Law, 1956 Code, 3o:12o, the Legislature has forbidden officials of Government, who are lawyers, from representing mercantile businesses. "Any Government officer acting as counsel, legal adviser, or agent to any mercantile business within

or without the Republic shall be removed from office unless he shall resign his position with such business." Since permission was granted counsel to complete a case already begun, which case does not fall within the prohibitive provisions of this statute, the Court feels strongly justified in having allowed counsel to continue to represent his client. The application of prohibition for the sake of public policy in any such given circumstance should be backed by statutory provision. The history of this case goes back many years, and involves much acrimony, animosity and unpleasantness, and is the subject of much unresolved litigation. When we assumed duties in chambers in June this year, a submission was filed by counsellor Nete-Sie Brownell, of counsel for petitioners, in which he complained that a judgment of the Supreme Court, sent to the Sixth Judicial Circuit to be enforced, was still pending enforcement due to obstruction from one of the parties. We conducted an investigation in chambers and found that, growing out of an action of ejectment brought by Tom N. Bestman et al., for the Bassa Brotherhood Industrial and Benefit Society against D. R. Horton, determined by judgment in 1966, there are now still pending before the Supreme Court several matters : the certiorari proceedings now under review by petition filed in chambers on March 1, 1969; a bill of information filed on April 29, 1970, by A. Romeo Horton, eldest son of the defendant in ejectment; another certiorari proceeding, undertaken by the petitioners through petition filed in our chambers on October 7, 1971; and, on the same day, October 7, 1971, as aforesaid, another petition, also filed in our chambers by petitioners for another writ of error. It should be noted that it was the first writ of error applied for by petitioners in 1969, in which the Supreme Court sent a mandate to the Sixth Judicial Circuit Court, for the judge therein to enforce the judgment in ejectment, which was obstructed by A. Romeo Horton. But

we shall come to that later. Of these several matters, only in the writ of error proceeding filed in 1969 is there any showing
that a determination was ever reached by the Supreme Court, but even in that case the judgment still remains unenforced, as will
be shown later. Perhaps a complete review of the facts and circumstances, from the very beginning of the controversy between the
parties, might help unravel the much-entangled details of this land dispute, and all of the attending issues growing out of it. According
to what we have found in the record of the ejectment trial in the Sixth Judicial Circuit Court, the records of the several remedial
matters in the Supreme Court, and argument before this bar during the present Term, the succinct history of this case can be set
forth. In 1925, Reverend D. R. Horton, a Baptist missionery, having settled in Monrovia, founded the Bassa Brotherhood Industrial
and Benefit Society, a Christian missionary organization, whose membership was mainly composed of the Bassa tribe. The Society established
the Saint Simon Baptist Church, around which its activities centered. Over the years, the Society grew and its activities expanded.
It was incorporated as a body politic by a joint resolution of the Legislature passed December 1925, section 1 of which states :
"That from and after the passage of this Joint Resolution, D. R. Horton, C. V. Johnson, Jacob Mason, James George, James Vambrum,
Emma Taylor, Jacob Gibson, J. E. Manderson and Joseph Banks, be incorporated as the `Bassa Brotherhood Industrial and Beneficial
Society,' their successors in office and all those who are now or may hereafter be members are hereby incorporated under the same
name and style and are declared from the date of the passage of this Joint Resolution a Body Politic capable in law to receive, hold
and enjoy real and personal estate to the value of One Hundred Thousand Dollars ($ too,-

000.00) for
the use and benefit of said Society by grant, bequest, purchase or otherwise. Said Society may sue and be sued, plead and be impleaded
before any court of law or equity having complete jurisdiction, and do all things usually done by such bodies corporate and politic."
Upon this authority, the Society purchased from the B. J. K. Anderson estate ten acres of land, in Monrovia, and in the area known
at the time as Half-way Farm, and now called Bassa Community. The Society also purchased from the Government one thousand acres of
farmland, in Totota, then known as the Central Province, and now part of Bong County. The status of this land is, according to the record, subject of another transaction
between the Government and the Society. In 1964, Tom Bestman et al., claiming to be trustees of the Bassa Brotherhood Industrial
and Benefit Society, sued D. R. Horton in an action of ejectment, alleging that D. R. Horton, the founder of the said Society, was

withholding from the plaintiffs the Society's ten acres of land in Bassa Community, and the one thousand acres in Totota, Bong County.
This case was handled by several judges, but came up for hearing before Judge James Hunter in the December Term, 1965, and resulted in judgment for the Society. Before quoting the judgment, and the writ of possession issued consequent thereon, I think it is necessary to explain here that the opposing parties in this ejectment suit are supposed to be members of different factions of the . Bassa Brotherhood Industrial and Benefit Society. The judgment which was rendered in favor of the Society, seems to have displeased both sides. The defendant took an appeal from it, which he later withdrew. The plaintiffs applied in chambers of the Supreme Court for a writ of certiorari to review it. They recite in count one of the petition : "The case was duly heard and determined by a verdict

of the trial jury in favor of the petitioners ; but in the final judgment the judge injected extraneous matters, to the effect that defendant Horton and others whose names appear in the title deeds, must also be put in possession of the property in question, which final judgment has been interpreted to mean that the property descends to the heirs and other persons not members of the late D. R. Horton (family), thus making it difficult for your petitioners to acquire possession of the two pieces of property sued for. They subsequently prayed for a writ of error, which was finally granted by the Supreme Court of Liberia." In count four of the petition for certiorari, light is thrown upon the extent and nature of a dispute between the members, and it might be relevant to the clarification of some of the issues, that we quote a portion of this count for the benefit of this opinion. "The dispute which arose over the illegal expulsion of several members of the society by the late D. R. Horton, was, in keeping with the provisions of the Associations Law, referred to arbitration, under the chairmanship of Vice-President William R. Tolbert, who, at the time, handed down a decision as follows : "That the members whom the Pastor said had been put out of the church were not put out in the regular form according to the discipline of the Baptist denomination and, therefore, the Pastor should not continue to consider these members as being put out of the church, but to consider them as still members of the church. The counsel explained the procedure by which members are put out of the Baptist Church. They pointed out that this had not been done in the case of the members in question.' "To the above decision, no exception was taken by the Pastor. Now to raise the irrelevant issue that as a result of the illegal expulsion of these members from the church, they cannot now function as members of

the
Bassa Brotherhood Industrial and Benefit Society, has no support in law."
According to this count, the expulsion referred to was
of members from the Society; but the quoted decision which was reached as a
result of the arbitration mentioned in this count, seems
to refer to members put out of the Baptist Church. There is no showing that
this expulsion from the church was in any way related
to the expulsion of members from the Bassa Brotherhood Industrial and Benefit
Society. If there were such a relationship, it has
not been so clarified in the record ; in other words, if expelling a member
from the church amounted to expulsion from the Society
as well, it has not been made clear at all. Since plaintiffs in ejectment
have shown such substantial disagreement with the judgment, it is unfortunate
that an appeal was not taken
by them, because a review on appeal could have covered a much wider field
than can be covered by certiorari. For instance, in the
minutes taken at the hearing held on February 28, 1969, and made profert with
the petition for certiorari, several witnesses testified
to the effect that the plaintiffs who brought the action of ejectment on
behalf of the Society, were no longer members and were not
clothed with authority therefore to represent the Bassa Brotherhood
Industrial and Benefit Society. On the other hand, plaintiffs'
witnesses testified that they were still members, and that one of their
number was then President of the Society. Had appeal not
been withdrawn by the defendant, or had an appeal been taken by the
plaintiffs, we could have examined the issues in the bill of
exceptions to see what defenses were made against these allegations, for
although witnesses on both sides were not shaken in their
testimony on cross-examination, it is not shown that any proper decision was
made on this important issue, according to the minutes
made profert. Without the certiorari applied for in 1969 by the plain-

tiffs in ejectment having been
decided, A. Romeo Horton, eldest son of the defendant in ejectment, together
with other members of the Society belonging to the group
of which Reverend Mapleh is alleged to be President, filed a bill of
information in the March Term, 1970, of the Supreme Court, alleging
that although the plaintiffs in ejectment had applied for certiorari to stop
the enforcement of the judgment rendered in the ejectment
suit, the certiorari proceeding was still pending before the Supreme Court
undetermined when the said plaintiffs in ejectment and
petitioners in certiorari filed a petition before Judge Krukue in the Sixth
Judicial Circuit, praying that he enforce the judgment
of Judge Hunter in the ejectment suit. The bill of information prayed that
the plaintiffs in ejectment and petitioners in certiorari
be made to answer in contempt of court. The more we look into this case, the
more complicated and entangled the issues become. It
is strange that the plaintiffs in ejectment, in whose favor judgment was
rendered by Judge Hunter, should have rejected the judgment

and applied for certiorari to review it, and, while the certiorari proceeding was still pending, should have applied to the Circuit Court for enforcement of the very judgment from which they had sought relief by certiorari to the Supreme Court. This is mystifying behavior, but this case is too long outstanding for us to go into this phase of it. Had the certiorari been heard and determined, there would have been no cause for the bill of information. Therefore, since the certiorari matter is still pending before us, we shall proceed to decide it. But before doing so, I would like to repeat that we would have much preferred had an appeal been taken from the lower court's judgment. The principle issue before us for determination in certiorari is dissatisfaction with that portion of the judgment in ejectment which ordered all members of the Society whose names appeared on the title document, to be

put in possession of the Society's land in Bassa Community and in Totota, Bong County. Plaintiffs in ejectment claim that their interpretation of the judgment, and the writ of possession growing out of it, is that it sought to have persons not members of the Society put in possession of the Society's property. It must be remembered that the action of ejectment was brought against D. R. Horton in his capacity as an individual member of the Society, according to the complaint, and not as the representative of the Society. But let us see what the judgment states, in the portion relevant herein. "In view of the foregoing, the verdict of the petty jury is hereby confirmed and affirmed, and this court hereby adjudges the Bassa Brotherhood Society to possess the io acres of land in Monrovia City, according to the metes and bounds on their deed assigned them by the grantor, B. J. K. Anderson. This possession is to include all members of the Bassa Society whose names appear on this deed and, as for the i,000 acres of land in Totota, since said portion of land has been disposed of by the Government of Liberia for reasons best known to the Government of Liberia, Rev. Horton, as head of the Bassa Society as well as the Church, is to associate with the group and again apply to the President for the i,000 acres of land which he has already promised, or, the value thereof, and it is to be done within 3o days as from the date of this judgment and the clerk of this court is hereby ordered to prepare a writ of possession to put the Bassa Society in possession of their 10 acres of land in Bassa Community and their deeds thereof turned over to them as a group to be kept wherever they feel. And if the i,000 acres of land is acquired, the Bassa Society is also to be put in possession of the value thereof, and it is hereby so ordered. To which defendant excepts, and announces an appeal to the Supreme Court in its ensuing October Term, 1966. Appeal granted."

The writ of possession was also objected to by the plaintiffs in ejectment, and is the basis of their petition for certiorari. "To James W. Brown, Esquire, Sheriff for Montserrado County. . . . "You are hereby commanded to put Dr. D. R. Horton, J. E. Manderson, James Vambrum, Jacob Mason, James George, Jacob Gibson, et al., trustees of the Bassa Brotherhood Industrial and Benefit Society of the City of Monrovia and their successors in office in possession of the premises situated in Bassa Community formerly known as Half-way Farm--lots number thirty-one and thirty-one A (31 & 3 IA) and bounded and described as follows : "1. Commencing at the Southeast angle of Farm Lot No. 26 same belonging to the heirs of the said Elijah Johnson thence allowing 4.9-% feet the width of a cross road leading to the Southeast Beach of Monrovia and running 70 degrees East ten (to) chains thence running South 38 degrees West parallel with said road ten (1o) chains thence running 70 degrees West ten chains thence running North 38 degrees East ten (to) chains to the place of commencement forming an oblique parallelogram and containing ten (to) acres of land and no more. "Note : Consequent of the death of Dr. D. R. Horton, founder of said Society, the deeds will be turned over to the Trustees of the Bassa Brotherhood Industrial and Benefit Society in keeping with the mandate of the Supreme Court of Liberia." It should be noted that the judgment and writ of possession sought to give possession of the property to the members of the Society whose names appear on the deed, which also appear in the joint resolution passed by the Legislature in 1927, when the organization was incorporated, and to those who thereafter became members. According to what we have found in the record of the

action of ejectment, and in the records of the several other matters relating thereto filed in the Supreme Court, suit was brought to recover the Society's ten acres of land in Bassa Community alleged to have been withheld by D. R. Horton. It is our opinion that the judgment and the writ of possession quoted from herein, seek to accomplish their purpose without regard for the split in the membership of the organization. It is not our opinion that property belonging to the Bassa Brotherhood Industrial and Benefit Society could be inherited by or descend to, the heirs of the late Dr. D. R. Horton, as petitioners in certiorari have interpreted the judgment. We do not feel that the text of the judgment justifies any such interpretation. The ten acres of land purchased by the Society from B. J. K. Anderson, and the thousand acres purchased from the Government is property of the Society as a corporate body, holding to it and its successors in perpetuity. Because of a misunderstanding which had arisen in the membership, the organization had been split into two factions, growing out of alleged expulsion of certain members by Dr. Horton, referred to earlier in this opinion. Later on in this opinion we have quoted relevant portions of the minutes of the

hearing conducted by Judge John A. Dennis at which this misunderstanding is testified to. However, there is another phase of this case which we think is necessary to look into. In June of this year, counsellor Brownell, of counsel for the plaintiffs in ejectment, and for the petitioners in certiorari, as well as for the petitioners for enforcement of the ejectment judgment, brought to our attention the fact that the judgment, and mandate of the Supreme Court growing out of it, had not been enforced and the plaintiffs had not been put in possession of the lands sued for in ejectment. It was revealed by investigation conducted in chambers, that A. Romeo Horton and others had oh-

structed the survey of the ten acres in Bassa Community, when Judge Lewis sought to put the plaintiffs in possession. It was reported that he physically attacked the surveyor, and when a report was made to Judge Lewis who had issued the orders, an attempt was made to hold Horton, and those who with him had defied the court, in contempt. Orders from the chambers of the Supreme Court stopped any further action on Judge Lewis's part, and there the matter still remains.

We do not hesitate to condemn the defiance which A. Romeo Horton showed for the court's order. Whether or not he had legal reason for objecting to the survey of what he might have regarded as his personal property descended to him from his late father, it is still an exemplification of lawlessness for him to have used force to defy constituted authority. There was adequate legal redress available to him for any wrong which he felt was being done to him by the survey, and there can be no excuse for this show of disregard for the law. Conduct of this kind should have been punished in contempt, but because of what was revealed later in respect to the judgment itself, we find ourselves unable to insist upon the enforcement of the contempt proceedings, in which Judge Lewis had ordered him to show cause. During the investigation in chambers, it was revealed that the Supreme Court's judgment, which the mandate sought to implement, had been signed by only two of the three justices who heard argument in the case. The Chief Justice, who was one of the three who heard argument was ill and absent from the country when the case was decided, and could not sign the judgment. The Constitution of Liberia states in Article IV, and Section 3rd, that "The number of justices of the Supreme Court of the Republic of Liberia shall be limited to one Chief Justice and Four Associate Justices, a majority of whom shall be deemed competent to transact the business of the Su-

preme Court and from whose judgment there shall be no appeal." The implementing statute also states that "the Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum for the transaction of business at any regular term." Judiciary Law, 1956 Code, 18 :1. Thus, it would seem clear

that although three of the Justices, which is a majority and a quorum, had heard the case, it also needed a quorum to sign the judgment to make it valid. A judgment signed by less than a quorum is legally and constitutionally invalid and a nullity, and cannot be legally enforced. It is reported that Chief Justice Roberts became ill during a certain Term of Court, which made it impossible for him to attend rendition of decisions. He directed his colleagues, Mr. Justice Richardson and Mr. Justice Dossen, to affix his signature in his behalf, and give decisions in his absence. David et al. v. Compania Transmediterranea[1934] LRSC 10; , 4 LLR 97, 99-100 (1934). However, in this case the absence of any indication of a third signature on the face of the judgment, compelled a redocketing of the case for the present Term of Court, so that the case might be heard by a quorum, and by Justices who were not members of the Court when the judgment referred to was written. It was also necessary to redocket this case and hear it again, because defendant Horton died before the case was terminated, and enforcement of the judgment against him was impossible. For, how could the Court enforce a judgment against a dead man? "Except as provided in the third and fourth paragraphs of this section, if a party dies, the action may be continued by or against his executors, administrators, or other legal representatives in accordance with the second paragraph of this section. "Within a year after the death of a party the court

may order substitution of the proper party ; if the substitution is not so made, the action shall be dismissed as to the deceased plaintiff or judgment by default may be entered against the deceased defendant. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and, together with the notice of hearing, it shall be served on all the parties. Any person may inform the court of the death of a party." Civil Procedure Law, 1956 Code, 6 :too. See also Revised Rules of the Supreme Court, Rule VI. It was brought out in evidence at the trial that in addition to the ten acres defendant Horton had bought for the Society from B. J. K. Anderson, he had also purchased several acres of land for himself from various grantors, represented by four deeds, which were put in evidence and marked by the court. It was argued that the plaintiffs in ejectment had sought to confuse the ten acres belonging to the Bassa Brotherhood Industrial and Benefit Society, with the property owned personally by D. R. Horton. It is of interest to note that not only were defendant Horton's four deeds put in evidence at the trial, but the deed for the Society's ten acres was also put in evidence, and was also marked by the court. According to the minutes of the trial held by Judge Hunter, Horton testified on March 2, 1966: "Q. Say whether or not you are in possession of title deed for the property which you are occupying at Bassa Community, and if so, please say from whom you derived title to said property? "A. I occupy where my house is on, I have the deed for same from the late B. J. K. Anderson the number is letter "0"; property from Mensah, the lot number is 25; I have deed

from the late Mr. Furgerson, lot no. 25; I have deed from the late H. R. Johnson, lot No. 26. I have no land with any lot nos. 31 and 3 rA. It should be re-

called that 31 and 31A are the numbers of the Bassa Brotherhood land. "Q. I hand you these documents; inspect them and say what you recognize them to be? "A. This is the lot letter "0" from Anderson; No. 2 is lot 26 from the family of F. E. R. Johnson ; deeds 3 and 4 for lot no. 25 from Mensah and Furgerson, respectively. [Defendant asks for marks of identification to be placed on the documents.] "Q. You have identified several deeds of property you claim you have bought from the late B. J. K. Anderson and others. Please tell the court and jury if these [pieces of] property were obtained by you after you bought the Bassa Society land, and if said properties are contiguous or adjoining the Bassa Society property? "A. The properties are not adjoining one another ; there is a street between the Bassa Brotherhood land and my land, and the Johnson parcel of land that I have bought. The land I bought from Anderson is not adjoining the Bassa Brotherhood land." Nowhere in the examination of this witness, which continued at some length, was it disproved that a street divides the Horton property from the Bassa Brotherhood ten acres of land ; nor was any witness brought to testify that the two pieces of property--Horton's and the Society's--are in any way adjoining property. Nor has any witness testified at the trial that the lot numbers on the deed to the Bassa Brotherhood Industrial and Benefit Society, are not 31 and 3 rA, or the numbers of the deeds for the four pieces which make up the Horton property are not numbers 0, 25 and 26. Since it seems very clear that there are two separate pieces of property, owned by two separate grantees, D. R. Horton on the one hand, with four deeds for several

acres, and the Bassa Brotherhood Industrial and Benefit Society on the other hand, with a deed for ten acres, and since it is also clear from an inspection of the record of the trial, that the metes and bounds of these two pieces of property and the number of the lots are not the same, and since the minutes of the trial show that a street divides the two pieces of property, it should be clear to any reasonable mind that there should be no mistaking one piece of the property for the other. Horton testified that he had never had possession of the Society's property, but that the deed for this ten-acre plot of land had always been in the custody of the trustees. We have not been able to undertsand why, the plaintiffs in ejectment did not seek to have the several pieces of property on both sides identified in keeping with the several deeds--their's and Horton's. The fact that some members were put out of the Society was testified to by several witnesses at the hearing held by Judge John A. Dennis in 1969,

and for the benefit of this opinion, I will quote relevant portions from the minutes

for February 28. Jacob Mason was one witness : "Q. Tell us whether or not the following named persons are members of the Bassa Brotherhood Industrial and Benefit Society at the present time or trustees thereof, if you can : Fred V. Smith, James T. Ward, Joseph E. Logan, Tom N. Bestman, Wilmot R. Diggs, Wilmot G. Gross, Weamah Tetee, Jarto Bestman and Thomas Pritchard? "A. Not now. They were members of the Society and the Church, but we put them out. They have never been trustees as far as I know. "Q. Who is the President of the Bassa Brotherhood Industrial and Benefit Society? "A. Reverend Mapleh is the present President of this Society.

"Q. The Mapleh that you are speaking about as being the President of the Society, please tell the court upon your oath whether Mapleh is a member of the Society or has ever been a member? "A. Reverend Mapleh has been a member of the Society three or four years before the death of Reverend Horton." Pesie Vambrum was another witness. "Q. I assume that you are one of the orginal members of the Bassa Brotherhood Industrial and Benefit Society, by that I mean one of the original members, and that you are acquainted with the names of the President, Trustees and members of this Society. If this is correct, please tell us who are the present trustees of the Society? "A. The old and founding trustees are myself, Jacob Mason, James George, Jacob Gibson, Joseph Barnes, Charlie Johnson, the late Doctor Horton, these are the trustees. I know of no other trustees ; I only heard about these new trustees the other day when I came to this court. "Q. What is the name of the President of the Society today? "A. Reverend Mapleh is the present President. "Q. You said in your direct testimony that Mapleh is the present President of the Bassa Brotherhood Society; please tell the court who elected him President and at what time? "A. After the death of Doctor Horton, Mapleh was made President. Mapleh was elected in a Society meeting as President. "Q. You said Smith, James, Ward and others are members. Do you remember they being present at a meeting when Mapleh was elected? "A. They had formed their own Society and were not members of our Society. There is a Bassa

Brotherhood Society and the persons who are named have gone and formed their own Society. "Q. Were you present at the meeting held in September, 1961, or thereabout, when Horton was in the chair, and Smith was elected to take his place? "A. I was at a meeting when the persons who are named expressed their desire to have Smith as their President, at which time the late Doctor Horton said that they should make themselves financial, which they did not do and they left the meeting." Reverend Africanus Mapleh also testified. "Q. Are you connected with the Bassa Brotherhood Industrial and

Benefit Society, and if so in what capacity? "A. Yes, I am, and I am the President of the Society. "Q. Tell us, if you can, who are the present trustees of this Society? "A. Mr. James Vambrum, Mr. Jacob Mason, Rev. Willie K. Vambrum, Deacon Robert Paul, Sister Mary Powell, Brother A. Romeo Horton, Leah Dennis and Africanus Mapleh as the President, with Tetee Grapoh. "Q. As President of the Society, please tell us whether or not you are acquainted with Fred F. Smith, James C. Ward, Joseph Logan, Tom N. Bestman, Thomas Pritchard, and if so, say whether or not they are members of the Bassa Brotherhood Industrial and Benefit Society, and what positions they hold therein, if any at all? "A. I know them, but they are not members of the Bassa Brotherhood Industrial and Benefit Society. "Q. Sir, are you a member of the Bassa Brotherhood Industrial and Benefit Society which sued D. R.

Horton, also a member, or are you a member of a different branch of the Bassa Brotherhood Industrial and Benefit Society? "A. I am not a member of the alleged Bassa Brotherhood Industrial and Benefit Society which sued Doctor Horton ; I am a member of the original Society, and not the illegal one set up by Fred Smith's group." This is the testimony of three members of the group under the Presidency of Reverend Mapleh, which claims to be representing the parent body. We will now record testimony of three of the members of the group led by Fred Smith and Tom Bestman, which is supposed to have been expelled from the Society, or which pulled out of the parent body. James Ward was one witness : "Q. Are you a member of the Bassa Brotherhood Industrial and Benefit Society, and if so, do you hold any position in the Society? "A. Yes, I am a member, and I am now VicePresident, and former Secretary under Doctor Horton. "Q. As such Secretary and member, will you please tell this court who are the trustees at this time? "A. Mr. Fred V. S. Smith, Joseph Logan, Tom N. Bestman, Chairman of the Board of Trustees, Wilmot G. Diggs, Thomas Pritchard, Jeto Bekman and Weamah Teetee. "Q. So, there are two groups, one including Dr. D. R. Horton, Jacob Mason, James Vambrum, and the other members whose names appear on the deed, and the other group which includes yourself, Fred Smith, Tom Bestman and others? "A. Yes. "Q. So, according to the three persons who testi-

fled here, your group and their group never did get together, and until now remain divided ; that is to say, you do not attend their church nor do they attend your meetings and church? "A. We belong to the same church, but we do not belong to the same society." Fred Smith also testified. "Q. Are you a member of the Bassa Brotherhood Industrial and Benefit Society, and if so, as what and how did you obtain it. "A. I am a member of the Bassa Brotherhood Industrial and Benefit Society,

and President of the Society. I was elected in· 1961, September 18. In the year 196o, the body got together and found out that Doctor Horton was using the land in his own name, for his own benefit and not the interest of the Society, and we asked him that we should have reelection. He said, I will think about it. Again we asked him the second time and we waited until the whole year passed. Now, in 1961, we went to a meeting and we put it before him, reminding him about the election, and he said, next meeting, then I will decide. We went back for the next meeting, and he put it off again. When we went for the election, opening the meeting and collecting dues, he said, what further, and we said, this is the night for election. Dr. Horton said, hence, you all charge me with stealing your land, we said, yes, but this has nothing to do with the election. Dr. Horton left the chair and sat on the bench and requested us to bring the man who we wanted for presidency. Then the body nominated W. R. Diggs to preside over the election, and the election was held that night in his presence. After the election there was no dispute."

Tom Bestman was another witness. "Q. Are you a member of the Bassa Brotherhood Industrial and Benefit Society? "A. I am a member and a member of the Board of Trustees. "Q. You have filed a list of persons, namely Fred Smith, James Ward, Joseph E. Logan, Torn N. Bestman, Thomas Pritchard, Wilmot R. Diggs, Wilmot Gross, Weamah Tetee, Jeto Bestman. Are these the trustees you know? "A. These are the trustees I know. "Q. According to the document marked D/2, which is entitled "Constitution and By-Laws of the Bassa Brotherhood Industrial and Benefit Society," on the last page, this document is supposed to have been subscribed by Wilmot G. Gross, Thomas Pritchard, Tom N. Bestman, James C. Ward and Joseph E. Logan. Tell us, since you are allegedly one of the subscribers, whether Jacob Mason, Mr. James Vambrum, Ernest Lewis, were present and also subscribed to these by-laws? "A. They were not there ; since the new administration started, these people have not attended these meetings for over ten years. "Q. Now, tell us whether or not your group claiming to be members of the Bassa Brotherhood Industrial and Benefit Society, attend upon meetings of this Society, as held by the original incorporators who are today still living, and the other officers who have been elected by them, and who associate with them both in the Society and in the Church? "A. I consider these meetings Church meetings ; we have our own Church." It would seem to have been conclusively proven from the testimony of these six witnesses, that there are two

distinct groups, each operating as the Bassa Brotherhood Industrial and Benefit Society; each with a President and a board of trustees, and each operating around a church of its own. The parent body, led by Reverend Mapleh as its President,

still operates out of the Saint Simon Baptist Church ; and the other group which seems to have pulled out of the parent body, led by Fred V. Smith as its President and Torn Bestman as Chairman of its Board of Trustees, has a church of its own, the name of which does not appear in the record. In any case, the members of both of these groups had belonged to the one original organization, before dissension split it into two factions. The question which arises is, was the Tom Bestman group, which had pulled out of the parent body, as the testimony of these six witnesses proves to be the case and operating outside the parent body, clothed with legal authority to own realty or to bring suit against D. R. Horton, a member of the parent body, in keeping with the spirit and intent of the joint resolution of 1925 cited above? Another question seems to present itself : If the Torn Bestman group is clothed with legal authority to sue and be sued, and to hold, own and possess real property, as the joint resolution of 1925 empowered the Society to do, wasn't the judgment rendered, placing members of the entire Society in possession of the ten acres of land they had purchased from Anderson, lawful and in accordance with the text of the joint resolution? And since it has been established that D. R. Horton, the founder of the Society, was still a member thereof, not having been expelled, was he not also entitled as such member to have been named in the judgment as one of those who were to be given possession of the land described? As we said earlier, these questions, and many more, might have been more effectively reviewed had the appeal of the defendant not been withdrawn, and had an appeal been taken by plaintiffs. We only refer to these issues because contention has arisen over them during the hearings.

There is another salient point in this case. Since Torn Bestman and his group regard themselves as members of the Bassa Brotherhood Industrial and Benefit Society, why quarrel with the judgment which ordered them to be put in possession of the Society's ten acres, since this is what they asked in their complaint? We have not been able to find anywhere in the record any denial on the part of plaintiffs-petitioners that they were indeed expelled from the parent body, because they refused to apologize for having accused Doctor Horton of unlawfully taking the Society's land. Nor is there any showing that the legality or illegality of the manner of the expulsion was ever properly questioned by them. We must, therefore, have to assume that they have accepted their expulsion as final, which must have given rise to the formation of the organization they call their own Society, retaining the name of the parent body. In such a circumstance, could they legally enjoy the right to sue and be sued, or hold and enjoy real property in fee, granted to the parent body in the joint resolution? But as we have said, these several questions are not before us, either in ejectment or in certiorari. We would like to emphasize in passing, that ejectment will not, and cannot, resolve disputes between the members of the Bassa Brotherhood Industrial and Benefit Society. In the case of ejectment, out of which certiorari has grown, all that was needed to be decided was

whether or not Horton did, indeed, withhold from the plaintiffs ten acres of land described by the metes and bounds of a deed which they made profert with their complaint. The question of whether or not there are two factions in the Society, arises only in respect to determining who the responsible officials are, to be placed in possession of the property on behalf of the Society which was incorporated in 1925, and in whose name the deed for the ten acres was executed. We would also like to make it clear, that whether or

not Fred Smith or Africanus Mapleh is President of the Society, and whether or not there are two or more factions in the Society, the fact cannot be erased that there is only one Bassa Brotherhood Industrial and Benefit Society incorporated under the joint resolution passed by the Legislature in December 1925. The foregoing applies to ownership of the ten acres of land purchased by Reverend Horton from the late B. J. K. Anderson for the Society in 1925. In our opinion, the judgment of Judge Hunter properly accomplished the purpose for which the suit was brought : to give possession of the Society's ten acres of land to the members, and only the members, of the Society. The question as to who are the legitimate members and officers cannot be determined by ejectment, as we have said, and the judge did not err in naming in the judgment some of the persons whose names appear on the title deed. In view of what we have found, and the law we have cited and quoted herein, we are of the firm opinion that the judgment of Judge Hunter handed down in the December 1965, Term, should be enforced. We are also of the opinion that the judgment should embrace all members of the Society, the incorporating members as well as those who joined later. We are of the opinion that dissension in the membership does not dissolve the Bassa Brotherhood Industrial and Benefit Society ; nor does any split in the organization clothe two separate bodies with the legal authority granted under the act of incorporation. In contemplation of law, there is only one corporate body created under the joint resolution of 1925. The question as to who are now members of that incorporated body is to be resolved by the organization itself, but not by means of ejectment; nor can certiorari determine this issue. The judge next assigned in the Sixth Judicial Circuit Court will, therefore, resume jurisdiction over the action of ejectment, and proceed to enforce the judgment of

Judge Hunter, in accordance with the amendment thereto contained in this opinion : which is to put the charter members, and their successors, in possession of the ten acres sued for in ejectment. The extraordinary remedy of certiorari will not issue nor can it be used to perform the functions of an appeal. '0 AM. JUR., Certiorari, § 7. In Harris V. Harris et ano[1947] LRSC 13; , 9 LLR 344, 349-

350 (1947) , a case involving certiorari, petitioner having appealed from a judgment rendered against him in favor of his wife in a suit for maintenance, failed to prosecute his appeal within the time prescribed by law and thereafter petitioned for certiorari to grant him relief. In denying the petition the Supreme Court said : "If the party aggrieved has elected another remedy under which he can obtain full redress he cannot resort to certiorari also ; although it would seem that the rule is otherwise where the remedy is inadequate to afford the relief sought. Similarly, since the writ will, as a rule, lie only to a final determination . . . where the case is still pending in the court below where the error complained of, if any, may be corrected on the final hearing, the writ will not lie." And in Daniel et ano v. Compania Transmediterranea, supra, the Court ruled that a remedial writ is an extraordinary remedy, usually applied for in order to prevent an injury to a party that may be irreparable or without which the ordinary method of appeal may not give an adequate remedy. And in Raymond Concrete Pile Company v. Hamilton et ano, 13 LLR 522 (1960), the Court held that certiorari is an extraordinary remedy which will not be granted where adequate relief can be obtained through regular processes of appeal. There is no reason given for the petitioners not to have appealed from the judgment in the ejectment suit, nor have they shown in argument here that a regular appeal

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African Industrial Co et al v Cole [1942] LRSC 5; 7 LLR 381 (1942) (20 February 1942)

AFRICAN INDUSTRIAL COMPANY, by L. SAJOUS, Chairman, and R. GAUCHY, Treasurer, Appellant, v. J. ABAYOMI COLE, Appellee.
APPEAL IN EQUITY PROCEEDING FOR CANCELLATION OF A LEASE.

Argued January 13, 15, 21, 27, February 2, 10, 11, 1942. Decided February 20, 1942.
1. An individual cannot at one and the same time contract with himself as lessor and lessee. 2. A privte citizen cannot lease land to a foreigner for more than twenty-one years with a privilege of a renewal for one additional term of the same duration. 3. Emblements are the right of a tenant to take and carry away, after his tenancy has ended, such annual products of the land as have resulted from his care and labor. 4. Whenever a freeholder demises a tract of land upon the signing and execution of the deed of lease, he immediately parts with the right of possession; but he retains within himself the right of property.

Appellant instituted a suit in the lower court for cancellation of a lease. On appeal from judgment in favor of appellee, judgment modified. Charles T. 0. King for appellants. W. 0. DaviesBright for appellee. MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court. On a date not mentioned

in the record before us, but admittedly before the institution on the twenty-first day of January, 1941, of this suit of cancellation, Dr. J. Abayomi Cole, Dr. Leo Sajous, and Mr. Raoul Gauchy entered into an agreement of partnership under the name and style of "African Industrial Company." At some time subsequent to the making of the agreement aforesaid, to wit, on the first day of November, 1938, the said company leased from the aforesaid J. Abayomi Cole one hundred

and fifty acres of land for a period of ninety-nine years; but the lessor and the lessee, becoming mutually dissatisfied with each other on account of alleged violations of contract on both sides, each instituted suits against the other. The lessor instituted this suit for cancellation of the contract, and the lessee instituted a suit for a specific performance of the contract. The suit for cancellation first reached this Court and was first assigned for hearing on the thirteenth day of January. Upon calling the parties at this bar and inspecting their respective briefs, it was pointed out from this Bench that all the contracts were illegal. First of all, J. Abayomi Cole, as a member of the company, was unable as an individual to contract with himself as a member of a partnership and in such dual capacity to be lessor and lessee in a lease agreement. This point has been settled by this Court in the case of Mczluley v. Republic, L.L.R. 354 (I9oo). Secondly, according to a statute passed and approved January 7, 1898, a private citizen cannot lease land to a foreigner for more than twenty-one years with a privilege of a renewal for one additional term of the same duration. At that stage, the attention of the Honorable Attorney General was called to the facts in the case, and he was invited to remain in the Court and follow up the case so as to protect any rights or interests that he might feel the government was entitled to exercise in the premises. Counsel on both sides thereupon petitioned the Court for an adjournment so as to be able to ascertain whether or not they could prepare stipulations that would settle the case. After five days they reappeared on the twenty-first day of January with a set of stipulations which the Court refused to accept because of certain ambiguous items; but, after a further leave granted, they subsequently, to wit, on the twenty-seventh day of January, filed amended stipulations which we quote as follows :

1. That the judgment of the court below be so modified and amended as to read, inter alia : " (a) That the number of years of said lease be reduced from 99 years to 20 years, with the option of another 20 years at the expiration of the first term; and also eliminating the words 'by their own will only.' "(b) That a new survey be made which would eliminate the dwelling house of appellee from the lease, with a frontage of seven chains allowed

appellee, commencing at the corner adjoining the block of land owned by Mr. C. G. Cheeks, on the Monrovia-White Plains Motor Road, and with a further extension inward of approximately 25 chains deep. See sketch herewith filed. " (c) That appellee, as soon as practicable and convenient to both parties, will deliver to appellants the remaining acreage of land to make up the 15o acres for which the deed of lease calls, including a frontage also of seven chains, commencing at the corner adjoining Mr. H. R. E. Robinson's property on the Monrovia-White Plains Motor Road. See sketch herewith filed. "(d) That the said new survey be made at the expense of appellants and appellee. "(e) That all outstanding and unpaid rents for three years, due to be paid in advance, viz.: November I) 1939 to November 1, 1942, will be paid by appellants on only 6o acres of **land, being the quantity of land** actually occupied by the company; the amount per annum to be calculated on a £2o.-- basis and not £22.-- as stated in said lease agreement: That is to say, appellants will pay said un-

paid rents on only two-fifths of the total acreage of 15o acres, and which when calculated on said £20.- basis will equal to £8.-- per annum, or £24.-- for the three years now outstanding. That the rent in the modified agreement be reduced from £22.10.-- to £17.10.-- per annum. "(g) That the agreement in all other respects remain the same, with the exception of the following point not agreed upon by Counsel, viz.: "APPELLEE'S PROPOSAL "(h) That appellee be entitled to the emblements on such portion of land as will be surrendered by him to appellants under the modified agreement; and that in lieu thereof, the appellants be relieved of appellee's claim of indebtedness in the aggregate amount of X16.-- made up as follows, to wit: "To appellant's one-half share of the cost of the former survey of said land made by Mr. Charles G. Cheeks, and which appellants promised to reimburse appellee £6.-- "To amount due appellee by appellants for services performed in supplying and replanting sugar cane tops for a large area of land (3o acres) at the special request of appellants and for which they promised to pay Xi O.TOTAL £16.--" This Court says that the word "emblements" is inaccurately used in the stipulations because : ( ) "Emblements [are] the profits of land sown. . . . The right of a tenant to take and carry away, after his tenancy has

ended, such annual products of the land as have resulted from his own care and labor." i Bouvier, Law Dictionary "Emblements" too6 (Rawle's 3d rev. 1914). This privilege is accorded him not only as compensation for his labor "but chiefly upon the policy of encouraging husbandry, by assuring the fruits of his labor to the one who cultivates the soil." 1 Washburn, Real Property § 255, at 120 (6th ed. 1902). The sugar cane and other crops, the basis of the contention, were not planted by either of the other two members

of appellant. (2) Emblements are incidents of only such estates as are of uncertain duration, such as estates for life and estates at will. Emblements do not attach to estates at sufferance because the original entry of the tenants thereon was without the consent of the landlord, and they are not incident to a tenancy for years since indeed the date for the determination of such an estate is fixed in the lease deed, and a tenant for years therefore plants at his own risk crops which he knows beforehand could not be harvested before the expiration of his tenancy. Counsel for appellant argued that appellee planted those crops as its agent, and said counsel stressed the point that what one does through his agent he does himself, bringing some evidence to prove that the said J. Abayomi Cole, as the appellant's agent, had made out a bill for supplying cane tops to the lessee and had planted them in the land appellee had demised to said lessee, appellant herein. But counsel for appellee countered with the contention that the land upon which the sugar cane crop was planted has never been in the actual possession of appellant. Says Blackstone in his Commentaries: "There are several stages or degrees requisite to form a complete title to lands and tenements. . . . "The lowest and most imperfect degree of title consists in the mere naked possession, or actual occupation of the estate; without any apparent right, or any shadow

or pretense of right, to hold and continue such possession. . . .

"The next step to a good and perfect title is the right of possession, which may reside in one man, while the actual possession is not in himself but in another. . . .

"The mere right of property, the jus proprietatis, without either possession or even the right of possession. This is frequently spoken of in our books under the name of the mere right, jus merum, and the estate of the owner is in such cases said to be totally divested, and put to a right." 2 Blackstone's Commentaries *195-97 (Jones ed. 1915). Emory Washburn, a modern writer, in his standard treatise on real property, makes a more exhaustive comment on this matter of title. "Blackstone divides title to lands, considered in its progressive development, into several stages ; namely, naked possession, right of possession, right of property without possession, and right of property united with the right of possession. This idea of Judge Blackstone, which has been adopted by Mr. Cruise and other writers, is illustrated by an act of disseisin, followed by possession by the disseisor. If a disseisor enters upon the land of another, and evicts or turns the true owner out of possession thereof, although in one sense, as between him and the true owner, he has no right or title whatever to the land, yet, as to all the world but him, the possession so gained gives him complete dominion over and right to the land, and constitutes, in the eye of the law, a prima facie title thereto. In the meantime, however, the one who has been wrongfully evicted has a right to the possession

which the disseisor has usurped and retains, so that here is a naked possession in one, and a right to the immediate possession in another. In every State, where the common law prevails, possession of lands, for a period of time sufficiently long, is held to divest the owner thereof of his right to regain his possession by his own act, without the aid of legal process. If, therefore, in the case supposed, this possession shall have been continued by the disseisor for the requisite length of time, nothing will remain in the original owner but a right of property, while the possession, and right of possession, will have become united in the disseisor. It only remains, then, for the right of possession, to perfect the disseisor's title." 3 Washburn, Real Property § 1822, at 2-3 (6th ed. 1902). This brings us to the kernel of the contention in this case. Whenever a freeholder demises a tract of **land**, upon the signing and execution of the deed of lease he, retaining within himself the right of property otherwise known as his reversionary interest, immediately parts with the right of possession; but the tenant's inchoate leasehold title is not complete until that right of possession is coupled with the actual possession which passes only upon the putting of the tenant in possession or occupation of the premises. That the company was never placed in actual possession of that part of the **land** under lease upon which the sugar cane crop was sown is an undisputed fact, not only because of the oral admission of counsel while arguing this cause at the counsel table of this Court, but also, and more emphatically so, because it formed part of the stipulations filed in this Court, the relevant portion of which reads: "(c) That appellee, as soon as practicable and convenient to both parties, will deliver to appellants the remaining acreage of **land** to make up the rso acres for which the deed of lease calls, including a frontage also of seven chains, corn-

mencing at the corner adjoining Mr. H. R. E. Robinson's property on the Monrovia-White Plains Motor Road. See sketch herewith filed.

"(e) That all outstanding and unpaid rents for three years, due to be paid in advance, viz.: November 1, 1939 to November 1, 1942, will be paid by appellants on only 6o acres of **land, being the quantity of land** actually occupied by the company; the amount per annum to be calculated on a £20.- basis and not £22.-- as stated in said lease agreement: That is to say, appellants will pay said unpaid rents on only twofifths of the total acreage of 'so acres, and which when calculated on said £20.- basis will equal to £8.-- per annum, or £24..-- for the three years now outstanding." The next question which arises in the case is, if the lease were executed in good faith, why have the tenants not yet been placed in the actual possession of all the **land** demised? It seems from

the arguments, supported by the evidence on the record, that neither party was at fault. Out of the 30o acres owned by the lessor, it appears they entrusted the delimitation of the 150 acres, the subject of the lease, to a surveyor who endeavored to include a certain stream in the area he was sent to mark out, and he, having surveyed an irregular polygon, showed the result of his work to the parties as 15o acres when in deed and in fact his survey covered but nominally 6o acres, actually 56.2 acres. The error in this survey was first discovered by the lessor who promptly informed the lessee by letter of March 21, 1940, of the mistake which had just then been brought to his attention. He had then already planted the sugar cane crop, the subject of this dispute, upon the 15o acres demised, but without the 6o

acres which had been turned over to the tenant, which 6o acres both parties erroneously believed at that time was the total 15o acre plot. Obviously, then, it was not the intention of the lessor at that time to trespass upon land which he believed he had demised to his tenant, nor to plant said crop as agent for the tenant, when indeed up to that time the parties believed that the area planted was without the area demised. It follows then from the foregoing that the sugar cane and other crops should be reaped by the lessor, appellee in this case, that the cost of planting said crops should not be collected by lessor from appellant, and that the costs of suit should be divided equally between appellant and appellee ; and it is hereby so ordered. Judgment modified.

NHA v Intestate Estate of Bai et al [1995] LRSC 4; 37 LLR 744 (1995) (16 February 1995)

NATIONAL HOUSING AUTHORITY (NHA), Petitioner, v. **THE INTESTATE ESTATE OF THE LATE CHIEF BAH BAI AND PEOPLE OF MATADI GBOVE TOWN**, by and thru FODAY KAMARA et al., Administrators, Respondents.

PETITION FOR RE-ARGUMENT

Heard: December 7, 1994. Decided: February 16, 1995.

1. For good cause shown to the court by petition, a re-argument of a case may be allowed when some palpable mistake is made by inadvertently overlooking some facts, or point of law.

2. A petition for re-argument shall not be heard unless a Justice concurring in the judgment orders it.

3. The re-hearing or re-argument of a cause before the court from which an opinion has been rendered, is not a right, but rather a privilege; and in this jurisdiction, it is granted by the Rules of the Supreme Court of Liberia.

4. A rehearing will be refused where all the issues presented have in fact been duly considered by the court and where the application presents no new facts, but simply reiterate the arguments made on the hearing; and where the petition is in effect an appeal to the court to review its decision on points and authorities already determined.

5. The court will not grant re-argument merely because the decision upon any particular issue did not satisfy the petitioning party, nor will it be granted because an issue which the court refused to pass upon has not been referred to in the deciding opinion.

6. Re-argument will only be granted if it is shown that a prior decision overlooked a salient point of law or fact raised at the prior hearing.

7. Title to **land** may be decided in declaratory judgment proceedings .

8. Courts of records within their respective jurisdictions, have the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, and the declarations shall have the force and effect of a final judgment.

9. In a trial on general denial, the defendants cannot introduce affirmative matter in confession and avoidance.

10. Where an answer has been dismissed and defendant placed on a bare denial of facts alleged by the plaintiff, the defendant is barred from introducing affirmative matter. Notwithstanding, he is not deprived of the right to crossexamine nor does such restriction to a bare denial exempt the plaintiff from the need to prove the essential allegations in the complaint.

The heirs of the late Chief Bah Bai filed a petition for declaratory judgment in the Civil Law Court for the court to declare the legitimate owner of the 209.55 acres of **land** expropriated by the Government, and the person or persons entitled to receive the compensation provided by government. The King family represented by C. T. 0. King II and Sarah King-Howard and the National Housing Authority were named as Respondents. The Civil Law Court ruled that the heirs and descend-ants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town were the legitimate owners of the 209.55 acres of **land**, subject of the petition; that they were entitled to just compensation for that portion of their **land** occupied by the Matadi Housing Estate of the co-respondent National Housing Authority; and accordingly ordered the said National Housing to compensate the heirs of Chief Bah Bai for the portion of petitioners s' 209.55 acres of **land** National Housing Authority occupies as the Matadi Housing Estate. From this ruling, the National Housing Authority appealed to the Supreme Court. In an opinion delivered on September 22, 1994, the Supreme Court affirmed the judgment of the lower court. The corespondent, National Housing Authority, not being satisfied with the opinion of the court, petitioned the Court for reargument, contending that the Supreme Court inadvertently overlooked several points of law and fact.

The Supreme Court upon review of the records found that the facts and points of law which the appellant claims were overlooked, were not in fact overlooked but were rather exhaustively treated. The Supreme Court holding that where all of the facts presented have in fact been duly considered by the court, and where the application for re-argument presents no new facts, but simply reiterate the arguments made on the hearing, and is in effect an appeal to the court to review its decision on points and authorities already determined, a rehearing will be refused. Accordingly, the Court *denied* the petition.
Marcus R. Jones appeared *forPetitioners. Frederick Cherue appeared for Respondents.*

MR. JUSTICE SMALLWOOD delivered the opinion of the Court.

The heirs of the late Chief Bah Bai filed in the Civil Law Court a petition for declaratory judgment praying the court to declare the legitimate owner of the 209.55 acres of **land** expropriated by the Government, and who is entitled to receive the compensation provided by government. The petition prayed the Court to summon the King family represented by C. T. 0. King II and Sarah King-Howard or their successors, as corespondents to establish their

ownership to the 209.55 acres of **land** expropriated by the Government for which they have received $75,000.00 as compensation, and for co-respondent National Housing Authority to show cause, if any, why the intestate estate of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town should not be justly compensated for the portion of their **land** expropriated by government on which the estate is established.

From the records before us, the heirs of the late C. D. B. King did not appear and answer even though they were also summoned by publication. Co-respondent National Housing Authority on the other hand, in its amended returns, contended among other things as follows:

"Respondent submits and say that it has not raised any issue with respect to the petitioners' title to ownership of the property in question, but rather the King family and Zoe Barma. Therefore, it is incumbent upon the petitioners to prove their title right to the property."

After hearing of the petition for declaratory judgment the court in its final judgment concluded in these words:

"WHEREFORE, and considering all the law, facts and circumstances surrounding this case, it is the ruling and final judgment of this court that the petition as filed and established by petitioners be and the same is hereby granted; and having granted the said petition it is the decree and declaration of this court that the petitioners, the heirs and descendants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of the 209.55 acres of **land**, subject of petition.

The said petitioners now having been declared lawful owners of the subject 209.55 acres of **land**, they are hereby declared entitled to just compensation for that portion of their **land** occupied by the Matadi Housing Estate of the co-respondent National Housing Authority and the said National Housing is hereby ordered to deal with, consider, treat petitioners as legitimate owners of the 209.55 acres of **land** and as such therefore must compensate petitioners for the portion of petitioners s' 209.55 acres of **land** National Housing Authority occupies as the Matadi Housing Estate, pursuant to the constitutional provision relating to expropriation of private property for public purposes. *See* CONSTITUTION OF LIBERIA (1986), Art. 24(a). The exact amount of compensation to be paid by corespondent NHA will necessarily depend on the exact amount of petitioners' **land** the government expropriated and payment will be made accordingly. Costs of these proceedings ruled against respondents. AND IT HEREBY SO ORDERED."

Based on this judgment of the court, an appeal was announced and perfected by co-respondent National Housing Authority.

This court in its opinion delivered September 22, 1994, affirmed the judgment of the lower court. The co-respondent, National Housing Authority, not being satisfied with the opinion of the court, took advantage of Rule 9 of the rules of the Supreme Court of Liberia which provides:

Part 1: For good cause shown to the court by petition, a re-argument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some facts, or point of law. SUPREME COURT RULES, Rule 9, Part 1

Part 3 of Rule 9 of the supreme Court provides: "the petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice concurring in the judgment shall order it. The moving party shall serve a copy thereof upon the adverse party as provided by the rules relating to motions." This hearing was ordered by one of the concurring Justices in the previous opinion delivered September 22, 1994. The petitioner in his petition for re-argument has alleged the following as grounds for granting re-argument:

1. That a declaratory judgment cannot decide title to **land** as specified in the judge's ruling couched in the opinion of this court found on sheet nine in which he states amongst others...."petitioners, the heirs and descendants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of 209.55 acres of **land** subject to this petition. The said petitioners now having been declared lawful owners of the subject 209.55 acres of **land**...." certainly has vested title in and to said **land** in the respondents".

2. That the court inadvertently overlooked the salient point of fact that the subject property is in dispute between the heirs of the late C. D. B. King and E. G. W. King, sons of the late C. T. O. King, I., and as such, such palpable mistake was inadvertent in that the declaratory judgment has not and cannot resolve the disputes as to ownership of the subject property between the claiming parties, and that petitioner will not be able to pay any of the parties except upon a judgement from a court of competent jurisdiction indicating which of the claimants are the legitimate owners".

3. Also because Your Honours inadvertently overlooked a salient point of law which is unequivocal to the point that a declaratory judgment which does not terminate the uncertainty or controversy as in this case, who owns the **land**, must be refused to be rendered and entertained." Civil Procedure Law, Rev. Code 1:43.5; *Isaac Cooper v. K & H Construction Company et al.[1978] LRSC 35; ,* 27 LLR 187, 196 (1978). Petitioner submits that the uncertainty as to the ownership has not been resolved, especially so, when the court overlooked another point of fact that the King heirs and the Bah Bai heirs are claiming title from the same source, the Republic of Liberia and as such, cancellation proceedings is the proper remedy under such circumstances in keeping with the case *Davies v. Republic*, [1960] LRSC 67; 14 LLR 249 (1960)."

4. That Your Honours further mistakenly overlooked a point of law that a judgment in **land** matters which does not specify the metes and bounds, is uncertain and unenforceable because the sheriff will not be able to serve a valid writ of possession. The portion of **land** allegedly occupied by petitioner is not specified. Hence the court inadvertently overlooked this salient point of law."

5. Also because the court mistakenly and inadvertently overlooked the fact that the judge below, after having allowed petitioner to take the stand and introduce six witnesses who deposed that when he revoked his previous ruling granting default judgment against petitioner, refused to give any consideration to petitioner's evidence. This, petitioner submits, was prejudicial to petitioner's interest and as such inadvertence should be corrected by Your Honours".

6. Also because the court committed palpable mistake when it used petitioner's returns which the lower court Judge refused to take into consideration in his final judgment, without the court addressing itself to evidence of petitioner. This is a serious inadvertence to the prejudice of petitioner especially so when, petitioner's returns clearly states that the petition for declaratory judgment should be dismissed because the King's family and Zoe Bah Bai are raising title/ownerships to the property in question and specifically call on petitioner/ respondents herein to prove their title rights to said property". See page 12 of the opinion of September 22, 1994.

The re-hearing or re-argument of a cause before the court from which an opinion has been rendered is not a right under the common law, but rather a privilege; and in this jurisdiction, is granted by the Rules of the Supreme Court of Liberia. *Rules of the Supreme Court of Liberia, Rule 9, Parts 1 - 3 ;* 4 C.J.S., *Appeals and Error, § 1409.*

This rule has been interpreted in a long line of opinions by this Court. In *King v. Cole et al.*, the Court said: "Where all of the facts presented have in fact been duly considered by the court, and where the application presents no new facts, but simply reiterate the arguments made on the hearing, and is in effect an appeal to the court to review its decision on points and authorities already determined, a re-hearing will be refused". *King v. Cole et al.[1962] LRSC 3; ,* 15 LLR 15 (1962).

In the same case, the Court also held further that: "The court will not grant re-argument merely because the decision upon any particular issue did not satisfy the petitioning party nor will it be granted because an issue which the court refused to pass upon has not been referred to in the deciding opinion." *Id.*

Also, this Court has said that: "Re-argument will be allowed only when the court had made some palpable mistake by overlooking some facts or points of law". *Webster et al., v. Freeman et al.[1965] LRSC 5; ,* 16 LLR 209 (1965).

Additionally we have said: "Re-argument will only be granted if it is shown that a prior decision overlooked a salient point of law or fact raised at the prior hearing". *West Africa Trading Corp., v. Alraine (Liberia) Ltd,* [1976] LRSC 23; 25 LLR 3 (1976).

Let us now look at the points raised in the petition for reargument which the petitioner contends the court overlooked and which the petitioner considers to be palpable error.

In the first count of the petition, the petitioner contends that a declaratory judgment cannot decide title to **land** as specified in the Judge's ruling when he said:

"Petitioner, the heirs and descendants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of 209.55 acres of **land** subject of this petition. The said petitioner now having been declared lawful owners of the subject 209.55 acres of **land**
"

The petitioner contends that this portion of the judge's final judgment vested title in and to said **land** in the respondents. The petitioner is contending both in his brief and argument that declaratory judgment cannot decide title. We have read through the statute on declaratory judgment and were unable to read into any of the sections that title to **land** shall not be decided in proceeding of declaratory judgment. The petitioner cited no law which states that declaratory judgment cannot decide title. The statute cited by petitioner, the Civil Procedure Law, Rev. Code 1:62.1, refers to actions of ejectment against a person who wrongfully withholds possession of real property from another; so are all of the case laws cited such as *Karnga v. Williams*, [1948] LRSC 3; 10 LLR 10 (1948); *Pratt v. Philips*, [1949] LRSC 13; 10 LLR 147(1949); *and Gbassage v. Holt*, 24 LLR 294, 296(1975).

The Supreme Court in its opinion delivered on September 22, 1994, at page 10 thereof, did pass on the issue of title as raised by the petitioner in the bill of exceptions and argued in his brief before this court during the hearing of the appeal. The Justice who wrote and read the opinion said:

"We disagree with the contention of the appellant in count one of the bill of exceptions for the judge is only declaring as in keeping with the statute".

The relevant statute is quoted in the opinion which we shall also quote herein:

"Courts of records within this respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceedings shall be opened to objection on the ground that a declaratory judgment is prayed for, the declarations shall have the force and effect of a final judgment. The power granted to quote under this section is discretionary". Civil Procedure Law, Rev, Code 1:43.1.

An action of ejectment would have been a proper action to be instituted in this case had the petitioners in declaratory judgment not being in actual possession of the subject property and it was being withheld from them by an opposing party. From the records in the case, the heirs of the late Chief Bah Bai are in possession of the property, portion of which had been expropriated by government and a portion of the compensation for the expropriated parcel of **land** had been received by the heirs of the late C. D. B. King who are not in actual possession of the **land**. Therefore the action of declaratory judgment was the proper action to be instituted in order to remove cloud and quiet title to the subject property.

In count 2 of the petition for re-argument, the petitioner National Housing Authority, contends that the Court committed palpable mistake in the opinion by overlooking the salient point that the subject property is in dispute between the heirs of the late C. D. B. King and E. G. W. King, sons of the late C. T. 0. King I; and as such, declaratory judgment cannot and has not resolved the dispute as to ownership of the property. It is further contended that petitioner will not be able to pay any of the parties except upon a judgment from a court of competent jurisdiction indicating which of the claimants are the legitimate owners.

It should be remembered that according to the records, it was the petitioner for re-argument, National Housing Authority, who instructed the heirs of the late Chief Bah Bai to seek a court judgment authorizing National Housing Authority to pay them compensation for the expropriated portion of the land. From the records before us, the heirs then filed declaratory judgment citing National Housing Authority as a party as well as the heirs of the Kings. The heirs of the Kings never appeared to contest the action. Petitioner, National Housing Authority, appeared and filed an amended returns in which he claimed:

"Respondent submits and says that he has not raised any issue with respect to the petitioners' title/ ownership to the property in question "

It is therefore clear that the petitioner for re-argument has no interest in the property except to compensate those who the court would declare to be the legitimate owners of the subject property. In this case, the petitioners in declaratory judgment, heirs of the late Chief Bah Bai, have been declared by a court of competent jurisdiction, the Civil Law Court, Sixth Judicial Circuit, Montserrado County, as the legitimate owners of the 209.55 acres of land. The petitioner, National Housing Authority, are therefore bound to honour the judgment from the court of competent jurisdiction.

In count 3 of the petition for re-argument, petitioner contends that this court inadvertently overlooked a salient point of law, that a declaratory judgment, which does not terminate the uncertainty or controversy in the case, must be refused to be rendered. The judgment rendered by the lower court in the declaratory judgment certainly terminated the issue in this matter, for it is provided under section 43.1 of the statute on declaratory judgment:

"that the declaration may be affirmative or negative in form and effect and such declaration shall have the force and effect of a final judgment".

The trial court rendered a final judgment in the matter declaring the heirs of the late Chief Bah Bai to be the legitimate owners of the 209.55 acres of **land** and that this court having confirmed and affirmed the judgment of the lower court, certainly puts an end to the controversy or uncertainty presented in the matter.

In count 4 of the petition for re-argument, the petitioner alleges that this court overlooked a point of law that a judgment in **land** matters which does not specify the metes and bounds is uncertain and unenforceable because the Sheriff will not be able to serve a valid writ of possession.

The matter before the court is not one of ejectment where it would be necessary to issue a writ of possession, but rather one to declare the rights of the party interest. The petitioners in declaratory judgment, being in actual possession of the **land**, are claiming compensation from the National Housing Authority for the **land** already expropriated by the Government and on which the National Housing Authority is operating a housing estate. The action did not seek to evict National Housing Authority but to pay compensation after the rights of the heirs of the late Chief Bah Bai have been established and declared. The court therefore did not overlook the alleged point of law because the action is not one of ejectment.

In counts 5 and 6 of the petition for re-argument, the petitioner contends that this court mistakenly overlooked the fact that the judge below, after having allowed the petitioner to take the stand and introduce six witnesses who disposed, refused to give consideration to petitioner's evidence.

In commenting on that count of the petitioner, it is our position that this court did not "mistakenly and inadvertently overlook" the fact that the judge did not give consideration to the evidence of petitioner in re-argument for the fact that the amended returns of the petitioner had been dismissed and she was placed on bare denial.

Our law provides that when an answer of the defendant has been dismissed and the defendant placed on bare denial, he is estopped from introducing affirmative matters. Most of the issues of

contention raised by the petitioner in the petition for re-argument are of affirmative matters and the court was correct in not giving credence to such matters.

"In a trial on general denial in an action of debt, the defendants cannot introduce affirmative matter in confession and avoidance. *The Butchers' Association of Monrovia v. Turay,* 13 LLR 365,377 (1959).

Where an answer has been dismissed and defendant placed on a bare denial of facts alleged by the plaintiff, the defendant is barred from introducing affirmative matter". *Saleeby Brothers Corporation v. Haikal,* [1961] LRSC 35; 14 LLR 537, 541(1961).

Also with regards to the contention of the petitioner in reargument that the Judge allowed the petitioner to take the stand and introduced witnesses who disposed, it is provided under our law that:

"A defendant's restriction to a bare denial upon dismissal of the answer does not deprive defendant of the right to cross-examine nor does such restriction to a bare denial exempt the plaintiff from the need to prove the essential allegations in the complaint. *La Fondiara Insurance Companies Ltd. v. Heudakor,* [1973] LRSC 29; 22 LLR 10, 16 (1973).

It is therefore, crystal clear that the facts and points of law which the appellant claims were overlooked, were not over-looked but rather were exhaustively treated which was the cause of confirming and affirming the lower court's judgment.

Under the circumstances, the court denies the petition for reargument with cost against appellant. The judgment of the lower court is hereby ordered enforced. And it is hereby so ordered.

Petition denied.

Davies v RL [1960] LRSC 67; 14 LLR 249 (1960) (16 December 1960)

JAMES W. DAVIES, Appellant, v. REPUBLIC OF LIBERIA, by and through the County Attorney of Maryland County, Appellee.
APPEAL FROM
THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued October 19, 1960. Decided December 16, 1960. 1. Lands granted as immigrant allotments, like all other public grants, are carved out of public property not otherwise allocated or disposed of. The fact that the land is unencumbered is a condition precedent upon which the President conveys the title ; hence the statute requires that the Land Commissioner should certify to that effect before the President's signature is affixed to the deed. 2. Contractually, the grantor is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed ; and the fact that the Republic of Liberia is one of the parties does not lessen the binding effect of the terms of the contract. 3. Immigrants have the same right to possess and defend real property as any other citizen has under the Constitution ; and when such property is acquired from the public domain, either by a public land sale or immigrant deed, fee simple title to such property is thereby transferred. 4. If the President acting by reason of misrepresentation, fraud, misinformation, or concealment of facts, executes a deed to transfer property which is not within the public domain, none of his successors can legally uphold such an act ; and since each of them is under oath to enforce the laws of the Republic, it would be within their legal duty to right any wrongs done against the interest of a citizen by their predecessor in office. 5. Laches will not run against the Republic where it becomes necessary for her to file suit to fulfil her obligations under the terms of a contract, and especially where it can be shown that she has been led into breaching her obligations by deceptive acts ; nor will it run against her where ignorance of the facts prevented her from bringing the suit within the time allowed by statute. 6. There is no legal time within which the Republic might not bring an action to cancel a deed executed by misinformation, mistake, concealment of fact, or deception on part of the grantee. 7. The constitutional guarantee that no one shall be deprived of property but by judgment of his peers was never intended to protect the unlawful ownership of property. In order that this provision of the Constitution may be invoked by a citizen in the possession of his property, he must be able to show that his acquisition and possession are legitimate and that the genuineness of his title is beyond dispute.

On appeal from
an order of the equity division of the circuit court, cancelling an immigrant allotment deed

executed
by the then President of the Republic of Liberia in 1935, on cancellation proceedings initiated by the President of the Republic
of Liberia in 1958, the order of cancellation was affirmed.
D. Bartholomew Cooper for appellant. Assistant Attorney General J. Dossen Richards and 0. Natty B. Davis

for appellee. MR. JUSTICE PIERRE delivered the opinion of the Court.
According to the records certified
from the court below, President C. D. S. King executed a public land sale deed in 1929, and thereby transferred fee simple title
to ten acres of public land in Maryland County to the late Allen N. Yancy. In April, 1935, a little more than six years thereafter,
President Barclay, who had succeeded President King in office, executed another deed, this time an immigrant allotment deed in favor
of James W. Davies, the appellant herein, also transferring to him fee simple title of one town lot, in the same locality in which
Mr. Yancy's ten acres had been acquired six years before. It was discovered in after years, however, that the one town lot for which
President Barclay had executed a deed to Mr. Davies in 1935 was a portion of the ten acres sold to Mr. Yancy in 1929. The record
also reveals that Mr. Davies had occupied the town lot for some time before he requested and was given a deed in 1935; and that, in fact, he had resided thereon as far back
as 1933. One would have thought that Mr. Davies's occupation of and residence on the land had been in ignorance of Mr. Yancy's ownership
; but a letter found in the record and which was made profert with the petitioner's reply, and was written by Mr. Yancy in 1933--four
years after he had acquired title, and two years before Mr. Davies secured his deed--convinces us

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drew land he knew belonged to Mr. Yancy. For the benefit of this opinion, we quote the relevant portion of the Yancy letter hereunder
: "DEAR MR. DAVIES, "With immense surprise I have discovered that on my property at Pleebo you have erected a house. This does not
at all meet my approbation. Although I don't know with whose permission or authority you have ventured to assume such liberty of
the use of said property, yet I wish to observe that the property is mine. . . ." It is reasonable to assume that any person acting
normally and in good health, and who might not have known that he had occupied or improved someone else's property, would have regarded
the contents of such a letter as proper and sufficient notice for commencement of negotiations with the owner; but Mr. Davies elected
to pursue a different course, and ignored this valuable warning. After the death of Mr. Yancy, his heirs appealed to the Republic
of Liberia, their grantor, and demanded that the terms of the contract to warrant and defend them in the peaceful possession of the
land be fulfilled. President Tubman, who had succeeded President Barclay in office, and who was bound by the terms of the two deeds
executed by his predecessors, ordered cancellation of the Davies deed on the ground that its execution by President Barclay in 1935

was an error; that it had been executed by mistake and misrepresentation ; and that the President was under a misapprehension of the true facts with respect to the status of the land at the time he signed Mr. Davies's deed, since the property which the deed was made to cover was not a part of the public domain when it was executed. Cancellation proceedings were then instituted in the equity division of the Circuit Court of the Fourth Judicial Circuit, Maryland County, by the County Attorney, upon

instruction of the Attorney General. The instant appellant, Mr. Davies, appeared as respondent and filed an answer in which he advanced the following points : r. That according to the Constitution, no person should be deprived of property but by judgment of his peers ; therefore ejectment should have been the proper action for recovery of the land, since trial thereof would have to be by jury. That the deed executed to respondent Davies was a 2. contract, binding upon the Republic of Liberia to abide by its terms, which provided that the President, for himself and his successors in office, did give, grant and confirm unto the respondent and his heirs, etc., the town lot in question. That being so, neither party should be allowed to abrogate the contract or take advantage of his own error or mistake. 3. Respondent denied that he had in manner clandestine or fraudulent applied to the government for the land, as had been alleged in the petitioner's bill ; and contended that President Barclay was under no misapprehension when he signed the deed in 1935. 4. Respondent also contended that the action should have been brought within three years of the execution of his deed, and that failure to have brought it within that time constituted laches since it was brought beyond the time allowed for such actions under the statute of limitations. These are the issues raised by the appellant in the court below which we have deemed necessary for our consideration. They were heard and passed upon by the lower court during the November, 1958, term, and cancellation of the deed was decreed by the judge then presiding. The respondent took exceptions, announced appeal, and has brought his case for final review on a bill of exceptions containing four counts which raise the issues listed above. Appellee's counsel contended in argument before this

bar that, no exceptions having been taken to any issue bearing on the last point during the trial so as to give the appellate court right to review it on appeal, the said point with others not mentioned herein, should be stricken from the respondent's brief and not considered by the Supreme Court. We must admit that there is merit in the contention; however,

because of the importance we have attached to this point, and the fact that it was raised in the respondent's answer, we have decided to pass upon it in our review of the entire case. Before dealing with the four points of the answer which we have listed hereinabove, we think it necessary to consider the following questions : r. The President of Liberia being empowered by law to execute deeds, and thereby transfer fee simple title to real property from the public domain to citizens (1956 Code, tit. 32, § 3o), do such acts of his bind his successors in office? 2. Under the terms of warranty clause of a public land sale deed the grantor stipulates to defend the grantee in the quiet possession of the property against all persons. Could the contractual terms of such a deed, if shown to have been executed by mistake or upon misrepresentation or misinformation or fraud, be regarded as valid and binding upon the parties? 3. Where it is discovered that the deed was issued under such unusual circumstances, should the President's order for its cancellation be regarded as reviewing or repudiating the legitimate acts of his predecessor in office? We do not hesitate to say that lands granted as immigrant allotments, like all other public grants, are carved out of public property not otherwise allocated or disposed of. The fact that the land is unencumbered is a condition precedent upon which the President conveys the title; hence the statute requires that the Land Commissioner

should certify to that effect before the President's signature is affixed to the deed. It is quite easy to see, therefore, that the State could not possibly grant land, the title of which had already been transferred. It is physically impossible to give what one does not have. Contractually, the grantor is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed ; and the fact that the Republic of Liberia is one of the parties, does not lessen the binding effect of the terms of the contract. Under the Constitution, we are commanded always to respect the obligations imposed by contracts ; and indeed, that is a fundamental basis of simple and honest dealing which should be respected by all men and all nations. Immigrants, such as Mr. Davies was, have the same right to possess and defend real property as any other citizen has under the Constitution; and when such property is acquired from the public domain, either by a public land sale or immigrant deed, fee simple title to such property is thereby transferred. But the rights enjoyed under an immigrant deed are not superior to those enjoyed by the holder of a public land sale deed. Both types of deed transfer the title in fee simple and, in both the President for himself and his successors in office, obligate the Republic of Liberia to defend the grantee against any person or persons claiming any part of the property. This seems to clarify the point that the President's successors in office are bound by contractual obligation and constitutional oath to respect and enforce the terms of a contract legitimately entered into. Applying this reasoning to the instant case, we feel correct to opine that the warranty clause in Mr. Yancy's deed should have bound

every grantor successor as effectively as it bound President King who executed it in 1929. This brings us to another one of the questions which we feel called upon to consider: could the contractual terms

of a deed executed by mistake, misrepresentation, misinformation or fraud be taken as being legally valid, and therefore binding on the parties? No contractual terms shown to have been fraudulently induced by a party who had full knowledge of the circumstances, and where the true facts were known to him, but concealed for his personal advantage, could be regarded as being morally right and therefore enforceable under the terms of any contract. "Fraud is a false representation of fact, made with a knowledge of its falsehood, or recklessly, without belief in its truth, with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it to his damage. It differs from mere misrepresentation in that it has the element of knowledge; and its most frequent example in the law of contracts is the making of false representations to induce consent to an agreement" 9 CYC. 411 Contracts.

"The rule that non-disclosure of facts does not constitute fraud does not apply where there is an active concealment of facts. This is a fraud. By an active concealment is meant either (I) a representation good as far as it goes, but accompanied with such a suppression of facts as makes it convey a misleading impression, or (2) an attempt by one party to draw the other's attention from a fact or to cover it from view. In the first case the non-disclosure has the effect of either impliedly representing that the fact concealed does not exist or of rendering the facts disclosed absolutely false. In the second case the conduct of the party, outside of an actual representation, is a fraud on the other." 9 CYC. 413 14 Contracts. "Fraud vitiates all contracts and a deed procured by such means will be set aside. The only fraud, however, which can be pleaded at law is that which goes to the execution of the deed. So a deed cannot be set aside on the ground of fraud in procuring the same in

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the absence of proof of facts of representations of the grantees or of their agents which were deceptive and false. Again such relief will not be granted unless the party seeking it was injured by the representations. Applying these principles, fraudulent misrepresentation or concealment of material facts in respect to the title to the property conveyed, its situation, character, quantity, or value, whether the act is that of the grantor or the grantee, may be ground for setting aside

a deed. Again misrepresentation or concealment of facts inducing a hasty transfer of the property may be sufficient." 13 CYC. 579-80 Deeds. "Generally, a deed procured through fraud perpetrated upon the grantor, even though not void at law, is voidable in equity; and as against the grantee and his privies and those chargeable with knowledge of the fraud, the grantor may elect to rescind and be restored to his original position. As has been said, upon no other ground is jurisdiction in equity so readily entertained and freely exercised as in the case of fraud. The jurisdiction of courts of equity to decree cancellation or recission of conveyances procured by fraud or false representation is well established and frequently exercised. The mere fact that the transaction has been executed does not prevent the court from annulling a deed." 16 AM. JuR. 454-55 Deeds § 31. We feel that these principles are applicable in the instant case where misrepresentation and concealment of material facts induced the execution of the appellant's deed. At the time when the appellant requested the President's signature to his deed in 1935, he had already been informed two years before that the property was Mr. Yancy's. This fact was positively alleged in the appellee's reply, and was not denied by the appellant in the court below. Instead, the respondent has contended in his rejoinder that the Yancy letter made profert with the reply should have been filed with the bill in cancellation,

and that this not having been done, the letter should be disregarded. The ineffectiveness of such a contention, as it might be able to negative the information contained in the letter, is only too obviously apparent; therefore we could not give it any meritorious consideration in passing upon the point. Besides, the appellant does not deny, but rather indirectly admits, that at the time of his acquisition of the land he knew it to be Mr. Yancy's property. The establishment of this fact clarifies another point. President Barclay must have been under a complete misapprehension of the facts with respect to the status of the property, the truth of which, although known to the appellant, he either concealed or misrepresented. For, how else could he have obtained the President's signature to a deed, which was intended to transfer title which had already been transferred two years before? The law does not allow that disadvantage should be imposed upon, or hardship practiced against anyone, growing out of the enforcement of the terms of a contract to which he was not a party. It is clear therefore, that the enforcement of the terms of the appellant's deed should not impair the interest of Mr. Yancy, who is not shown to have either consented to its execution or to have indicated, by any act of his, that he might have given his consent thereto. On the contrary, it has been shown that he informed the appellant of his ownership of the property two years in advance of the appellant's move to acquire title thereto. The next question for our consideration is as follows : When it is discovered that a former President had issued a deed upon wrong information or misrepresentation, would an incumbent President's order for its cancellation be a repudiation of the legitimate act of his predecessor? Among the constitutional duties of the President,

is that "he shall take care that the laws are faithfully executed." (Constitution, Art. III section 1st.) An act performed by the President as a result of misrepresentation or fraudulent concealment of facts cannot be regarded as

valid, since the basis upon which the President was induced to act vitiates the legitimacy of the act. Nor can a President's correction of any acts of his predecessor, which can be shown to have been instigated or induced by fraud, misrepresentation, or concealment of facts, be regarded as a departure from the faithful execution of the laws by the President. Again, no President is under oath to violate the laws of the country; on the contrary, he swore to protect and defend the Constitution, and enforce the laws of the Republic of Liberia. So the failure to enforce any act of his predecessor which can be shown to be in violation of the statute laws of Liberia is not contrary to his oath, nor is it a review or repudiation of the lawful acts of his predecessor in office. Applying this to the instant case, the statute requires that, in order for land to be transferred from the public domain, it must first be unencumbered and not otherwise appropriated. So if the President, acting upon misrepresentation, misinformation, fraud, or concealment of facts, executes a deed to transfer property which is no longer within the public domain, none of his successors can legally uphold such an act of his; and since each of them is under oath to enforce the laws, it would be within their legal duty to right any wrong in this respect, done against the interest of a citizen by their predecessor in office. And it does appear all the more their duty to do so, since they are bound under the contractual terms of the deed to warrant and defend the grantee. Having passed upon the three questions which seemed obvious from the circumstances appearing in the record, we come now to consider the main points of issue raised in the answer and upon which the appellant has rested his defense. Our review of the three questions referred to above has also clarified two of the issues to which we would have had to address ourselves, leaving only the first and fourth for our consideration. Taking these in reverse order, we will now consider the issue of laches.

The action is alleged to have been brought after the time allowed for such actions under the statute of limitations. The statute of limitations, being an affirmative plea, must be pleaded specially, and must be relied upon as a sufficient defense; since to plead it is to admit or confess the correctness of the plaintiff's case, while questioning his right of recovery after the time allowed by law. In such cases, the plaintiff is said to be guilty of laches; and laches will bar a right of recovery where it can be shown that the party was under no legal disability not to have brought his action within the time allowed by statute. So, therefore, if the complaining party could not have brought the action within the

statutory time, because of circumstances beyond his control, such as ignorance of the facts, laches will be excused. Bryant v. Harmon, [1954] LRSC 18; 12 L.L.R. 33o (1956). Judge Bouvier in his Law Dictionary has explained it as follows : "To constitute laches to bar a suit there must be knowledge,
actual or imputable, of the facts which would have prompted action or, if there were ignorance, it must be without just excuse. .
. ." BOUVIER, LAW DICTIONARY Laches (Rawle's 3rd Rev. 1914). It was necessary, therefore, that we go back to the record, to ascertain just when it came to the appellee's knowledge that the appellant's deed had been executed for property already sold to Mr. Yancy.
We found a letter written by the Attorney General to the County Attorney of Maryland County; and although no date appears thereon,
it is shown to have been filed in the office of the clerk of court in November, 1956; and since the appellant has not claimed it
to have been written earlier, we have assumed that it must have been written in that year. However, we have quoted relevant portion
of the letter for the benefit of this opinion. It reads : "MR. COUNTY ATTORNEY : "I wish to acknowledge receipt of your letter, CA
:993 of October 2, 1956, in which you seek advice

as to whether or not it would, in the light of the
facts outlined in your letter, be proper for the government to move for cancellation of the more recent of two deeds allegedly issued
by the government for the same piece of property. "If the facts as have been represented to you are correct, then it would seem clear
that, when the Government of Liberia issued the second deed, it had no title thereto, the same having already vested in the first
grantee, and that the government acted in the second instance under misapprehension of the facts. "In the circumstances, the State
would be authorized to petition the court for cancellation of the deed, which it issued in error." The cancellation proceedings were
filed in October, 1956, the same year in which the correspondence between the Attorney General and the County Attorney seems to have
taken place. From the context of the letter quoted above, it would seem that, at no time before 1956 did the government know of the
existence of two deeds both executed by the Government, for the same piece of property. In fact, the Government has not alleged such
previous knowledge. According to the law we have cited above, laches could not be imputed where the petitioning party was ignorant
of the existence of the facts upon which the petition to cancel is based ; that is, before the year in which the action was brought.
The position we have taken, so far, with respect to laches, relates to an ordinary party, unlike this case where the Government is
the appellee. "Laches cannot be imputed to one who has been justifiably ignorant of the facts creating his right, and who therefore
has failed to assert it. Ignorance of the fact that defendants are invading or disputing plaintiff's rights is the same in effect
as ignorance of the right itself. Where the facts are known, ignorance of the law will not in general be a sufficient answer to the
charge of laches.

261 "While the rule just stated is general, it receives its most frequent and familiar application in suits for relief on the ground of fraud, where time begins to run not from the perpetration but from the discovery of the fraud, provided the discovery is made with reasonable diligence. The remedy will be given in such cases, although the statutory period of limitations has expired." 16 CYC. 169-170 Equity. In this case, the Republic of Liberia has petitioned the court to cancel a deed executed by the Government under misrepresentation of the facts and by mistake. In fact, the petition has alleged deception and fraud on the appellant's part, and that he concealed the fact that he knew the land he sought to acquire from the Government, was the bona fide property of Mr. Yancy, at the time that he presented his deed for the President's signature. There is no legal time limit within which the Government might not have brought an action to cancel a deed executed under such conditions of concealment, misrepresentation, misinformation, or even mistake. Laches will not run against the government when it becomes necessary to file suit to fulfil obligations under the terms of a contract, especially where it is shown that the government had been led into breaching her obligations by deceptive acts. "Laches on the part of its officers cannot be imputed to the government and no period of delay on the part of the sovereign power will serve to bar its right either in a court of law or equity when it sees fit to enforce it for the public benefit. . . ." BOUVIER, LAW DICTIONARY Laches (Rawle's 3rd Rev. 1914). In considering the first point of the answer, we would like to point out that the constitutional guarantee that no one should be deprived of his property but by judgment of his peers was never intended to protect the unlawful ownership of property. We do not think it could be convincingly contended that anyone could be deprived of what he never lawfully owned. In order that this provision of the Constitution may protect a citizen in the

possession of his property, he must be able to show that acquisition and possession are legitimate, and that the genuineness of his title is beyond dispute. The Republic of Liberia could not have given Mr. Davies property she no longer owned; therefore she could not protect him in the spurious ownership of some other person's land. Another point which was urged in the brief of the appellant is that ejectment should have been brought, since his right to lawful possession of the property would have had to be tried by jury. If ejectment had indeed been brought against him by Mr. Yancy, the deciding factor according to our law on ejectment would have been the dates of the two deeds; the older always taking preference. Mr. Yancy's deed was clearly shown to be more than six years older than that under which Mr. Davies claims. One wonders just how he expected to recover in ejectment. It should be clear to all that the Republic of Liberia could not have disposed of land she did not have; and if she executed a deed to that effect by mistake, or upon misrepresentation,

misinformation, concealment of facts, or by fraud, she had every legal right to move for its cancellation immediately the facts came to her knowledge. We are therefore of the considered opinion that the deed issued by President Barclay in 1935 to Mr. Davies, should be, and the same is ordered to be cancelled. The Circuit Court of the Fourth Judicial Circuit, Maryland County, is hereby commanded to carry out this order in keeping with the law controlling such proceedings. Affirmed.

Buchanan v Juah et al [1966] LRSC 7; 17 LLR 196 (1966) (20 January 1966)

JUAH KARPEH BUCHANAN, Appellant, v. KPEH PLOE JUAH, Heir and Administratrix of the Intestate Estate of KPEH PLOE, Appellee.
MOTION
FOR REARGUMENT OF APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 15, 1965. Decided January, 1966. A motion for reargument will be denied when the movant fails to show that the Supreme Court inadvertently overlooked any proper and pertinent argument on the prior hearing of the case.

On prior hearing, the Supreme Court affirmed a judgment in appellee's favor on a jury verdict in an ejectment action. Buchanan v. Juah, [1965] LRSC 34; 17 L.L.R. 79 (1965). Appellant's motion for reargument was denied.
Morgan, Grimes and Harmon Law Firm (J. Dossen Richards of counsel) for appellant.
Henries Law Firm (James H. Smythe of counsel) for appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court. At the adjournment of this Honorable Court in its March term last, an opinion in the above-entitled cause was delivered and judgment handed down in affirmation of the judgment of the lower court ordering appellee placed in the possession of her two-acre tract of land, the subject of an ejectment action. Thereafter, within legally specified time, appellant filed a motion for reargument, the three counts of which alleged : "1. That this court inadvertently overlooked an important and material matter of fact because plaintiff in her complaint alleged that defendant was unlawfully
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withholding and detaining 2 acres of land as speci-

fically

described in her complaint, it was incumbent upon plaintiff to have established this fact at the trial by competent and sufficient evidence, whereas, according to the records in this case, not a single witness for the plaintiff even testified with respect to the defendant being in possession of and withholding from the plaintiff the property sued for and described in her complaint. The fact that the appellant feels that this Court inadvertently overlooked is that the plaintiff failed to prove that the defendant was in fact occupying and unlawfully detaining the property of the plaintiff as sued for by her, which fact, if your Honors had taken it into consideration and had not inadvertently overlooked it, would have required a different judgment. Ci 2. That this Court took into consideration and decided the case principally on what the Court considered to be fraudulent action on the part of the appellant when in fact, no question of fraud was ever raised in the pleadings heard and decided at the trial, nor was the question of fraud argued by either party before this Court; hence appellant was taken by surprise when this Court took into consideration the question of fraud because she had no opportunity to argue said issue before this Court. The basic fact at issue to have been established was the unlawful withholding of the identical property sued for, which appellant claims was not done in this case. "3. That this Court also inadvertently overlooked the essential and salient fact that the piece of property which appellant is occupying forms no part of the 6o acres of land, a portion of which had been sold to the Government, and that no evidence on the part of the plaintiff apparent on the record in this case shows that the 2 acres of land owned by the defendant-appellant was a part of the land sold to the Government and if

the Court had not overlooked these important facts as well as the fact that the plaintiff in the court below did not prove the allegations made in her complaint, the only means by which an action of ejectment could have legally been maintained, the decision of this Court would have been favorable to the appellant." This motion is endorsed by Mr. Justice Wardsworth, one of the justices concurring in the judgment of this Court, who made the following notation thereon : "Because appellant strongly contended in her motion for reargument that the Court inadvertently overlooked a very pertinent issue in the final determination of this cause, I have thought it wise to sign this motion for reargument in order that she might be given an opportunity to convince the Court of the alleged inadvertence." Throughout the ages of our judicial system, the rules which govern the procedure of this Court have conferred on parties the privilege to move the Court for a reargument when good cause can be shown that some palpable mistake is made by inadvertently overlooking some fact or point of law. The reason for the rule is obvious. No single person or group of persons can acclaim himself or themselves perfect or all-sufficient in any profession although judges are expected to be learned in the law. However, the rule does not intend an abuse to be made of the privilege as would seem to be the concept of appellant's counsel in this case. As

a Court of dernier resort, it is our opinion that all appeals before us are subject to review on the records sent forward, and it does not appear that this review is circumscribed to any particular portion of such records to suit the whims and notions of any particular party in litigation, nor will we permit the Court to be castigated on misrepresentations and illusions. We will expatiate on this question later in this opinion but will now proceed to consider singly the grounds before us. Notwithstanding defendant's answer in the lower court

was dismissed on the law issues, yet it forms a part of the records before us and subject to review because the court ruling made thereupon was excepted to by the defendant. In this answer consisting of one solitary count, defendant averred the following: "Because defendant says that whilst it is true that plaintiff holds title deed to the property in question, said plaintiff is estopped and forever barred under the statute of limitations from recovering against defendant because defendant, her grantors and privies, have enjoyed undisturbed adverse possession of the said parcel of land for a period of more than 40 years. Defendant's late father purchased said property from Ephraim A. Andrews and Jama C. Andrews, his wife, in the year 192o, and later sold a portion of said property to the Republic of Liberia. The continued occupation of the remaining portion of said parcel of land by defendant, which occupancy she continues, is notorious and undisturbed, adverse possession, as appears more fully by copies of deeds herewith proferted to form a part of this answer." This was the only plea set up by the defendant in the lower court. A plea of the statute of limitations, as in this case, is one that completely acknowledges the title vested in the adversary but avoids by precluding the plaintiff from the right of possession because of the time in which adverse and notorious possession has been enjoyed. An exception to the court's ruling dismissing the aforesaid answer is made the first count in defendant-appellant's bill of exceptions. Again, besides the testimony of the plaintiff to the effect that the **land in question was her land**, Jacob Logan testified that he and other heirs of the late King Peter sold this land to plaintiff's mother and further that the plaintiff told him that defendant had encroached on the tract of **land they sold to her mother out of land** they still possess and for which they have the original deed. The de-

 fendant admitted in her statement in chief that plaintiff did go to her to inform her that she was encroaching on her land. Moreover, the metes and bounds laid in plaintiff's deed, which is far older than defendant's deed, were never questioned by the defendant; and when called by public notice for a resurvey of plaintiff's land, the defendant deliberately refused to be present either in person or by representative. In the face of all such facts and connecting links apparent in the record, nevertheless appellant contended that the court acted contrary to law. This Court has said often that in an action of ejectment the plaintiff is not to recover on the weakness of his adversary; nor has it happened in this case. With

regard to proof in an action of ejectment when title of the plaintiff to the premises is controverted under the general issue, he is required to establish the following facts : ( ) that he had the legal estate in the disputed land at the time of the filing of his declaration ; and, (z) that such legal estate was accompanied by a right of entry; and (3) that the defendant or those claiming under him were in possession of the premises at the time when the declaration in ejectment was delivered or filed. See 4 BOUVIER, INST. AM. LAW 66-72 §§ 3661-3671 (1851) . Under the foregoing, Count 1 of the motion not being tenable, the same is hereby dismissed. In Count 2, appellant alleged that the issue of fraud was never raised in the pleadings and that this Court raised that issue sua sponte and predicated its judgment thereon without giving appellant the opportunity to argue the question before this Court. For the benefit of this opinion, we will hereunder quote word for word Count 5 of plaintiff's reply and Count 2 of defendant's rejoinder which we are sanguine will expose the evil motives of the appellant in her unjustifiable attack against the competence of this Court. Count 5 of plaintiff's reply reads as follows :

"And also because plaintiff submits that the executor's deed proferted by the defendant is false, misleading, and untrue, for there could. not have been issued an executor's deed by the executors to the defendant when indeed and in truth the land purported to have been bought by defendant's father from Ephraim A. Andrews and Jama C. Andrews was sold to the Government of Liberia. Plaintiff gives notice that at the trial she will request a subpoena duces tecum for the production of the transfer deed and other documents issued to the Government of Liberia by defendant. And plaintiff submits that the land having been sold already, no executor's deed could be issued for a part of the land already sold to the Government. This act on the part of the defendant constitutes fraud and ground for dismissal of the entire answer." Count z of defendant's rejoinder reads as follows : "And also as to Counts 2-5, inclusive, of plaintiff's reply, defendant reaffirms and confirms the issues of plaintiff and the law and facts contained in defendant's answer and prays the dismissal of plaintiff's reply with costs against plaintiff." Without further commentary on this count of the motion, since recourse to the records is sufficient regardless of the dictates of the law in respect of fraud being raised in the pleadings, we will dismiss Count 2 of the motion ; and the same is hereby not sustained. Count 3 of the motion contains another misleading and false allegation. Here are the facts in connection therewith. Robert S. Karpeh of the City of Monrovia, Montserrado County, Republic of Liberia, was seized in fee simple of 40 acres of land known as Range No. 3, situated on Bushrod Island near the City of Monrovia. He willed this property to all of his children in equal proportions. A deed that had been registered and probated denominated the said 40-acre tract of land. The Govern-

ment of Liberia negotiated with the heirs to purchase the land and the aforesaid heirs engaged the services of one Fritzroy Williamson to do the survey. Williamson suggested that they increase the number of acres from 40 to 6o. They alleged that he found the land to be 6o acres instead of 4o. The alteration was affectuated by having the Bureau of Archives in the Department of State delete the figure 40 and insert instead 6o to complete their fraudulent aim. Actually it would not have been possible for Robert S. Karpeh's grantor, Ephraim Andrews, to have sold 6o acres of land for 40 when he had occupied the land for so long before he parted title. Moreover, in addition to this fraudulent increase of 20 acres over and above the acreage devised by Robert S. Karpeh, his heirs purportedly conveyed title to the Government of Liberia for 69.46 acres, or 9.46 acres in excess of the land they claimed title to even after having fraudulently increased the acreage from 40 to 6o without legal color of right. For this land they received in compensation from the Government the sum of $52,650. Now here is the background. Appellant and her brothers and sisters were willed 40 acres of land in Range No. 3 on Bushrod Island. They in their fraudulent contrivance increased their title to 6o acres and no more. Within the same range, as the evidence goes, they sold to the Government of Liberia 69.46 acres which was over and above the quantity of land to which they claimed title. Where then, did they obtain title to an additional tract of land in the same range to transfer to their sister, allegedly in return for services rendered? Obviously they had sold to the Government more than they owned in fee. So where could Juah Karpeh Buchanan, the appellant, get an additional tract of land from the same chain of title when they had sold more than they owned? It is clear that the heirs of Robert S. Karpeh owned no land in the area to convey to appellant and therefore her possession of appellee's land situated in Range No. 2

and contiguous to

Range No. 3 is an encroachment and a fraudulent attempt to deprive appellee of her fee simple right, which this Court will not lend aid to under any circumstances. "A naked possession of land by an intruder can not prevail against a paper title." Minor v. Pearson, 2 L.L.R. 82 (1912) Syllabus 2. These facts in connection with Count 3 of the motion for reargument were clearly stated in the opinion of this Court handed down at the close of its March 1965 term. It therefore cannot be conceded that this Court inadvertently overlooked any of the issues raised in appellant's motion for reargument. This opinion is also intended to call to a stop any further attempt to

abuse the privilege of reargument provided by the rules of this Court. The grounds laid in the motion being unrealistic and untenable in law and fact, the motion is hereby denied in its entirety and the clerk of this Court is hereby ordered to send a mandate to the lower court immediately ordering it to proceed to the enforcement of the judgment previously handed down in this case. And it is hereby so ordered.
Motion denied.

Buchanan v Ploe [1965] LRSC 34; 17 LLR 79 (1965) (18 June 1965)

JUAH KARPEH BUCHANAN, Appellant, v. KPEH PLOE JUAH, Heir and Administratrix of the Intestate Estate of KPEH PLOE, Deceased, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 18, 1965. Decided June 18, 1965. 1. When the answer in an ejectment action is dismissed for untimely filing, the action should be tried on a bare denial of the facts alleged in the complaint, particularly the facts as to plaintiff's title. 2. An answer not filed within the statutorily prescribed period of time is void ab initio and not merely voidable. 3. The requirement that issues of law be disposed of before the trial of issues of fact entails judicial consideration of the pleadings in reverse order. 4. In an ejectment action, a reply which pleads in avoidance of the answer for untimely filing is supersedeas to a plea in bar of adverse possession alleged in in the answer.

On appeal, a judgment on a jury verdict in an ejectment action was affirmed. Morgan, Grimes and Harmon Law Firm (J. Dossen Richards of counsel) for appellant. Henries Law Firm (Joseph F. Dennis and James H. Smythe of counsel) for

appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court. The records in this case show that Messrs Jacob Fay, Henry Logan, and Sambo Bee, heirs of the late King Peter, parted with title to z acres of land situated and lying on Bushrod Island, Monrovia, Montserrado County, Republic of Liberia, to one Kpeh Ploe of Monrovia, on the loth day of March, 1948, which land constitutes a portion of Block No. i on Bushrod Island aforesaid.
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Title deed for this tract of land was probated and registered in Vol. 6o, pages
274-276, on the 27th day of March, 1948. Kpeh Ploe, appellee's mother, enjoyed ownership of this parcel of land unmolestedly up to
the time of her death, leaving Kpeh Ploe Juah as the only heir of her body surviving. By petition to the probate court, Kpeh Ploe
Juah was given letters testamentary to administer her said mother's estate as sole administratrix. Observing later that Juah Karpeh
Buchanan was occupying the said tract of land, the aforesaid property of her late mother which she withheld from her, claiming title
thereto also for the purpose of evicting her, the within appellant, Kpeh Ploe Juah, instituted a suit of ejectment to recover possession
of the land predicated upon the title deed which she made profert of, and her case was filed on the 17th day of May, 1963, in the
Circuit Court of the Sixth Judicial Circuit, Montserrado County. The defendant was summoned on the day of the filing of the case,
but she did not file her answer to plaintiff's complaint until the 3oth day of May, 1963, a period of 13 days after she was returned
summoned ; and in her onecount answer she averred the following, pleading statutory limitation : "Because defendant says that whilst
it is true that plaintiff holds title deed to the property in question, said plaintiff is estopped and forever barred under the statute
of limitation from recovering against defendant because defendant, her grantors and privies, have enjoyed undisturbed adverse possession
of the said parcel of land for a period of more than 40 years. Defendant's late father's purchase of said property from Ephraim A.
Andrews and Jama C. Andrews, his wife, in the year 1920, and later sale of a portion of said property to the Republic of Liberia,
the continued occupation

of the remaining portion of said parcel of land by defendant, which occupancy
she continues is notorious, undisturbed, adverse possession, as appears more fully by copies of deed herewith proferted to form a
part of this answer, bear evidence of defendant's actual possession of the said parcel of land." It is very interesting, yet amusing,
to make a comment before passing on the deed in question under which defendant claims title and notorious, undisturbed, and adverse
possession of the land. **Defendant's late father, Robert S. Karpeh, died possessed in fee simple of a 40acre tract of land** which he purchased from Ephraim Andrews and his wife
during his lifetime. The deed for the said **land called for 40 acres of land** on Bushrod Island, Monrovia, adjoining Farm Block No.
2 owned by "Old Man Overton." The said appellant's father died and willed the identical 40-acre tract of land to his children, and
that paragraph of his last will and testament reads as follows : "I will and bequeath to all of my children an equal portion of 40
acres of land situated on Bushrod Island, near the City of Monrovia, County of Montserrado and Republic of Liberia, Range No. 3,

to them and their heirs in fee simple forever, said property having been purchased by me from Ephraim A. Andrews." Here the fraudulent intrigue is exposed. Although the deed for the property was for 40-acres of land and the testator willed the exact 40-acre block to his children, yet, long after the testator's death, the deed for the 40 acres was stealthily changed to refer to 6o acres, thus unauthorizedly adding 20 more acres by voluntary act. Defendant testified as follows whilst on the witness stand : "Then we got a surveyor by the name of Tarr Grimes and he went on the spot and surveyed the land. Tarr Grimes said to us : 'According to the metes and bounds of this deed, your land should be 6o acres in-

stead of 40.' I then said to him : 'According to the metes and bounds, the land is 6o acres and not 40' ; and we were happy." What a fraudulent contrivance! But still it did not rest at that point. Right here, we cannot forget that this tract of land was bought from a private individual and was in no way public domain. Besides that, it adjoined Block No. 2 then owned by "Old Man Overton" and is nowhere shown to have been connected with Block No. 1, a portion of which plaintiff bought; yet again defendant, continuing her statement in chief, testified further : "So we got in contact with Mr. Williamson, being an engineer, and asked him to be our agent, that is to say, map the land out and sell it for us, but before we could do this, he asked us to make an agreement with him. After the agreement, Mr. Williamson asked to see the deed for the property. We gave the deed to Mr. Williamson and the Mr. Williamson took the deed and checked. He said : 'Well, according to the metes and bounds of this deed, it should be 6o acres and not 40.' Mr. Williamson was the second surveyor who told us that the land was 6o acres and not 40. Before doing anything else, Mr. Williamson said : 'Let us go to the court and petition the court and correct the deed from 40 to 6o,' which we did ; and the court then wrote the Department of State asking them to correct the deed, changing 40 to 6o. After the correction Mr. Williamson said : 'Now I am ready to go on the land and check.' " What seems to be amusing is the complete fraudulent act of the appellant by adding zo acres of land to the deed which was held for 40 years. The property in question was not their property--it could have been public domain or privately owned ; and even if public domain, their method of obtaining the additional tract was a fraud on the Government of Liberia; and if not, then surely it was private property; which has now led to these ejectment

proceedings. Besides the additional 20 acres, they surveyed and sold 69.46 acres to the Government of Liberia for $52,650 and then retained the remnant of an acre which appellee claims to be a portion of the land bought by her father in 192o and which she claims to hold by deed from the executors of her father's estate for services

purportedly rendered by her to the estate--another inconsistent and illegal act of receiving land as an executor from the estate that she administered. We have taken the opportunity to review the record so that appellant's fraudulent contrivance in acquiring the deed in question would be completely exposed. Having done so without prejudice to either of the parties engaged in the litigation, we shall now proceed into the details of the appeal. The pleadings rested at the surrejoinder and His Honor James W. Hunter, presiding by assignment over the September 1963 term of the Circuit Court of the Sixtht Judicial Circuit, Montserrado County, heard the law issues and on the 31st day of October, 1963, made this ruling: "At the call of this case, Counsellor James Smythe of the Henries Law Firm announced representation for the plaintiff ; Counsellor C. P. Conger Thompson, of the Morgan, Grimes and Harmon Law Firm for the defendant. "The pleadings in this case travelled as far as the surrejoinder. The court observes in Count 1 of defendant's answer a law issue raised on the ground of limitation, from plaintiff recovering of the premises because of the fact that it was over 40 years; in other words, it was over the statute of limitations governing the recovery of real estate. The plaintiff in his reply exhibited a deed carrying a date of 1954. A deed signed 1954 up to the present could not fall under this provision of the statute of limitations. This part of defendant's answer, Count 1 is hereby overruled. Count 1 of plaintiff's reply attacks the answer as being

filed out of statutory time, this is to say, ro days after the service of the complaint on defendant and, according to the statute, defendant failed to answer until the 3oth day of May, and did answer 13 days after the service of the complaint on the defendant. Defendant denied the allegation and attributed the lateness to the negligence of the Sheriff of this court. The court staged an investigation and the sheriff denied the allegation made by the defendant. The bailiff who served the writ was also called to the stand and confirmed the defense of the sheriff that the writ was served within the prescribed time, but the defendant, through her own negligence, failed to make her answer within the time prescribed by law. The court having been satisfied by this investigation and being convinced that the officer of the court was not responsible for the negligence, hereby sustains Count r of the reply and defendant's entire answer is hereby dismissed and this case is hereby ruled to trial on a bare denial. And it is hereby so ordered." To this ruling the defendant excepted. At the March 1964 term of the circuit court, His Honor John A. Dennis, presiding by assignment, conducted a trial on the facts laid in plaintiff's complaint and a verdict was brought in favor of the plaintiff entitling her to the possession of the land. Exceptions were taken, a new trial denied, and an appeal taken on a bill of four counts after judgment was made affirming the verdict. Counts 3 and 4 are taken respectively against the final judgment rendered against defendant in the court below and the denial of defendant's motion for new trial, which, in our opinion, do not reflect much importance in law because the dismissal of defendant's answer automatically

placed her in a category where she could offer no affirmative defense; and the trial being regular, the jury, as sole triers of the facts presented in evidence by the plaintiff and defendant, were entitled under the law to find a verdict in favor of the plaintiff which

should not have been set aside on a motion for new trial. Hence in our judgment the court below did not err in denying the motion. We have carefully perused the record and are convinced that plaintiff did prove title to the land by a preponderance of evidence; and what is most noticed is that the defendant never denied plaintiff's title, which dates as far back as 1948, whereas the defendant's purported title under which she attempted to claim adverse possession is dated May 12, 1954, some 6 years later than the plaintiff's. Notwithstanding this fact, defendant was not denied the right of participation at the trial. This was in conformity with settled principles of procedure, and I quote: "Where the defendant's answer is struck from the record of the case, the cause must nevertheless be ruled to trial on its merits." Cavalla River Company, Ltd. V. Pepple, [1933] LRSC 13; 3 L.L.R. 436 (1933) Syllabus 3. Particularly in ejectment suits, the plaintiff is entitled to recover on the strength of her own title and not on the weakness of her adversary's ; and this was done to all intents and purposes according to the records before us; hence the judge did not err in rendering his judgment. We will consider Counts 1 and 2 of the bill of exceptions later in this opinion. When this case was argued before this Court, appellant's counsel strongly contended that it was reversible error for the trial judge to have disposed of Count 1 of defendant's answer in the court below in the manner in which he ruled by dismissing the same. This ruling of the trial judge we have already made a part of this opinion; hence there does not arise the necessity for us to do anything more than to make an appraisal of the soundness of his point of argument. Several opinions of this Court, as well as statutory provisions, require all issues of law raised in the pleadings in any given case to be disposed of before any issues of fact are tried. This obviously requires that the pleadings be considered in

 reverse order. In this case, the defendant filed an answer composed of only one count in which she acknowledged plaintiff's title to be a genuine one and set up a plea in bar on the ground of statutory limitation. The plaintiff in her reply, and in her first count, attacked the defendant for having failed to comply with the mandatory provision of the statute by filing her answer 13 days after she was summoned and furnished copy of her complaint; then in subsequent counts she denied defendant's right to recover under the statute of limitations because her chain of title descended from the late King Peter--a period longer than a hundred years. Those were the only two issues joined in the pleadings. The question that arises now from the arguments is whether it was necessary for the court to have considered the issue of statutory limitation

or that which went to the very foundation of the answer, that is to say, that it was filed three days after the time allowed by law.
The statute setting forth specifically the time within which defendant was required to file her answer provides that : "In an action in a court of record the defendant shall file and serve on the plaintiff his answer within ten days after the service of the summons and complaint on him unless otherwise provided by law or ordered by the court or unless additional time to answer is granted in accordance with the provisions of section 33 above." 1956 CODE 6:297. On this law it is conclusive that if the answer is not filed within the specified time it becomes void ab initio and not voidable under the legal maxim that that which is not legally done, is not done at all. In our opinion, there were two separate and distinct issues--the one in justification and the other in avoidance. The defendant pleaded adverse, notorious possession which went conclusively in justification of her right, if

well taken. The plaintiff, in her reply, pleaded avoidance in consequence of the fact that the defendant was legally precluded from filing a legal answer because she had not availed herself of the statutes controlling and not being filed in legal time rendered it a nullity. The Court had to be controlled by the pleadings, including the sheriff's returns made to the summons which alone brought the defendant under the jurisdiction of the court. But according to the records certified to us, notwithstanding the returns were examined and found to have been made on the 17th day of May, the day on which the writ was served, yet, in the exercise of patience and neutrality, the court conceded defendant's request for an investigation into the truthfulness of the sheriff's returns, although not legally necessary, and found the same to be true. Under such circumstances, we are moved to believe in the legal soundness of the course pursued by the court below. In our opinion, plaintiff's plea of avoidance being supercedeas to defendant's plea raised in bar, the court below did not err in dismissing defendant's answer and ruling her on a general denial to the truthfulness of the facts in the plaintiff's complaint. Counts i and 2 of the Bill of Exceptions are therefore dismissed. Summing up all of the facts and circumstances and the law applicable in this case including the evidence adduced at the trial, we are of the unanimous opinion that the evidence was sufficient to support the verdict and judgment for the plaintiff; and below is this law which clarifies the quantum of evidence necessary in a suit of ejectment: "To support an action of ejectment, the evidence must be sufficient to identify the land in dispute and establish, at least prima facie, the plaintiff's title or right of possession thereon. In order to prove a perfect or complete paper title the plaintiff in ejectment

must connect his title with the original source of title unless both he and his
adversary claim from a common source." i8 Am. JUR. 92-93 Ejectment §115.
Records in the instant case show that Jacob Logan, one of
plaintiff's grantors took the witness stand and testified that he, with other
heirs of the late King Peter, sold the land in question
to plaintiff's mother. He identified the deed as the exact one executed to
their grantee. He also testified that it was the very
tract of land which defendant was illegally claiming title to. Defendant,
when on the stand, confirmed the fact that the deed for
her father's property, as well as his will devised 40 acres of land which
they had increased to some 70 acres because the surveyor
told them that the metes and bounds laid in the deed showed more than 40
acres--a travesty of good conscience and justice which she
attempts to invoke to dispossess bona fide owners of their right of
possession to their fee simple property. Plaintiff having well
proven her case on a regular trial, the judgment of the court below is hereby
affirmed with costs against the appellant; and the
clerk of this Court is hereby ordered to send a mandate to the court below
ordering it to resume jurisdiction and proceed to enforce
its judgment. And it is hereby so ordered.
Judgment affirmed.

Dukuly et al v Wesley [1965] LRSC 33; 17 LLR 70 (1965) (18 June 1965)

M. DUKULY, Executor of the Estate of MARTHA WRIGHT, Deceased, and His Honor,
J. GBAFLEN DAVIES, Commissioner of Probate, Montserrado
County, Appellants, v. J. D. WESLEY, Commissioner of the Town of
Gardnersville, Montserrado County, Appellee.
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APPEAL FROM RULING
IN CHAMBERS ON APPLICATION FOR WRIT OF PROHIBITION TO THE COMMISSIONER OF
PROBATE OF MONTSERRADO COUNTY.

Argued March 22, 1965.
Decided June 18, 1965. 1. A commissioner of probate cannot order a survey of
land for the purpose of distributing or partitioning
the property of a decedent's estate. Application for such a survey must be
made to the circuit court. 2. Prohibition will lie to
restrain a commissioner of probate from acting in excess of statutory
jurisdiction. 3. Prohibition will lie to restrain a commissioner
of probate from ordering a survey of land in a location other than that
described in instrument offered for probation. 4. A township
commissioner may apply for prohibition to restrain a commissioner of probate
from ordering a survey of public land within the township,
including land conveyed by the Republic.

On appeal to the full Court, a ruling of the Justice presiding in Chambers granting prohibition
was affirmed.
M. M. Perry for appellants. 0. Natty B. Davis and C. H. Simpson for appellee.

MR. JUSTICE the Court.

WARDSWORTH

delivered the opinion of

This case originates or stems from an application made on October 9, 1963, by Momolu Dukuly, executor of
the estate of the late Martha Wright, for a survey of land allegedly situated, lying, and being in the settlement of Gardnersville,
Montserrado County, Republic of Liberia.
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This application being spread on the record, the clerk was
ordered to forward a copy of the minutes in which the said application was inserted to the commissioner of the settlement of Gardnersville,
requesting him to appear, if he so desired, and show cause why the application should not be granted. The said commissioner appeared
through his counsel, Charles H. D. Simpson who, by permission of court, spread his observation on record as follows: i. Because he
is in doubt as to whether Mr. M. Dukuly is rightly the executor of the testate estate of the late Martha Wright or whether he is
the counsel for the said estate. Because if he is the executor of the estate, he is under the law of this Republic wholly and solely
under the jurisdiction of this probate court and to function in said capacity as executor, he is required by law to be bonded. "411
which objector is ready to prove. /4 2. And also because objector says and strongly submits that the probate court is a court not
vested with the right to try and determine title, for title of right is vested in the Circuit Court of the Sixth Judicial Circuit,
Montserrado County, and should he be made to permit said survey to be conducted, it would be usurpation of functioning power, for
only the Circuit Court of the Sixth Judicial Circuit has jurisdiction to try and determine issue when title is involved. "411 which
objector is ready prove. "3. And also because objector says and submits that Count z of the application made to court is hypothetical
because executor has plainly set out that in 1888 there was no definite delimitation, and as such one cannot be and not be, for if
the boundary was set between Johnsonville and Gardnersville, then and in that case the question of definite delimitation does not
come in. Further to this, if it be permitted that such survey should be conducted, it would simply open a floodgate
"

to others to obtain land and/or realty in any part of the County of Montserrado without any restriction.
"All which
objector is ready to prove.

"4. And also because objector says and submits that the deed of the late Martha Wright specifically
sets out and states in unequivocal terms that the land now to be sought is located in Johnsonville, obviously it is the position
and right of the executor of said estate to locate the said 4o-1/2 acres of land in Johnsonville and not in Gardnersville. Moreover, diligent search has been meticulously made
and there cannot be found and/or traced any mandate from the Honorable Supreme Court of Liberia ordering this estate to be closed.
"All which objector is ready to prove.

"5. And also because objector submits and strongly contends that should he be permitted to
have any survey conducted in his township, it would tend to decide title which is beyond the jurisdiction and function of this court.
"Wherefore, in view of the foregoing facts, objector respectfully maintains that this court should not entertain the application
as made by the executor of the testate estate of the late Martha Wright. And this he respectfully prays.
"All of which objector in
duty bound will ever pray and stands ready to prove."

It would seem that neither the executor nor his counsel resisted the above-quoted
objections as entered upon the records of court; however, the commissioner of probate made the following ruling: "In view of the
circumstances already narrated and the law controlling in such cases made and provided, it is clear that the executor, who is under
the supervision of this court, applied to this court in the exercise of his function as executor of the said estate for an order
for competent surveyor to have the land traced

in keeping with the deed executed to the late Martha Wright
by the President of the Republic of Liberia who, in his official capacity, also guaranteed to defend, warrant and protect the said
Martha E. Wright. It is the opinion of this court that, in any case where the commissioner who is just an agent in the settlement
of the executive head of government, should have in his official capacity referred the matter to the chief executive for his intervention,
or the Department of Justice or the Department of Public Works and Utilities, the agents of the President. Under our law, not even
the township itself owns property in its own right except as deeded to it by the President of Liberia and/or by the Legislature through

legislative enactment. This not having been done, the action of the commissioner is null and void. His objections are therefore denied and the application made to this court for a competent government surveyor to locate the land stipulated in the deed executed by a President of this Republic be, and the same is hereby granted; and it is hereby so ordered." Counsel for the objector excepted to this ruling and gave notice that he would apply for writ of prohibition to restrain the respondent commissioner from carrying into effect his ruling in these proceedings. According to notice served on the respondent commissioner, the objector filed his petition for a writ of prohibition on the 4th day of November, 1963. We quote hereunder for the benefit of this opinion, Counts 1 and 2 of said petition: It . That on the first day's sitting of the monthly and probate court, said day being the 9th of October, 1963, M. Dukuly, executor of the estate of Martha Wright, deceased, of the City of Monrovia, made application to court to grant him the right to survey 40-1/2 acres of land situated, lying and being in the Township of Gardnersville when, in deed and in

truth, the said deed of the testator specifically and expressly states that the said 40-1/2 acers of land sought to be surveyed are located in the Settlement of Johnsonville. "All of which petitioner is ready to prove. "2. And petitioner further petitions and says that on the i6th day of October, 1963, his objections objecting to the granting of said application as requested by M. Dukuly executor were spread upon the record of court by his counsel showing the reason and logically stating why said application should not be granted. Arguments were submitted on the 29th of October, 1963 showing in substance that the judge of the monthly and probate court has no jurisdiction over the subject matter directly or indirectly and that the judge is not legally clothed and vested with right to have any survey conducted in the township of Gardnersville and/or elsewhere, for it is purely civil which only the Sixth Judicial Circuit is authorized under the law to request and/or order the surveying of land in matters of ejectment. "All of which petitioner is ready to prove. In countering the petition of the petitioner, the respondent judge filed returns containing six counts which we do not consider sufficiently meritorious to engage and/or claim our judicial attention in passing on same; however, in respect of the issue raised and stressed in Count 1 of the said returns, the respondent commissioner, said : "In that there is no legal right of the petitioner alleged to be assailed by the respondent commissioner, that is to say, the petitioner being only a commissioner of Gardnersville, as he styles himself, and not averring any right to or title in the land sought to be surveyed, either from a grant of the sovereign (the Republic of Liberia) or any other source to him or to the settlement of Gardnersville, he (the commissioner-petitioner) is not entitled to any relief sought by him in these proceedings."

Upon first glance and before second thought is given an opportunity to mature, the contention of the respondent commissioner would seem to have some legal merit; but after due consideration and survey of the facts and law relative to the township commissioner, it can be readily observed that the position assumed by the respondent commissioner in his returns is either an overlook of the law or a misconception thereof. The statute defining the duties of township commissioners provides that : "They shall have the care of all public property in their respective townships." 1956 CODE 21:85 (b). The **land** in question, subject of these proceedings, was ceded by the grantor (Republic of Liberia) to the grantee over the signature of H. R. W. Johnson, President of Liberia. In the body of the deed conveying 4o-1/2 acres of **land, it is stated : "And bounty land** certificate having been legally issued. . . ."--a clear and definite indication that the **land** involved in these proceedings was intended to be carved out from the public domain. Therefore, under the statute prescribing the duties of the petitioner as a township commissioner, he was legally bound to conserve the interest of the public **land** within the limits of his township. It is peculiar and indeed strange to observe that the respondent executor did not file returns in keeping with law and procedure. On the other hand, the respondent probate commissioner, the nominal party whose position should have been defended by the respondent executor was the only one who filed returns to petitioner's petition in these proceedings. The respondent executor in these prohibition proceedings, being a former judge of the probate court, is fully aware of the fact that the probate commissioner is not clothed with legal authority to order the survey of larid for the benefit of distribution or partitioning of an estate. Rather, a petition for partitioning an estate should be filed in the circuit court of the county in which the estate or property is situated and it is the duty of the commis-

sioner appointed for the purpose to employ a surveyor with necessary assistants to aid them in such partition. Barring this, except in case of ejectment and/or arbitration in which survey of **land** may be authorized by circuit courts, the probate court is without legal authority to grant petition or application for the survey of **land**. Being in complete agreement with the ruling of the Justice presiding in Chambers, we shall quote the concluding portion of said ruling as follows : "Now in considering these five points in relation to the ruling given thereon by the probate commissioner, which ruling has resulted in a petition for prohibition there would seem to be a number of questions needed to be answered. For instance : "1. Where the location of real property is the subject of dispute, and where such dispute could only be resolved by the delimitation of a controversial boundary line between two settlements is the probate court clothed with the legal authority to give any order for proper discovery of the property? "2. Where the probate

court undertook to give such an order and the piece of property was surveyed and an executor's deed issed therefor, and later when official delimitation of the boundary between the two settlements was established and the piece of property was found to have been located in the wrong settlement, wouldn't such an act of the probate commissioner be the cause and occasion of useless litigation and be responsible for unwarranted expense to innocent parties in the future? "3. Where the commissioner of Gardnersville had permitted 4.o-1/2 acres of his township's **land to be surveyed for disposition without protest to satisfy a public land** grant intended to be carved out of the public domain of another settlement, wouldn't such an irresponsible act of dereliction on his part warrant his removal from office as being incompetent to protect pub-

lic property left in his care and under his supervision? It is an elemental governmental procedure, that no public property can be disposed of in the settlement without a certificate from the commissioner certifying the property to be unencumbered; for only then would the President feel safe to sign a deed. "4. Where a public **land** sale deed referred to property as in one settlement and the probate court ordered the property located in another settlement contrary to the expressed terms of the deed, wouldn't this be tantamount to an attempt to fix the exact location of real property? But does the probate court have such legal authority? "Under the statutes of Liberia, the extent of the jurisdiction of the monthly and probate courts is limited to areas specified in Chapter 27 of Title 8 of the 1956 Code. Nowhere in the law of Liberia has the probate court been clothed with legal authority to assume jurisdiction beyond these areas; so if and when it is discovered that jurisdiction over other matters is sought to be assumed by the probate court, it would seem reasonable to conclude that the said jurisdiction was not given by law. In every such case prohibition will lie. "There are quite a few issues raised in the returns which, in our opinion are not relevant to the only issue involved; that is to say, that the probate court had no legal authority to decree survey of **land** devised in one settlement to be located in another. Especially should this have impressed itself upon the probate commissioner when he was informed that there was dispute as to the proper boundary line between the two settlements and that the order which he gave could have resulted in uncertain execution and mistaken identification of **land** sought before proper delimitation of the boundary line , had been made. I might have been much more prepared to see his view if the survey had

been attempted in the settlement of Johnsonville where the will asserts the property to be located ; but even then there are complications which would have had to be ironed out. "In view of the foregoing, we have no hesitancy in ordering the issuance of the peremptory

writ of prohibition as prayed for in the petition. And the clerk of this Court is ordered to send a mandate to the court below commanding it to desist from further enforcement of the order to survey land in Gardnersville to satisfy the devise in a will which calls for land in Johnsonville. Costs of these proceedings are ruled against the respondent executor. And it is so ordered." Therefore and in view of the foregoing, we are of the considered opinion that the ruling of the Justice presiding in Chambers should not be disturbed but sustained and upheld with costs against the respondent executor. And it is hereby so ordered.
Ruling affirmed.

In re Intestate Estate of Nagbe v Nagbe [1982] LRSC 59; 30 LLR 278 (1982) (9 July 1982)

IN RE: THE INTESTATE ESTATE OF THE LATE S. B. NAGBE, SR., by **S. B. NAGBE, JR.** Appellant, *v.* **SARAH NAGBE**, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: May 5 & 5, 1982. Decided: July 9, 1982.

1. Where the legal requirements for the closing of the estate including the payment of government tax fees, and the equal division of the estate among the lineal heirs, are not met, it is proper for the Probate Court to order the estate reopened.

2. The court may declare a witness hostile, upon application of a party, if the testimony of the witness is contrary to his earlier statement, inherently impossible, irresponsible or hostile, or shows that he is biased against such party.

3. In exercising its exclusive jurisdiction over all testate and intestate matters, the Probate Court may order rents accruing from property under its jurisdiction, held in escrow so as to protect the property from waste and misuse.

4. The tendency of modern decisions is to disregard technicalities and to treat all uncertainties in a conveyance as ambiguities subject to be cleared up by resort to the intention of the parties as gathered from the instrument itself, the circumstances attending and leading up to its execution, and the subject matter and the situation of the parties as of that time.

5. In the application of rules of construction to terms used in deeds, ordinarily 'or' implies the alternative and "and" the conjunctive; but where the obvious intention so requires, the word 'and' will be read as 'or' and "or" will be read as 'and'.

6. To constitute a joint tenancy, the four unities must exist, unity of interest, unity of title, unity of time, and unity of possession.

7. The practice of a father or mother making his or her son or daughter co-lessor of a property owned by him or her, does not in any way create or confer a joint tenancy.

Upon the death of S. B. Nagbe Sr., one of his three lineal heirs, S. B. Nagbe, Jr., was granted Letters of Administration to administer his intestate estate. In filing the inventory of the estate to the Probate Court, S. B. Nagbe, Jr., left out 5 acres of **land** located in Vai Town with commercial buildings thereon, on grounds that the said property was not part of the estate in that the deed for the five acres is in his name and that of his late father thereby creating a joint tenancy. On the basis of the inventory filed and a petition duly filed, the Probate Court ordered the estate closed.

Subsequently, one of the three lineal heirs, petitioned the Probate Court to reopen the estate on grounds, among others, that S. B. Nagbe, Jr. was appointed without reference to them; that he closed the estate without distributing the properties among the lineal heirs; that she and her sister did not know what really comprised the estate; and that they did not enjoy any benefit of said estate. Lastly, petitioner contended that S. B. Nagbe, Jr. was depriving her and her sister of the entire estate. The Probate Court, upon entertaining arguments on the petition and the resistance thereto, granted the petition and ordered the estate re-opened, holding that the estate was closed without the statutory requirements having been met, that is, without the payment of government tax fees and the equal distribution of the estate among the lineal heirs.

After the re-opening of the estate, and upon petition duly filed by Sarah Nagbe, Christiana Nagbe was appointed as co-administrator to join S. B. Nagbe, Jr., to administer the estate of their father. The Probate Court also ruled that all the properties of the late S. B. Nagbe including the five acres that S. B. Nagbe had excluded from the inventory, should be equally distributed among the lineal heirs. S. B. Nagbe, Jr. was also ruled to account for all monies he had collected from the estate as rents. It is from this ruling that S. B. Nagbe, Jr. appealed to the Supreme Court.

S. Raymond Horace appeared for appellant. *S. Edward Carlor* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court

The late S. B. Nagbe, Sr. of Bushrod Island, Monrovia, Montserrado County, died intestate on the 28th of May, A. D. 1973, at the John F. Kennedy Hospital of the City of Monrovia. At the time of his death, he was seized of both real and personal properties and was survived by three children, S. B. Nagbe, Jr., Sarah and Christiana Nagbe, and his widow, Mrs. Sanpon Gbadeh Nagbe. S. B. Nagbe, Jr., petitioned the Monthly and Probate Court for Montserrado County for letters of administration to administer the intestate estate of his late father and on June 14, 1973, by orders of His Honor H. Victor Stryker, then probate judge presiding, he was granted letters of administration to administer said estate. In filing the inventory of his late father's properties, S. B. Nagbe, Jr. did not include the 5 acres of **land** situated in Vai Town on which there are commercial buildings which are the bone of contention. But instead, he made a notation on the inventory of August 14, 1973, as follows:

"Note: Vai Town lot where SATCO is has been left out."

On November 27, 1974, S.B. Nagbe, Jr. petitioned His Honor G. C. N. Tequah, then Acting Probate Commissioner presiding over the Monthly and Probate Court for Montserrado County to have the estate closed without distributing the estate to the lineal heirs of the late S. B. Nagbe, Sr. and, the judge decreed on December 4, 1974, declaring the said estate closed. Christiana Nagbe, one of the sisters of S. B. Nagbe, Jr. petitioned His Honor R. D. Urey, then Probate Judge, on November 8, 1976 to reopen the estate on the grounds that her brother B. Nagbe, Jr. applied for letters of administration after their father's death without any reference to them. Secondly, that when he was granted the letters of administration, he closed the estate without distributing the properties of the late S. B. Nagbe, Sr. among the lineal heirs, who according to statute are to inherit from their late father equally. Thirdly, that she and her sister did not know what really

comprised the estate and did not enjoy any of the benefits of said estate. Lastly, that S. B. Nagbe, Jr. was depriving petitioner and her sister of the entire estate.

The aforesaid petition was resisted by S. B. Nagbe, Jr. In his resistance, S. B. Nagbe, Jr. claimed that petitioner and her sister had benefitted from the estate by receiving large sums of money from the rental of the estate as well as their share of other legacies thereto belonging prior to the closing of the estate. He also maintained that petitioner was estopped from making such requests to the court at that stage since she was present in Monrovia when respondent was appointed as administrator, and remained in the City of Monrovia up to the time the estate was closed, especially so when she suffered no physical disability which would have prevented her from raising these issues. He further contended that the petitioner had no authority to petition court for her sister who was living in foreign parts since she did not have any legal power of attorney from her sister, Sarah Nagbe; and finally he was never charged with maladministration of the estate.

The court ruling on the petition and resistance held that if at all the estate was closed, it was closed without the statutory requirements in that there was no evidence that the estate has been distributed among those that are entitled to it and that the Government tax fees on the inventory have not been paid. The petition for the reopening of the estate was therefore granted on June 15, 1977.

Sarah Nagbe, one of the lineal heirs of the estate moved the court on August 6, 1977 for permission to nominate an administratrix for qualification and to have S. B. Nagbe, Jr. to account for the rents he had collected and received from tenants who were occupying the houses on the estate since May 28, 1973 after the death of their father. She contended that, since the reopening of the estate on June 15, 1977, no one had been appointed to administer the estate up to August 6, 1977, nor has anything been done. She therefore prayed the court to permit her to nominate Christiana Nagbe, one of the lineal heirs, as the sole administratrix of their late father's estate and that S. B. Nagbe, Jr., be ordered to account for his stewardship as Administrator of their father's estate from May 28, 1973 up to the time of the granting of her motion.

In his resistance to this motion, respondent contended that he had not committed any acts to warrant his replacement because no charge has been preferred and established against him to justify the making of such motion; that as administrator he is not accountable to the heirs of said estate but he is only to report to the Probate Court on matters relating to his office, as administrator of the estate, and that he forms no objection to Christiana Nagbe associating with him as administratrix, but strongly objected to her being the sole administratrix of the estate. On August 25, 1977 the court ruled on the motion and held that the issues raised in the motion were

allegation of facts and needed proof and were therefore ruled to trial on August 31, 1977. There was no exception taken to this ruling as revealed by the records.

After conducting trial, Judge Gladys K. Johnson, decided on the 27th of May 1980 that all the properties of the late S. B. Nagbe, including the 5 acres of **land** should be shared equally among the lineal heirs, namely S. B. Nagbe, Jr., Sarah Nagbe and Christiana Nagbe. The Judge also ruled that Christiana Nagbe should join S. B. Nagbe, Jr. to jointly administer the intestate estate of their late father. S. B. Nagbe, Jr. was also ruled to account for all money he had collected from the estate as rents since he closed the estate in 1974 and to file his report within two weeks with the clerk of the probate court. Respondent being dissatisfied with this decision has appealed to this Court on an eighteen-count bill of exceptions. The counts which we consider germane to the determination of this case are counts 1, 10, 17, and 18. Count one refers to the reopening of the estate on the ground that the estate was not distributed to the lineal heirs and non payment of government tax fees on the inventory; while count ten deals with the trial court's declaration of appellee's witness, who is also the appellee herein, as hostile.

The judge did not err in reopening the estate because the legal requirements as provided by statute were not met. Government tax fees had not been paid and the estate was not divided equally among the lineal heirs. Decedents Estates Law, Rev. Code 8: 3.2(b), 3.4 and 121.2 (2). A party may request the court to declare his own witness hostile if his testimony is contrary to his earlier statements, inherently impossible, irresponsible or hostile or shows that he is biased against such party. Civil Procedure Law, Rev. Code 1: 25.19 (3). A writ of subpoena duces tecum was prayed for, issued and served on Respondent S. B. Nagbe, Jr. to produce certain documents including the account books of the late S. B. Nagbe, Sr., and, when questioned on the witness stand, he told the court that he did not have any document or account books, even though he had made several withdrawals from the accounts of the late S. B. Nagbe, Sr. for burial and other expenses, and had given some amounts to his sisters and stepmother. The judge was therefore correct in granting the request to have the witness declared hostile. Counts 1 and 10 are therefore overruled.

Count 17 reads "that on the 4th of May A. D. 1979, Your Honour granted the petitioner's application for sequestration of rents accruing from the 5 acres of **land** on Bushrod Island against the resistance of respondent; to which said ruling of Your Honour respondent then and there excepted." The Probate Court has exclusive jurisdiction over all testate and intestate matters. The court therefore rightly ruled to have the rents accruing from the 5 acres of the **land** on Bushrod Island kept in escrow because said **land** is still in dispute, especially so when the dispute is before the same Probate Court which is to protect said property from waste and misuse. Decedents Estates Law, Rev. Code 8: 102.1. Count 17 is not conceded and therefore overruled.

We quote count 18 word for word:

“That on the 4th day of June A.D. 1980, Your Honour gave a final ruling in the S. B. Nagbe, Sr., matter, including the five acres on Bushrod Island belonging to the three heirs of his body, namely, S. B. Nagbe, Jr. be required to account within two weeks for all money collected since he closed the estate in 1974 and appointing Christiana Nagbe as co-administratrix of the estate of S. B. Nagbe, Sr. (See Ruling). To which said final ruling of Your Honour, respondent there and then excepted and announced an appeal to the People’s Supreme Tribunal sitting in its October Term, 1980.” This is the crux of the whole case. Therefore, the question is whether the 5 acres of **land** situated on Bushrod Island is part and parcel of the late S. B. Nagbe’s Sr. intestate estate or whether this **land** belongs to S. B. Nagbe, Jr. by virtue of a joint tenancy?

S. B. Nagbe, Jr. who administered the intestate estate of their late father from June 14, 1973 to December 4, 1974 excluded the five acres situated on Bushrod Island with houses thereon from the inventory, from which houses respondent allegedly receives rents, on the ground that the deed for the five acres is in his name and that of his father thereby creating a joint tenancy. Respondent also contended in his argument that his late father gave cognizance to this joint tenancy when he, S. B. Nagbe, Sr., made him, S. B. Nagbe, Jr., co-lessor of this five acres to different tenants. We quote the deed, subject of this contention:

“TO ALL WHOM THESE PRESENTS SHALL COME: whereas it is true Government to induce the Aborigines of the country to adopt civilization and to become loyal citizens of and whereas one of the best means thereto is to grant **land** in fee simple to all those showing themselves fit with the rights and duties to full citizenship and whereas S. B. Nagbe of the settlement has shown himself said rights and duties.

Now therefore for and in consideration of the various duties of citizenship hereafter to be legally performed by the said S. B. Nagboy and Tangbeh Nagboy, I, E. J. Barclay, President of Liberia, for myself and my successor in office have granted and by these presents give, grant and confirm unto the said S. B. Nagboy Tangbeh Nagboy his heirs, executors, administrators and assigns forever that piece or parcel of **land** lying being in the settlement of Bushrod Island in the County of Montserrado and bearing in the authentic records and the number (1) one and bounds and described as follows: Commencing at the northeast angle of adjoining lot thence running north 5 chains; east 5 chains; south 5 chains; west 10 chains, and contains 5 acres of **land** and no more.

TO HAVE AND TO HOLD the above granted premises together with all and singular the buildings, improvements and appurtenances thereof and thereto belonging, to the said S. B Nagboy and Tangbeh Nagboy, heirs, executors, administrators or assigns forever. And I, the said E. J. Barclay, President as aforesaid for myself and my successors in office do covenant with the said S. B. Nagboy and Tangbeh Nagboy their heirs, executors, administrators or assigns that at the ensealing hereof I, the said E. J. Barclay, President as aforesaid by virtue of my office had good right and authority to convey the aforesaid premises in fee simple. And I, the said E. J. Barclay, President as aforesaid and my successors in office will forever warrant and defend the said S. B. Nagboy and Tangboy Nagboy their heirs, executors, admini-strators or assigns against the lawful claims of all persons to any part of the above granted premises."

The records in this case reveal that S. B. Nagbe, Sr. was also called Tangbeh Nagbe. Nowhere in the records have we dis-covered that S. B. Nagbe, Jr. was named S. B. Nagbe or Tangbeh Nagbe in 1931 when the deed in question was executed, even though he was 13 years old then. Counsel for respondent admitted that respondent was named S. B. Nagbe, Jr. after his return to Liberia from Nigeria in 1957. Christiana Nagbe asserted that S. B. Nagbe, Jr. was known and called by the name Francis Nimley prior to his return to Liberia from Nigeria. Although no other witness corroborated this testimony of Christiana Nagbe, yet respondent S. B. Nagbe, Jr. never refuted this allegation when he took the witness stand.

The burden of proof rests on a party who alleges a fact unless where the subject matter of a negative averment lies peculiarly within the knowledge of the other party. Civil Procedure Law, Rev. Code 1: 25.5(1). The respondent S. B. Nagbe, Jr. having alleged that the deed for the five acres of **land** on Bushrod Island creates a joint tenancy between his late father and him, it was incumbent upon him to have proved at the trial that his name was either S. B. Nagbe or Tangbeh Nagbe in 1931 when the deed was executed, since the only grantees in said deed are S. B. Nagbe and Tanbeh Nagbe. Instead, he and the other lineal heirs, Christiana and Sarah Nagbe, testified that their late father was known and called by the names S. B. Nagbe and Tanbeh Nagbe; S. B. Nagbe being his civilized name while Tanbeh was his native name. Counsel for S. B. Nagbe, Jr. argued that the deed creates a joint tenancy between S. B. Nagbe, Sr. and S. B. Nagbe Jr. as indicated by the word "and". He contended vehemently that the word "and" could not have referred to one person. Respondent's counsel further argued that S. B. Nagbe, Sr. recognized S. B. Nagbe, Jr. as a joint tenant when he made him co-lessor for the property in question. Although the lease agreement was testified to, it was never pleaded, or offered, or admitted into evidence. Therefore, we have no means of perusing it because it does not constitute a part of the records before us in this case.

The general rules of construction state: “In the consideration of the application of rules of construction to deeds, it has been pointed out that all rules of construction are simply means to a given end, being those methods or reasoning which experience has taught are best calculated to lead to the intention, and generally no rule will be adopted that leads to the defeat of the intention. That is to say, the primary rule to be observed is that the real intention of the parties, particularly that of the grantor, is to be sought and carried out whenever possible, when contrary to no settled rule of property which specifically ingrafts a particular meaning upon certain language or when not contrary to or violative of settled principles of law or statutory prohibitions. The rule giving paramount emphasis to intention is established by the effect of statute in some jurisdictions.

The tendency of modern decisions is to disregard technicalities and to treat all uncertainties in a conveyance as ambiguities subject to be cleared up by resort to the intention of the parties as gathered from the instrument itself, the circumstances attending and leading up to its execution, and the subject matter and the situation of the parties as of that time. Hence, in the construction of deeds surrounding circumstances are accorded due weight. In the consideration of these various factors, the court will place itself as nearly as possible in the position of the parties when the instrument was executed.

Where the intention of the grantor clearly appears from the face of a deed, effect will be given thereto, however, unusual the form of the deed, unless the repugnancy in its clauses is such as to render the deed utterly void.” 16 AM. JUR, *Deeds*, § 168.

The deed for the five acres is an aborigines deed and the statute relating to the granting of aborigines deed provides:

“Allotments of public lands to aborigines who become civilized:

Aborigines of the Republic of Liberia who shall become civilized shall be entitled to draw public lands to the same amount as immigrants and to receive deeds to such lands under the provisions of section 51, paragraph 2 of this chapter; provided that an aborigine who has drawn or shall draw lands under the provisions of this section shall be entitled to a deed in fee simple for such **land** only when (a) he shall have completed a frame dwelling house thereon covered with plank, sheet iron, tiles, or shingles, or a house of stone, brick, logs, or mud, of sufficient size to accommodate himself and family; and (b) If the **land** is farmland, he shall have brought at

least one quarter thereof under cultivation by planting coffee trees, palm trees, rubber, cocoa, or other trees or plants bearing marketable products." 1956 Code 3: 53.

The intent of the grantor at the time he executed the deed was to grant **land** in fee simple to aborigines who had shown themselves fit with the rights and duties of full citizenship as one of the best means for them to adopt civilization and to become loyal citizens. As a precondition for the granting of such a deed, the aborigine selecting or drawing the **land** was required to build a dwelling house on said piece of **land** large enough to accommodate himself and his family, or if a farm **land**, he was required to have brought at least one quarter of the **land** under cultivation as specified in Section 53 (a) and (b) quoted above. In the instant case, the deed unequivocally provides in the first paragraph among other things: ".... and whereas S. B. Nagbe of the Settlement has shown himself of said rights and duties." Although S. B. Nagbe, Jr. was allegedly thirteen years old in 1931 when the deed was executed, there is no mention of S. B. Nagbe, Jr. in the deed as one of the grantees.

From these surrounding circumstances, we are of the opinion that the deed in question was granted to the late S. B. Nagbe who was also known by his native name Tanbeh Nagbe in keeping with Section 53, *Allotments of Public Lands to Aborigines* as, cited hereinbefore, absent any proof that the name S. B. Nagbe or Tangbeh Nagbe refers to another person other than the late S. B. Nagbe.

With reference to the construction of the word "and" we quote the following authorities:

"'And'; 'or'. In the application of rules of construction to terms used in deeds, ordinarily 'or' implies the alternative and 'and' the conjunctive; but where the obvious intention so requires, the word 'and' will be read 'or' and 'or' will be read 'and'." 16 AM JUR, *Deeds*, § 250.

The "and" therefore in the deed has to be read "or" since the two names refer to the same person, one being his civilized name and the other his native name. The only person who can legally claim under the deed in question is S. B. Nagbe or Tangbeh Nagbe, but the claimant in this case is S. B. Nagbe, Jr. and there is no S. B. Nagbe, Jr. in the deed before us as grantee.

The contention of respondent's counsel that "the subsequent act of S. B. Nagbe, *inter alia* Tangbeh Nagbe, who are known as S. B. Nagbe, Sr. and S. B. Nagbe, Jr. by alienating the said

property and leasing the very same property covered by the deed for the five acres of **land**, by a matter of logic, conferred upon them joint tenancy," is not conceded. To constitute a joint tenancy the four unities must exist - unity of interest, unity of title, unity of time and unity of possession. The practice of a father or mother making his or her son or daughter co-lessor of a piece of property owned by him or her is a common practice in this jurisdiction, especially among the aborigines, and does not in any way create or confer a joint tenancy.

In view of the prevailing circumstances, the facts and laws cited, we are left with no choice but to affirm the judgement of the court below. The judgement of the lower court is therefore affirmed. And it is hereby so ordered.

Judgment affirmed.

MR JUSTICE MABANDE *dissents.*

On the 28th day of May, 1973, a truly foresighted man, S. B. Nagbe, Sr. went to the great beyond at the will of our Creator. Dispute, however, soon arose among his heirs concerning the ownership of five (5) acres of **land** located in Vai Town, Monrovia. This Court is now called upon to determine whether or not that parcel of **land** constitutes a part of the intestate estate of the late S. B. Nagbe, Sr.

The history of the **land** in controversy goes as far back as 1931, when, according to the records, S. B. Nagbe, Sr., obtained an aborigines grant of **land** from the Republic of Liberia to "S. B. Nagbay and Tangbeh Nagbay. The phrase "S. B. Nagbay and Tangbay Nagbay" appearing throughout the deed is the sole issue joined by the parties which the trial court declared to be ambiguous and therefore requiring construction. At the time of the grant, S. B. Nagbe, Jr. was 13 years of age.

The issues presented for our determination of this controversy are: (1) whether the wordings of the deed are ambiguous to warrant a construction? and (2) what should be the construction of the coordinating conjunction "and" joining the two proper nouns in the deed?

I have declined to vote for affirming the judgment of the trial court for reasons that the language of the deed warrants no consideration and that the construction given to the entire deed, especially the coordinating conjunction "and" appearing in the deed and the entire circumstances surrounding the conduct of the deceased and his surviving son, S. B. Nagbe, Jr., during the years prior to the death of S. B. Nagbe, Sr. compulsorily and convincingly dictate a reversal of the judgment of the trial court on the sole ground that there is no ambiguity in the deed.

The Anglo Saxon meaning of the coordinating conjunction "and" means plus, or in addition to. This is the ordinary public and general meaning of the word "and", as used in the English language and general business circles.

As deeds are made for use by the public, if there is an ambiguity in the meaning of any word, phrase, or phrases appearing in them, the ambiguity should be construed in the light of the ordinary meaning and understanding of that word, phrase or phrases by the public. The public understanding of an ordinary and unscientific term or word should never be overlooked by courts in construing meanings for the public. The records of the trial court also indicate that since the return of S. B. Nagbe, Jr., from Nigeria to his homeland, he and his late father had in their business relation on several occasions considered themselves as joint owners of the said **land**.

Even in the case *Nettles v. Litchman*, 152 SE2d. 450; 91 ALR 1455, 1458 (1934), it was held that:

"It is the well settled rule that where the language of a deed is ambiguous, the intention of the parties may be ascertained by a consideration of the surrounding circumstances existing at the time of its execution, and for this purpose the court will place itself as nearly as possible in the position of the parties when the instrument was executed. To ascertain the intention with respect to the property conveyed, reference may be had to the state of facts as they existed when the instrument was made and to which the parties may be presumed to have had reference."

The prevailing circumstances at the time of the execution of the deed in issue were the existence of the father and the son as the sole surviving members of the family for the protection of whose interest the deed was procured. The son was the only and most likely person intended to have possessed and used the realty in conjunction with the father. This was the common, acceptable and acted upon intention of the father, purchaser of the **land**, up to the time of his demise.

In the case *Weekley v. Weekley*, 27 SE2d 591, 150 ALR 689, 694 (1943), it was held that:

"If the language of a deed be unambiguous, and the language employed has a common and accepted meaning, there would be no reason why we should seek to attach thereto a meaning and interpretation different from that commonly accepted."

The general surrounding circumstances with respect to the issuance of the deed and the past years of business and family dealings between the father and the son clearly showed that there was no ambiguity in the deed, and that therefore, the deed required no interpretation. A valid deed is always made in the name of a living being. The children born in later years could therefore not have been named in the deed.

In the case *Hanks v. McDanell*, 210 SW2d 784, 17 ALR2d 1, 4 (1948), it was held that:

"There is thus presented to us the question whether or not the ancient and universally applied rule by all courts that the intent of the maker of a written document, as gathered from its four corners, shall prevail, unless such intent conflicts with some statutory provision within the jurisdiction or is against public policy. That rule is referred to generally as the cardinal rule for the construction of written documents, and is especially applied to deeds and wills. It is also described as the "Polar Star" interpretive rule, which designation this court has adopted in a number of its opinions."

A strict or even liberal application of the rule confirms the unambiguity of the word "and" in the deed. These guides for the construction of a deed are supported by several other legal authorities.

"AND"; "OR"

As used in deeds, the word "and" ordinarily implies the conjunctive while "or" ordinarily implies the alternative, or is used as a conjunctive to indicate substitution. There is a presumption that

when the word “or” is used in the habendum of a deed, the grantor intended it to express its ordinary meaning as a disjunctive, and that he did not intend to use the word “and”. Where the obvious intention so re-quires, the word “and” will read “or”, and “or” will be read “and”, but such construction is never resorted to for the purpose of supplying an intention not otherwise appearing.” 23 AM. JUR., Deeds, § 218.

The records further reveal that during their business trans-actions such as the execution of agreements of lease on the subject of this case with business institutions, both the late S. B. Nagbe, Sr. and S. B. Nagbe, Jr. recognized and dealt with each other as joint owners of the said parcel of **land** by their joint execution of the leases for said **land**.

All of these facts in the records clearly indicate that there was no ambiguity for construction of any word or phrase appearing in the deed and that the construction giving to the word “and” by this Court is contrary to and adverse to the language of the deed itself, and the purpose and intention of the grantees, as demonstrated jointly by them during their business transactions. In view of these facts and the laws cited hereinabove, I dissent.

Kollie v Kpan [1983] LRSC 134; 31 LLR 600 (1983) (22 December 1983)

MOSES KOLLIE, Appellant, v**. PETER S. KPAN,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 14, 1983. Decided: December 22, 1983.

1. The plaintiff in an ejectment suit must show a legal title to the property in dispute in order to recover, and the weakness of the defendant's title will not of itself enable the plaintiff to recover.

2. In an action of ejectment, the plaintiff's recovery must be based on the strength of his own title and not on the weakness of the defendant's title.

3. Where the plaintiff in an action of ejectment has proven his case by the preponderance of evidence, including a valid deed, the judgment must be rendered in plaintiff's favour.

A parcel of **land** known as lot no. 26, located on Camp Johnson Road in the City of Monrovia, Montserrado County, subject of this litigation, was originally owned by one F. E. R. Johnson who conveyed the said plot of **land** by a warranty deed to one Mr. T. K. Kpan. Following the death of the said T. K. Kpan, the **land** passed unto one Evelyn G. Kpan, by an administrator's deed issued by P. S. Kpan, the sole heir of T. K. Kpan who had undertaken to administer the estate of his father. The plot of **land** was reconveyed to P. S. Kpan, the appellee in this case, by Evelyn G. Kpan who prepared, probated and registered a warranty deed in his favour in August, 1978.

By virtue of this chain of title, the said Peter S. Kpan sued out this action of ejectment against appellant, Moses Kollie, who had occupied the property, in the Sixth Judicial Circuit Court, Montserrado County, for the recovery of his **land**. The appellee having proved his case in the lower court by a preponderance of the evidence, judgment was rendered in his favour. The said judgment of the lower court was affirmed by the Supreme Court, the Court holding that the appellee had shown sufficient evidence to entitle him to recover his **land** and that there was an absence of irregularities committed by the trial court.

J D. Gordon appeared for the appellant. J. Emmanuel R. Berry appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The parcel of **land** know as lot no.26 located on Camp Johnson Road in the City of Monrovia, Montserrado County, subject of this litigation, was originally owned by one F. E. R. Johnson of the City of Monrovia, Montserrado County, Republic of Liberia who had conveyed the said parcel of **land** by a warranty deed to one Mr. T. K. Kpan. Upon the death of said T. K. Kpan, the parcel of **land** passed on to one Evelyn G. Kpan by an administrator's deed issued by P. S. Kpan who, as sole heir of T. K. Kpan, had undertaken to administer the estate of his late father. Thereupon, Evelyn G. Kpan reconveyed said plot of **land** to P. S. Kpan, plaintiff/appellee in this case, by a warranty deed probated and registered according to law in August, 1978.

By virtue of this chain of title, Peter S. Kpan sued out this action of ejectment against Moses Kollie in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, for the recovery of his **land**. Defendant/appellant filed his answer contending that plaintiff's previous action of ejectment regarding the self-same property having been dismissed on law issues, he is forever barred from re-instituting the said action. He neither denied being on plaintiff's **land** nor did he claim title or any other right to the property in question in his said answer. Pleadings rested at the reply. While the case was pending, Messrs. Samuel Kollie, J. K. Kollie and Joseph Kollie all of the City of Kakata, Gibi Territory filed a motion to intervene with an answer claiming title to the property, subject of the ejectment. The motion to intervene was heard and denied to which movants excepted but did not pursue this further.

Law issues having been disposed of, trial was had and ended in a verdict and judgement for the plaintiff/appellee and the defendant/appellant, being dissatisfied with the said judgement, appealed to this Court for a final review on a five-count bill of exceptions.

Salient among the points contained in the bill of exceptions of the appellant are, firstly, that appellee had failed to state the quantity of **land** occupied by the appellant which creates a doubt as to the quantity of **land** he occupies. Secondly, that appellee having personally testified that he had never surveyed the **land**, he thereby admitted that he did not know the exact location of his property. Thirdly, that Mr. Joseph Richards, a material witness, testified that the **land** in question had never been clearly demarcated which testimony creates another uncertainty as to the exact location of appellee's property. Fourthly, that Mr. Richards had said on the witness stand that he and Mr. Kpan had a dispute over the title to said **land** which cast further doubts as to appellee's chains. And finally that appellant produced a deed for the **land** which the judge of the lower court ignored.

The appellee on the other hand contended in his brief and strenuously argued before this Bench that the issue of not stating the portion of **land** occupied by appellant in the complaint and the alleged failure of appellee to re-survey the **land** and appellant being in possession of a deed not having been raised in the answer in order to have been traversed, argued, passed upon by the trial judge and excepted to during the course of the trial, this issued should not form part of the bill of exceptions in this case. Therefore, the trial judge was legally correct to have ruled against the defendant/appellant and entered judgement in favour of plaintiff/appellee, as there is sufficient evidence to support such judgement.

From these contentions, the pertinent issues presented that warrant our consideration in the determination of this case are:

4. whether a point of law or fact not raised in the pleadings to have been traversed, argued and passed upon by the court and excepted to by a dissatisfied party may legally form part of and be included in a bill of exceptions or be argued during the hearing of a case at this level?

5. Whether or not plaintiff/appellee had shown sufficient legal title to the said **land** that would enable the court to award him recovery against the defendant/appellant.

The issue of appellee's alleged failure to state the number of acres occupied by appellant as well as appellant being in possession of a deed for the property in question not having been raised in appellant's answer or the deed made profert of by that attaching of same to his answer, if there was any, to be traversed in the appellee's reply and to be passed upon by the trial court, was indeed a violation of the fundamental rule of pleadings.

Besides the above, according to records the documents proffered and admitted into evidence and certified to this Court, including deeds, and the witnesses heard on both sides, as well as the various case law authorities cited on both sides, we are convinced that the most important issue in this case is whether or not appellee showed sufficient legal title to the said **land** that enabled the trial court to award him recovery against the appellant. This last issue is derived from the well known and often cited case law in Gibson et al. v. Jones[1929] LRSC 3; , 3 LLR 78 (1929), which states that a plaintiff in an ejectment suit must show a legal title to the property in dispute in order to recover it, and that the weakness of the defendant's title will not of itself enable him to recover.

During the trial of the case, the appellee relied on his deed, an authenticated copy of which forms part of the records, and on the oral testimony of several witnesses. The appellee's deed certified to this Court shows that appellee was the last in a chain of title starting with one F. E. R. Johnson of the City of Monrovia, Montserrado County, Republic of Liberia who conveyed to one T. K. Kpan also of the same address on May 30, 1928 in a warranty deed. The plot of **land** in question is described in the deed as lot no. 26, bounded and described in the deed, and was probated and registered September 3, 1928 with authentic official signatures.

In June 1978, the **land** in dispute was conveyed to one Evelyn G. Kpan, daughter of Peter S. Kpan, Sr., by an administrator's deed. In July of the same year, Evelyn G. Kpan then re-conveyed to Peter S. Kpan (appellee) herein, by a warranty deed, which was probated and registered according to law in August, 1978. The **land** in question has the same description in metes and bounds on all the deeds in the chain from Johnson to Peter S. Kpan and there is no doubt as to where it could be found in Monrovia.

All of the witnesses who testified on behalf of the appellee showed that appellant, Moses Kollie, had no **land** in the vicinity, and that the **land** he now occupies is the lawful property of appellee, Peter S. Kpan. One witness, Joseph Richards, even went on to show that he had personally marked out the area occupied by Appellant Kollie to put up a gold smith's shop, with the permission of Peter S. Kpan. Appellant did not substantiate his contention of ownership to lot no. 26, and did he did not by any proper means deny the authenticity of appellee's deed. No deed has been authenticated to this Court to support appellant's claims, and to counter, effectively, the strength of appellee's deed. According to 25 AM. JUR. 2d., Deeds, § 24, at page 557,"....where one has shown a perfect chain of paper title from its original source, no proof of actual possession is required; in such event the presumption would be all sufficient, and the title would be complete and perfect... if the objector has a better or stronger title than the prima facie title proved, he must show it; and until he does, the prima facie title prevails.": And there is no doubt in this case under consideration that appellee has shown proof of title and a right superior to that of the appellant, while the latter has failed to show any title at all.

It is the opinion of this Court that appellee has shown sufficient evidence to entitle him to recover his **land** and in the absence of any irregularities committed by the trial judge, this Court has no other alternative but to uphold the judgement of the lower court which judgement is based on the principle that where the plaintiff in an action of ejectment has proven his case by the preponderance of evidence including a valid deed, the defendant should not recover against him; and that the Tay v. The, et al.[1968] LRSC 18; , 18 LLR 310 (1968) relied upon by appellant only applies where neither party has a valid title deed, which is not the case here since indeed appellee has a valid title deed.

In view of the foregoing, it is the opinion of this Court that the judgement of the court below be affirmed, and that surveyors should assist the sheriff of this county in serving the writ of possession in accordance with the metes and bounds of the plaintiff/appellee' s deed, with costs against the appellant. The Clerk of this Court is hereby instructed to send a mandate to the trial court commanding the judge therein presiding to resume jurisdiction over this case and to enforce its judgment consistent with this Court's judgment and opinion. And it is hereby so ordered.

Judgment affirmed.

Donzo v Tate [1998] LRSC 23; 39 LLR 72 (1998) (5 August 1998)

ABU DONZO, Appellant, v. **DORIS TATE**, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 21, 1998. Decided: August 5, 1998.

1. A plaintiff in an ejectment suit must always prove and recover the property on the strength of his title and not on the weakness of the defendant's title.

2. The dismissal of a defendant's pleadings, restricting the defendant to a bare denial of the facts alleged by the plaintiff, does not deprive the defendant of the right to cross examine the plaintiff's witnesses as to proof, and does not shift the burden of proof.

3. The grantor of property shall warrant and defend the subject property in litigation forever against the lawful claims and demands of all persons.

4. The priority of claim to title is a material element in an action of ejectment, and plaintiff in an action of ejectment is required to furnish clear and convincing proof of title.

5. In an ejectment suit the primary objective is to test the strength of the title of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery.

6. Nothing tends greater to disturb tranquility, to hinder industry, and to improve communities than the insecurity of property, personal or real, to prevent which, courts of justice are established.

7. A person cannot be deprived of his property unless by a judgment of his peers who constitute a jury.

8. It is the law, procedure and practice hoary with age in our jurisdiction, that a judge cannot review the judicial acts of another judge of concurrent jurisdiction, except by the court of last resort, the Supreme Court.

9. A circuit court judge cannot grant a motion for summary judgment after the case has been ruled to trial by another circuit court judge.

Doris Tate, appellee herein, filed an action of ejectment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, before His Honour M. Wilkins Wright, judge presiding during the March Term, A. D. 1997, against defendant/appellant, Abu F. Donzo. Appellee alleged in her complaint that she was the lawful owner of a piece of **land** located in Gardnersville, on which appellant had commenced the construction of a building, thereby depriving her of the use of her lawful property. She prayed that she be compensated for the damages she allegedly suffered, that appellant be ousted, evicted and ejected from the property, and that the court place her in possession of the **land**.

Appellant filed a seven-count answer to appellee's complaint and attached thereto photocopies of three deeds, some of which he considered as original deeds, for his property. Like the deed of the appellee, the deeds presented by appellant had been probated and registered according to law. The trial judge, His Honour M. Wilkins Wright, disposed of the law issues, dismissing defendant/appellants' answer because of what was regarded as the defectiveness of his deeds, and placed the appellant on bare denial of the facts alleged in the complaint. The judge therefore ruled the case to trial, only on the complaint and the reply.

On the 10th day of May, A. D., 1997, appellee herein filed a seven-count motion for summary judgment contending that there were no genuine issues, as to material facts, to warrant a trial, following the disposition of the law issues. Appellant's request to spread his resistance to the motion on the records of the trial court was denied.

On the 22nd day of May, A. D. 1997, Mr. Joe Young, defendant's grantor, filed an eight-count motion to intervene, along with an answer to which he attached a deed from the Republic of Liberia to James Sims and Alice Sims, dated March 28, 1960, and another deed from James Sims and Alice Sims to the intervenor in the ejectment action. The movant intervened as a party defendant to enable him to legally defend and protect his property.

Appellee then filed an eight-count resistance to the motion to intervene, indicating that the motion to intervene was not filed within a reasonable time and that the intervenor's rights and interest in the remaining three acres of **land** would not be affected by a determination of the ejectment case.

The trial judge denied the motion to intervene on the grounds that all of the deeds presented by the intervenor were all defective and therefore could not have legally passed title to any of the grantees.

On the 30th day of December, A. D. 1997, Judge C. Aimesa C. Reeves granted appellee's motion for summary judgment on the grounds that appellant's deeds were all defective, and that there was no genuine issue as to any material fact that would warrant a trial. Appellant excepted to the ruling and announced an appeal to the Honourable Supreme Court of Liberia.

The Supreme Court reversed the judgment of the lower court, holding firstly that the trial judge had invaded the province of the jury in dismissing the appellant's answer and ruling him to a bare denial. The Court noted that the action, being one of ejectment, necessarily involved mixed issues of law and facts, and that therefore the appellant's answer should have been ruled to trial so as to enable the jury, as triers of the facts, to determine the weight and credibility of the written instruments annexed to the answer.

The Court also held that it was error for the trial judge to grant the appellee's motion for summary judgment, noting that in an ejectment action the plaintiff must always prove and

recover property on the strength of his title and not on the weakness of the defendant's title. The Court opined that the records showed that by the granting of summary judgment, without the taking of evidence, the trial court had permitted the appellee to recover on the weakness of the appellant's title rather than on the strength of her title. It therefore concluded that the trial court had committed reversible error in that respect.

Moreover, the Court said, the granting of summary judgment by the trial court deprived the appellant of the right to cross examine the appellee and her witnesses, noting that the dismissal of the appellant's pleadings and restricting him to a bare denial of the allegations in the complaint did not deprive the appellant of the right to cross the appellee and her witnesses as to proof, and also did not shift the burden of proof from the appellee.

On the trial court's denial of the intervenor's motion to intervene to protect his right to his property and to defend the rights of his grantee, the Court held that the facts clearly showed that not only did the intervenor have a right to protect its property as any judgment of the trial court was likely to affect the intervenor's interest, but also that under the transfer deed, which constituted a contract between the grantor and the grantee, the intervenor had warranted and had an obligation to protect the grantee right against all legal claims made against the transferred property.

The Court noted that because of the many errors made, the judgment of the trial court warranted reversal. It therefore reversed the judgment and ordered that the case be remanded for a new trial beginning with the disposition of the law issues, and further, that the intervenor be permitted to intervene.

George S. B. Tulay appeared for appellant. Benedict F. Sannoh appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The certified records transmitted to this Court reveal that President William V. S. Tubman, of the Republic of Liberia, executed a Public **Land** Sale Deed on March 28, 1960 in favour of James Sims and Alice Sims, containing sixteen (16) acres of **land**, situated and lying in the settlement of Gardnersville, Montserrado County, bearing lot number N/N. The said deed was

probated according to law on July 12, 1962, and registered in Volume 88-H, Page 14, without any objection from any person.

On the 13th day of March A. D. 1966, President Tubman executed another deed in favour of Doris Tate for a piece of **land** containing two acres, situated and lying in Gibson's Farm Area, Gardnersville, Somalia Drive (Freeway), in Montserrado County, bearing lot number 6. This deed was duly probated on May 16, 1966, and registered in Volume 90HF, pages 350-351 without any caveat filed against its probation and registration.

The records also disclose that James Sims and Alice Sims executed a transfer deed on April 16, 1982 in favour of Joe Young, containing four acres of **land** out of their sixteen acres of **land** deeded to them in 1960 by President Tubman. The deed was probated on April 8, 1987 and registered in Volume 496, pages 71-73.

On the 14th day of November A. D.1995, Joe Young also executed a deed in favour of Kaba Kunati for a piece of **land** containing one acre out of his four acres of **land** that he acquired from James Sims and Alice Sims in 1982. On the 18 th day of November A. D. 1996, Kaba Kunati sold his one acre of **land**, acquired from Joe Young, to Abu F. Donzo, appellant herein, and said deed was probated on February 14,1997 and registered in Volume 20-97, pages 40-42, without any objection thereto.

On the 20th day of February A. D. 1997, Doris Tate, appellee instituted an action of ejectment against Abu F. Donzo in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, during its March Term, A. D. 1997, presided over by His Honour M. Wilkins Wright, then resident circuit judge. Appellee alleged in her complaint that she was the lawful owner of the property, referred to herein, upon which appellant had commenced constructing a building. She annexed to the complaint a copy of her public **land** sale deed, acquired from the Republic in 1966.

She also stated in her complaint that appellant had illegally entered upon her property without her prior consent and permission and commenced constructing a building thereon, thereby depriving her the use of her lawful property. She further alleged that she had been damaged as a result of the inconvenience and deprivation attendant to the appellant's wilful, callous and wanton conduct. Appellee prayed the trial court to oust, evict and eject the appellant from her property, and to place her in possession thereof, as well as award her general damages in an amount sufficient enough to compensate her for the damages she had sustained.

On the 28th day of February A. D. 1997, appellant filed a seven-count answer to appellee's complaint and attached thereto photocopies of three deeds: a deed from James Sim and Alice Sims to Joe Young, a deed from Joe Young to Kaba Kunati, and a deed from Kaba Kunati to him. We deem counts five and six of said answer relevant for the determination of this case.

Appellant alleged in count five of his answer that he had legally, lawfully and rightfully entered upon the subject property on which he had commenced construction of a building by virtue of a legal and honourable purchase of said **land** from one Kaba Kunati on November 18, 1996. In the said count, he traced his chain of title to the subject property as herein mentioned above. In count six of his answer, appellant contended that he had neglected, failed and refused to vacate said premises on which he was constructing his building on ground that he was the rightful owner thereof. Appellant also prayed the trial court to sustain his answer and dismiss appellee's complaint.

On the 14th day of March A. D. 1997, appellee filed a seventeen-count reply, counts 9, 10, 13 and 14 of which this Court considers worthy for the determination of this case.

Appellee contended in count nine of her reply that the appellant had failed to establish his chain of title directly to the Republic because no linkage had been established between Mr. and Mrs. James Sims and the Republic of Liberia.

Appellee also alleged in count 10 of her reply that the transfer deed from James Sims and Alice Sims to Joe Young was defective, in that it was probated and registered five years beyond the statutory period of four (4) months. Hence, Joe Young's secondary deed was inferior to appellant's deed, duly probated and registered within statutory time.

In count 13 of the reply, appellee alleged that the transfer deed signed on November 16, 1995 by Joe Young to appellant's grantor, Kaba Kunati, was defective, in that it was probated and registered six (6) years before it was signed by Joe Young, as shown on its face, and indicating that although it was surveyed on November 9, 1995, it was not probated and registered until the 8th day of May A. D. 1998. Appellant contended that Joe Young's deed was defective, and as such, he could not legally transfer any title to appellant's grantor, Kaba Kunati.

Appellee contended in count 14 of her reply that there was a serious discrepancy in the description of the metes and bounds and the exact location of the property conveyed to appellee by Kaba Kunati, in that Joe Young had sold to Kaba Kunati only one acre of **land** but the deed probated by appellant indicated nine (9) acres of **land** from which he sold one to the appellant. Appellant maintained that the **land** which Kaba Kunati had allegedly sold to the appellee was not the same property sold to Kaba Kunati by Joe Young; thus, there was no continuous chain of title from the Republic to appellee.

On the 8th day of May A. D. 1997, the trial judge, His Honour M. Wilkins Wright, disposed of the law issues and dismissed appellant's answer due to the defectiveness of his deeds. He placed appellant on a bare denial and ruled the case to trial on the complaint and the reply. We shall address ourselves to the judge's ruling on the disposition of the law issues later in this opinion.

On the 10th day of May, A. D. 1997, appellee filed a seven count motion for summary judgment, contending that there was no genuine issue as to any material fact to warrant a trial following the disposition of the law issues and the dismissal of appellant's answer by the trial judge. Appellant's request to spread his resistance to the motion on the records of the trial court was denied by the trial judge.

On the 22"d day of May, A. D. 1997, Joe Young, appellant's grantor, filed an eight-count motion to intervene, along with an answer. He attached thereto photocopies of two deeds, a deed from the Republic of Liberia to James Sims and Alice Sims dated March 28, 1960 and a deed from James Sims and Alice Sims to the Joe Young, intervenor in the ejectment action. Intervenor asked to intervene basically to enable him to legally defend and protect his property and the one acre of **land** he had sold to Kaba Kunati, who had in turn had sold to appellant. He asserted that appellee was claiming two acres of **land** in the area where intervenor's four acres of **land** were located. Intervenor also contended that his rights, interest and ownership to the three acres of **land** in the area will be adversely affected if he could not be made a party defendant in the ejectment action.

On the 28th day of May, A. D. 1997, appellant filed an eight count resistance to the motion to intervene She contended that said motion was not filed within a reasonable time, in that the law issue had been disposed of and the case ruled to trial on the complaint and reply. She also contended that the intervenor's rights and interests in the remaining three acres will not be affected by a judgment in the ejectment action on ground that the property claimed by intervenor was not located in the area where appellee's property was located. Appellee also maintained that intervenor has no legal or equitable interest in the property on the ground that it is legally owned by appellant, who is an existing party to the ejectment suit. Appellee contended that the Public

Land Sale Deed of James Sims and Alice Sims, of 1960, and Joe Young's deed of 1982, from Mr. and Mrs. Sims, are all defective for not being probated and registered within the statutory period of four months.

The trial judge denied the motion to intervene on the 30th day of May A. D. 1997 for reasons that all of the deeds proffered by intervenor, including that of the Republic, in the linkage of appellant's title, were defective and therefore could not pass title to any of the grantees named therein, including appellant. The trial court also ruled that intervenor was not a party to this case and had no interest in the property. As such, it said, intervenor could not be affected or bound by a judgment of the trial court. Intervenor excepted to this ruling.

On the 30th day of December A. D. 1997, Judge C. Aimesa Reeves granted appellee's motion for summary judgment on grounds that the deeds proferted by appellant were defective and that there was no genuine issue as to any material fact that would warrant a trial. Appellant excepted to this ruling and announced an appeal to this Court on a nine-count bill of exceptions, counts 1, 2, 5, 7, and 8 of which this Court deems relevant for the determination of this case.

Appellant alleged in count 1 of the bill of exceptions that the trial judge committed a reversible error when he declared appellant's deeds defective and dismissed his answer, thereby placing appellant on a bare denial.

We would like to remark here that an ejectment suit involves issues of law and facts. Therefore, appellant's answer should have been ruled to trial so as to enable the jury, the trier of facts, to determine the weight and credibility of such written instruments as were annexed to the answer in the ejectment action. The trial judge therefore invaded the province of the jury when he determined the factual issues as to the weight and credibility of appellant's deeds, pleaded in his answer, without the aid of a trial jury in such cases made and provided by law. Hence, said ruling on the disposition of law issues is reversible.

Count two of appellant's bill of exceptions substantially alleges that the trial judge erred when he denied Joe Young's motion to intervene as a grantor of appellant, by virtue of a deed he acquired from James Sims and Alice Sims, who also acquired a Public **Land** Sale Deed from the Republic of Liberia in 1960. Appellant argued before this Court that Joe Young own four acres of **land**, one of which was sold to appellant in the area where appellee is claiming two acres of **land**.

In count 5 of the bill of exceptions, appellant alleged that the trial judge, Her Honor C. Aimesa Reeves, erred when she granted the motion for summary judgment growing out of the ejectment action which contained mixed issues of law and facts. By that action, appellant said, he was deprived of his property, in contravention of the Constitution of Liberia which guarantees a trial by jury in such cases made and provided. Appellant also argued before this Court that Judge Reeves erred when she granted said motion for summary judgment after the ejectment suit had been ruled by Judge Wright to trial by a jury, and asserted that the act of Judge Reeves was tantamount to reviewing and reversing the ruling of her colleague. We shall decide this issue later in this opinion.

Count 7 of the bill of exceptions alleged that the appellee had failed to prove and recover said property on the strength of her title, but the trial judge made appellee to recover said premises on the weakness of the appellant's title.

We are in agreement with appellant's assertion that a plaintiff in an ejectment suit must always prove and recover a property on the strength of his title, and not on the weakness of a defendant's title. Cooper-King v. Cooper-Scott, [1963] LRSC 38; 15 LLR 390 (1963). The records in this case did not establish that appellee proved and recovered the subject property on the strength of her title; rather, the records clearly show that she recovered on the weak-ness of appellant's title. Count 7 of appellant's bill of exception is hereby sustained.

In count 8 of appellant's bill of exceptions, he contended that the granting of the motion for summary judgment by the trial judge deprived him of the right to cross examine appellee and her witnesses as required by law in our jurisdiction. We observe from the records in this case that the motion for summary judgment was filed by appellee after the disposition of law issue and the case being ruled to trial by a jury. This Court held in the case, Salami Brothers v. Wahaab, 15 LLR.32 (1962), that the "dismissal of a defendant's pleadings restricting the defendant to a bare denial of the facts alleged by the plaintiff does not deprive the defendant of the right to cross examine as to proof, and does not shift the burden of proof." We are therefore in agreement with the appellant that the granting of the motion for summary judgment was a deprivation of his right to cross examine the plaintiff and her witnesses, and that the dismissal of his answer did not shift the burden of proof. Hence, count 8 of appellant's bill of exceptions is sustained.

Appellant argued before this Court that the trial judge erred in denying Joe Young's motion to intervene in the ejectment action as a grantor of appellant. He maintained that Joe Young should have been permitted to intervene to protect his three acres of **land** and Joe Young's property

in the area where appellee was claiming two acres of **land**. Appellant also contended that Judge Reeves erred when she granted a motion for summary judgment after the case had been ruled to trial by her predecessor, Judge Wright, thereby reviewing and reversing the ruling of her colleague. He further maintained that the trial judge granting of the motion for summary judgment deprived him of his right to trial by a jury, in contravention of the Constitution of Liberia. Appellant therefore requested this Court to reverse the judgment of the lower court, remand the case for new trial by a jury and to allow Joe Young to be made a party to defend his property.

Appellee, in counter-argument, contended that the ruling denying the motion to intervene was proper, in that said motion was not timely filed and that intervenor had no legal or equitable interest in the property which he had sold to appellant in fee simple. Appellee also argued before this Court that the ruling of the trial judge granting the motion for summary judgment was proper and in harmony with law as there was no factual issue to warrant a full trial upon the .dismissal of appellant's answer. Appellee maintained that appellant made no allegation in his pleadings that the property claimed by appellee is not the same as that occupied by defendant, thereby impliedly admitting that appellee's deed did cover the property, subject of the ejectment action. Appellee therefore prayed this Court to confirm the judgment of the lower court. The facts and circumstances in this case present two issues germane to the determination of this case:

(1) Whether or not the trial judge committed a reversible error when she granted the motion for summary judgment after the case had been ruled to trial by her predecessor.

(2) Whether or not the ruling denying Joe Young's motion to intervene as a party defendant was proper and supported by law.

We shall decide these salient issues in the reverse order. As to the issue of Joe Young's intervention, appellant argued that the subject property in litigation is one of Joe Young's four acres of **land** sold to appellant and that Joe Young intervened to defend his remaining three acres of **land** in the area and the property of appellant. Counsel for appellee argued in support of the trial judge's ruling that the motion was filed untimely and that intervenor had no legal and equitable interest in the subject property after its sale to appellant in fee simple. During the arguments,, counsel for appellee answered a question from the Bench contending that it is not written in any deed that a grantor can defend and protect the interests and rights of a grantee.

This Court observes from the motion to intervene that the intervenor is the grantor of appellant and that he is also claiming his remaining three acres of **land in the area where appellee is also claiming ownership of two acres of land**. Intervenor is so situated as to be adversely affected by a judgment in the ejectment action or by a distribution or other disposition of the subject property by the trial court. Civil Procedure Law, Rev. Code 1: 5.61 (b) (c). With regards to the issue of intervenor's right and obligation to defend the property rights of appellant, a careful perusal of said deed clearly shows that the grantor shall warrant and defend the subject property in litigation forever against the lawful claims and demands of all persons, including the appellee herein. Hence, appellee's contention that such clause of warranty or obligation is absent in a deed is unfounded and not sustained. In Davies v. Republic, 14 LLR 248 (1960), this Court held that "contractually, the grantor is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed; and the fact that the Republic of Liberia is one of the parties does not lessen the binding effect of the terms of the contract." We hold that acquisition of a property transferred by a deed is a legal contract between the grantor and the grantee or subsequent grantees, and as such, a grantor, including this Republic, is bound by perpetual obligation to defend such grantees' ownership of property so transferred by a deed. The trial judge therefore committed a reversible error in denying Joe Young's motion to intervene for the reasons herein stated above.

We shall now decide the second and final issue in this case, which is whether or not the trial judge committed a reversible error when she granted the motion for summary judgment after the case had been ruled to trial by her predecessor.

We observe from the records in this case that Judge Wright ruled this case to trial by a jury before appellee filed her motion for summary judgment, which was subsequently granted by Judge Reeves, thereby dispensing with a jury trial. Appellant contended that the trial judge erred when she granted said motion after the case had been ruled by another circuit court judge to trial by jury, and that this was tantamount to reviewing and reversing her colleague. Appellee, on the other hand, stressed that said motion for summary judgement was properly granted and in harmony with law as there was no factual issue to warrant a trial upon the dismissal of appellant's answer.

Appellee claimed title to the property by virtue of a Public **Land** Sale Deed executed in 1966 from the Republic, and appellant claimed title to the subject property in litigation by a deed from Kaba Kunati, which chain of title was also derived from the Republic in 1960. This Court has held that priority of claim to title is a material element in an action of ejectment. A plaintiff in an ejectment action is required to furnish clear and convincing proof of title." Duncan v. Perry, 13 LLR (1960).

In this regards, both parties were required to establish their claim of title to the property, in that the primary object in ejectment suit is to test the strength of the titles of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery. Further, this Court held as far back as 1895 that "nothing tends greater to disturb tranquility, to hinder industry and improvements in communities, than the insecurity of property, personal or real, to prevent which courts of justice are established." Reeves v. Hyder, 1 LLR 271 (1895). Courts of justice are therefore established to prevent insecurity of property, personal or real, in a society. As such, a person cannot be deprived of his property unless by a judgment of his peers. Hence, the filing and granting of the motion for summary judgment was not necessary when both parties claimed title to the same property in litigation as there were factual issues that warranted a trial by jury to establish the true ownership of the property.

Further, we have been taken aback that the motion for summary judgment was filed and subsequently granted by Judge Reeves after her colleague had ruled the case to trial. It is the law, procedure and practice hoary with age in our jurisdiction that a judge cannot review the judicial acts of another judge of concurrent jurisdiction, except this Court of last resort. This Court has further held that " a judge cannot review the judicial acts of his peers; therefore, as in the case presented, a circuit court judge cannot grant a motion for summary judgement after the case has been ruled to trial by another circuit court judge." Dennis, et al. v. Philips, et al.[1973] LRSC 14; , 21 LLR 506 (1973). In the Dennis case, Judge Kandakai had disposed of the issues of law and ruled the case to trial by jury, but Judge Koroma thereafter granted a motion for summary judgement and awarded judgment as a matter of law. This Court held that Judge Koroma reviewed and interfered with the ruling of his colleague, and therefore reversed the judgment and remanded that case for a new trial. The facts in the Dennis case and the instant case are analogous. The judgment awarded appellee is therefore reversible.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the lower court should be, and the same is hereby reversed, and the case is remanded for a new trial commencing with the disposition of the law issues. It is the further holding of this Court that Joe Young should be permitted to intervene as party defendant and that all deeds and other relevant documents relating to the subject property be submitted to the jury under the supervision of the trial judge presiding therein. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and to proceed with the trial in keeping with this opinion. Costs are to await the final determination of this case. And it is hereby so ordered.

Reversed and remanded for new trial.

Wilson v Dennis [1974] LRSC 52; 23 LLR 263 (1974) (15 November 1974)

FRANCES C. WILSON, Executrix of the Estate of A. Dash Wilson, Sr., deceased, Appellant,, v. JOHN L. DENNIS, et al., Appellees.
APPEAL
FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 28, 1974. Decided November 15, 1974. 1. Where three days are required for placarding of a deed before offering it for probate, and only one day's notice is given, the probation and registration of the deed is void. 2. The Supreme Court will not do for a party what the party failed to do for himself. 3. In actions of ejectment the Supreme Court will give preference to the older deed. 4. The State cannot grant land, the title of which has already been transferred, for contractual obligations must be respected under the Constitution. 5. Copies of deeds attested to by an official, herein the Secretary of State, will be given consideration by the Court in the absence of the originals which cannot be found or are unavailable to the party. 6. The Court is reluctant to disturb long-established titles to realty, especially where the rights of innocent parties are involved, who would be hurt thereby. 7. If an application for substitution for a deceased party is not made within one year after the death of the party, judgment may be entered by default in the action against the deceased defendant. 8. The trial court is empowered, sua sponte, to order substitution for a deceased party. 9. The Supreme Court will not allow a party to repudiate his own acts. 10. For issues to be reviewed by the Supreme Court they must be set forth in a bill of exceptions which contain the objections made at the time of trial, raising such issues for the Court's consideration. 11. If a defendant fails to appear at a trial or fails to proceed, the court is empowered to enter judgment by default upon application of the plaintiff.

The appellant was substituted for her deceased husband in an action of ejectment brought against him by the appellees. After the widow had made one motion for continuance which was granted, neither she nor her counsel appeared at the trial, and consequently judgment by default was entered against her, from which she appealed.
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Title to too acres of land came to the plaintiffs through a chain of titles beginning in 1857 when President Benson executed a bounty land deed for the property to the initial grantee. For to8 years the grantee and those, incltiding the plaintiffs, who took title thereafter remained in undisturbed

possession of the too acres. In 1965, President Tubman executed to deceased a public **land** sale deed for 26.4 acres of the aforesaid too acres, giving rise to the action in ejectment. In addition, the plaintiffs contended probation of the deed was invalid because insufficient notice thereof had been given by defendant. The principal arguments of the appellant were that the 26.4 acres were not on plaintiffs' **land** and that default judgment could not be rendered against her because she had served an answer. The Supreme Court discounted the contentions of defendant and pointed out that she could have asked for arbitration of the issue of location of her **land** or produced witnesses at the trial rather than default in appearing. The judgment was affirmed. Beauford Mensah and D. Caesar Harris for appellant. Samuel E. H. Pelham for appellee. MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. This is a case on appeal by the widow of A. Dash Wilson, Sr., as a substituted party in an action of ejectment brought against her late husband by the heirs of Wilmot E. Dennis. For the legal and factual reasons hereinafter set down in this opinion, we have affirmed the judgment of the trial court. This Court from the earliest days of its existence has laid down the rule that in ejectment the plaintiff should prove his title and, if and when possible, from the source

of all **land** titles, the Republic of Liberia. In the record before us we find that in July, 1857, President Stephen Allen Benson signed a bounty **land deed for too acres of land** in what was then known as First Range, Monrovia, to George Henry Shaw. For to8 years the grantee, and those who took after him, enjoyed undisturbed possession of this particular tract of **land; but in 1965, the late A. Dash Wilson, Sr., obtained from President William V. S. Tubman a Public Land** Sale Deed for 26.4 acres of the aforesaid zoo acres. The location of this property is in what is known as the Sinkor Area, Oldest Congotown. Later in this opinion we shall say more about a President, either by misrepresentation, misinformation, or mistake, selling public **land** which had been previously sold by his predecessor in office. According to the record, George H. Shaw's deed was probated and registered in Vol. N/N and liter rerecorded in Vol. 93-V of Montserrado County and, therefore, was a valid instrument in accord with the laws of Liberia. In October, 1857, George Henry Shaw sold this property to Levi James, whose heirs in turn sold it on March 9, 19to, to the late Wilmot Dennis, father and grandfather of the plaintiffs, who are the appellees in this appeal. All of the deeds in this chain were proferted with the complaint and the reply, and we shall comment later in this opinion on the unusual procedure of making profert a chain of title in two pleadings instead of doing so in the complaint alone. Plaintiffs brought an action of ejectment in September, 1971, against the grantee holding under and on the strength of the Public **Land** Sale Deed executed to him on December 5, 1965, as aforesaid. A. Dash Wilson, Sr., appeared for himself and filed an answer, to which the plaintiffs replied. Two years later, and before the case could be called for trial in the Sixth Judicial Circuit, A. Dash Wilson, Sr. died ; whereupon his widow, Frances Wilson, applied to

be substituted for her husband, in keeping with the law. It must be noted that the
plaintiffs also filed a motion for Frances Wilson to be substituted for her deceased husband; these two motions were granted by the
court and she was so substituted. On the face of the Public **Land** Sale Deed made profert with the defendant's answer it is observed,
as plaintiffs have complained in their reply, that although the law requires that "all instruments, documents and other papers other
than Wills, necessary to be probated, shall be offered in open Court and recorded by the clerk in the minutes for the day's sitting;
after which it shall be bulletined for at least three (3) days, before being cried by the Sheriff .. ." and that "Bulletin of these
matters shall be placarded on the door of the Court House for the required three days, to give public notice of the profferer's intention
. . ."; yet, the aforesaid deed was offered for probate the very next day after President Tubman had signed it; that is to say on
December 6, 1965, in violation of Rule 5 of the Monthly and Probate Court Rules quoted above. It is our opinion that this deliberate
violation of the Rule quoted above took advantage of the plaintiffs by depriving them of the notice to which the law entitled them;
the said probation and registration must, therefore, by force of law have to be declared void. In the defendant's answer five points
have been raised in an equal number of counts, and we shall discuss them in reverse order, and we begin with count five, which claims
difference in location of the **land** claimed by the parties on both sides. According to the plaintiffs' chain of title made profert
with the pleadings, President Benson in July, 1857, executed a Bounty **Land Deed to George Henry Shaw for too acres of land** in what
was then known as First Range, Monrovia vicinity, and the number at the time was the number 3. In October of the same year George
Henry

Shaw sold this parcel of **land** to Levi James, and the number of his deed was also number 3, and
the location also was First Range, in the vicinity of Monrovia. This property must have descended to Levi James' heirs, because although there is no showing of how the
property left the possession of Levi James, the next link in the plaintiffs' chain is a deed from Joseph and Lucretia James, heirs
of Levi James. They sold the property in March, 1910, to Wilmot E. Dennis, father and grandfather of the plaintiffs, now the appellees
before us. It is interesting to note that although the number given the **land** remained the same, that is to say, number 3, the name
of the location had in the 53 years between the sale to Levi James in 1857, and the subsequent sale to Dennis in 1910, changed to
Long Beach, near Monrovia, in Montserrado County. It does not seem strange, therefore, that 55 years after Wilmot Dennis bought the

property in 1910, the name of the location might have again changed to Sinkor, Oldest Congotown, in the City of Monrovia, as appears in A. Dash Wilson's deed dated December, 1965, and signed by President Tubman. We also take note of the fact that the number of the land in question has also changed from number 3, sold by President Benson in 1857, to N/N-O, which appears on the face of the deed executed by President Tubman in 1965. On this very technical issue we would like to observe that since this question had been _raised by the defendant in his answer, it seems strange that the substituted party defendant refused to attend the trial, where she might have objected to the admission of the plaintiffs' deeds because of the differences referred to. Moreover, it also seems strange that in face of this issue raised in the answer, the defendant did not see the need for asking for arbitration, to resolve the technical issues of difference in location and in numbers of the deeds on both sides. We cannot do for the party defendant what she failed to do for herself. Besides, the invalidity and nullity of the

probation of the defendant's deed issued on December 5, 1965, and probated on the 6th of the same month, contrary to the Rule quoted, renders the document defective, as compared with a chain of four deeds constituting the title of the plaintiffs all of which were regularly probated and registered. The next point for our consideration is count four of the answer. In this count the defendant contends that the property in question is hers by virtue of a Public Sale Deed executed to her husband in 1965 by President Tubman. According to the issues raised on both sides, the question is whether or not A. Dash Wilson's 26.4 acres acquired in 1965, is or is not part of the Dennis' too acres of land acquired in 1857. Normally, and according to our practice in actions of ejectment, the older deed must be given preference. Therefore, the plaintiffs, whose chain of title began in 1857, would first carve out their too acres from the area, before any consideration is given to locating the defendant's 26.4 acres. But all of this has been obviated by the invalidity of the probation of A. Dash Wilson's deed, probated contrary to law, as aforesaid. But to carry this point a little further, we would like to call attention to the principle laid down in Davies v. Republic, [1960] LRSC 67; 14 LLR 249, 253-254 (196o) : "We do not hesitate to say that lands granted . . . are carved out of public property not otherwise allocated or disposed of. The fact that the land is unencumbered is a condition precedent upon which the President conveys the title; hence the statute requires that the Land Commissioner should certify to that effect before the President's signature is affixed to the deed. It is quite easy to see, therefore, that the State could not possibly grant land, the title of which had already been transferred. It is physically impossible to give what one does not have. "Contractually, the grantor is bound by perpetual

obligation to defend the grantee's ownership of property transferred by deed ; and the fact that the Republic of Liberia is one of the parties, does not lessen the binding effect of the terms of the contract. Under the Constitution, we are commanded always to respect the obligations imposed by contracts; and indeed, that is a fundamental basis of simple and honest dealing which should be respected by all men and all nations." We say the same in this case with respect to the impossibility attempted by President Tubman's sale of land in 1965, which had been disposed of by his predecessor in office, President Benson, who sold it in 1857. But I would also like to comment on the improbability of finding a block of 26 acres of unencumbered public land in the heart of the residential area of Monrovia in 1965. I will go further to say that this seems most likely an impossibility. And now to counts two and three of the answer. These counts refer to the nonexistence of the deeds under which the plaintiffs have claimed title to the zoo acres in the deed executed by President Benson in 1857. The defendant also says that the plaintiff should show proper title in themselves. This is a fundamental rule in ejectment, established by many cases. The allegation that the plaintiffs' title deeds do not exist must be considered in relation to the certificates attesting to copies of all the deeds in the public records and signed by the Secretary of State. In view of this authentication by the State Department, as to each of the deeds in the plaintiffs' chain of title, it is difficult to give credence to the mere allegations to the contrary contained in the defendant's answer, especially since no witnesses were produced at the trial to substantiate the said allegations. In support of the defendant's allegation of the nonexistence of one of the deeds in the plaintiffs' chain, the deed from George Henry Shaw to Levi James, he made

profert of a certificate issued by the Secretary of State, J. Rudolph Grimes, to the effect that such a deed supposed to have been recorded in Volume 13 and on page 183, could not be found. It is of great significance to note that this certificate does not show that the records were checked by the Director of Archives, as they were for the three deeds in the plaintiffs' chain of title. But more important is the fact that the warranty deed from George Henry Shaw is shown by the record not to have been recorded in Volume 13, page 183, but recorded in Volume 93-V, on pages 41-43. Therefore, this certificate of Secretary Grimes is perfectly correct insofar as it states that said deed is not recorded in Volume 13. Finally, we come now to count one of the defendant's answers. In that count the defendant contends that the metes and bounds in the deed made profert with plaintiffs' complaint do not disclose any particular quantity of land and, therefore, the said deed is invalid. This argument raises a technical issue which might only have been resolved by expert

testimony. Unfortunately no such testimony was either sought by the defendant or produced at the trial. We have noted, however, that the metes and bounds referred to appear in the deed transferring the ioo acres from Joseph and Lucretia James to Wilmot Dennis in March, 1910. Those metes and bounds were copied exactly from the deed executed by President Benson to George Henry Shaw, and the deed thereafter from Shaw to Levi James and thereafter in the deed to Wilmot Dennis and his heirs. Let us agree, for argument's sake, that the defendant might be correct in her assertion of the faulty description of metes and bounds. But how does she expect this fault to be corrected after 114 years, especially when she took no steps to have an expert substantiate at the trial such claim of faulty measurement? In King v. Scott, [1963] LRSC 38; 15 LLR 390, 408 (1963) this Court

said that "there would be untold disturbance to society if unduly belated demands would be allowed to defeat longestablished vested titles to real property . . . and where the status quo, having been long-established, could not be disturbed without hurt to the rights of innocent parties." We have now analyzed the entire answer of the defendant, and we find ourselves unable to sustain the issues raised therein. Earlier in this opinion we indicated we would discuss the novelty of making profert with the complaint in an ejectment suit only one out of three deeds in the plaintiffs' chain of title. We specifically asked this question of appellee's counsel during his argument before us. He explained that at the time his complaint was prepared, all of the plaintiffs' original deeds had been given to Counsellor Lawrence Morgan by Mrs. Louise Dennis-Alston, one of the plaintiffs in this case and that these deeds were still in his possession. In the plaintiffs' reply, in count two thereof, it is alleged that these deeds were handed over in the presence of Stephen Tolbert. In count three of the said reply notice was given that a subpoena duces tecum would be applied for to have the deeds produced at the trial. This allegation in the plaintiffs' reply has not been denied, nor did defendant attend the trial and bring witnesses to disprove the allegation. But we have found in the record a letter written by Stephen Tolbert, verifying plaintiffs' contention. It is fortunate that the appellants were able to produce the letter, for it explained the defect in their chain of title. These absent links certainly would have rendered the chain imperfect. In the bill of exceptions, and in counts two, three, and four thereof the appellant has contended that the judge in the court below did not pass upon the motion filed by Frances Wilson, for her to substitute for and stand in the stead of her deceased husband. It is contended, there-

fore, that Frances Wilson has not been properly substituted for the deceased defendant in the
case and that she has not been served with a summons to be substituted. On this ground her lawyers say that the case presented to
the jury was one-sided and that, moreover, the judge could not arbitrarily have her substituted. Contrary to this allegation contained
in the bill of exceptions, we found the documents in the record indicating proper service. "Republic of Liberia to P. Edward Nelson,
Esquire, Sheriff for Montserrado County, GREETINGS : "You are hereby commanded to summon Frances Cecelia Wilson, nominated Executrix
of the estate of the late A. Dash Wilson to appear before the Civil Law Court for the Sixth Judicial, Montserrado County, sitting
in its March 1974 Term, on the zoth day of March, 1974, at the hour of to:oo o'clock in the morning at the Circuit Court House in
the City of Monrovia to substitute as defendant in the above entitled cause of action. "You are hereby commanded to make your official
returns endorsed on the back hereof as to the manner of service. · · · "Given under my hand and Seal of Court in the City of Monrovia
this 19th day of March, 1974. "[Sgd.] ROBERT B. ANTHONY, Clerk, Civil Law Court, Montserrado County." Endorsement on the back of
the document indicating service on the party was properly made by the sheriff. We are of the opinion that service of this writ is
shown to have been made, according to the sheriff's returns; and we think this was sufficient to place Frances Cecelia Wilson under
the court's jurisdiction, as the substituted party defendant standing in the stead of the deceased A. Dash Wilson. The law on substitution
of parties is set forth in our

Civil Procedure Law. Within a year after the death of a party the court may order substitution of the proper party; if the substitution is not made,
the action shall be dismissed as to the deceased plaintiff
or judgment by default may be entered against the deceased defendant. The motion for substitution may be made by the successors or representatives of
the deceased party or by any party, and, together with the notice of hearing, it shall be served on all the parties. "Any person
may notify a court of the death of a party. . . ." Rev. Code i :5.36 (2). It would seem to us that there was no need for the judge
to have formally passed upon the motion, since it was within the authority of the court to have sua sponte ordered substitution for
the deceased party. Id. In looking through the record we observed that Frances Wilson prepared and filed her motion to be substituted
for her deceased husband on March 19, 1974. Before the judge had any time to rule upon the motion, the very next day, March 20, 1974,
she filed a motion for continuance, in which she named herself as the party substituted for her husband. So that even if the court
had not been disposed to grant her motion for substitution, she had voluntarily assumed the role. It is, therefore, puzzling to us
how she could in the circumstances seek to repudiate her own act. These counts of the bill of exceptions are, therefore, overruled.

The bill of exceptions also refers to the verdict of the jury and contends that the jury was incompetent to pass upon the issues raised in the case without an arbitrator's report. In looking through the record we have observed that although several notices of assignment for trial were served and returned, defendant and her lawyers absented themselves from the trial of the case, with the result that no request for arbitration was ever made. Circuit Court Rule Seven (1972), states very clearly that "A failure to file a motion for continuance or to ap-

pear for trial after return by the sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plaintiff's side of the case and decide thereon or, dismiss the case against the defendant and rule the plaintiff to costs, according to the party failing to appear." If the defendant could not appear for trial, why didn't she file another motion for continuance as she had done on a previous occasion? Not having done so, it left the court without any alternative but to proceed with the trial. The appellant has contended in her bill of exceptions that as sole executrix of her deceased husband's estate which is still pending before the Probate Court, she cannot be made to appear before the Circuit Court in an ejectment suit involving a parcel of land which is part of the estate. This issue could not have been raised in the pleadings, because A. Dash Wilson died after pleadings in the case had rested, and his executrix was only appointed after his death. However, Frances Wilson knew that she was nominated executrix of her deceased husband's estate when she voluntarily filed a motion to be substituted for him, which was granted by the trial judge. Moreover, raising the issue for the first time in the bill of exceptions seems to be asking us to take jurisdiction over the point, although it had never been raised in the trial court which she could readily have done, and which is contrary to our practice. It is our opinion that under our Civil Procedure Law issues brought for review by the Supreme Court must have been specifically raised in the trial court, by exceptions taken to the judgment, decision, order, or ruling against the party, setting them forth in the bill of exceptions. Rev. Code i :51.7. But to include a matter in the bill of exceptions which has never been litigated in the court below is improper practice and deprives the

adverse party from defending against it. It also asks the Supreme Court to review a matter which has never been heard. This is contrary to the spirit and intent of Article IV, Section znd, of the Constitution, respecting the cases in which the Supreme Court might take original jurisdiction of matters. We come now to consider the last point raised in the bill of exceptions. That the court rendered final judgment by default on May 2 r , 1974., in spite of the fact that the defendant had

submitted an answer. She took exception to the adverse judgment and brought the matter on appeal before the Supreme Court. In considering this exception we would like to observe that our Civil Procedure Law is clear on the point. "If a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, the plaintiff may seek a default judgment against him." Rev. Code :42.t. After examining the record in this case and hearing arguments from both sides, we have not been able to find any legal reason why we should disturb the judgment of the trial court. We, therefore, affirm it, with costs against the appellant. It is so ordered. Affirmed.

Johnson v RL [1983] LRSC 77; 31 LLR 280 (1983) (7 July 1983)

CHARLIE JOHNSON, Appellant, v. **REPUBLIC OF LIBERIA,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard: May 10, 1983. Decided: July 7, 1983.

1. The uncorroborated testimony of a person accused of a crime is insufficient to rebut proof of guilt.

2. Points raised in the bill of exceptions and not argued in the briefs are considered waived.

3. The appellate court will not consider points of law not raised in the lower court and contained in the briefs.

The appellant was charged with theft of property for selling a piece of **land** which did not belong to him. The charge stated that appellant had sold the **land** under false pretense. The trial jury brought a verdict of guilty against him and the appellant was sentenced to two years imprisonment and required to make restitution of the amount involved.

On appeal to the Supreme Court, the Court found that appellant had indeed sold the **land** in question, that he had received the amount alleged against him, and that he was not the owner of the **land**. The Court also found that even though appellant claimed to have sold the **land** proffered to a power of attorney, he did not produce any evidence to corroborate the claim that he had the authority to sell the **land**. Accordingly, the Supreme Court affirmed the judgment of the trial court.

James Doe Gibson appeared for the appellant. A. W. Octavius Obey, Acting Solicitor General, and S. Momolu Kiawu, both of the Ministry of Justice, appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

The appellant in this case was indicted and tried under the 1971 Penal Law of Liberia which, under the PRC Government, was repealed by Decree No. 62 and quite recently reactivated by Decree No. 72. Offenses under the 1956 Penal Law, such as embezzlement, grand larceny, petty larceny, obtaining money under false pretense, and other related offenses, are all now grouped and referred to as "Theft of Property" under the 1971 Penal Law.

During the 1979 August Term of the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County, Charlie Johnson, the appellant herein, was indicted by the grand jury for the crime of theft of property. The indictment substantially alleged that the said Charlie Johnson wrongfully, fraudulently, feloniously and intentionally obtained $600.00 from one Maryle Reeves-Johnson, the private prosecutrix, under the pretext that he owned a certain parcel of **land** in Congo Town, Monrovia, for sale when indeed and in truth the appellant owned no such **land** for sale; that after receiving the said amount from the private prosecutrix, appellant neither gave her the **land** nor refunded her money.

During the November and December 1979 Terms of the now dissolved First Judicial Circuit Court, Criminal Assizes "C", Montserrado County, the case was called for a trial which ended in a verdict of guilty returned against the appellant. The said verdict was confirmed and affirmed by judgment of the trial court, adjudging the appellant guilty of the crime of theft of property and sentencing him to two years imprisonment with restitution of the $600.00 to the private prosecutrix. To this final judgment, the appellant excepted and brought this case before this Court for final review by a four-count bill of exceptions.

In counts one and four of the bill of exceptions, the appellant contended before us that his motion for new trial should have been granted for reason that the verdict of the empanelled jury is without legal foundation, in that the same is not supported by the evidence adduced at the trial; hence, the judgment should be reversed. In count two of the bill of exceptions, appellant argued that the trial judge erred when he overruled appellant's objection to a leading question of the prosecution on sheet two of the minutes of the 20th day's sitting of court, Tuesday, November 27, 1979. And in count three of the bill of exceptions, appellant contended that the trial judge committed a patently reversible error when he denied admissibility into evidence of the species of evidence offered by the appellant, which were identified and marked by court "D/1" and "D/2", respectively.

We would like to mention in passing that in count one of appellant's brief, he raised for the first time the question of jurisdiction of the Supreme Court to hear and decide the case on the ground that the First Judicial Circuit Court, Criminal Assizes "C", Montserrado County, from which this case emanated has been dissolved by the PRC Government and was not reconstituted and, therefore, should the judgment be confirmed there would be no court to send this Court's mandate for enforcement of the judgment. However, counsel for appellant while arguing immediately withdrew this contention; hence, we need not comment on it any further.

The next point argued in the brief by counsel for appellant is that, the evidence of the prosecution is contradictory and therefore raises reasonable doubt which must operate in favour of the appellant. Regrettably, however, this issue was not raised in either the motion for new trial or the bill of exceptions. Appellant also argued that the verdict of the jury is not supported by the evidence.

Because of the fact that the issues raised in the bill of exceptions are not argued in the brief, except the contention that the verdict is not supported by the evidence, we must assume that appellant waived all such other issues raised in the bill of exceptions, and, therefore, we must confine ourselves only to the question whether or not the verdict is supported by the evidence. Under the caption of scope of review, the Civil Procedure Law, Rev. Code 1:51.15, provides that the appellate court shall not consider points of law not raised in the trial court and argued in the briefs. Conversely, points raised in the bill of exceptions and not argued in the briefs are considered waived.

Turning to the evidence, we observed that the private prosecutrix testified in substance that she paid to the appellant, Charlie Johnson, the amount of $600.00 in two equal installments for the purchase of **land; that the land** was shown to her by the appellant in Congo Town and it was mutually agreed that on the 3' of October-of that year the surveyors of both the private prosecutrix and the appellant would meet on the **land** to survey the one lot paid for; that to her surprise and without the two surveyors meeting on the parcel of **land** to conduct the survey, appellant presented to the private prosecutrix a deed for one lot made out by him for her; and that after her surveyor went on the **land** which the appellant claimed to be his, and out of which he sold one lot to the private prosecutrix the said surveyor went to the Ministry of Lands, Mines and Energy, and upon inspection of the map thereat he discovered that in fact the said parcel of **land** was owned by the late Speaker Richard A. Henries and not Charlie Johnson. The second witness who took the stand and testified was Surveyor Lawrence Gbuie, who confirmed the testimony of the private prosecutrix.

The appellant himself testified as a witness in his own behalf. He testified substantially that he was acquainted with the private prosecutrix; that he was reared by the , late F. E. R. Johnson for twenty-five years and that the said F. E. R. Johnson died on his lap; that it was Senator Liberty who got to know about the **land** and sent to inform his daughter, the private prosecutrix, who then expressed her desire to buy one lot. Appellant also testified that he charged the amount of $1,000.00 for one lot but that Senator Liberty gave him $600.00 in two equal installments, for which he issued a receipt at each payment; and that his surveyor, Grisgby, surveyed the one lot and prepared a deed for the private prosecutrix. Appellant testified further, however, that the private prosecutrix informed him that her surveyor was at the Ministry of Lands, Mines and Energy by the name of Reeves and that she would prefer him to do the survey, but that he disapproved of Reeves surveying the lot because his surveyor had already surveyed the lot and made out a deed. Appellant further testified that subsequently, the private prosecutrix returned and told him that she no longer wanted the **land**. At that juncture, appellant said, he asked Senator Liberty for the balance of his money but Senator Liberty told him to go and that he would contact his daughter, the private prosecutrix, later. Appellant further testified that while waiting, the next thing he saw was three policemen who came from the magisterial court at five o'clock in the morning to arrest him, and they took him to the police station where he remained

until he could secure a bond for his temporary release. Appellant also testified that he was selling the **land** by virtue of a power of attorney given to him by his foster sister, Geneva Johnson-Duff, daughter of the late F. E. R. Johnson, whose signature the deed issued to the private prosecutrix carried as grantor.

From the testimony of the appellant, it is quite clear that; he did sell the **land** in question to the private prosecutrix through her father, the late Senator Liberty; that he received the amount of $600.00 therefor and that he was not the owner of the **land** but elected to sell same to the private prosecutrix based upon a so-called power of attorney given to him by his foster sister, Geneva Johnson-Duff. The testimony of the accused was never corroborated by any other witness, especially Geneva Johnson-Duff, who is alleged to have issued the power of attorney to the appellant and signed the deed he presented to the private prosecutrix. Geneva Johnson-Duff was not shown to be incapacitated to be cited so as to corroborate the testimony of the appellant in respect of the alleged power of attorney and the signature on the deed. It was also not denied by the appellant at the trial and substantiated by any other competent evidence that the **land** sold by him to the private prosecutrix was for the late Speaker Henries, nor was any attempt made by appellant to refund the $600.00 he received from the private prosecutrix up to and including the time of his arrest and trial.

In the case Johns v. Republic, 13 LLR 143 (1958), this Court held that the uncorroborated testimony of a person accused of a crime is insufficient to rebut proof of guilt. The Penal Law, Rev. Code 26:15.51(b), under which appellant was indicted, provides that:

"A person is guilty of theft if he knowingly obtains the property of another by deception or by threat with the purpose of depriving the owner thereof, or purposely deprives another of his property by deception or by threat".

In view of the foregoing, and the law cited supra, it is our holding that the judgment of the court below be, and the same is hereby, confirmed and affirmed. And it is hereby so ordered.

Judgment affirmed.

Caine et al v Fahnfulleh et al [1983] LRSC 71; 31 LLR 235 (1983) (8 July 1983)

AUGUSTUS F. CAINE, SEKU FREEMAN, et al., Appellants, v. **MOMOLU LAMIE FAHNBULLEH, A. KINI FREEMAN,** et al., Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Heard: May 23, 1983. Decided: July 8, 1983.

1. Ejectment action which involves a multitude of people and diverse interests should not be heard in the absence of the defendants who have presented a valid excuse for their absence and requested postponement of the trial.

2. The appointment of a cabinet or executive committee to investigate a matter pending before a court of competent jurisdiction does not divest the court of its jurisdiction, but where the court had notice of such appointment, a request for postponement based on the functions of said committee on a given date should be granted.

3. In an action of ejectment, paper title to **land** without proof of occupancy is insufficient to dispossess an industrious occupant.

4. A plaintiff in an ejectment action must recover unaided by any defect or mistake of the defendant; and proof of the plaintiff's title must be beyond question.

5. A point of law not raised in the bill of exceptions will not be answered by the Supreme Court.

6. An action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years.

The appellants appealed to the Supreme Court, growing out of a challenge to the validity of a deed in possession of the appellees. An inspection of the records revealed that the purported deed of the appellees had been ordered canceled by a previous decision of the Chambers Justice. In the lower court, however, the jury returned a verdict in favor of the appellees, and the court, acting thereon, rendered a final judgment that appellants were liable and should be evicted from the premises. On appeal to the Supreme Court, the judgment was reversed, the Court holding that the mere possession of paper title without proof of occupancy was insufficient to dispossess an industrious occupant, especially where the occupancy by the industrious person has been for a period of more than twenty years. The Court also held that the trial judge had erred in proceeding with the trial of the case after he had received a letter from the appellants' counsel praying that the case be postponed.

Nelson W. Broderick appeared for appellants. M Fahnbulleh Jones appeared for appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal was announced from a judgment entered against the appellants in the ejectment action instituted by the Apelles in the Fifth Judicial Circuit Court, Grand Cape Mount County. The following is a synopsis of the facts as disclosed by the trial records certified to this Court.

The appellees, Momolu Lamie Fahnbulleh, A. Kini Freeman and the people of Mani Town, Gawula Chiefdom, Gawula District, Grand Cape Mount County, by virtue of a tribal **land**

certificate issued to them by Clan Chief Armah Kiazolu, of Kiazolu Clan, and attested by the Paramount Chief of the aforesaid Chiefdom, approved by the then Superintendent Gray of Grand Cape Mount County, on August 17, 1961, undertook to survey a parcel of **land** containing 2,324.75 acres of **land**, which survey is alleged to have taken in a greater portion of **land** within the Fahnbulleh Clan in Garwula Chiefdom aforesaid, of which the appellants are elders, tribal authorities and trustees.

Upon hearing that the appellees had obtained a title deed for the **land** signed by the President of Liberia, the late Dr. William V. S. Tubman, appellants engaged the services of Attorney George Caine to file objection to the probation and registration of appellees' said deed, if offered. Attorney Caine thereupon filed a caveat before the Fifth Judicial Circuit Court, notifying the court of the intention of appellants to file a formal objection against the probation and registration of any deed which may be offered by the people of Mani Town, appellees herein.

During the August Term, 1965, of the Fifth Judicial Circuit Court, presided over by His Honor Lewis K. Free, Attorney Frank Skinner, for the appellees, on the 12t h day of August, 1965, offered the public **land** sale deed for 2,324.75 acres from the Republic of Liberia to the appellees for probation and registration. The court did not notify the caveator, appellants herein, of the offering of the appellees' deed so as to have filed a formal objection within ten days after such notice as required by law; instead, on the 16th day of August, 1965, the judge presiding in probate admitted they said public **land** sale deed and ordered it registered.

Because Judge Free admitted the appellees' deed into probate and ordered it registered without notifying the caveator, appellants herein, the appellants applied to the Supreme Court for a writ of error, which was resisted and heard by the Court. In an opinion delivered by Mr. Justice Simpson for the Court, reported in [1968] LRSC 5; 18 LLR 238, the decree of Judge Free admitting the appellees' deed into probate was nullified by the Supreme Court and the lower court was ordered to allow the appellants to file formal objection to the probation and registration of the said public **land** sale deed within ten days of the reading of the Supreme Court's mandate in keeping with the caveat filed for the appellants by Attorney George Caine, and thereafter conduct a hearing thereon. The decree of Judge Free aforesaid having thus been nullified, the appellants filed their formal objection to the probation and registration of the deed, and pleadings rested with the objectors' reply.

During the February, 1977 Term of the Fifth Judicial Circuit Court, presided over by His Honour J. Jeremiah Z. Reeves, now of sainted memory, the legal issues raised in the pleadings were heard and Judge Reeves ruled dismissing the objection for not having been filed within the ten days period, and admitted the deed into probate and ordered it registered without indicating his signature and the date of probation on the face of the deed, and so only the signature of Judge Free and the date of probation and registration in 1965 remained on the back of the deed. The probate records of Judge Reeves were not proferted with the complaint or the reply in the ejectment suit.

Counsel for appellants argued before us that only God spoke and it was done that way, but not man; in that, Judge Reeves should have probated the appellees' deed and ordered it registered,

evident by his signature at the back of the deed as provided by law. Consequently, the appellants again petitioned the Supreme Court for a writ of error against the ruling of Judge Reeves for review of his said ruling.

On the 21' day of February, 1979, Mr. Justice Roland Barnes, presiding in Chambers, heard and denied the petition because accrued costs were not paid by the petitioners and, consequently, commanded the judge presiding in the Fifth Judicial Circuit Court to resume jurisdiction over the probate matter and admit the subject deed into probate nunc pro tunc. During the February Term of the court, 1979, His Honour Judge Brathwaite received and read the mandate from the Chambers of Justice Barnes, and it is also alleged that the judge ordered the said deed admitted into probate and registered nunc pro tunc in keeping with the mandate of Justice Barnes. But here again there is no evidence of the judge's signature and the face of the deed still shows that it was probated and ordered registered by Judge Lewis K. Free on August 16, 1965.

On the 5th day of June, 1981, the appellees filed an ejectment suit against the appellants, alleging substantially that appellees are the owners of a parcel of **land containing 2,324.75 acres in Kiazolu Clan and that the land** borders the towns of Jundu, Tee, Madina and See, where appellants are residing; and that without any color of right and legal justification, the appellants have entered upon the said **land** through the areas bordering their towns and made farms thereon without the knowledge, will and consent of the appellees, and have detained the parcel of **land** for about sixteen (16) years.

The defendants, appellants herein, filed an answer praying the court to dismiss the complaint, substantially alleging that the deed relied upon by the appellees is not valid, because it has not been legally probated and registered; that the decree of Judge Free admitting the deed into probate had been declared null and void by the Supreme Court on the 18t h day of January, 1968, and therefore the appellees have no legal title to the **land** as alleged; that the **land** certificate and the surveyors' certificate relied upon by the appellees are fictitious documents; that the **land** on which appellants live was occupied by their ancestors from time immemorial and were in fact buried thereon; that it was on this **land** that appellants were all born; and that appellants' rights to the **land** is in keeping with law and tradition recognized by government, and, therefore, no one could have obtained the **land** in question without a certificate from the appellants; that the **land** for which a deed is secured must be unencumbered.

The pleadings rested with the reply, in which appellees contended that Justice Barnes ordered the deed probated nunc pro tunc with costs against the appellants, to which ruling no appeal was announced, and therefore Judge Brathwaite probated the appellees' deed nunc pro tunc. However, this allegation is not supported by the deed itself; for, there is no indication on its face that it was ever probated nunc pro tunc and ordered registered by Judge Brathwaite, or any other judge for that matter, except that the deed still carries on its face the name of Judge Free and the registration date of 1965, which had been nullified by the Supreme Court. There are also no probate records showing that appellees' deed was admitted into probate and ordered registered by any judge nunc pro tunc. It is observed, however, that Justice Barnes, according to his ruling in Chambers, given on February 21, 1979, denied the petition of the appellants for a writ of error

because of nonpayment of accrued costs as prerequisite to the granting of an alternative writ of error, and not on the merits.

During the August, 1981, Term of the Fifth Judicial Circuit Court, presided over by Judge Galima D. Baysah, the legal issues raised in the pleadings were heard and the judge ruled count one of the complaint and count one of the answer together with the reply to trial by jury. Count one of the complaint alleged ownership of the parcel of **land in the plaintiffs by virtue of the public land** sale deed. Count one of the answer was in reference to the Supreme Court nullifying the probation of the appellees' deed by Judge Free in 1965. The reply was in respect to the probation of the deed nunc pro tunc subsequent to its probation in 1965 by Judge Free, which the Supreme Court had nullified. The defendants, appellants herein, noted exception to Judge Baysah's ruling on the law issues.

During the February, 1982 Term of the trial court, presided over by His Honour M. Fulton W. Yancy, Jr., the case came on for jury trial and ended with a verdict finding for the plaintiffs/ appellee; final judgment was rendered by the court affirming the verdict. Appellants excepted to the verdict and the court's final judgment and announced an appeal to this Forum of last review by a four-count bill of exceptions, which we quote hereunder for the benefit of this opinion.

"1. Because Your Honour erred in your ruling on the law issues delivered on the 17 th day of August, A. D. 1981, for the reasons stated in the ruling to which defendant excepted.

2. And also because Your Honour proceeded with the trial of the said action in the absence of defendants and their counsel, notwithstanding the letter from co-defendant Augustus F. Caine for the postponement of the trial together with a motion for continuance filed by defendants' counsel, all of which Your Honour ignored and denied and to which defendants excepted.

3. And also because of the absence of defendants and their counsel from the trial, they had no opportunity to have excepted to the verdict of the trial jury, and Your Honour erred in not designating a lawyer to take the verdict of the jury for the purpose of excepting thereto.

4. And also because Your Honour erred in your court's final judgment affirming and confirming the verdict of the jury entitling plaintiffs to recover and awarding damages in the sum of $10,000.00 with costs to which final judgment defendants excepted."

The first point in appellants' brief and which their counsel strongly argued is that, a single Justice presiding in Chambers has no authority to hear and decide error proceedings, his only authority being to order the issuance of the writ and the proceeding docketed for hearing by the Full Bench; hence, Justice Barnes had no authority to conduct a hearing of the proceeding and to subsequently order probation of the appellees' deed nunc pro tunc.

Because this issue is not part of the bill of exceptions, and also because appellants did not appeal from the ruling of Justice Barnes to afford this Court an opportunity to pass upon the issue, we refuse to give any cognizance to said argument. For reliance, see Flood v. Alpha, [1963] LRSC 31; 15 LLR 331 (1963), and Cooper v. Republic, 13 LLR 528 (1960). In these cases, this Court

held that a point of law not raised in appellant's bill of exceptions will not be considered by the Supreme Court.

The second and fourth points argued in the brief by counsel for appellants are the same, and are all in connection with the invalidity of the appellees' title deed by reason of its irregular probation by Judge Free, which the Supreme Court had declared null and void in 1968, and which deed has not since been regularly admitted into probate and registered according to law, as directed by the Supreme Court up to the filing of the ejectment action.

We shall proceed firstly to discuss the third issue raised and argued by counsel for the appellants in his brief and thereafter discuss the point of the validity or invalidity of the appellees' deed as raised in the second and fourth counts of appellants' brief.

Appellants' third point of contention was that the trial judge disregarded their motion for continuance and the letter from Coappellant Augustus F. Caine requesting for the postponement of the trial and proceeded to hear the ejectment case in the absence of the appellants. For the benefit of this opinion, we quote here under the said letter from Co-appellant Augustus F. Caine, dated February 15, 1982, addressed to the trial judge, His Honour M. Fulton W. Yancy, acknowledging receipt by the appellants of the notice of assignment for the hearing of the case on February 22, 1982, as follows:

"Dear Judge Yancy:

I have received the assignment of the case Momo Larmie, A. Kini Freeman, etc. and Augustus F. Caine et al., in the case 'action of ejectment' for February 22, 1982.

Your Honor, because tricks of the law were used by plaintiffs and their counsel to subvert Liberian law by denying us our right to object to their title deed, we appealed to Government for an investigation of their title and the Government has agreed. The Head of State has set up a Cabinet Committee comprising the Minister of Local Government as Chairman, the Minister of Justice, the Minister of Lands, Mines & Energy, and the Superintendent of Cape Mount.

Because of delays in calling the case, a delegation from our side called on the Minister of Local Government a week ago with the request that the case be called up and he set Tuesday, February 16 as the date we should return to see him about a possible date.

Under the circumstances, I am asking that you kindly excuse our side, the defendants, from appearing before your court on February 22. We make this application with every respect for you. Over 3,000 acres of **land** is just too much for one selfish man to seize from the people of two clans, even though he attached the names of a few people in his town to give the impression that they joined him in this grand scheme of **land**-grabbing.

I am sending a copy of this letter to the Minister of Local Government. Respectfully yours, Sgd.: Augustus F. Caine For and on behalf of Seku Freeman, Alhaji Ware and other defendants.

cc: The Minister of Local Government."

At the call of the case in the court below on February 22, 1982, Counsellor M. Fahnbulleh Jones announced representation for the plaintiffs and no one appeared for the defendants. The court thereupon took recourse to the sheriffs returns to the notice of assignment, which reads thus:

"I, Thomas E. Jackson, sheriff for the People's Fifth Judicial Circuit Court, Grand Cape Mount County, R. L., do hereby deputize Daniel Gio, bailiff for the People's Fifth Judicial Circuit Court, Grand Cape Mount County, R.L., to serve the within notice of assignment issued on the 12, day of February A. D. 1982. He has duly served said notice of assignment on the within named parties, namely: Attorney Varney D. Cooper, counsel for plaintiffs, and Augustus F. Caine, on behalf of the defendants, on the 15 th day of February, A. D. 1982, to appear before this Honourable Court on the 22' day of February, A. D. 1982, at the precise hour of 10 o'clock a.m. And copies of said notice of assignment were (sic) given to each of them in person and they received same by the said Bailiff Daniel Gio. Attached a letter addressed to said Judge His Honour Fulton W. Yancy, assigned judge by assignment. And now I make my

Official returns to this Honourable Court. Dated this 1st day of February, A. D. 1982.

Sgd. Thomas E. Jackson, SHERIFF, GRAND CAPE MOUNT COUNTY

Served by: Daniel Gio, his x cross, BAILIFF."

Based upon the foregoing returns of the sheriff, the trial judge ordered the trial proceeded with in the absence of the appellants and, in spite of a motion for continuance filed by them. However, during the progress of the case, a motion for continuance dated, February 23, was filed in court on the 24 th day of February, 1982, by the appellants. The trial judge on the 2' day of March, 1982, ruled and denied the motion for continuance, holding that the grounds of "the motion were not supported by law; that the movant did not give notice as to the date they desired the case to be heard, and the court would not submit to a cabinet committee hearing and thereby postpone the hearing of the case."

In our opinion, the trial judge erred when he proceeded to hear the case on February 22, 1982, having already received a letter of that tenor from Co-appellant Augustus F. Caine, without informing the appellants that their request was not granted and thereafter ordering the issuance of another notice of assignment, setting a day on which the case would be heard, especially when this assignment was the first ever to be served for hearing of the case by jury. We therefore hold that an ejectment action which involves a multitude of people of various towns should not have been heard in the absence of the defendants who had presented a valid excuse for their absence and requested postponement of the trial. It is also our holding that the appointment of an executive committee did not divest the court of its jurisdiction to hear the ejectment case, but where the court had such notice of the appointment of a cabinet committee to investigate the matter involving the deed which appellees had obtained and relied upon, the trial judge should have granted the request and postponed the trial until another date. Count two of the bill of exceptions is therefore sustained.

Coming now to the question of validity or invalidity of the appellees' deed as contended and argued by appellants' counsel in his brief, we are of the opinion that if Judge Reeves heard and

dismissed the appellants' objection and admitted the deed into probate and ordered it registered, the records to that effect should have accompanied appellees' pleadings in the ejectment action, especially so when the said question was raised in the answer of the appellants. It is also our holding that if the said deed was indeed admitted into probate and ordered registered by Judge Reeves, or any other judge subsequent to the nullification of Judge Free's decree by the Supreme Court, the same should have been substantiated by the signature of such judge, indicated at the back of the deed and the probate record made a cogent part of the appellees' pleadings. But as it is, the public **land** sale deed from the Republic of Liberia to the appellees does not show on its face that it was probated by any other judge nunc pro tunc as directed by the Supreme Court; rather, the deed still shows on its face that it was probated and ordered registered by Judge Free in 1965, which proceeding the Supreme Court, in Caine v. Freeman, [1968] LRSC 5; 18 LLR 238 (1968), had set aside. It must therefore be concluded that the appellees' deed in question has not been regularly and legally probated and registered; hence, the argument of the appellants' counsel in counts two and four of appellants' brief must be sustained.

Our statute relating to probation and registration of instruments provides that:

". . . If the court decides that such instrument is entitled to probate, he shall write thereon the words, 'Let this be Registered', and shall sign his name thereto officially. He shall direct the clerk to enter upon the record the character of the instrument and the date and hour of its probate, and to forward the instrument to the Registrar of Deeds to be registered." Property Law, 1956 Code 29:3. It is also provided in section 2 of the aforesaid statute that:

"All persons acquiring any interest affecting or relating to real property shall appear in person or by attorney-at-law before the probate court for the county in which such real property is situated within four months of the date of execution of the instrument, and have the deeds, mortgage or other instrument affecting or relating to real property publicly probated; provided, however, that this provision shall not apply to real property prior to October 1, 1862." Ibid. 29:2.

Although appellants contended in count one of their answer, which was ruled to trial, that the probation of appellees' deed in 1965 by Judge Free had been declared null and void by the Supreme Court, and the appellees on the other hand contended in their reply that the said deed was subsequently probated and registered nunc pro tunc, yet only one witness, in person of Albert Kini Freeman, one of the appellees herein, testified on behalf of the appellees; after he was examined, appellees rested evidence on the lone testimony of said witness. The court thereafter charged the empanelled jury. The public **land** sale deed, court's mark "P/4", still carries the signature of Judge Free, and there was no effort made by the appellees to show proof that the said deed was subsequently probated nunc pro tunc.

The appellants also averred in their answer that their ancestors lived on the parcel of **land**, subject of the ejectment action, for time immemorial, died and were buried thereon. There was no showing at the trial by testimony of any of the tribal authorities of Garwula Chiefdom to the effect that appellants have transcended their boundaries into the territory of Kaizolu Clan and occupied the **land for sixteen years. In an action of ejectment, mere paper title to land** without proof of occupancy is insufficient to dispossess an industrial occupant. Payne v. Jones, [1929] LRSC 3; 3 LLR 78, 83 (1929). And the right to recover real property, or its possession,

shall be forfeited or barred if the defendant or his privy has held the property adversely for a period of not less than twenty years. Civil Procedure Law, Rev. Code 1: 2.12(2). A plaintiff in ejectment must recover unaided by any defect or mistake of the defendant; and proof of the plaintiffs title must be beyond question. Cooper-King v. Cooper-Scott, [1963] LRSC 38; 15 LLR 390 (1963). Plaintiff in ejectment must recover upon the strength of his own title and not upon the weakness of his adversary's title. Savage v. Dennis, 1 LLR 51 (1871).

In view of the foregoing discussions and the facts as disclosed by the records in this case, as well as the legal citations in support of our holding, it is our considered opinion that the judgment of the trial court should be, and the same is hereby, reversed with costs against the appellees. And it is hereby so ordered.

Judgment reversed

The Intestate Estate of Chief Bai v Heirs of King [1994] LRSC 22; 37 LLR 496 (1994) (22 September 1994)

THE INTESTATE ESTATE OF THE LATE CHIEF BAH BAI and **THE PEOPLE OF MATADI GBOVE TOWN**, by and thru FODAY KAMARA et al., Petitioners/Appellees, v. **THE HEIRS OF THE LATE C. D. B. KING** and **D. G. W. KING**, sons of the Late C. T.O. KING I, by and thru the Representatives of the King Family, CHARLES C. T. O. KING, III, et al., Respondents/Appellants.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 18, 1994. Decided: September 22, 1994.

1. Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary." Civil Procedure Law, Rev. Code 1:43.1.

2. Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or *cestui qui trust*, in the administration of

a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto

3. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

4. Issues not raised in the pleadings may not properly be raised during the trial of a case.

5. The fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised during the trial.

6. Failure on the part of respondent to attack the defectiveness of petitioners' title in the returns or the amended returns constitutes a waiver.

7. A trial judge cannot review the act of his predecessor having concurrent jurisdiction.

Appellant National Housing Authority (NHA) appealed from the final judgment of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in a petition for declaratory judgment. Appellees are heirs of the late Chief Bah Bai to whom President Arthur Barclay, in 1908, granted an aborigines **land** grant deed for 209.55 acres of **land** in the settlement of Congo town for agricultural purposes and to enable them exercise their voting rights. The heirs of Chief Bah Bai and his families inhabited the property uninterrupted until 1973 when the National legislature of Liberia passed an Act to expropriate certain parcel of **land** in Matadi for the construction of low cost housing units, referred to as the Old Matadi Estate. The National Housing Authority proceeded with the construction of the housing project without negotiating with the appellees regarding the compensation and the quantity of **land** involved. When the petitioners, the heirs of the Late Chief Bah Bai, were informed that government had appropriated funds to compensate the owners of the **land** upon which the Old Matadi Estate was constructed, and that the King family was also claiming ownership to the area, they made their claims to government and presented their title deed to the Lands, Mines and Energy Ministry. Petitioners also filed a petition for declaratory judgment before the Sixth Judicial Circuit Court, Montserrado County, naming the King family and the National Housing Authority as respondents. The National Housing Authority appeared and filed its returns but the King family

never appeared, filed returns, or proceeded to trial. Trial was had, which culminated into a final judgment declaring that the petitioners, the heirs and decedents of the Late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of the 209.55 acres of **land**, subject of this petition. The Court also ruled that the petitioners, having been declared lawful owners of the subject 209.55 acres of **land**, were declared entitled to just compensation for that portion of their **land** occupied by the Matadi Housing Estate of Co-respondent National Housing Authority. Co-respondent NHA was therefore ordered to deal with and consider petitioners as legitimate owners of the 209.55 acres of **land** and as such must compensate them for the portion of the 209.55 acres of **land** it occupied as the Matadi Housing Estate. From this ruling, appellant NHA appealed to the Supreme Court.

Appellant contends on appeal that the judge erred in granting title in a declaratory judgment action; that appellee' s title was defective; and that the correction of appellee' s deed was defective. The Supreme Court disagreed with the contention of the appellant with respect to the granting of title and held that Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed; hence the trial court committed no error. With respect to the claim that appellee's title was defective, the court held that appellant having failed to attack the defectiveness of petitioners' title in the returns or the amended returns, they are deemed to have waived such defence. The judgment of the trial court was therefore *affirmed.*

Marcus Jones appeared for appellants. *Frederick Cherue* appeared for appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The late Chief Bah Bai and his people lived in the settlement of Congo Town in a town called Gbove Town before 1908. The Constitution of Liberia at the time provided that only people with property could vote. President Arthur Barclay, on February 7, 1908 , during tenure, granted Chief Bah Bai and his thirty (30) families an aborigine **land grant deed for 209.55 acres of land**. The grant was also pursuant to an Act of the National legislature of Liberia, approved January 25, 1905 which provided that there be granted to the inhabitants of each town of a district inhabited by aborigines, sufficient lands around each town for agricultural purposes and to enable them to vote under the property clause of the Constitution as citizens of the Republic of Liberia.

The heirs of the late Chief Bah Bai and the families enjoyed this piece of property until July, 1973 when, during the administration of the late President William R. Tolbert, Jr., the National Legislature of Liberia passed an Act to expropriate certain parcel of **land** in Matadi for the construction of low cost housing. Without any negotiation with the heirs of the Late Chief Bah Bai, the owners of the 209.55 acres of **land, regarding compensation and quantity of land**, the National Housing Authority, in reliance upon the Act of the Legislature, proceeded to construct the Old Matadi Estate in violation of the 1847 Constitution as amended in 1972, which provides that private property shall not be taken for public use without just compensation. LIB. CONST., Art. 1, §13 (1847).

The records reveal that when the petitioners, the heirs of the Late Chief Bah Bai were informed that government has appropriated funds to compensate the owners of the **land** upon which the Old Matadi Estate was constructed and also that the King family was claiming ownership to the area, they made their claims to government and presented their title deed to the Lands, Mines and Energy Ministry. The petitioners also filed a petition for declaratory judgment before the Sixth Judicial Circuit Court for Montserrado County and named the King families and the National Housing Authority as respondents. The National Housing Authority appeared and filed its returns. The King Family never appeared; accordingly, a re-summons was issued. After they did not appear, the writ and copy of the petition were mailed to their last known addresses in Liberia and in the United States of America. Up to the final disposition of the petition in the lower court, the King Family had not appeared. Trial was held culminating in a final judgment from which this case is now before us on appeal, predicated upon a six-count bill of exceptions.

Count one of the bill of exceptions attacked the judge for having erred in granting title in declaratory judgment. We shall quote the concluding part of the judge's final judgment:

"WHEREFORE, and considering all the law, facts and circumstances surrounding this case, it is the ruling and final judgment of this court that the petition as filed and established by petitioners be and the same is hereby granted; and having granted the said petition, it is the decree and declaration of this court that the petitioners, the heirs and decedents of the Late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of the 209.55 acres of **land**, subject of this petition. The said petitioners now having been declared lawful owners of the subject 209.55 acres of **land**, they are hereby declared entitled to just compensation for that portion of their **land** occupied by the Matadi Housing Estate of the Co-respondent National Housing Authority and the said NHA is hereby ordered to deal with, consider and treat petitioners as legitimate owners of the 209.55 acres of **land** and as such therefore, must compensate petitioners for the portion of petitioners' 209.55 acres of **land** which the NHA occupies as the Matadi Housing Estate, pursuant to the constitutional provision relating to expropriation of private property for public purposes. **LIB.** CONST., Art. 24(a). The exact amount of compensation to be paid by Corespondent NHA will necessarily depend on the exact

amount of petitioners' **land** the Government expropriated and payment will be made accordingly.

Costs of these proceedings ruled against respondents. And it is hereby so ordered.

GIVEN UNDER MY HAND AND SEAL OF
COURT THIS 3 RD DAY OF DECEMBER, A. D. 1993.
M. Wilkins Wright
RESIDENT CIRCUIT COURT JUDGE PRESIDING.

We disagree with the contention of the appellant in count one of the bill of exceptions, for the judge's declaration was only in keeping with the statute. The statute provides that:

"Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary." Civil Procedure Law, Rev. Code 1: 43.1

The statute further provides, under adjudication of rights, that:

"Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or *cestui qui trust*, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings." *Id.,* 43.3

As to count three in which the respondent, National Housing Authority raises defective title, the court says according to our civil procedure hoary with age that:

"Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided". *Id*, 1:9.8(3), *Defect of Failure to Deny:*

The deed and other documents were proferted and attached to the petition to which the respondent filed its returns, withdrew and filed an amended returns. Yet, it never attacked the defectiveness of petitioners' title in the returns or the amended returns. Hence, this is a waiver.

As to count six, the records show that the correction of the deed was ordered by the Late Judge Frederick K. Tulay in a final decree rendered by him on February 19, 1992. Besides, if the respondents intended to challenge said correction, it would have done so in its amended returns. Hence, the present judge could not have reviewed the act of his predecessor with concurrent jurisdiction. In *Shaheen v. Compagnie Francaise De L 'Afrique Occidentale*, 13 LLR 278 (1958), this Court held that:

"Issues not raised in the pleadings may not properly be raised on the trial of a case."

And

"The fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised on trial."

The Co-respondent National Housing Authority in its amended returns said in count one that:

"...respondents submit that it has not raised any issue with respect to the petitioners' title ownership to the property in question; but rather the King Family and Zoe Barma. Therefore, it is encumbent upon the petitioners to prove their title right to the said property..."

In counts four and five respondent also maintained that:

"Respondents further contend and say that as regard compensation for **land** expropriated from private individuals, said person or group of persons are entitled to prompt payment of just compensation therefor from the Government of the Republic of Liberia, after the presentation of valid title deeds by claimants to the Ministry of Finance..."

In count five it contends that:

"Respondents further say that in as much as there are more than one claimants to the property in question, each claimant, including the petitioner, may under the law challenge, freely in the court of law for compensation after he has proven title to the court of law. Respondents not having made any claim to such property therefore petitioners' petition should be dismissed in its entity as its relates to the respondents and thereby sustain count five of respondents' amended returns.

As gathered from the amended returns, the co-respondent National Housing Authority is indicating that she has no property interest nor is she looking for compensation. Therefore, the petitioners should proceed to our law courts to exhibit their title deed and government will justly compensate them. In other words, she is saying that she is not a party of interest but rather an agent of government.

The records reveal that the petitioners presented their title deed to Minister Willie P. Nebo, then Minister of Lands and Mines. Minister Nebo then wrote the petitioners on February 9, 1981, suggesting that their deed be carried in the court of record for correction.

The records further show that a final decree of correction was handed down by the Sixth Judicial Circuit Court of Montserrado County sitting in its March Term, A. D. 1992 on the 19thday of February, 1992, which we quote hereunder.

"COURT'S FINAL DECREE
IN RE: THE PETITION OF MUSA KIAZOLU, PETITIONER PRAYING THIS HONOURABLE COURT FOR COR-RECTION OF A DEED AS GOVERNMENT GRANT IN FAVOR OF THE LATE CHIEF BAH BAI AND THE PEOPLE OF MATADI CALLED FOR FINAL DECREE

In passing upon the request made to court yesterday by Attorney Moses Agbage, Sr., counsel for petitioner herein, the court hereby grants petitioner's petition and decrees the correction of the minutes and the distribution as appeared in the aforesaid Government Grant Deed which was executed in favor of the petitioner's grand father and his people. It is further decreed that the correction as recommended by the surveyor in his memorandum herein be reflected in the records of the Registrar of Deed for Montserrado County as follows:

Commencing at a point in the southwestern direction of Deline's property, said point being a soap tree and also service as a boundary point between Deline and Chief Bah Bai's property, and running thence on magnetic bearings: North 86 degree 30 minutes East 1840.0 feet along the property line of Deline to a point; thence running South 55 degree 30 minutes East 780 feet to a point, thence running South 38 degrees East 1043.0 feet to a point, South 38 degrees 30 minutes 1880.0 feet to a point; thence running South 40 degrees West 3800.0 feet to a point; thence North 3 degree 30 minutes West 1240.0 feet to the place of commencement and containing 209.55 acres of **land** and no more."

Cost ruled against the petitioner and it is hereby so ordered.

GIVEN UNDER MY HAND SEAL OF COURT IN OPEN COURT THIS 19Th DAY OF FEBRUARY, A.D. 1992, SO FOURTH AND SO ON.

FREDERICK K. TULAY
RESIDENT CIRCUIT JUDGE PRESIDING
MATTER SUSPENDED".

In view of all we have said, the laws relied upon, and the facts and circumstances surrounding this case, the judgment of the court below is hereby affirmed and confirmed with costs against respondents. The Clerk of this Court is hereby instructed to send a mandate to the court below informing it of this judgment. And it is hereby so ordered.

Judgment affirmed

Toe v Tate [1999] LRSC 3; 39 LLR 317 (1999) (21 January 1999)

MEMBA TOE, Appellant, v. **JOSEPH TATE**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: December 10, 1998. Decided: January 21, 1999.

1. Notice is a fundamental requirement in all litigations and is designed to afford a party litigant an opportunity to appear and be heard. As such, it should be served in keeping with law and the returns to the manner of service by a ministerial officer should be clear and without impropriety.

2. The mutual agreement of the parties to submit their respective claims to a board of arbitration for the speedy determination of such claims is valid and binding on them and is enforceable by the trial court granting the application.

3. Where the parties agree to submit their claims to an arbitration board, it is legal for the trial judge to hear the report of the arbitration board without a trial by jury.

4. Where the parties agree to submit to submit their claims to arbitration proceedings for determination, they thereby waive their right to jury trial.

5. Where an agent does not have a transfer deed or other express authority from his principal to dispose of his property, the agent is without the authority to issue a transfer deed disposing of the principal's property.

6. The transfer by an agent of property of his principal, without express authority from the principal, does not extinguish the principal's lawful title to the disputed property.

Appellee filed an action of ejectment against the appellant for a parcel of **land** said to belong to the appellee and which he alleged the appellant was illegally occupying. Following the exchange of pleadings, the parties agreed to submit their respective claims to a board of arbitration and made application to the trial court to the effect. Also, the grantor of the appellant filed a motion to intervene, claiming that the parcel of **land** in question had been conveyed to him by the agent of the previous owner. The trial court, acting on the application of the parties appointed a board of arbitration to investigate the claims of the parties and make a determination as to the location of the parcels of **land** claimed by the parties and as to the parties entitled thereto. The board disagreed as to the party entitled to the parcel of **land** in dispute and therefore prepared two reports: a majority report and a minority report. The report was submitted to the court which entered judgment thereon for the parties to be placed in their respective possession as recommended by the majority report. From this judgment, the appellant, defendant in the trial court appealed to the Supreme Court, claiming that she did not have her day in court as neither she nor her surveyor was duly notified by the court. She also claimed that the trial judge had erred in entering judgment without submitted the matter for a jury trial based on the report of the arbitrators.

The Supreme Court agreed with the appellant that proper notice was not served on her, that the returns of the sheriff showed inconsistencies as to date of service which cast doubts on its legitimacy, and that therefore the trial court committed a reversible error in not having the appellant properly notified. However, the Court did not reverse the judgment of the trial court, observing that as the case had been pending for almost a decade, it would render such fair and just decision as should have been rendered by the trial court to bring the matter to an end.

In deciding the matter, the Court opined that the agreement of the parties to submit their claims to arbitration was binding on the parties and therefore enforceable. The Court noted that because the parties had agreed to arbitration of their claims and had not revoked their agreement, the trial court could properly dispose of the report of the arbitration board without submitting the matter

to a jury trial. It therefore overruled appellant's contention that a jury trial should have been conducted by the trial court.

The Court then ruled that the transfer deed executed in favor of the appellant was invalid since it had been executed by an agent who had no authority from the principal to execute .such transfer deed. However, the Court noted that this did not deprive the principal, Francis Tarr Grimes, of his legal title to the **land**. The Court observed that both Mr. Grimes and the intervenor had derived their title from the Republic, and, hence, the principle of the older deed obtained. In the instant case, Francis Tarr Grimes held an older deed and therefore was entitled to possession of the **land** specified therein. Thus, the Court ruled that because of the invalidity of the appellant's deed, the appellee should be placed in possession of the one lot claimed be him, provided that the one lot did not fall within the acreage granted to Francis Tarr Grimes since the mother of Mr. Grimes executed by the Republic was older than the mother deed of deed of the appellee's grantor. Accordingly, the Court *affirmed* the judgment of the trial court, which had affirmed the report of the majority of the arbitration board, but with the modification mentioned made by the Supreme Court, and which was not taken into consideration by the trial court.

Ishmael P. Campbell of the Legal Aid Inc. appeared for the appellant. *Snosio E. Nigba* of the Legal Services Inc. appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case originates from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, wherein the appellee herein, Joseph Tate, filed an action of ejectment on August 29, 1984, against Madam Memba Toe, during the September Term A. D. 1984, of said court, under the gavel of His Honour Frederick K. Tulay, then resident circuit judge. Appellee alleged principally ins four-count complaint that he is the legal and bonafide owner of one lot of **land** lying in New Georgia, which he purchased from one Williette Berrian in 1967, and that his grantor acquired the aforesaid of from the Republic of Liberia in 1966. Appellee asserted in his complaint that the appellant encroach d on his premises and illegally, wrongfully, and prejudicially withheld possession thereof, and constructed a building thereon, notwithstanding several warnings from him to appellant to discontinue her encroachment and illegal possession of the property. Appellee prayed the trial court to eject, oust and evict the appellant from the property and repossess him thereof and to award him damages for the un-lawful occupancy and use of the premises.

A writ of summons was duly issued but returned unserved for reason that the appellant could not be found. A writ of resummons was issued upon request of the appellee on the 19thday of September A. D. 1984. It was served, acknowledged by the appellant and returned served.

The defendant, appellant herein, filed a three-count answer on October 29, 1984, alleging at Mr. Matthew T. Weah was the lawful owner of the property by virtue of a warranty deed from O. J. Kai Gray, probated on the 19thday of November, A. D. 1969, and registered in volume 88-GA, page 987.

The records in the case indicate that Mr. Matthew T. Weah filed a two-count motion to intervene, along with a five-count answer on the 29th day of October, A. D. 1984. The intervenor claimed ownership of two lots, including the one for which the appellant had been sued, alleging that he bought the property from 0. J. Kai Gray II, as evident by his warranty deed, and that the appellant was his wife who has been placed upon and was living on the subject property with his knowledge, will and consent. As such, he said, appellant was not occupying the premises illegally or unlawfully. Intervenor also contended that his property was not the same as that of the appellee, and he therefore challenged the legal sufficiency of appellee's title. Intervenor also claimed that his interest would be affected by a judgment of the trial court should he fail to be joined as a party defendant in the ejectment suit. Intervenor prayed the trial Court to intervene in the matter to protect his property interest and rights, and to further dismiss appellee's complaint in its entirety. The appellee filed a three-count reply upon which the pleading rested.

The records in the case also reveal that counsel for both parties applied to the trial court on the 9thday of August, A. D. 1985, for a board of arbitration to hear and determine the controversy between the parties upon evidence to be produced from the parties as well as the report of the survey. They requested that the board be mandated to submit its award within 15 days of the date of submission of the controversy to it.

During the September Term, A. D. 1985, of the trial court, presided over by His Honour Jesse Banks, Jr., assigned circuit judge, on the 6th day of December, A. D. 1985, disposed of the law issues and ruled this case to trial by jury under the direction of the trial court on ground that the issues presented in the pleadings were mixed law and facts.

On the 30th day of March, A. D. 1989, the trial court appointed and qualified Mr. Kempson Murray as chairman of the board of arbitration, and Messrs Arah Kamara and Henry K. Sieh as members of the said board, and instructed the to report to the trial court their findings as to the

ownership of the property within two weeks. The board was divided in its report to the trial court. The majority report of May 12, 1989, showed that the **land** in dispute was in the same area and that the metes and bounds of the deeds of the parties had the same description except that Matthew T. Weah's deed was for two lots. The majority of the board recommended that Mr. Gray should present to the trial court supporting documents authorizing him to execute a transfer deed of two lots to Matthew T. Weah. It also reminded the trial court to *focus its attention on the ages of all the deeds including the mother deeds.* The majority finally observed appellee's warranty deed from Williette Berrian to Joseph Tate was probated in 1967, and that the public **land** sale deed to Williette Berrian was probated on November 1, 1966. On the other hand, the records also showed that the warranty deed in favor of Henry T. Weah, from O. J. K. Gray, II, was probated November 19, 1969; that there was a letter of recommendation from Francis Tarr. Grimes to Mr. O. J. K. Gray, II, to act as an agent for his property; and that there was a certified photocopy of a public **land** sale deed in favor of Francis Tarr Grimes containing 22.8 acres of **land**, which was probated on September 28, 1942. It also observed that there was no transfer deed from Francis Taff Grimes to O. J. Kai Gray, II, and that there was no letter of authorization for Mr. Gray to execute a deed in his name.

The minority report of the board submitted on May 19, 1989 by Henry K. Sieh, public **land** surveyor, Ministry of Public Works, also acknowledged all of the deeds, including the mother deeds of the parties and a letter of recommendation to Mr. Oscar J. Gray, II, to act as agent on behalf of Mr. Francis Tarr Grimes. He also observed that the properties could be easily illustrated, and that Mr. Weah had made development and improvements such as buildings for almost 20 years without any legal objections. He further observed that the letter of authority to Mr. Gray to act as an agent for Mr. Francis Tarr Grimes empowered and authorized him to legally sign all required documents and that the deed executed was therefore legal. Thus, he recommended that the majority report, on page 2, at paragraphs 2 & 3, be nullified as such did not fall within the surveyor's technical rule. He also recommended the dismissal of the majority report on ground that it projected partial recommendation by imposing upon the court the burden of demanding a letter from Mr. Gray showing his legal authority, and noted that Mr. Joseph Tate was not bound by any party to any **land** dispute or boundary because his *area fell in the swam* which had no demarcation or boundary lines, or any improvement or development made by him or his grantor.

On the 7th day of August, A. D. 1989, His Honour Varnie D. Cooper, assigned circuit judge presiding over the Sixth Judicial Circuit, rendered a final decree upon a notice of assignment confirming and affirming the majority report of the board of arbitration. The trial judge ordered the clerk of the court to prepare a writ of possession in accordance with the metes and bounds of the arbitrators' report and map to place appellee in possession of his **land** as indicated in said report. Appellant excepted to the decree and appealed to this Court upon a bill of exceptions.

In count one of the bill of exceptions, appellant contended that at the trial, the judge illegally dismissed the ejectment action upon hearing the board of arbitration's report on August 7, 1989, on ground that both parties in this case signed a notice of assignment for the hearing of this case on August 4, 1989. Appellant alleged that her counsel appeared on the 4thday of August, A. D. 1989, but that the trial judge was not present, and, therefore, she had expected a subsequent notice of assignment to be issued and served on her. Hence, appellant contended that the trial judge erred in denying her of her day in court. Appellant argued before this court that the notice of assignment issued on July 29,1989, for hearing of the case was changed from the 4th to the 7th day of August by writing over "e", but that the date the sheriff was ordered to make his returns remained the 4t h day of August, A. D. 1989. Thus, the hearing of the case could not have been on the 7t h day of August, A. D. 1989, when the sheriff was ordered to make his official returns on or before the said 4thday of August, A. D. 1989. Appellant stressed that it was impossible for a notice of assignment requiring the parties to appear before court at 10:00 a.m. for hearing to be served on the same day of the hearing, as alleged by the sheriff.

Appellant further asserted that the trial judge erred when he erroneously affirmed and confirmed the majority report and illegally dismissed the minority report without a trial by jury and in the absence of the appellant and the surveyor, Henry K. Sieh who had prepared the minority report As such, she said, the findings and final ruling of the trial judge was contrary to the statute and laws governing arbitration.

Appellant also strongly contended that the majority report of the board of arbitration upon which the trial court based its ruling, did not render any award to the appellee, plaintiff in the court below, for which the appellee was ordered placed in possession of the premises. Appellant therefore prayed this Honourable Court to remand the case for retrial to resolve the issue of ownership to the disputed property.

In counter argument, appellee contended that the trial judge did not err when he upheld the decision of the majority report, as against the minority report, on ground that both parties agreed and submitted their respective claims to a board of arbitration for its investigation, and that both the majority report and the minority report confirmed that the **land** occupied by the appellant was the same **land** claimed by appellee.

Appellee asserted that the failure of intervenor to show his chain of title was a legal defect for which the decision of the trial court should be enforced and appellant's appeal denied. In short, appellee argued that the intervenor bought two lots from Jung Gray, but failed to show by evidence the person from whom his grantor came in possession of said property. Hence, he said, the trial court acted prudently in dismissing the ejectment suit as there were no issues to be

traversed or valid evidence to prove a better title had by the appellant and intervenor, as against the legitimate title of appellee. As to the issue of the notice of assignment, appellee argued that the minority report was only designed to frustrate justice, deny appellee his legitimate right to possession of his property, and delay the relief duly granted by the trial court.

Appellee vehemently contended that he had superior title to the disputed property as against the intervenor; and that as such, appellant's illegal construction on the premises was not a sufficient basis for denying him his rights to the unmolested access to his property. Appellee therefore prayed this Court to affirm the decision of the trial court and to order the enforcement of that court's decision.

The paramount issues for the determination of this case are:

1. Whether or not the report of the majority members of the board of arbitration is valid and enforceable by the trial court; and

2. Was the appellant and her surveyor given a notice of assignment for hearing of the report of the board of arbitration?

These issues will be decided in the reverse order. As to the issue of the notice to the appellant and her surveyor, this Court observes from the records that a notice of assignment was duly issued on July 29, 1989, notifying the parties, the board of arbitration and the counsel of both parties to appear before the trial court on the 4th day of August, A. D. 1989. The notice was acknowledged by counsel for both parties. On the face of the notice is shown that Kempson Murray and Ara R. Kamara, chairman and member of the board of arbitration, signed said notice on August 2, 1989. Surveyor Henry K. Sieh, the other member of said board, did not sign the notice. However, "August 7, 1989" was written against his name, perhaps indicating as the date of service of said notice. We also observe the appearance date, August 4, 1989, was changed to the 7thday of August, 1989, by pen. The reason for such change is not disclosed by the records in the case. The sheriff's returns of August 7, 1989, further shows that Bailiff George Sherman served the notice of assignment on both counsel for the parties and on the three members of the board on the 7thday of August, A. D. 1989, the day for the hearing of this case.

A careful perusal of the notice and the sheriff's returns clearly supports the contention of appellant that a subsequent notice of assignment ought to have been issued and served on all the interesting parties for hearing of this case on the T h day of August, A. D. 1989. We observe that the majority of the board of arbitration signed the notice on the 2n d day of August, A. D. 1989, but the sheriffs returns showed that said notice was served on all the parties on the 7t h day of August, A. D. 1989. This indeed is a clear indication that the majority members of the board signed the notice prior to its service by Bailiff George Sherman. The sheriffs returns are therefore faulty and vague as to the manner of service of said notice. A notice is a fundamental requirement in all litigations which is intended to afford a party litigant an opportunity to appear and be heard. As such, it should be served in keeping with law and the returns as to the manner of its service by a ministerial officer should be clear and without any impropriety, *Barbour-Tarpeh et al. v. Dennis et al.[1977] LRSC 11;* , 25 LLR 468 (1977).

The trial judge therefore committed a reversible error when, he heard this case without a subsequent notice of assignment being issued and served on the appellant. However, we observe that this case has been pending before this Court since 1989, almost nine (9) years without redress. In this regard, we shall decide this case in a fair and impartial manner in bringing this litigation to an end as the lower court ought to have rendered.

The second and final issue in this case is: Whether or not the report of the majority members of the board of arbitration was valid and therefore enforceable by the trial court.

A recourse to the parties' application to the trial court praying for a board of arbitration reveals, and clause one (1) thereof provides: "That in order to speed up the final determination of this matter, counsel for both parties have mutually agreed to submit their respective claims to a board of arbitration for its investigation."

The parties herein through their counsel, submitted their respective claims to the board of arbitration for its investigation so as to speed up the final determination of the ejectment suit now on appeal. Clause four (4) of said application also authorizes the arbitrators to "conduct a survey" to determine the superior title vested in either of the parties. Finally, clause five (5) of the aforesaid application further authorizes the arbitration board to hear and determine the controversy upon evidence produce, notwithstanding the failure of a party duly notified to appear at the hearing. The mutual agreement of the parties to submit their respective claims to the board of arbitrators for the speedy determination of such claims is valid and binding on them and therefore enforceable by the trial court granting said application. A careful perusal of our statute governing arbitration proceeding provides that:

"A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justifiable character of the controversy, irrevocable except upon such grounds as exist for the revocation of any contract." Civil Procedure Law, Rev. Code 1: 64.1, viz: *Validity, enforceability, and irrevocability of arbitration agreements.*

The records before us are devoid of any evidence showing that either of the parties herein ever 'revoked the written agreement to submit to arbitration their dispute and respective claims. Thus, it was but legal for the trial judge to hear the arbitration reports without a trial by jury. The appellant therefore waived her right of a trial by jury predicated upon the mutual written agreement praying the trial court for arbitration proceeding to determine their respective claims inexpensively and expeditiously. Hence, the trial judge's confirmation of the majority report in accordance with statute. Civil Procedure Law, Rev. Code 1: 64.5(f) and 64.10.

The majority report of the board confirmed by the trial court reminded said court to "focus its attention to the ages of all the deeds including the mother deeds" as shown on page 2 of the report. The mother deeds investigated by the board of arbitration and reported by its majority members included one original and one public **land** sale deed in favor of Williette Berrian, grantor of Appellee Tate, the former being probated on the 1" day of November 1966, and registered in volume 88m, at pages 319-32, showing one (1) lot, and the latter (a certified photocopy public **land** sale deed from the Republic of Liberia to Francis T. Grimes, principal of Gray), showing 22.8 acres, probated on September 28, 1942, and registered in volume 91-m, at pages 267-268, as shown on page 1 of said report. The majority report also observed that the **land** in dispute was in the same area and that the metes and bounds of the deeds carry the same description, with the exception of Matthew T. Weah's deed which carried the dimension of 82.5 X 264 making it 2 lots. Finally, the majority report observed that neither' a transfer deed nor a letter of authorization had been issued from Francis T. Grimes to 0. J. Kai Gray to write a deed in his name, and therefore recommended that Mr. Gray should present to the trial court a supporting document authorizing him to write a transfer deed for two lots to Matthew T. Weah.

We observe that the public **land** sale deed of Francis Tarr Grimes, as acknowledged by the board, was probated and registered in 1942, and contained 22.8 acres of **land** located and lying in the same area stated in Appellee Tate's public **land** sale deed of 1966, and which contained one lot. Thus, the deed of Mr. Grimes is older than the deed of Mr. Tate. The two lots allegedly sold by Mr. Gray, agent of Francis Tarr Grimes, without title vested in him, remain the lawful property of his principal, Francis Tan Grimes. In other words, the fact that the agent does not have a transfer deed or an authority from his principal to dispose of a portion of his property

does not extinguish his principal's lawful title to the disputed property located in the same area and bearing the identical metes and bounds. It is also important to remark that appellee's grantor, Williette Berrian, and Gray's principal, Francis Tan Grimes, have the same grantor, the Republic of Liberia. In this regard, the trial court having confirmed the majority report, ought to have focused its attention on the two mother deeds from the Republic of Liberia, as recommended by the majority of the board in ascertaining whether appellee's one lot is not a portion of Francis Tarr Grimes 22.8 acres of **land**.

This Court therefore holds that appellee should only be placed in possession of the subject property, after the trial court further ascertains that his one (1) lot of **land in the vicinity is exclusive of the 22.8 acres of land** of Francis Tarr Grimes in the same area. This modification of the trial court's judgment is necessary and proper to bring this long outstanding matter to an end and to avoid further litigation.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the court below should be, and the same is hereby confirmed with modification that appellee should be placed in possession of the disputed property, provided that his one (1) lot of **land** in the vicinity is exclusive of the 22.8 acres of **land** of Francis Tarr Grimes, located in the same area. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs are disallowed. And it is hereby so ordered.

Judgment affirmed with modification.

Dundas v Botoe [1966] LRSC 53; 17 LLR 457 (1966) (1 July 1966)

T. A. DUNDAS, Appellant, v. THOMAS N. BOTOE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 11, 1966. Decided July 1, 1966. In an ejectment action, a defendant who has failed to allege or proffer a deed to the disputed property in his pleadings may properly be barred from producing such a deed in the trial. 2. In an ejectment action, a duly probated and registered deed is superior, as evidence of title, to any prior instruments or indicia which have not been duly probated and registered. 3. In an ejectment action, a defendant's bare and unsupported denial of the plaintiff's title cannot prevail where

the plaintiff has established title by a duly probated and registered deed.
1.

On appeal in an ejectment action, the judgment of
the trial court was affirmed.
Morgan, Grimes and Harmon Law Firm for Simpson Law Firm for appellee.

appellant.

MR. Court.

JUSTICE

R.OBERTS delivered the opinion of the

Thomas N. Botoe, the appellee in this case and plaintiff in the court below, alleged that
in the year 193o he purchased Lot No. 77, situated and lying in the west side of Robert Street, Monrovia, Liberia, from the late
John W. H. McClain and his wife Mary McClain who both executed a warranty deed in his favor; that whilst he was away from the Republic
of Liberia, appellant entered his premises and thereon constructed a neat house in the year 196o; and that appellee, returning to
Liberia and observing the encroachment on his land by appellant, wrote him a letter informing him of his illegal possession of his
land and advised him to vacate. From this letter many others
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LIBERIAN LAW REPORTS

issued and conferences were arranged
with a view of dissolving the dispute, but all these efforts were fruitless. Thereupon appellee instituted an ejectment suit on the
3oth day of April, 1962. The pleadings progressed as far as the rejoinder. The issues of law having been disposed of by His Honor
John A. Dennis presiding by assignment during the March term of court, 1964, the case was ruled to trial to determine whether plaintiff,
now appellee, was the lawful owner of the property described in the complaint and whether defendant-appellant was unlawfully occupying
same. The case came up for hearing before a jury during the March 1965 term of court presided over by His Honor D. W. Baromi Morris.
After hearing the evidence adduced, the jury brought in a verdict in favor of appellee, to which appellant excepted and moved for
a new trial, which motion was denied. The court rendered final judgment confirming the verdict of the trial jury and ordered the
issuance of a writ of possession in favor of appellee. Appellant took exceptions from this judgment and other rulings of the judge
and prayed an appeal to this court for a review of the case. We find it necessary first to quote the bill of exceptions filed by
appellant which reads as follows. "1. Because defendant says that the court on May 13, 1964, same being the 38th day's session, ruled
on the law issues, overruling Counts 1 and 3 of defendant's answer, to which defendant excepted. "2. Because defendant says that
when he was testifying for himself, the following question was put to him on the direct examination : " 'Q. You have referred to

your having a deed to the land and stated that it has been registered and probated. If you have said deed, will you please present it?' To which question plaintiff objected on the grounds: (1) not issue pleaded; (z) not one of the is-

sues ruled to trial; and (3) the law of notice. Which objection Your Honor sustained; to which ruling defendant excepted. (See minutes of court, April 21, 1965, 22nd day's session, pages 3 and 4.) "3. Because Your Honor on the 23rd day of April, 1965, same being the 22nd day's session, delivered a written charge to the jury, to which charge defendant recorded his exceptions. "4. And also because on the aforesaid 22nd day of April, 1965 the jury returned a verdict in favor of the plaintiff to the effect that the plaintiff is entitled to his land, to which verdict of the jury the defendant then and there entered his exceptions. "5. And also because on the 23rd day of April, 1965, the defendant filed a motion for a new trial which Your Honor heard and denied on the 28th day of April, 1965, to which defendant duly excepted. "6. And also because on the 3rd day of May, 1965, Your Honor rendered judgment against the defendant, thereby sustaining the verdict of the jury, to which judgment the defendant promptly entered his exceptions and announced appeal to the Honorable Supreme Court at its ensuing October term 1965." Count 1 of the bill of exceptions refers to the trial judge's overruling Counts 1 and 3 of the answer. Let us see how the answer reads : t`i. Because defendant says that plaintiff's complaint is fatally defective and bad, in that plaintiff, relying as he is on a record or paper title, should have shown a regular chain of title from the Government of Liberia. Plaintiff not having done this, his entire action should be dismissed and defendant so prays. "2. And also because defendant says that he is not now occupying, nor has he at any time occupied, the whole or any portion of the parcel of land described in plaintiff's complaint, the subject of these proceedings, as is falsely alleged by plaintiff.

"3. And also because defendant says that he is the owner of a certain quarter-lot parcel of land adjoining the premises described in plaintiff Botoe's complaint which quarter-lot parcel of land plaintiff purchased from the Government of Liberia which at the time of purchase was the bona fide owner. (See copies of certificate of **land commissioner, official revenue receipt, and public land** surveyor's certificate, marked exhibits A, B, and C, respectively, hereto annexed to form part of this answer.) Defendant submits that his said quarter-lot parcel of **land is separate and distinct from the parcel of land** from which plaintiff seeks. to eject defendant. "4. And also because defendant denies all and singular the allegations of law and fact as are set forth and contained in plaintiff's complaint not made

a subject of special traversal in this answer. "Wherefore in view of the foregoing, defendant prays the dismissal of plaintiff's action with costs against plaintiff." Plaintiff-appellee in his complaint asserted that he was the bona fide owner of Lot No. 77 and made profert a copy of a deed acquired from John W. H. McClain and Mary McClain and marked by the court Exhibit A. The deed made profert by appellee and made part of the records in the case certified to us is clear and distinct and speaks for itself with regard to this regular conveyance which gives title to appellee. We quote the relevant portion : "Know all men by these presents that I, John W. H. McClain of the City of Monrovia in the County of Montserrado and Republic of Liberia, for and in consideration of the sum of one hundred sixty-eight dollars paid to me by Thomas Nimene Botoe of the City of Monrovia in the County of Montserrado, Republic of Liberia (the receipt whereof is hereby acknowledged) do hereby give, grant, bargain, sell and con-

vey unto said Thomas Nimene Botoe, his heirs and assigns, a certain lot or parcel of land with buildings thereupon and all the privileges and appurtenances to the same belonging, situated in the City of Monrovia, County of Montserrado, and bearing in the authentic records of said City the Number seventy-seven (77) and bounded and described as follows.. . ." In Count 3 of the answer, appellant claimed ownership of a "quarter lot" without describing this tract of land by number or otherwise; and what is most surprising, appellant failed to proffer any deed granting him title to said land. **Instead appellant made profert certificates from the land** commissioner and land surveyor and revenue receipts as indicia of title. What a novelty! Our statute is clear on this point as against the purported title of appellant and says : "All persons acquiring any interest affecting or relating to real property shall appear in person or by attorney-at-law before the Probate Court for the county in which such real property is situated within four months of the date of execution of the instrument and have the deed, mortgage or other instrument affecting or relating to real property publicly probated ; provided, however, that this provision shall not apply to persons acquiring an interest affecting or relating to real property prior to October 1, 1862." 1956 CODE 29 :2. "If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this Chapter within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered." 1956 CODE 29:6. This Court has held that a naked possession of land by an intruder cannot prevail against a paper title and that an action of ejectment may be brought against any person

holding property adverse to the interest of a party plaintiff. We are of the decided opinion
that the judge could not but rule out Counts i and 3. We now come to appellant's objection to the question: "You have referred to
your having a deed to the land and that has been registered and probated. If you have said deed, will you please present it?" This
Court has held that: "In civil cases however the parties are confined to the points specifically set up in the pleadings; hence a
defendant who pleads in traverse, or a fortiori does not plead at all, cannot cross-examine the witnesses for plaintiff on any affirmative
matter." Massaquoi v. Lowndes, 4 L.L.R. 26o (1935). The grounds of objection raised by plaintiff that the deed was never pleaded, nor the issue ruled to trial, and that notice
was lacking were rightly and legally sustained by the judge. Moreover, the record shows that nowhere in the defendant's testimony
did he assert possession of a deed that had been probated and registered. He testified as follows : "I occupied not an inch of land
belonging to Mr. Botoe. The **land I am occupying, I bought from the Government of Liberia, and it was surveyed by the public land** surveyor. I have my title to prove that." It is evident that by "title" the plaintiff referred to those certificates and receipts
he proffered and which were marked Exhibits A, B, and C. The entire testimony of appellant given during the trial for which he has
asked us to review and reverse the judgment of the lower court is here recorded in full with no omission whatsoever : "Q. What is
your name and place of residence? "A. My name is T. A. Dundas, Monrovia, Liberia. "Q. Are you the defendant and acquainted with one
Mr. Thomas N. Botoe plaintiff in this case? "A. Yes.

"Q. The plaintiff has brought a suit of ejectment
alleging that you are unlawfully withholding and detaining from him property Lot No. 77. You have denied this allegation in your
answer and subsequent pleadings. Please tell this court all the facts and circumstances that may lie within your knowledge and in
support of your defense. "A. I occupied not an inch of **land belonging to Mr. Botoe. The land** I am occupying, I bought from the government
of Liberia, and it was surveyed by the public land surveyor. I have my title to prove that. "Q. You have referred to your having
a deed to the land and stated that it has been registered and probated. If you have said deed, will you please present it? "Objection:
Grounds: (1) not issue pleaded; (2) not one of the issues ruled to trial; and (3) the law of notice. "Objection sustained. To which
defendant excepts. Defendant rests with the usual reservation. Witness discharged with the thanks of this court. Defendant rests
evidence." From the evidence adduced during the trial it appears that appellee conformed with the rule that in ejectment the plaintiff
must show title. This Court is at a loss to know what defendant-appellant relied on to disprove the allegation of plaintiff-appellee.

Did he rely on the few lines of testimony he gave or on the certificate he proffered? It is clear that defendant-appellant produced nothing in the court below to show title to the premises in question nor any other premises but set up a bare denial. We are wondering whether the exceptions taken to the rulings and final judgment of the trial judge and the filing of this appeal were honest or regarded as a formality or a means of elongation? Be it what it may, the trial having been regularly and fairly conducted, we find no reason to

interrupt the judgment. This Court is therefore of the opinion that the judgment of the trial court should be affirmed and appellant ruled to pay all costs. And it is hereby so ordered. Judgment affirmed.

Lartey et al v Corneh et al [1989] LRSC 14; 36 LLR 255 (1989) (14 July 1989)

BOIMA LARTEY et al., purported surviving heirs and descendants of the late CHIEF MURPHY and Residents of Vai Town (alias VEY JOHN'S PEOPLE), Plaintiffs/Appellants, v. **ALHAJI VARMUYAH CORNEH, et al.**, Defendants/Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 2, 1989. Decided: July 14, 1989.

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.

In 1906, the Republic of Liberia issued an Aborigine **Land** Grant Deed to Chief Murphy, Vai John and Vai John People for twenty-five (25) acres of **land** on Bushrod Island, Montserrado County, Republic of Liberia. Subsequent thereto, that is in 1931, the said Republic of Liberia issued another Aborigine **Land** Grant Deed to Alhaji Varmuyah Corneh, Alhaji Sondifu et al. for the identical twenty-five acres of **land** in Vai Town aforesaid.

The execution of the two (2) deeds gave rise to a prolonged and protracted litigation between the two (2) separate grantees. Because of the protracted court proceedings, the President of Liberia appointed a special committee to probe into the matter, and to find out who were the rightful owners of the 25 acres of **land**. The committee reported that the descendants of Chief Murphy, Vai John and Vai John People, owners of the 1906 deed, were the rightful owners of the **land** in dispute. The President approved the report and instructed the Minister of Justice to institute cancellation proceedings in respect of the 1931 deed. The deed was canceled in the

Circuit Court for the Sixth Judicial Circuit, Montserrado County. Appeal from the judgment of said cancellation was heard by the Supreme Court and the judgment was confirmed and affirmed.

In affirming the judgment in the cancellation proceedings, the Supreme Court held that since the 1931 deed no longer existed. Therefore, the 1906 deed should be recognized as the valid deed for the 25 acres of **land**. The Supreme Court also held that 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. Consequently, the appellants withdrew their appeal taken from the dismissal of the action of ejectment and were awarded the twenty-five acres of **land** situated on Bushrod Island and covered by the 1906 Aborigine Grant Deed.

James D. Gordon appeared for petitioners. *Joseph Williamson* appeared for the respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

The history of this case, as culled from records of the Civil Law Court, Sixth Judicial Circuit, Montserrado County and this Court, shows that the Republic of Liberia issued an Aborigine **Land** Grand Deed in fee simple to Chief Murphy, Vai John and Vai John People in 1906, for 25 acres of **land** on Bushrod Island, Montserrado County, Republic of Liberia. Subsequent thereto, in 1931, the said Republic of Liberia issued another Aborigine **Land** Grant Deed to Alhaji Varmuyah Corneh, Alhaji Sondifu, et. al., for the identical twenty-five acres of **land** in Vai Town, Bushrod Island, City of Monrovia, Montserrado County, Republic of Liberia.

The execution of these two deeds gave rise to a prolong and protracted litigation between the two separate grantees, namely, Chief Murphy, Vai John and Vai John People, on the one hand, and Alhaji Varmuyah Corneh, Alhaji Sondifu, et al., on the other hand, for the identical twenty-five acres of **land** in Vai Town, Bushrod Island, City of Monrovia, Montserrado County, Republic of Liberia. Because of the protracted court proceedings, the President of Liberia appointed a special committee to probe into the matter and find out who were the rightful owners of the 25 acres of **land**.

The committee prepared a report to the effect that the descendants of Chief Murphy, Vai John and Vai John People, grantees under the 1906 deed, were the rightful owners of the property because they were the direct descendants of Chief Murphy, Vai John and Vai John People. The President approved the report and instructed the Minister of Justice to institute cancellation proceedings in respect of the 1931 deed under which Varmuyah Corneh, et al. claimed. The order was executed by the Minister of Justice and a petition for the cancellation of the 1931 deed was filed in the Civil Law Court, Sixth Judicial Circuit, Montserrado County. The petition was granted by the court and the 1931 deed was decreed cancelled. From the judgment, Varmuyah Corneh et al. appealed to this Court for a review. Following arguments *pro et con* in the cancellation proceedings, this Court confirmed and affirmed the judgment of the trial court cancelling the deed of 1931.

The cancellation of the 1931 deed divested Varmuyah Corneh et. al. of any and all rights to the twenty-five acres of **land** in question. As such, this Court of dernier resort cannot create a

vacuum by not determining the rightful owners of the property, since there exists a genuine deed executed by the late President Arthur Barclay in 1906 which granted the twenty-five acres of **land** located on Bushrod Island, Montserrado County, Republic of Liberia, to Chief Murphy, Vai John and Vai John People, under which deed of 1906, J. D. Lassanah, Boimah Lartey, Jema Kiadii, Miata Kiadii, Gartee Kiadii, Massa Funjeh, Tietee of Mando, Massa Sunden, Borleor Gray, Massa Kiadii of Kongo, Alhaji J. D. Lassanah, J. D. Lassanah Jr., Brima Kamara, Jeneka Dabla, Lahai Lassana and Zwanah Coleman have claimed ownership to the said property throughout the history of the several court litigations, as shown from the opinions of this Court.

The issue to which this Court must now address itself concerns the ownership of the property in question. In that connection, the question that comes to this Court's mind is where two parties claim the same property with different deeds at different times, as in the case before us, and where one of the deeds has been cancelled and the other remains undisturbed, recognized and valid, as with the case of the 1906 deed, what is the status of claimants under the undisturbed, recognized and valid deed?

The long history of this case does not disclose that the 1906 deed was ever annulled or cancelled by its grantor for any reason and no evidence has been shown to the contrary. In normal circumstances, where two conflicting deeds of conveyances exist and there is a dispute over their legal validity, the one issued subsequent to the first is inferior. This is precisely the case before us concerning the 1906 and the 1931 deeds. Under the elementary principle of law governing deeds relating to realties, the latter deed must yield.

From the foregoing, it is quite clear that the descendants of Chief Murphy, Vai John and Vai John People are the legitimate and rightful owners of the twenty-five acres of **land** in Vai Town, Bushrod Island, City of Monrovia, Montserrado County, Republic of Liberia. This position was upheld by this Court when former Chief Justice A. Dash Wilson, delivering an opinion of this Court in this very case, as found in [1967] LRSC 20; 18 LLR 177 (1967), said that there were two deeds found in the records executed by two Presidents of Liberia at different times: one vested title in Chief Murphy, Vai .John and Vai John People which is the 1906 deed executed by the late President Arthur Barclay, and the other, from the Republic of Liberia to Morve Sone, Varmuyah Corneh, et. al. executed by the late President Edwin J. Barclay in 1931.

This Court observes that following the cancellation of the 1931 deed by this Court, the descendants of the grantees under the deed of 1906, who had earlier filed an action of ejectment against those claiming under the 1931 deed, which ejectment action traveled to this Court and had been on appeal since, filed a notice of withdrawal on November 15, 1988, in this Court, withdrawing the appeal, since the 1906 deed under which they claim is the only deed now valid. *Republic v. Morve Sone et al.*, 35 LLR 129 (1988), March 1988 Term of the Supreme Court.

For the purpose of clarity, it is better that we give a brief history of the ejectment suit and, in so doing, quote hereunder the content of the bill of exceptions made by counsel for appellants in the ejectment suit:

"1. Because appellants say that Your Honour committed a reversible error when, on the 7t h day of August, 1982, you conferred upon yourself appellate jurisdiction and granted in blatant

violation of the relevant statutes on pleadings and numerous opinions of the Supreme Court of Liberia, the so-called 'motion to dismiss or abate proceedings,' which was filed on the 5th day of August, 1982. Appellants submit that Your Honour's act in granting the motion and dismissing their action of ejectment was intentional and deliberate in that, on August 6, 1982, a day prior to your ruling on said motion, appellants, in resisting the motion, cited Civil Procedure Law, Rev. Code 1: 11.2(1), which provides that a motion to dismiss must be filed at the time of service of responsive pleading. Appellants further submit that in spite of the clear and unequivocal language of the code just cited, Your Honour, without citing a single authority, ignored it and capriciously granted the motion to dismiss.

2. And also because appellants say that Your Honour's sole objective in dismissing the action is to stifle justice since as far back as January 14, 1982, said action had been ruled to trial by His Honour Frank W. Smith whom Your Honour has referred to as "your colleague," and to which ruling the defendants, now appellees, duly excepted in its entirety and gave notice that they would take advantage of the statute. Appellants submit that Your Honour knew that to dismiss this action at the time when you did was illegal, since indeed you had earlier made record to that effect on said action on Friday, July 30, 1982, 34' day's session, sheets 2 and 3: "Hence, this court will proceed as a matter of record to dispose of the injunction and in doing so the ruling might be preemptive since we cannot undo what our colleague has already done" (emphasis added).

From the foregoing, it leaves no doubt in the mind of this Court that appellants J. D. Lassanah Sr., Boimah Lartey, Jema Kiadii, Miatta Kiadii, Gartee Kiadii, Masa. Funjeh, Tietee of Mando, Massa Sundeh, Borleor Gray, Massa Kiadii of Karnga, Alhaji J. D. Lassanah, J. D. Lassanah, Jr., Brima Kamara, Jeneka Dabla, Lahai Lassanah and Zwannah Coleman who filed the ejectment suit, their rights having been established by the cancellation of the 1931 deed, are the direct heirs and descendants of Chief Murphy, Vai John and Vai John People, and therefore legitimate owners of the 25 acres of **land**, covered by the 1906 deed, and which is situated in Vai Town, Bushrod Island, City of Monrovia, Montserrado County, Republic of Liberia. They are legitimately entitled to the immediate possession of the aforesaid twenty-five acres of **land** located on Bushrod Island, Montserrado County, Republic of Liberia, and should be placed in possession of same.

In view of the foregoing, it is our order that the Clerk of this Court should send a mandate to the court below, being the Circuit Court for the Sixth Judicial Circuit, Montserrado County, to that effect. And it is hereby so ordered.

Judgment affirmed.

Kamara et al v Kindi [1998] LRSC 26; 39 LLR 102 (1998) (6 August 1998)

ARMAH KAMARA and **HENRY KOLLIE**, Appellants, v**. BINDU KINDI et al.** Appellees.

MOTION FOR RELIEF FROM JUDGMENT OF THE SUPREME COURT, PETITION FOR RE-ARGUMENT, BILLS OF INFORMATION.

Heard: March 30, 1998. Decided: August 6, 1998.

1. The failure of a party to deny those averments of an adverse party which are known or believed by him to be untrue amounts to an admission of the same.

2. Where the respondent to a bill of information does not deny the averments in the bill of information, the information will be granted, and if the acts alleged therein constitute contempt of court, the party failing to deny the acts will be held in contempt of court.

3. It is contemptuous for a party to engage in any conduct which is contrary to the specific orders of a trial court or which has the tendency or potential to undermine the effectiveness of the final judgment of the Supreme Court.

4. It is common knowledge that appeals serve as a stay on the proceedings, and the judgment cannot be enforced; in fact everything remains in status quo until the appeal is determined.

5. A motion for relief from judgment is a subject matter for the trial court and not the Supreme Court.

6. While the section of the statute providing for motions for relief from judgment does not say in clear and concise terms that the "court" referred to therein is the trial court, same is inferred from the provisions.

7. It is common knowledge in our jurisdiction that the general jurisdiction of the Supreme Court is appellate in nature; its original jurisdiction is therefore limited. Hence, where the statute gives the Court the power to entertain an independent action that statute refers to only a trial court and not an appellate court.

8. Where a party does not attempt to have the Supreme Court sent down to the trial court a mandate growing out of the Supreme Court judgment, and the other party take advantage of the inaction by filing a motion for relief from judgment, the Court will deem that the case remains on the docket, and the motion will be passed upon regardless of whether or not the motion is cognizable before the Court.

9. A party's negligence and failure to act in seeing that the Supreme Court's mandate is forwarded to the trial is considered to be laches, and a motion for relief for judgment filed in consequence thereof will be passed upon by the Court.

10. The three-day time limitation is applicable to petitions for re-argument and not to motions for relief from judgment.

11. The filing of a motion for relief from judgment in the Supreme Court, twenty-one days after the rendition of the Supreme Court's judgment is not deemed to be untimely; rather, it is an attack on a motion for relief from judgment that is considered to be untimely where the response is filed eight months after the filing of the motion.

12. The Supreme Court loses jurisdiction over a case only when the Court issues and sends down a mandate to the trial court with instructions to resume jurisdiction and to do or refrain from doing certain acts.

13. Once a case is on the Supreme Court's docket, the Court has jurisdiction over it and must therefore dispose of it, even where a judgment has been rendered, once the judgment has not been effectuated by a mandate being issues and sent down to the trial court.

14. The failure of the Supreme Court to send down a mandate to the trial court after the Supreme Court has rendered judgment in a case will be interpreted as a decision of the Bench to entertain a motion filed after the rendition of the judgment.

15. Although a motion for relief from judgment is a proper subject for the trial court and is not cognizable before the Supreme Court, once a predecessor Supreme Court Bench which had rendered judgment in a case for which the relief is sought had decided not to enforce the judgment by virtue of the fact that a mandate was not sent down to the trial court, the motion will be entertained by the Court.

16. Where a predecessor Supreme Court Bench fails to enforce a judgment rendered by it and from which a motion for relief from judgment is filed, the judgment is deemed to remain in abeyance, and as such, technically, no final judgment will be deemed to have been made in the case.

17. The Supreme Court will be deemed to have jurisdiction over and will entertain a motion for relief from judgment, even though the Court concedes that the motion is a proper subject for the trial court.

18. Only a trial court can issue summons and render final judgment, after commencing actions on its own level.

19. Where a judgment is set aside, the court may direct and enforce restitution, in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.

20. The three-day time limitation is applicable to petitions for re-arguments and not motions for relief from judgment.

21. The Supreme Court only loses jurisdiction of a cause when the Court issues and sends down a mandate.

22. Only those issues raised in the first hearing and not passed upon are proper subjects for review in re-argument.

23. Not every point raised needs to be passed upon by the Court; rather, only those issues which are material and decisive of the controversy will or need to be passed upon.

24. A judge is not disqualified by having been counsel of any person who is interested or whose estate is involved, where such judge was never consulted relative to the particular matters which are the subject of the cause or proceeding before him.

25. In order to disqualify a judge who had previously been of counsel to a party, it must be shown that he had previously consulted on the identical point in controversy or very closely connected therewith.

26. A judge is not disqualified from sitting on a cause by the fact that he had been an attorney for one of the parties in another action involving one of the issues in the case on trial.

This is a case in which the Honourable Supreme Court is for the third time rendering an opinion. It involves a petition for declaratory judgment filed by Bindu Kindi et al. A trial was first had and judgment rendered in favor of petitioners. Respondent excepted to the ruling and appealed therefrom. That appeal was heard and granted, and the trial court's final judgment was ordered reversed. Then the appellees filed a petition for re-argument, which was heard and granted, and the opinion of the Supreme Court was itself reversed in favor of the appellees, thereby reinstating the trial court's final judgment. Subsequently, the appellants in whose favor the first opinion was rendered, and against whom the second opinion was given, filed a motion for relief from judgment, which motion was not determined at the time the matter was called for hearing by the Supreme Court.

In the interim, both appellants and appellees, respectively, filed separate bills of information accusing each other of violating the status quo of the property which was in dispute. Neither of the parties resisted the bill of information of the other, and the Supreme Court had not passed on either of the bills of information. In short, there was a regular appeal still not finally determined because of the pendency of a motion for relief from judgment, filed after re-argument was granted reversing an opinion of the Supreme Court, a motion for relief from judgment which had not yet been determined, and two bills of information respectively filed by the parties, both not resisted nor disposed of. The Supreme Court consolidated the three actions and made a final determination thereof.

On the two bills of information filed by the parties and not resisted, the Supreme Court noted that under the laws of this jurisdiction, the failure to deny averments in a pleading to which a denial is required will be deemed as an admission of the truthfulness of the averments. Since, in the instance case, the respondents in the two bills of information had failed to deny the allegations in the bills of information, which allegations accused the respective parties of acts contravening the judgment of the Supreme Court and the orders of the trial court, which acts constituted contempt of court, the parties were deemed in contempt of court and were each fined L$5,000.00 to be paid into the government revenues or be detained until the fines are paid.

With regards to the motion for relief judgment rnd the respondents arguments that the said motion was only cognizable before a trial court and not the Supreme Court, the Court conceded the legality of the argument but maintained that the fact that the respondents had failed to see that the Supreme Court's mandate, handed down in the previous petition for re-argument caused them to suffer lashes. The Court stated further that the fact that the motion was permitted to be on the docket, and the mandate in the previous petition for re-argument was not forwarded to the trial court meant that the Court still retained jurisdiction over the previous case and give it jurisdiction over the motion for relief from judgment. The Court interpreted the failure to send the mandate down to the lower court as a decision by the previous Court not to enforce the judgment, and to therefore vest in it the right to entertain the motion for relief from judgment. Accordingly, the Court dismissed the resistance to the motion for relief from judgment and proceeded to pass upon the said motion.

The Court held, with respect to the motion for relief from judgment that the previous Bench had acted beyond the petition for re-argument filed before it and held that the interpretation given by such previous Bench was wrong. The Court therefore reversed the judgment of the previous Bench, entered an new judgment reinstating the judgment out of which the re-argument grew, and ordered the trial court's judgment reversed. In entering this new judgment, the Court determined that the deed executed by the Republic in favour of Chief Fahn Kendeh and Families referred not only to the Chief and his immediate family, but to all families living in the Kendeh Town at the time of the execution of the deed.

The Court therefore sent down a mandate to the Civil Law Court for the Sixth Judicial Circuit Court for Montserrado County ordering the judge presiding therein to resume jurisdiction and give effect to the opinion that the subject property as communal property for the benefit and use of all of the residents, inhabitants and families of Kendeh Town, evidenced by the public **land** grant issued on March 17, 1916 since this was the intention of the grantor, the Republic of Liberia.

Molly M Gray appeared for appellants. J. D. Baryogar Junius and James W Zotaa, Jr., appeared for appellees.

MR. JUSTICE WRIGHT delivered the opinion of the Court

This is another one of those cases that have had a "topsyturvy" or roller-coaster ride in the Supreme Court. This is the third time this Court is having to render an opinion in this case. There was first a petition filed for declaratory judgment by Bindu Kindi et al. After pleadings rested, a trial was had and judgment rendered in favor of petitioners. Respondents being dissatisfied, excepted to said ruling and appealed therefrom. That regular appeal was heard and granted and the trial court's final judgment ordered reversed.

Then the appellees filed a petition for re-argument, which was heard and granted, and the opinion of the Supreme Court was itself reversed in favor of the appellees, thereby reinstating the trial court's final judgment. Subsequently, the appellants, in whose favor the first opinion was rendered and against whom the second opinion was given, filed a motion for relief from judgment.

This motion has not been determined, but in the interim, both appellants and appellees filed separate bills of information, accusing each other of violating the status quo of the property which was (and still is) in dispute. Neither of the parties resisted the bill of information of the other and this Court had not passed on either of the said bills of information prior to this opinion. In short, there is a regular appeal still not determined due to the pendency of a motion for relief from judgment filed after re-argument was granted reversing an opinion of this Court. Second, there is the said motion for relief from judgment still not heard and decided. Third, there are the two bills of information filed by the parties, both not resisted and not disposed of. Therefore, this Court, by this opinion today, lays to rest this case in its totality. The Court herein decides the appeal from the final judgment of the trial court, the motion for relief from judgment, and the two bills of information, all in one consolidated ruling, thus putting finality to the litigation.

This opinion being a consolidated ruling covering all the several pleadings that were filed and rulings made, the Court shall refer to the original petitioners in the parent case, i.e. Messrs. Bindu Kindi, Trini Kindi, Gbessie Kindi, Kula Kindi, Lami Kindi and Gboto Kindi, lineal heirs of the late Palm Kindi, as appellees; and shall refer to the original respondents, Messrs. Armah Kamara and Henry Kollie, as appellants.

Further, it is to be noted that this case has already enjoyed the benefit of one reargument following the first opinion and now is subject of a motion for relief from judgment following the second opinion and therefore shall not come back to this Court on re-argument or for any other reason except perhaps in case of improper enforcement of this Court's mandate or its obstruction. This Bench shall now lay this case to rest once and for all. See the case Rizzo and Richards v. Metzger and Rizzo, 38 LLR 544 (1998).

We shall now revert to the essence of this opinion, commencing with the two bills of information, same being the last pleadings filed; then, the court shall go on to the motion for relief from judgment.

Following the trial court's final judgment in favor of appellees (who then were petitioners), the appellees perfected their appeal from that judgment and the Supreme Court heard and granted their appeal in an opinion dated August 1, 1986. The appellees then filed a petition for re-argument on August 1, 1986 which was, in turn, heard and granted on February 25, 1988, thus reversing the first opinion and also thereby reinstating the trial court's final judgment. Thereafter, the appellants filed a motion for relief from judgment dated March 17, 1988, which was resisted on November 5, 1988, and is still not yet determined by this Court.

Given the above development in the case, the appellants, Armah Kamara and Henry Kollie, filed a bill of information to this Court, dated January 13, 1989, alleging that the Justice in Chambers, then Justice Frank W. Smith, now of sainted memory, sent down a mandate to the Civil Law Court on December 20, 1985, ordering the Sheriff of Montserrado County to collect all monies which were being collected by one of the parties to the cause of action for the use of the road built on the **land** and to hold said amounts in escrow pending the final determination of the petition for declaratory judgment by the Supreme Court.

Further, even though both parties were duly notified of the orders of this Court, the appellees, Bindu Kindi et al., harassed the Civil Law Court's bailiff such that she had to flee the area, thus leaving appellees still collecting monies to the detriment of appellants and without reporting said monies to the sheriff of the trial court. Additionally, because the monies collected by appellees were not being accounted for or deposited with the sheriff to be kept in escrow pending the final determination of the case, the acts of appellees were detrimental, disadvantageous and prejudicial to appellants' interest.

Appellees in turn filed their own bill of information, dated February 18, 1989, alleging that despite the pendency of the petition for declaratory judgment, by virtue of the motion for relief from judgment, Co-appellant Armah Kamara was continuing the sale of the property subject of the litigation; that he had sold said property to Messrs. Mike Dickson, Junior Ranyeh and Boakai Kalbah, that if he were not stopped by this Court from selling the **land**, he would be finished selling all by the time the matter was finally determined by this Court, and that he would have no money to refund to the purchasers should he not be successful at the end of the litigation.

During oral arguments before this Court, both counsels conceded that neither party resisted the bill of information of the other, thus leaving both unchallenged and as such taken to be true and correct. Our law provides that a party shall deny those averments of an adverse party which are known or believed by him to be untrue and that failure to deny such averments amounts to an admission of same. Civil Procedure Law, Rev. Code 1: 9.8.2. Both bills of information, being unrebutted as far as the records show, and as such deemed admitted, are hereby granted; and, because of that, the Court adjudges both parties guilty of contempt of this Court.

It must be remembered that the controversy of the parent case is for this Court to declare who, as between the contending parties, are the true owners of the disputed **land** and this controversy is still unresolved by virtue of the appeal announced from the trial court's final judgment, which appeal is still undecided by virtue of the motion for relief from judgment filed by appellant. It is common knowledge that an appeal serve as a stay on the proceedings and the judgment cannot therefore be enforced. In fact, everything remains in status quo until the appeal is determined. LIB CONST. (1986) Art. 20(b); Civil Procedure Law, Rev. Code 1:51.2, 51.20.

Therefore, it was contemptuous for either or both parties to have engaged in any conduct which was contrary to specific orders of the trial court, or which had the tendency or potential to undermine the effectiveness of a final judgment of the Supreme Court as to the status and value of the property in relation to the relative positions of the parties. Accordingly, both bills of information are respectively hereby granted and both parties are adjudged guilty of contempt and fined the sum of $5,000.00 (Five Thousand Liberian Dollars) each, which fines should be paid within five working days of this opinion and the flag receipts therefor presented to the Clerk of this Court. Upon the failure of either or both parties to pay these fines, the Clerk of this Court is hereby ordered to issue a commitment for the party or parties in default to be detained until the fine(s) shall have been paid.

Next, we proceed to the motion for relief from judgment filed by appellants after the first opinion was reversed on re-argument in favor of appellees.

The appellants' motion contained seven (7) counts, six of which we shall herein quote verbatim as follows:

2. That the declaratory judgment as prayed for by the petitioners, being against your humble movants, an appeal to this Honourable Court of last review was announced, granted, perfected and the court below was reviewed by the Nagbe Bench in 1986, and it reversed the said judgment of the court below and declared that the 204 acres of **land** was belonging to all of the families of Kendeh Town, including the petitioners/appellees, in keeping with the intent of the grantor—the Republic of Liberia—as expressed in the Aborigine Deed itself.

3. That even though this Court in 1986, with Mr. Justice Jangaba speaking for the Court, addressed all of the issues presented and clearly showed all to whom the 204 acres was made according to the intent of the grantor— the Republic of Liberia—as is expressed in the deed itself, yet the respondents herein, then petitioners/ appellees, filed for re-argument, which placed the case back on the docket.

4. That during the October 1997 Term of this Honourable Court, the succeeding Bench, prior to the qualification and seating of the Chief Justice, Emmanuel N. Gbalazeh, of the Supreme Court, heard the re-argument with Justice Azango, Senior Associate Justice presiding, and contrary to the rule governing re-argument, reviewed the opinion and judgment, and on February 25, 1988, reversed the judgment of the Bench with which it had concurrent jurisdiction, instead of reviewing the points for the re-argument presented so as to either deny or grant the application for re-argument.

5. Your humble movants submit that the petition for re-argument points out the law and fact which the petitioners allegedly claim were inadvertently overlooked by the Court through palpable mistakes on its part. The duty of the Court, as presided over by Mr. Justice Azango, was to see whether those points of law and facts were material and decisive of the petition for declaratory judgment and as to whether they were not passed upon in the previous opinion of the Nagbe Bench, and if they were so found, to grant the motion for re-argument and order the case redocketed for re-submission or to correct any such minor mistakes, if any, without disturbing the judgment in its entirety or otherwise to deny the motion for re-argument if the previous opinion did in fact address such points of contention.

6. Your humble movants further submit that this Bench was not called upon in the motion to review the judgment of Judge Hilton of the court below, but rather to grant a re-argument so that the points of law and fact raised, which the Court by palpable mistake inadvertently overlooked and did not pass upon, could be reviewed and addressed upon re-submission, but not to review the judgment of the court below for confirmation as was done by this Honourable Bench.

7. Your humble movants say that this present Bench made a serious and incurable mistake when it reviewed the appeal in this case and on February 25, 1998, rendered judgment in the appeal already heard and decided by the preceding Nagbe Bench in 1986 and reversed the judgment of a court of concurrent jurisdiction and confirmed the judgment of the lower court contrary to law and the purpose of the petition for re-argument, hence your said judgment of February 25, 1988, is void and should be vacated."

The appellees, in whose favor the re-argument had been granted, filed their resistance to the motion, also containing seven (7) counts.

In Count one of the resistance, respondents/appellees contended that movants/appellants should have filed their own petition for re-argument if they felt that some material issue of law or fact had been overlooked but not a motion for relief from judgment. It was respondents/appellees' basic contention that a motion for relief from judgment is cognizable only in the trial court and has no standing in the Supreme Court.

In count two of the resistance, the respondents/appellees contended that the issues raised in counts one, two and three of the motion had already been disposed of in the opinion of February 25, 1988 and so a finality had been reached on the merits of the case, and therefore under the principle of stare decisis and the doctrine of res judicata the case cannot be unearthed by a motion for relief from judgment.

Count three of the resistance raised the issue of timeliness; that the re-argument was granted on February 25, 1988 and if the movants wanted to file for re-argument, such a petition should have been filed within three days, that is, not later than February 29, 1988. And that the movants not having filed a petition for re-argument, a motion for relief from judgment cannot be substituted therefor.

Count four of the resistance merely restate the provision allowing re-argument.

In count five of the resistance, the respondents/appellees argued that the successor Bench did not make any serious or incurable mistake in that it was one of the concurring Justices of the Nagbe Bench who signed the previous judgment who approved the petition for re-argument. So it was proper for the Court to have heard and determined the case, having been convinced there were some facts or points of law inadvertently overlooked in the previous opinion.

Respondents contended in count six of their resistance that it was contemptuous for movants to claim that the Court's judgment was void without showing how it was void. Further, that movants' prayer to have the Supreme Court vacate its own judgment is not proper in the Supreme Court but properly suited for subordinate courts, and that the judgment of the Supreme Court is not and cannot be subject to review. Finally, that movants should have filed a petition for re-argument and not a motion for relief from judgment since the latter has no place before the Supreme Court.

Before reaching the merits of the motion for relief from judgment, the jurisdictional hurdle must first be surmounted. The respondents/appellees have strongly contended that following the opinion of February 25, 1988, which granted re-argument in favor of appellees, if appellants felt aggrieved thereby, they should have filed a petition for another re-argument and not a motion for relief from judgment, and that as such a motion is cognizable only in the trial court. Further, that such petition for re-argument should have been filed within three days of the date of the opinion of February 25, 1988, which would have been not later than February 29, 1988.

As to the jurisdictional question, this Court fully agrees with respondents' contention that a motion for relief from judgment is a subject matter for the trial court and not the Supreme Court. While the section providing for motions for relief from judgment does not say in clear and concise terms that the "court" referred to therein is the trial court, same is inferred from the provisions. Civil Procedure Law, Rev. Code 1:41.7 (2-5). For example, subsection 4 in its latter part states: "this section does not limit the power of a court to entertain an independent action to relieve a party from a judgment or to grant relief to a defendant under section 3.44." It is common knowledge in our jurisdiction that the general jurisdiction of the Supreme Court is appellate in nature and that its original jurisdiction is very limited. Therefore, where the statute gives the court the power to entertain an independent action that certainly refers to and can only refer to a "trial" court and not an appellate court.

Further, a review of section 3.44, referred to in subsection 4 above, reveals that the said section relates to and deals with defendants who are served with summons other than by personal delivery, and are therefore allowed to appear and defend an action at any time before final judgment or within five years thereafter. Civil Procedure Law, Rev. Code 1:3.44. Note that only a trial court issues summons and renders final judgment. Also, this provision falls under Chapter 3, Sub-Chapter B Form, Issuance And Service of Process." In fact, the whole of Chapter 3 is captioned "Commencement of Action." Civil Procedure Law, Rev. Code 1:46.48. We know that all actions are commenced in the trial courts and not at the appellate level.

Going further in our examination of section 41.7, we observe at subsection 5 that where a judgment is set aside the court may direct and enforce restitution "in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal." (Emphasis ours). This shows clearly that this provision relates to the trial court, in view of the distinction between the trial court level and the appellate level, shown in the language of the emphasized portion of the quoted section.

This Court therefore is in full concurrence with the contention of appellees/respondents that a motion for relief from judgment is a trial court proceeding not cognizable before the Supreme Court. However, this Court cannot grant appellees/respondents' request to have said motion dismissed because even though the opinion was rendered on February 25, 1988, there is no showing that any attempt was made or action taken to have the Supreme Court send down a mandate ordering enforcement of the judgment. That inaction allowed the appellants to file the said motion for relief from judgment twenty one (21) days after judgment, thereby keeping the case on this Court's docket. Whether or not the motion was cognizable before this Court, the fact remains that the case is still on this Court's docket with no mandate to the lower court by virtue of the said motion, which motion must therefore be passed upon. Why did appellees not pursue the issuance of a mandate to the trial court within the time (21 days) between the rendition of the opinion and the filing of the motion? It was because of appellees' own negligence and failure to act that they must bear the consequences of laches by having the motion passed upon by this Court.

Also, respondents/appellees have attack the motion for being untimely filed. They contended that a petition for re-argument should have been filed within three days of the opinion and that a motion for relief from judgment cannot substitute a petition for re-argument. The Court observes that the three-day time limitation is applicable to petitions for re-argument and not motions for relief from judgment. Rule IX Part 2 of the Revised Rules of the Supreme Court at Page 43. In the case of the latter, it is provided that such motion can be filed within a reasonable time after judgment. Civil Procedure Law, Rev. Code 1: 41.7.3. In the instant case, we are not dealing with a petition for reargument and therefore the three day time limit is not applicable. What we have is a motion for relief from judgment; hence, the question is, was the motion filed within a

reasonable time after the judgment was entered? The opinion was rendered on February 25, 1988 and the motion was filed March 17, 1988 while, the resistance attacking the motion was filed November 5, 1988.

In the mind of the Court, it is the attack on the motion that was untimely filed, in that the opinion was rendered on February 25, 1988 and the motion was filed March 17, 1988, which is approximately twenty-one (21) days after the opinion. Yet, the resistance attacking the motion was not filed until November 5, 1988, which is about eight (8) months less twelve (12) days.

In appellees' brief and arguments before this Court, they have contended that an appellate court cannot assume jurisdiction over real estate matter after judgment has been rendered based on a motion for relief from judgment. Also, they contended that an appellate court, having heard a motion for re-argument, cannot entertain a motion for relief from judgment. To these contentions, the Court says firstly that this Court is not "assuming" jurisdiction in this case. The fact of the matter is that this Court never lost jurisdiction over the case from the time the appellant perfected their appeal from the final judgment of the trial court. So the word "assume" is wrongly applied this Court has simply "retained" jurisdiction.

The question is, when does the appellate court (this Court) lose jurisdiction over a case properly brought before it? The Supreme Court only loses jurisdiction of a cause when the Court issues and sends down a mandate to the trial court with instructions to resume jurisdiction and do or refrain from doing certain acts. Rule XI Part 1 and Rule XII Part 1 of the Revised Rules of the Supreme Court at Page 45.

In the instant case, the Supreme Court rendered an opinion on February 25,1988 and never sent a mandate to the trial court up to the appellants filed their motion for relief from judgment on March 17,1988, some twenty one (21) days later. The failure to issue and send down a mandate kept the case on the Supreme Court's docket, where it remains even until today's date. A reasonable mind therefore is led to believe that the Supreme Court indeed elected and intended to keep this case on its docket and entertain this motion for relief from judgment by the Court's refusal or failure to issue a mandate to enforce this Court's judgment, read from the Bench by Justice Azango.

Against that background, this present Bench cannot now substitute its own wisdom for that of our predecessors when they decided not to issue the mandate. This Court can only keep the case on the docket and hear the motion for relief from judgment. We now declare that once the case is

on our docket, we have jurisdiction over it and we must dispose of it, because even though a judgment was rendered, it was not effectuated by virtue of a mandate being issued and sent down; thus it remains ineffective. What kept appellees from pursuing and obtaining a mandate? The only explanation can be that the Bench decided to hear the motion for relief from judgment.

And so, even though a motion for relief from judgment is a proper subject for a trial court, yet, once our predecessors who rendered the judgment from which relief is sought decided not to enforce that judgment but kept the case docketed, then that judgment remains in abeyance and as such, technically no final judgment has been made in said case. Justice Jangaba's opinion of 1986, which became the subject of re-argument was hence unenforceable and not enforced. Similarly, Justice Azango's opinion granting re-argument and reversing Justice Jangaba's judgment became itself subject of review by virtue of the motion for relief from judgment, and such as also unenforceable and not enforced.

Therefore, this Court holds that it has jurisdiction over and will entertain the motion for relief from judgment, even though we concede same to be subject for the trial court and ordinarily would not be permissible and cognizable at this forum, because our predecessors who made the judgment deliberately refused to enforce their own judgment, and instead allowed the motion to be docketed, thereby leaving the case in this Court.

We now proceed to the substance of the motion. Essentially, movants contended that the final judgment of the trial court was reviewed on appeal and this Court in 1986, speaking through Justice Jangaba, reversed said final judgment and held that the 204 acres of **land** was communal property belonging to all the families of Kende Town and not to only Chief Fahn Kende and his immediate families. Movants contended also that all of the issues presented were addressed by that 1986 opinion, and that it was error for the succeeding Bench under Mr. Justice Azango, who had concurrent jurisdiction with the Nagbe Bench, to have reviewed and reversed said 1986 opinion.

In our view, the heart of the movants' contention is in count six (6) of the motion which states that the Bench under Justice Azango was called to review only those points of law which were alleged to have been inadvertently overlooked by palpable mistake, but that instead of limiting its review to that, the "Azango" Bench went as far as to call into question the final judgment of the trial court rendered by Judge Eugene L. Hilton, now of sainted memory.

By this contention, movants/appellants have called upon this Bench to determine whether or not the Azango opinion was legal or valid and should be given effect. Movants have attacked the Azango opinion as having exceeded the office of re-argument, which is limited only to determining if by palpable mistake the previous opinion overlooked some material point of law or fact which might have produced a different result, instead of delving into the trial court's final judgment. In effect, movants have contended that the judgment from which they seek relief is void, and hence is a ground for reversal or setting aside the same. They have relied on Civil Procedure Law, Rev. Code 1:41.7.2.

IX-RE-ARGUMENT.
"Part 1 -Permission for - For good cause shown to the court by petition, a re-argument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact or point of law". Rule IX Part 1 Rules of the Revised Supreme Court.

Further, for re-argument the law also is that the issue or point sought to be re-examined must have first been raised before the Court and ignored in the previous opinion. West African Trading Corporation v. Alraine (Liberia) Ltd., [1976] LRSC 23; 25 LLR 3 (1976); Lamco J. V. Operating Company v. Verdier, [1978] LRSC 9; 26 LLR 445 (1978).

In their resistance to the motion, the respondents have not addressed the issue of voidness of the judgment whereby the opinion did not limit itself to only points alleged to have been overlooked by the first opinion, but went further to review the final judgment of the trial court. The only reference in the resistance to count 6 of the motion which raises that issue is found in count 4 of the resistance, which is merely a recital of the rule and procedure allowing for re-argument

The strength of respondents' resistance was in their jurisdictional contention that a motion for relief from judgment was not cognizable before the Supreme Court but only in the trial court, but this Court has already held that while that contention is true, this Court will hear the motion because, by that motion, the very Bench that rendered the judgment did not enforce it but permitted the motion to be docketed, thus keeping the case before the Supreme Court. That was the only substantive issue raised by the respondents in their resistance.

Before going on to the re-argument itself, the Court wishes to discuss one point raised in the motion, and that relates to a succeeding Bench's grant of a re-argument of a matter in which a previous Bench had given judgment. Movants contended that because the Bench presided over

by Justice Azango as Senior Associate Justice, had concurrent jurisdiction with the Nagbe Bench which rendered the opinion, the Azango Bench could not grant re-argument.

On this issue the Court observes, as respondents pointed out in their resistance, that the Nagbe Bench, speaking through Mr. Justice Jangaba, had rendered the opinion on August 1, 1986. It was Justice John A. Dennis, now of sainted memory, one of the concurring Justices, who ordered he re-argument on August 5, 1986. Note, it was not the Azango Bench that ordered the re-argument. The fact is that after Mr. Justice Dennis had ordered the re-argument, that Bench took no action to hear and dispose of the re-argument until the said Bench was forced by the President to resign. And so when the Bench was reconstituted with Mr. Justice Cheapoo as Chief Justice, they also did not bear the case until Mr. Justice Cheapoo was also removed as Chief Justice, leaving the four Associate Justices, of whom Mr. Justice Azango was the Senior. This means the Bench inherited the case already docketed for re-argument and only did what was proper and expected of them by hearing the re-argument.

As we see it therefore, the issue is not whether the Azango Bench assumed jurisdiction over and heard the re-argument because the Azango Bench did have jurisdiction over the re-argument by virtue of Mr. Justice Dennis' approval of the application for re-argument in his capacity as one of the concurring Justices. Instead, the issue is that movants contended that the opinion in the re-argument proceedings exceeded the bounds of reviewing only the Jangaba opinion to see if it had overlooked some fact or law, and not to conduct a full regular appellate review of the trial court's final judgment, which is not the province of re-argument. In other words, only those issues raised in the first hearing and not passed upon should have been subject of the review in re-argument. In fact, this Court has held that not every point raised needs to be passed upon by the Court but rather only those issues which are material and decisive of the controversy will or need to be passed upon. Lamco J. V. Operating Company v. Verdier cited above. So this Court needs to take recourse to the petition for re-argument, in conjunction with the original opinion, so as to determine whether any material or pertinent fact or issue was earlier raised but not touched, which if ruled on, would have produced a different result in the August 1' 1986 opinion.

In count one of the petition for re-argument, filed August 5, 1986, petitioners/appellees contended that Mr. Justice Jangaba should have recused himself from hearing the original case because prior to his ascendency to the Bench and while he served as Assistant Minister of Justice he had something to do with the prosecution of Madam Bindu Kindi, one of the appellees/ petitioners, for the crime of malicious mischief for having uprooted a cotton tree from a portion of the 204 acres of **land**, subject of the dispute.

In the returns filed by respondents/appellant to the petition for re-argument, the appellees contended that there was nothing to disqualify Justice Jangaba from sitting on the case in the Supreme Court because the issue in the criminal case was the destruction to property by Madam Bindu Kindi uprooting a tree planted by President Tolbert, and that the complainant was Honourable Bai T. Moore, Assistant Minister for Culture, by and through the Republic of Liberia, while the issue in the declaratory judgment case was for the court to determine who were the real owners of the 204 acres of **land**. Further, respondents/appellants contended that since the criminal case did not include the existing controversy as to who the real legal owners of the **land** were, there was no basis for the recusal of Justice Jangaba. Respondents argued that "a judge is not disqualified by having been counsel of a person who is interested, or whose estate is involved, where he was never consulted relative to the particular matters which are the subject of the cause or proceeding before him." 23 CYC 588 (1906).

This Court fully agrees with the argument of the appellants/ respondents as there is support in our own law exactly on the point. The Supreme Court of Liberia, speaking through Mr. Chief Justice Grimes, held that in order to disqualify a judge who had previously been of counsel to a party it must be shown that he had previously been consulted on the identical point in controversy or very closely connected therewith. Dennis v. Republic, [1942] LRSC 2; 7 LLR 341 (1942). In Cleghom v. Cleghorn, 66 Cal., 309, the conclusion reached was that "a judge is not disqualified from sitting on a cause by the fact that he had been an attorney for one of the parties in another action involving one of the issues in the case on trial. "Id., at 345 .

This Court observes that this is not one of the issues raised even in the petitioners/appellees' brief to have been passed upon by the Court in the first opinion of August 1, 1986, and therefore re-argument could not have been had and hence did not lie. More importantly, the Supreme Court has held that said issue was not one of the grounds for disqualification of a judge. And so that issue is laid to rest.

Counts two, three and five of the petition for re-argument lists issues which appellees/petitioners contended were not raised by appellants in their answer in the court below or in their brief in this Court but were raised by the Court in its opinion.

Recourse to respondents' amended answer in the trial court reveals that the issue of the Aborigines **Land** Grant made to Chief Fahn Kendeh and all the families living at Kendeh Town was squarely raised by the respondents (See Count two of the amended answer) and was not sua sponte raised for the first time by this Court in the opinion. Therefore, count two of the petition is overruled. Similarly, recourse to the trial court's ruling of October 21, 1983 reveals, at page 3, last paragraph, that the trial judge held that the property was conveyed to Chief Kendeh

thereafter at would descend to his heirs and their families. Here again, it was not the Supreme Court in its opinion that sua sponte raised the issue for the first time. Count three of the petition for re-argument is therefore overruled.

As to counts five and nine of the petition for re-argument the Court concede that the issue of 25 acres being the limit of **land** granted to an individual family under the Aborigine **Land** Policy of the government, was not raised by the respondents in their answer or bill of exceptions at the trial court, but it is to be noted that in the amended answer, the respondents did claim community ownership and to prove same, relied on two warranty deeds for properties jointly sold by petitioners and respondents to other people. What the Supreme Court referred to were points advanced by respondents in this Court, as admitted by petitioners to the effect that indeed the issue was raise by the respondents but only during arguments, and not in the pleadings. Granted that the issue was raised only during oral arguments, the fact of the matter is that it was raised by the respondents and the Court was merely restating in the opinion the various points raised by the parties. It is immaterial that the Court did say it was raised in the answer because that issue is not part of the holding of the Court and therefore does not warrant any re-argument. Moreover, the Court made it quite clear in the opinion that it took judicial notice of historical circumstances of the said **land** grant. See also Civil Procedure Law, Rev. Code 1: 25.1 and 25. 2. Accordingly, counts five and nine of the petitions are also overruled.

As to counts four and six of the petitioner's petition for reargument, petitioners conceded that the salient issue in the case was whether the grantee mentioned in the Aborigines **Land** Grant Deed was intended to be only Chief Fahn Kendeh and members of his own family, consisting of his lineal and collateral heirs, or whether the grantee intended to include persons outside the family of Fahn Kendeh. Petitioners contended that the Court inadvertently overlooked this salient issue.

Recourse to the opinion at page three, reveals that the Court did not overlook the issue. Rather, on the contrary, the Court said: "From what we gather from this matter, there is only one issue for our determination here: whether or not the Aborigines **Land** Grant Deed issued by President Daniel E. Howard in 1916 to Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, was in fact a communal grant in fee or a mere individual family grant to said chief and his family?"

It is interesting to note that this was the identical issue confronting the trial judge in the lower court and he ruled that in fact the deed in question was "an individual family plot to Chief Kendeh and his heirs ...." Thus, in view of this passage quoted above, counts four and six of the petition for reargument are accordingly overruled.

In counts seven and eight of the petition of re-argument, petitioners stated that the Court overlooked the issue of evidence advanced as to the relationship between appellants and Chief Fahn Kendeh, which was raised in the petition for declaratory judgment, and in the appellees' briefs, and argued before this Court. But the Court observes that the opinion, at page 5, second full paragraph, settled that question when it held that the Aborigine **Land** Grant Deed conferred a communal **land** grant on all the families that had settled in Kendeh Town at that time, including the family of Chief Fahn Kendeh, who only occupied a position of father and representative or agent of all the other families settled in Kendeh Town at that time. Therefore, in our view, it is irrelevant whether or not the Court specifically stated that appellees were or were not directly related to Chief Fahn Kendeh, because even if there were no relationship established or existing between appellants and Chief Fahn Kendeh, the Court, by said holding, had ruled that the **land** was communally owned by all families settled in Kendeh Town, including Chief Kendeh's family and also those not related to him. Hence, a family did not have to show its relationship to Chief Kendeh to inherit the property, but rather, all that was required of anyone who claimed to co-own the 204 acres of **land** was that he or his family was one of those who settled in Kendeh Town at the time the Grant was conferred by the Liberian Government. Therefore, counts seven and eight of the petition are also overruled.

The Court has now traversed the petition for re-argument filed by appellees and hereby determines that it was unmeritorious and did not warrant a re-argument of the appeal. This Court is of the view that the opinion of August 1, 1986 was all embracing and comprehensive enough and that said opinion exhaustively dealt with all the relevant issues. This Court has over and again held that the Court is not compelled to rule or pass upon every single issue raised before it but only those it feels are decisive of the case or are substantive enough. See the case Lamco J V. Operating Company v. Verdier, 25 LLR 445 (1978).

We therefore hold that the opinion of August 1, 1986, having comprehensively dealt with all relevant and material issues, and having held that the 204 acre Aborigines **Land** Grant from the Liberian Government was intended to be and was in fact communal property and not for only one family, be and the same is hereby reinstated and reaffirmed by this Bench as being sound in law and supported by reason, and that the same will enhance peace and harmony in the society.

Like the Nagbe Bench in 1986, this present Bench, the Scott Bench, interprets the Aborigine **Land** Grant as being communally held. To support this, we take recourse to the actual text in relevant portion of the Aborigine **Land** Grant Deed executed by the Government of Liberia, by and thru President Daniel E. Howard, on March 17, 1916:

"TO ALL WHOM THESE PRESENTS SHALL COME. WHEREAS It is the policy of this Government to induce the Aborigines of this country to adopt civilization and be loyal citizens of the Republic; and whereas one of the best things thereto is to grant **land** in fee simple to all those who prove themselves to be entrusted with the rights and duties of full citizenship as voters and Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, Montserrado County, Republic of Liberia, have shown themselves fit to be entrusted with said rights and duties.

Now therefore know ye that I, Daniel E. Howard, for and in consideration of the various duties of President, do grant, give and confirm unto said Chief Fahn Kende and Families as aforesaid, his heirs, executors, administrators and assigns forever that piece or parcel of **land** situated, lying, and being in the rear Settlement of Paynesville,

"To have and to hold the above granted premises and farm **land** together with all and singular the buildings, improvements and appurtenances thereto and thereof belonging to the said Chief Fahn Kendeh and families of Kendeh Town, his heirs, executors, administrators and assigns as aforesaid forever. And I, the said Daniel E. Howard, President as aforesaid, for myself and my successors in office, do covenant to and with the said Chief Fahn Kendeh, his heirs, executors, administrators, and assigns, and that at the ensealing hereof I, said Daniel E. Howard, President as aforesaid and my successors in office, will forever warrant and defend the said Chief Fahn Kendeh and families, legal heirs, executors, administrators and assigns against the unlawful claims and demands of all persons to the above granted premises."

From the above quoted language, what other interpretation could be given to the conveyance or explanation as to the intent of the grantor, the Government of Liberia, than that the property is to be held by all inhabitants of Kendeh Town as tenants in common and not in fee simple by only one family, that of Chief Fahn Kendeh. We hold that Chief Fahn Kendeh was merely a representative or agent for all the people of Kendeh Town. We agree that had the Government intended to convey only to Chief Fahn Kendeh and his lineal (and even collateral) heirs, first of all, there would have been no need to even insert the words "and families", because under the law of intestacy it is automatic that upon the demise of the Chief his intestate estate would have devolved upon his lineal (and the collateral) heirs. Further, the use of the word "families" (in the plural) as well as the pronoun "themselves", leads one to conclude that it was more than the nuclear or immediate family of Chief Fahn Kendeh, but extended to and included everyone in all families living at Kendeh Town. Further, that no one had to show that he was related to Chief Fahn Kendeh, but rather, that he was a resident or an inhabitant of Kendeh Town on the issuance date of March 17, 1916.

For this reason, this Court holds and hereby rules that the August 1, 1986 opinion adequately and properly determined the status and rights of the parties as joint communal co-owners of the entire 204 acres of **land**. Accordingly, the motion for relief from judgment filed by appellant is hereby granted, the petition for re-argument filed by appellees denied and overruled, and the opinion of Justice Azango, which reversed the previous opinion of Justice Jangaba, is itself herein and hereby reversed, and the opinion of August 1, 1986, reinstated and reaffirmed, and the trial court's final judgment reversed.

The two bills of information are granted and both parties adjudged guilty of contempt and ordered to pay the amounts of L$5,000.00 each, within five (5) days of the rendition of this opinion or be detained pending compliance.

In view of the above, the Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit ordering the judge presiding therein to resume jurisdiction over the case and give effect to this opinion to the effect that the subject property is communal property for the benefit and use of all of the residents, inhabitants, and families of Kendeh Town at the time the Aborigine **Land** Grant was issued on March 17, 1916. Costs are ruled against the appellees. And it is hereby so ordered.

Motion granted, petition for re-argument denied, bills of information granted, and parties adjudged guilty of contempt.

Johnson v Alpha et al [1960] LRSC 25; 13 LRSC 573 (1960) (15 January 1960)

MARIE DAVIES-JOHNSON, Appellant, v. ISAAC ALPHA, His Honor, D. W. B. MORRIS, Judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, and URIAS N. DIXON, Sheriff, Montserrado County, Appellees.
APPEAL FROM RULING IN CHAMBERS ON PETITION FOR WRIT OF PROHIBITION TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 23, 1959. Decided January 15, 1960. 1. In presenting cases before the Supreme Court, counsel are admonished against attempting to mislead the court by omission of material facts. 2. In an ejectment action where defendant has alleged and proved facts conclusively rebutting the essential allegations of the complaint, the action should be dismissed. 3. Prohibition will lie to prevent the execution of a judgment in ejectment by

writ of possession directed to property held by a person who was not a party to the ejectment action where, although the parties to the action have taken appeals from the judgment, no proceeding has been instituted to correct errors of the trial court, and no other remedy is available to the affected property holder. 4. A petitioner for a writ of prohibition need not be a party to the proceedings with respect to which the writ is applied for.

On appeal from a ruling in Chambers denying issuance of a writ of prohibition against the execution of a judgment on an ejectment action by writ of possession directed to property held by appellant, who was not a party to the ejectment action, the judgment in the ejectment action was set aside, the ruling appealed from was reversed, and the writ of prohibition granted.
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Davis for petitioner.

R. F. D. Smallwood

for respondents. MR. JUSTICE PIERRE delivered the opinion of the Court.

For reasons which will be mentioned later herein, we think it necessary to preface this opinion with these words : Judges in courts of last resort should always seek to probe into the issues raised before them, either in the record or in the argument of counsel, so as to satisfy themselves that transparent justice is meted out to the parties concerned, according to the facts of the law as it relates to those facts. For us to be able to act fairly and intelligently, and in order to assist us to do justice to the parties bringing cases before the Supreme Court, counsel should be honest enough to present all phases of their respective sides in the cases, in order not to mislead the Court, and especially the Justice who presides in Chambers. We expect that counsellors who practice here would so regard the ethics of the profession, that they would think it dishonorable to conceal facts for the sake of expediency, or to advance their side of the case at the expense of fair play. We have made this special comment because we have noticed for some time--and in this case it became most pronounced--that some counsellors who represent parties before this bar, and especially before the Justices in Chambers, are in the habit of representing issues in a manner which has led the Justices into taking positions not legally compatible with the facts later shown in the records of the cases in which remedial processes have been applied for. Such was our discovery during the arguments here, at the hearing of the application for prohibition before the bench, en banc. Mr. Justice Harris, who had presided in our Chambers, and before whom the issues as to prohibition had

been raised, and from whose ruling an appeal was taken to the full bench, was not only presented with an argument different from that which had been made in his Chambers, but was also confronted with a document introduced during the argument by the respondents' counsel, which was never brought into the case before him, and of the existence of which he therefore had

no previous knowledge. The said document placed an entirely different light on the case. We do not regard this as ethical practice, and we shall refer to the circumstances in detail later in this opinion. In order to get a proper picture, it is necessary that we go back to the case out of which these prohibition proceedings have grown, and review the record in an effort to ascertain whether normal, regular and accepted procedure was followed in the conduct and determination of the case of ejectment in the court below. One Isaac Alpha entered an action of ejectment in the Circuit Court of the Sixth judicial Circuit, Montserrado County, against one Aaron Tucker, for a lot of land, a portion of Block Number 8o in the Halfway Farm area of the City of Monrovia. He claimed in his complaint that he is the owner of the said tract of land, and that the defendant unlawfully and wrongfully withholds and detains the same from him. The defendant appeared and filed an answer, in Count "3" of which he denied occupying or withholding any portion of Block Number 8o, and contended that he had acquired fee simple title from the Republic of Liberia for property in Block Number 79, and that his said property is separate and distinct from the plaintiff's land in Block Number 80. He made profert of a title deed in support of his answer, and the pleadings were continued in this strain, and rested with the defendant's rejoinder. The Judge, feeling it necessary, appointed a board of three surveyors--one to represent the court and two to represent the respective parties--who were instructed to proceed to the area, and on the spot designate. Block Number 8o the subject of the ejectment suit. These surveyors, constituted as a Board of Arbitrators, submitted a report on their work, with an attached map of the area, showing Block Numbers 79 and 80. It is interesting that, although Block Number 8o was the subject of the ejectment

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suit, and of the report
of the Board of Arbitrators, and although a map was made of Block Number 8o
and submitted with the report, the said map does not
show any other owner of property therein except the Center of Hope Building,
and Isaac Alpha, the plaintiff in ejectment. The significance
of this fact was to come later, both in a subsequent map filed by government
surveyors, and in the arguments before this bar when
the bench sat in hearing of the prohibition. For the benefit of this opinion
we have quoted the Report of the Board of Arbitrators
in full. It reads as follows : "The Board of Arbitrators in the above
entitled cause, constituted and qualified by court to determine
the locality of the plaintiff's **land in keeping with his title deeds, and
also defendant's land** in keeping with his title deed respectively,
in respect of the block numbers of the Halfway Farm area, as stipulated in
the title deeds of the respective parties, beg most respectfully
to submit the report of their investigation and findings of the issue joined
in the above entitled cause : " i. The plaintiff's title
emanates from J. Koon Sherman who obtained title from the Republic of Liberia
for one-quarter acre in Block Number 8o, Halfway Farm
Monrovia, in the year 1948. "2. The plaintiff purchased from J. Koon Sherman
in 1953 the said parcel of **land** (see title deeds submitted
by plaintiff to court). "3. The defendant's title emanates from the Republic
of Liberia for one-quarter acre in Block Number 79,
Halfway Farm Area; Monrovia, in the year 1 953. "The location of the
respective] Blocks 79 and 8o was determined from the intersection
of Benson and Newport Streets, and the properties of the respective parties
were located according to the block numbers in their
respective deeds contiguous to the western limits of Newport Street.

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"Findings. r. Defendant's **land**
was discovered to lie within

Block Number 79 near its southeastern limits and adjoining the northeastern
limits of Block Number
8o, which portion of Block Number 8o is owned by S. D. George and houses the
Center of Hope premises. gI 2. The plaintiff's **land**
was located accordingly in Block Number 8o, commencing from the southeastern
corner of said Block Number 8o, a distance of 132 feet from the commencement
of defendant's
land. "3. Both parcels are unoccupied, so far as any evidence of
improvement could be seen. "4. This Board does not discover any
encroachment by defendant upon plaintiff's **land** in view of the respective
deeds, the locations of the blocks in question, and the
locations of the respective properties of the parties in this action." As can
be seen from the Report of the Board of Arbitrators,
the parties in ejectment held titles in two different blocks; so the question
of encroachment as alleged in the complaint, did not

arise at all. Respondents' counsel was fair enough to admit this in his argument before this bar. In other words, the position taken by the defendant in his answer had been completely vindicated and upheld by the said report; and one would think that this should have brought the action of ejectment to a close by dismissal of the complaint, which would have averted further litigation, and would have been legally correct and fair to both sides. But instead of following this legally and procedurally correct course, the learned Judge proceeded to issue a writ of possession for the parties to be repossessed of lands in their respective blocks, even though the Report of the Board of Arbitrators had stated so very pointedly that there was no encroachment by the defendant on the plaintiff's land. A very strange and novel procedure!

It has not been explained why, at this stage, the court seems to have needed to consult the Division of Surveys of the Department of Public Works and Utilities in respect to land owned in the area by the petitioner, Mrs. Marie Davies-Johnson ; but on January 27, 1959, that is to say, a day before the Judge terminated the ejectment suit, the Department of Public Works addressed the following letter to Mr. Kennedy, the clerk of the Circuit Court of the Sixth Judicial Circuit, Montserrado County : "DEAR SIR: "On May 17, 1956, the Department of Public Works and Utilities located a piece of land in Block Number 8o, belonging to Mrs. C. W. Davies-Johnson. Mrs. C. W. Davies-Johnson produced a deed dated December 18, 1946. "The land was originally surveyed by Hon. H. B. D. Duncan. Mrs. Johnson showed us two existing corners, the N.W. corner and the S.W. corner. The adjacent owners recognized these corners as belonging to Mrs. Johnson. The corners were established in 1946 by Mr. H. B. Duncan. "From 1946 up to 1956, and later, nobody claimed or made any objections to the existing boundaries of Mrs. C. W. Davies-Johnson's land. "If the description in a deed is such that a surveyor by applying the rules of surveying can locate the same, such description is sufficient. "Where a deed contains a wrong description, but the land can be precisely identified by inquiry based on the landmarks referred to, the title held by the owner is not merely equitable but legal. "Where, by omitting one part of a false description in a deed, a perfect description remains, the false part should be repected and the instrument upheld. "In the deed of Mrs. C. W. Davies-Johnson the surveyor, Mr. H. B. Duncan, described a piece of land

and mentioned landmarks, which landmarks were still existing in 1956. "That in the deed the wrong number is mentioned does not make the deed void or change the location of the land. **Following this universal rule made us decide that Mrs. C. W. Davies-Johnson's land** is situated at the place where it has been recognized since 1946. "Respectfully submitted, [Sgd.] G. SLAGMOLEN

Director Division of Surveys,
Dept. of Public Works & Utilities, R.L."

As we have said before, the record does not show why this official report, backed by an official map from the Department of Public Works, entered the case as it has done, or why it placed such special emphasis on Mrs. Marie Johnson's land in Block Number 8o, when she was not a party to the ejectment suit. The official map submitted with the official report of Mrs. Johnson's property, issued by the Division of Municipal Engineering of the Department of Public Works, shows that Mrs. Johnson, the petitioner, owns almost half of Block Number 8o, the subject of the ejectment suit. Remember, the Judge had issued a writ of possession for the sheriff to put Alpha in possession, based upon a private map submitted by the Board of Arbitrators. At the time when the Judge issued his writ of possession in favor of Alpha for Block Number 8o, he had the official report and the official map of the Government before him, showing a large portion of that block to be the officially recognized property of Mrs. Johnson. We therefore questioned counsel, during his argument, as to whether the Judge had informed the landowners holding deeds for contiguous property of the intended court survey, especially since he has been officially informed by Government agents that the block in question was legally owned in part by someone who was not a party to the ejectment suit before him. We also wondered why

the Judge preferred to base his decision on the private map of the Board of Arbitrators, when he= had an official Government map of the area. But then, for that matter, and we also asked, why was it necessary for the Judge to issue a writ of possession at all, when the Report of the Board of Arbitrators had so clearly shown that there was no encroachment by the defendant on plaintiff's land? These were some of the questions, not raised before Justice Harris in Chambers, but introduced before this Court, en banc, by the presentation of the arbitrators' map ; and in our effort to get clarification on them, the respondents' counsel for no known or apparent reason, undertook to start hurling insinuations, and to punctuate his argument with insulting and disrespectful suggestions. We would like to warn that counsel who practice here should learn to comport themselves as should become honorable members of the bar. There are men whose names grace our honor roll today, and whose past practices before this bar are proudly remembered for the clean, dignified and respectful conduct they exemplified before this Court of highest resort. Do not expect the Supreme Court to condone the concealment of certain parts of cases to suit the convenience of certain parties. As confused as the proceedings in the ejectment case seem to have been at this point, the confusion became much worse later. All of the documents we have referred to and quoted so far herein are taken from the file in the ejectment case, which we had to order sent up from the court below, since neither of the parties in prohibition filed any records which could have cleared the confusion in the contentions on both sides. In the absence of such records there was no

way of telling whether the Judge had acted in accordance with procedure or not. We will now read the Judge's ruling, the attempt to execute which has given birth to these prohibition proceedings. It reads : "Before this case was set for trial by jury, counsel for both sides agreed and moved the court that the issues

thus joined be submitted to arbitration. Whereupon surveyors P. Tarr Grimes for plaintiff, B. J. K. Anderson for defendant, and Adolph N. Adjavon for the court were appointed, and constituted the Board of Arbitrators who were given terms of reference and the necessary title deeds to put in full operation surveys and make diagrams with a view to satisfy all parties concerned as to the rights and wrongs. "After completing their work, the Board of Arbitrators submitted a unanimous report, with maps supporting, which shows that the defendant, according to the metes, bounds and numbers of the respective deeds, was not encroaching upon plaintiff's **land**. "The said report establishes that there are two separate and distinct lots not encroaching one upon the other. In view of the foregoing, the court hereby constitutes this award to be as valid as a verdict, thereby confirming same, and because of the peculiar nature in which the report was made, the court hereby adjudges Lot Number 8o to be that of the plaintiff and Lot Number 79 to be that of the defendant. "This judgment is also supported by a map submitted from the Department of Public Works & Utilities, Survey Division, which is in harmony with the report of the Board of Arbitrators appointed by this court. "The clerk of this court is hereby ordered to issue a writ of possession and place same in the hands of the sheriff, who will proceed to the spot, associated with the Board of Arbitrators, and put the parties in possession of their respective lots, thereby designating the monument made thereon in keeping with the map of this survey. And it is so ordered." According to this ruling, which was based upon the report of the Board of Arbitrators, Alpha was to be placed in possession of a portion of Block Number 80. According to the Board of Arbitrators' map, only Alpha and the Center of Hope premises are shown to belong to Block

Number 80. So looking at the picture at first blush, everything seems well and in order. The official map of the area, prepared and submitted by the Department of Public Works, however, which official map the Judge referred to in his ruling, shows only two occupants of Block Number 8o--Marie Davies-Johnson, the petitioner, and Sarah Simpson George. Alpha, the plaintiff in ejectment, is not shown at all on this official map; and Marie Davies-Johnson is not shown on the arbitrators' map ; yet the Judge's ruling sought to put Alpha in possession of a portion of the said block, and this said ruling claims to be in harmony with the Government map. It is not hard

to see, therefore, what chaos and confusion would have been created, if the writ of possession to Alpha had been allowed to be executed by the sheriff. It was at this stage that Mrs. Marie Davies-Johnson, although not a party in the ejectment suit, but fearing the results of the execution of the writ of possession, fled to the Chambers of Mr. Justice Harris for the issuance of a writ of prohibition to stay the hand of the sheriff. In clarification of the situation we will quote the two counts her petition contains. They read as follows : "I. That she is seized in fee simple with a certain parcel of land, namely one town lot, as will appear more specifically from copy of a title deed hereto attached, marked Exhibit 'A' and forming a part of this petition. And that she has enjoyed undisturbed occupancy of said piece of land for about more than twenty years, and that her title, as can be seen from inspection of her deed, is derived from the Sovereign. 2. And your humble petitioner, further petitioning, shows that one Isaac Alpha instituted an action of ejectment against one Aaron Tucker for a lot adjacent to, or in the proximity of petitioner's lot, which proceeding petitioner had no interest in, nor was she made a party to same. And although not a party to said ejectment proceedings between

Alpha and Tucker, and not having been brought into court in any controversy over her said lot, yet petitioner understands, and has come to know that His Honor, Judge D. W. B. Morris, in deciding the ejectment case between Isaac Alpha and Aaron Tucker, has made a ruling and judgment that Isaac Alpha should be placed in possession of petitioner's lot, and not the lot over which he and Tucker were contending. And that said respondent Judge has also given instructions for a writ of possession to be issued in favor of the said Isaac Alpha to place him in possession of petitioner's lot, even though petitioner has never been in court in the controversy between Alpha and Tucker over any property. Petitioner respectfully avers that the court has no jurisdiction over her to have warranted or authorized the said court to pass judgment affecting and seeking to deprive her of her property. Besides this, in ordering the issuance of the writ of possession against petitioner's property when she has not been given an opportunity to defend same, the court has proceeded by rule different from those which ought to be observed at all times; and therefore prohibition will lie, not only to prevent whatever remains to be done, but also to undo what has been illegally done. . . ." Against this petition respondents filed returns wherein they contended that the number of petitioner's deed not being 8o but 8 t, and since the block in dispute was Number 8o, she was a stranger to the proceedings. The significance of the official report submitted by the Department of Public Works with reference to the wrong number of petitioner's deed, and the length of years of her occupancy, immediately becomes apparent. But we are of the opinion that such a situation should be handled by a different proceeding and before a different forum ; so we will not comment on that phase of the problem. The returns in prohibition also allege that appeal was

taken from the ruling
of the Judge by the defendant in ejectment, and therefore a writ of
prohibition should not be granted during the pendency of the
said appeal. Recourse to the record shows, however, that although plaintiff
and defendant both took exceptions to and announced appeals
from the Judge's ruling on January z8, 1959, not a single jurisdictional step
had been taken up to the moment of argument before
this Court, en banc, quite eleven months from the date of judgment in the
court below. So that, unless these prohibition proceedings,
or some other had been instituted, there might never have been any means of
reviewing the novelties in procedure appearing in the
record of the ejectment suit, and the chances of ever correcting the many
errors committed by the Judge would have been remote. Prohibition
will issue to correct any procedure of an inferior court unknown or foreign
to the practice in a jurisdiction. Our rules of practice
in all cases of ejectment, provide that writs of possession will issue where
it can be proved that one party has unlawfully detained
or withheld the property of another, which property must have been the
subject of dispute. In such a case, in order to replace the
proved and rightful owner in legal possession, such a writ is issued by order
of court and served by the sheriff. In the instant
case, however, not only are the parties proved to be holding titles to pieces
of property in different blocks, without any encroachment
upon or interference with each other, but the Board of Arbitrators appointed
by the court submitted a written report with a map to
that effect, and the court has, by its ruling upheld that report. Under what
rule of law was the writ of possession ordered issued?
Was it only to place the parties in possession of property which had never
been detained, but which they had always peacefully occupied?
But why was it necessary for the court to resort to such irregularity? Was it
to justify the filing of an unmeritorious complaint
in ejectment? It is our opinion that the un-

necessary and illegal issuing of the writ of possession,
which might have affected the property rights of the petitioner, was
sufficient legal ground for the application for the writ of
prohibition. It is also our opinion that, in cases where the enforcement or
execution of a writ of possession, can be shown by competent
and authorized official survey to be likely to affect and disturb the
ownership or property rights of persons over whom the court
has no jurisdiction, as in this case, and where said property is not the
subject of litigation, as also in this case, prohibition
will lie to restrain the execution of such a writ of possession where no
other remedy is available to the affected party. Prohibition
will also lie, in the discretion of the issuing court, to protect the status
quo and prevent the service of a writ of possession, the illegal and
unnecessary execution

of which is likely to defeat the rights of a party, even though the party be a stranger to the ejectment out of which the writ was issued, unless such a party can be shown to have other adequate legal remedy against the court's enforcement of the writ. The following authorities support this position : "As a general rule any person who will be affected or injured by the proceeding which he seeks to prevent is entitled to apply for the writ, but a person who has no interest therein and whose right will not be affected or injured cannot. At common law it is not necessary that applicant for a writ of prohibition be a party to the suit or proceeding sought to be prohibited ; the writ could issue upon the application of a party or a garnishee, or a stranger." so C.J. 693 Prohibition § 88. "In England, under the common law, it is not essential that the applicant for the writ be a party to the proceedings against which it is sought, or that he have any interest in the matter other than or different from that of every other citizen." 42 Am. JUR. 174. Prohibition See also BOUVIER, LAW DICTIONARY 2739-40 Prohibi§

tion (Rawle's 3rd rev. 1914) ;

R.C.L.
7-8 Prohibition

§ 6. No judgment can conclude a person not a party to the suit, nor can it affect the property of such a person unless he has been brought under the jurisdiction of the court. In the instant case, there is no question of the Judge not knowing that his judgment sought to conclude the petitioner, who was not a party in ejectment. Both the official map and official report from the Department of Public Works established that the petitioner, and not the plaintiff in ejectment is part owner of Block Number 80. It was argued that the petitioner should have allowed the writ to be served, and if her property were affected thereby, to take legal steps to correct any errors which might have been committed. We cannot bring ourselves to agree with such a strange doctrine; for it is an old maxim that he who stands by and allows his property to pass into the possession of another, is thereafter estopped from raising contentions to the contrary. In view of the foregoing, and of what we have been able to find by sifting through and probing into the much confused and tangled mass of facts found in the record, we are of the considered opinion, that the Judge erred by not dismissing the complaint in ejectment, and terminating the unmeritorious suit brought by Alpha, especially after he found the plaintiff's allegations to be untrue and unsupported by the report of the Board of Arbitrators which the Judge had commissioned. We are of the further opinion that the Judge also erred by issuing a useless and ineffective writ of possession to repossess parties who were already in possession of their respective lots, after the Board of Arbitrators had reported that there was no encroachment by the defendant on plaintiff's land. In order to correct the aforesaid errors committed by the Judge, the writ of possession which was ordered issued in the ejectment suit, to repossess Alpha and Tucker of

their already possessed property,
is hereby cancelled and rendered a nullity. The parties in ejectment are commanded to return to and remain in the original position
in which the unmeritorious suit of ejectment found them. The clerk of this Court will issue the necessary orders which will perpetuate
the alternative writ of prohibition already issued. Costs of these proceedings are ruled against the respondent. And it is so ordered.
Prohibition granted.

Gibson v Williams [1985] LRSC 31; 33 LLR 193 (1985) (21 June 1985)

JAMES B. GIBSON, Appellant, *v.* **JAMES B. WILLIAMS,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard May 15, 1985. Decided June 21, 1985.

1. A complaint in any controversy should be clear, concise and certain to enable the court to grant the relief sought; it must be so drawn that, assuming all the facts in it to be true, it would justify a court in giving a judgment under some principle of law.
2. Under our practice and procedure, pleadings must state definitely the cause of action upon which the parties rely; they must not only be clear and logical, but they must also be in conformity with set and established principles of law.
3. The fundamental principle of all pleadings is the giving of notice of what a party intends to prove at the trial.
4. The complaint in an action of ejectment must state with certainty the quantity of **land** claimed or the portion occupied by the defendant, being fully described to put the defendant on notice as to the **land** claimed and for which an award is sought.
5. If a defendant appears within the time prescribed by statute, being ten days after the service of summons or resummons, his failure to interpose an answer shall be deemed as a general denial of all the allegations in the complaint. Thus, at the trial, such defendant may cross-examine plaintiff's witnesses and introduce evidence in support of his denial.

6. An affirmative defense, being a plea in confession and avoidance, admits the truthfulness of allegations made, expressly or by implication, but sets forth facts which tend to avoid the legal consequences attendant upon bare ad-mission.
7. All documentary evidence which are relevant and material to the issues of fact, and which are received and marked by the court, shall be presented to the jury.
8. The jury's verdict in an action of ejectment must sufficiently describe the **land** awarded so that a writ of possession can be issued based upon the description.

Appellee instituted an action of ejectment against the appellant, claiming title and ownership to an un-described parcel of **land**. Appellant filed a formal appearance, but did not file an answer. At the trial of the case, the appellant appeared and was permitted to cross-examine appellee's witnesses as well as introduce evidence in his own defense. This evidence was a public **land** sale deed which was identified and marked by the court. However, when, following the close of appellant's oral evidence, he offered into evidence the deed, objections were interposed to the admission, which objections were sustained by the court and the document not admitted into evidence. Accordingly, the deed was not permitted to go to the jury. A verdict was returned in favor of the appellee, awarding him possession of the disputed property. The trial court rendered judgment thereon, confirming the said verdict. It is from this judgment that an appeal was taken to the Supreme Court.
On appeal, the Supreme Court reversed the judgment, holding that the complaint and the jury's verdict had failed to sufficiently describe and identify the property to which the appellee had claimed title. The Court observed that the complaint, as far as its reference to the property was concerned, was not clear and concise enough to give the appellant notice of what the appellee intended to prove or of the exact **land** claimed, so as to justify the trial court in making an award and issuing a writ of possession.
The Supreme Court held further that the trial court had erred in refusing to admit into evidence the public **land** sale deed offered by the appellant. The Court noted that the document had been testified to, identified and marked by the trial court. Under the laws of Liberia, it said, all documentary evidence relevant and material to the issues of fact, which have been received and marked by the court, should be presented to the jury. It rejected the basis upon which the trial court had excluded the document, noting that its presentation did not amount to a confession and avoidance as wrongly concluded by the trial court. The Court therefore *reversed* the judgment and *dismissed* the case in its entirety without prejudice.

J. Emmanuel R. Berry appeared for the appellant. *Francis N. Topor* appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The genesis of this case dates back to June 26, 1958, when plaintiff/appellee James B. S. Williams filed an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit,

Montserrado County, against defendant/appellant James B. Gibson, praying the court to award him judgment ousting and evicting the latter from the premises of the former, the same being a price of farmland located in the present Bomi County. Defendant filed a formal appearance but did not file an answer. However, James B. Gibson subsequently died and the administrators of his estate were formally substituted in his place.
The first trial of the case ended with a hung verdict. Hence, a new trial was awarded. In the course of the second trial, plaintiff produced witnesses who were qualified, and who testified thereafter, and were examined and cross-examined. Following the testimony, plaintiff rested evidence. On the other hand, the defendant, who did not file an answer, appeared and produced witnesses who testified in essence that he was not on plaintiff's **land, he being in possession of a public land** sale deed from the Republic of Liberia. This deed was testified to, identified and marked by the court. Thereafter, defendant rested evidence.
Defendant's having rested oral evidence, he applied for admission into evidence of the deed. This application was objected to by plaintiff on the grounds that as the document had not been pleaded, it should not be admitted into evidence, as to do so may constitute an affirmative defense which is not allowed when a party is placed on a bare denial of the complaint, as was in the instant case. The judge sustained the objections and denied the admission into evidence of the defendant's deed. The ruling also prevented the document from going to the jury who are triers of facts. Hence appellant excepted to the ruling. The trial ended with a verdict in favor of the plaintiff, which was confirmed and affirmed by the court's final judgment wherein it declared that plaintiff was entitled to the disputed **land**.

The peculiar thing about this case is that the complaint, the verdict and the judgment referred to plaintiffs **land** without mentioning the quantity owned and the portion reportedly occupied by defendant. Therefore, and for sundry reasons, defendant excepted to the judgment, and announced and perfected an appeal therefrom. The appellant contended, firstly, that the judge erred when he refused to allow the jury to consider the evidence produced by the appellant and which was marked by the court. Secondly, appellant contended that the verdict was manifestly against the weight of the evidence, in that the complaint having failed to specify the quantity of **land** owned by plaintiff and occupied by defendant, the verdict should have been otherwise. Appellant therefore argued that the judge erred when he denied his motion for a new trial.
From the foregoing history of this case, the issues germane to resolving this dispute are the followings: Firstly, what is the effect of a complaint which is unscientifically drawn and fails to give defendant the required notice as to plaintiff's claims and entitlements; secondly, whether or not a document testified to and marked by a court, even though not pleaded, must necessarily be admitted into evidence for the jury to determine its credibility; and thirdly, whether or not judgment in an action of ejectment is uncertain and therefore unenforceable, where it fails to spell out a clear definition of the quantity and the exact location of **land** awarded.

Resolving the first issue, this Court has held that the complaint in any controversy is important and should therefore be clear, concise and certain to enable the court to grant the relief sought. It must be so drawn that, assuming all the facts in it to be true, it would justify a court in giving a judgment under some principle of law. Under our practice and procedure, pleadings must state definitely the cause of action upon which the parties rely. They should not only be clear and logical, but they must also be in conformity with set and established principles of law. They should at all times be characterized with certainty, clearness, and consciousness, in order that the

point or points in controversy may be evolved and distinctly presented for decision. *Salala Rubber Company v. Onadeke,* [1976] LRSC 2; 24 LLR 441 (1976). In another case the court said that the funda-mental principle of all pleadings is the giving of notice of what a party intends to prove at the trial. *Saheen v. CFAO,* 13 LLR 278 (1958).

In the case before us, as we said earlier, the complaint refers to plaintiff's **land** without mentioning the quantity owned and the portion reportedly occupied by defendant. There is no description therein to put the defendant on notice as to the exact **land** claimed and sought to be awarded, nor indeed does it furnish the court itself with the required certainty that would have allowed it to make an award and to issue a writ of possession to effect same.

This was certainly a fatal omission that should not have been overlooked by the court below, and we wonder why the court allowed it to occur at all.

Next, we consider the issue of whether or not documents testified to and marked by a court, even though not pleaded, should be admitted into evidence for the jury to determine their credibility. In this jurisdiction if a defendant appears within the time prescribed by statute, that is, within ten days after service of summons or resummons, his failure to interpose an answer shall be deemed a general denial of all the allegations in the complaint. At the trial, such defendant may cross-examine plaintiff's witnesses and introduce evidence in support of his denial. Civil procedure Law, Rev. Code I : 9.12.

From what we gather from the records in the present case, the appellant appeared as is required by statute and made a general denial, and again appeared physically during the trial and examined and cross-examined appellee's witnesses. He introduced, in his own defense, a Public **Land** Sale Deed which was testified to, identified and marked by the court. He thereafter rested oral evidence and prayed the court to admit into evidence the said public **land** sale deed from the Republic of Liberia, for the jury to determine its credibility. However, the trial judge refused to admit said document on the basis of the objection filed by appellee, to the effect that its admission would amount to an affirmative defense contrary to our statute, especially so, since it was not pleaded. Both the objection and the sustaining thereof appear very ridiculous and betrayed a lack of understanding of the meaning of an "affirmative defense". For reasons of elucidation, this Court has held that an affirmative defense, being a plea in confession and avoidance, admits the truthfulness of allegations made by implication or expressly, but sets forth facts which tend to avoid the legal consequences attendant upon bare admission. *Good-Wesley v. Dwalubor,* 19LLR 282 1969).

In the case at bar, the appellant appeared and maintained that the appellee's averments are false and not true, while in an affirmative defense the averment of the complaint is accepted as true. The appellant produced a public **land** sale deed to show that he was the rightful owner of the property and not the appellee. We must note however that as the appellant's plea was an affirmative defense, he should first have conceded the truthfulness of appellee's allegations and then set up the affirmative defense, such as adverse possession; that is to say, that even though the appellee's complaint was true, yet, having been on the **land** for twenty years or more, he, the appellant, thereby became the owner by law. But this was not the case here since appellant denied the truthfulness of the complaint, and his evidence of ownership was in support of that denial.

The deed referred to in the appellant's testimony was exhibited at the trial, but because it had not been proferted with the pleadings the judge ruled that it could not be admitted into evidence, although it had been received and marked by the court.

Perhaps if this document had been admitted into evidence along with the appellee/plaintiff's deed, a clearer picture might have been presented to the triers of the facts. But in fact, there was no consideration given the defendant's deed by the jury, even though testified to, identified and marked by the court. In our opinion, the defendant's deed should have been allowed to proceed to the jury. All documentary evidence which are relevant and material to the issues of fact, and which are received and marked by the court shall be presented to the jury. Rev. Code 1: 25.4; *Walker v. Morris*, [1963] LRSC 42; 15 LLR 424 (1963).

From the foregoing, we have no hesitation in saying that appellant's deed, not being an affirmative defense, should have been admitted into evidence and allowed to be presented to the jury to determine its credibility.

Finally, we consider the issue as to whether a judgment in ejectment is uncertain and unenforceable where it fails to spell out a clear description of the quantity and exact location of the **land** awarded.

In the case of *Ginger v. Bai*, a case much similar to the one before us, being an action of ejectment, this Court ruled that in such an action the jury's verdict must sufficiently describe the **land** awarded so that a writ of possession can be issued based upon the description. The Court then remanded the case for a new trial since the verdict was uncertain for lack of proper description of the **land** awarded. The rationale was that no valid judgment could be based on such uncertain description to put the plaintiff in possession of the **land** purportedly award-ed in the verdict. *Ginger v. Bai*, [1969] LRSC 38; 19 LLR 372 (1969).

In the case under review, the records show that not only the complaint, but in fact the verdict and the judgment merely referred to the plaintiff's **land** without describing it in any way or stating its location. The verdict being so, the judgment based thereon was therefore certainly erroneous, as no writ of possession could properly be issued based upon it to put plaintiff in possession of the property. This amounted to a fatal error which demands a remand of the case.

In view of the foregoing facts and the laws cited, the judgment appealed from is reversed, and the action dismissed in its entirety without prejudice. Costs disallowed. And it is hereby so ordered.

Judgment reversed; case dismissed without prejudice.

Barclay v Digen [1999] LRSC 43; 39 LLR 774 (1999) (16 December 1999)

CORPU BARCLAY, Appellant, v. **SAMPSON DIGEN**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 11, 1999. Decided: December 17, 1999.

1. A jury is certain number of men and women selected according to law, and sworn to inquire of certain matters of fact and declare the truth upon evidence to be laid before them.

2. The role of the jurors is to try the cause of action and render a verdict according to law and evidence. That is to say the duty of the jury is to listen to the facts, consider the evidence produced in support of the facts presented, and render a true verdict, which will support the evidence presented and the law applicable to the condition or circumstances occasioned by the facts

3. The object of an action of ejectment is to determine who has a superior legal title to real property.

4. Where adversaries claim title to the same property from the same grantor, with the respective deeds carrying the same metes and bounds, the party who is entitled to the property is the party who produces an original deed and clear and convincing evidence in substantiation of the transactions, which led to the execution of the deed in his favor.

5. The testimony of the person identified by both adversaries as the lone witness to the consumption of the transaction for real property in an ejectment suit carries great weight; and where such witness testifies in corroboration of the testimony of one of the parties, without discrediting or impeaching said testimony, the verdict should be for the party in whose favor said witness testified.

6. A legally married woman can purchase real property in her maiden name prior to the dissolution of that marriage

7. Whether or not a married woman bears the name of her husband is a matter of preference and style and it does not affect the right of a woman to own property in her maiden name while married.

8. The property which a person possesses at the time of marriage or which may afterwards be acquired as a result of one's own labors shall not be held for or otherwise applied to the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage, nor shall the property which by law is to be secured to a man or a women be alienated or be controlled by that person's spouse save by free and voluntary consent.

9. The constitutional right of a spouse to own, control and alienate property to the exclusion of the other spouse does not bar or prevent the relinquishment of control by one spouse to the other.

10. Where the verdict is against the weight of the evidence, it is just and legal to grant a motion for a new trial.

11. After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A motion for new trial shall be made within four days after verdict; and no extension of time shall be granted for making a motion for new trial.

12. If a new trial is warranted but denied by the trial court, and the aggrieved party thereby loses the opportunity for a new or a different empaneled petit jury to hear the evidence and render a true verdict, on appeal, the Supreme Court shall make a determination in conformity with the weight of the evidence contained in the records and rendered that judgment which should have been rendered in the trial court.

Appellant and appellee were wife and husband, but were divorced based on the complaint of appellant. Subsequently, appellant filed an action of summary proceedings to recover possession of real property against appellee. The case was dismissed, apparently because both appellant and appellee proferted deed as evidence of title. Appellant later filed in the Civil Law Court an action of ejectment against appellee for the same property.

In the ejectment suit, appellant claimed that she had bona fide title to the property in her name exclusively, even though this was the property in which she and appellee resided while they were married. In support of her claim, appellant presented her original deed for the property, dated March 10, 1992.

Appellee, in response to the complaint, claimed that the property was purchased by him for him and appellant, jointly as husband and wife, and that therefore appellee should not be able to dispossess him of the property. In support of this claim, appellee presented the archives copy of a deed dated February, 1992.

Both deeds carried the same metes and bounds and had the same grantor and witnesses. At the trial, both appellant and appellee identified the daughter of the grantor as the person who physically received the purchase price for the **land** and signed the deed on behalf of her father. This witness appeared and testify corroborating appellant's version of the facts, especially that the deed was executed in favor of appellant exclusively. Not only did appellee fail and neglect to impeach or discredit this testimony, but appellee also failed and was unable to clarify certain contradictions in important dates.

Finally, appellee claimed that a married woman cannot own real property in her own name while married and as such appellee could not have acquired the property in question other than as a joint owner with her husband.

The trial jury brought a verdict for appellee. Appellant excepted to the verdict and moved for a new trial. The trial judge denied the motion and entered judgment affirming the verdict. From this judgment, appellant appealed to the Supreme Court.

The Supreme Court found that appellant had proved her exclusive title to the property through the preponderance of the evidence and that the weight of the evidence was against the verdict of the jury. The Supreme Court held that not only was the jury's finding contrary to a fair and impartial verdict, but that the verdict was contrary to the evidence adduced at the trial and the law controlling. As such, the Supreme Court said, the trial judge should have granted appellee's motion for a new trial. The Supreme Court therefore proceeded to enter the judgment which, it said, the lower court should have entered; that is, that as the appellant her proved her title to the property to the exclusion of appellee, the appellee should be ousted and evicted from appellant's property.

The Supreme Court also ruled that under the 1986 Constitution, a married woman may acquire property in her own name during marriage and that a voluntary relinquishment of the property. is possible only during her life time. Therefor, the fact that the appellant and the appellee were

married did not vest in appellee ownership right to appellant's property, even though they both lived on that property.

The Supreme Court therefore *reversed* the judgment and *rendered*judgment in favor of appellee.

James W. Zotaa appeared for appellant. *A. Blamo Dickson* appeared for appellee.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

Appellant and appellee were joined in holy matrimony on the 21" day of December, A. D. 1991. During the December, 1997 Term of the Civil Law Court for the Sixth Judicial Circuit, appellant filed an action of divorce against appellee, trial was held and a judgment entered in favor of appellant. A bill of divorcement was subsequently granted to appellant. Thereafter, appellant filed an action of summary proceeding to recover possession of real property against appellee at the same Civil Law Court; but upon the application of appellee, this case was dismissed by Her Honour C. Aimesa Reeves, then assigned judge presiding.

Appellant then filed an ejectment suit against appellee claiming title to a three-bedroom building; which building was also the subject of the dismissed summary proceedings to recover possession of real properly. This ejectment action was filed by appellant during the March 1998 Term of the Civil Law Court.

Appellant attached to her complaint as an exhibit her title deed, same being a transfer deed dated the 10thday of March, A. D. 1992 and signed by her grantors, Daniel David, Mondaygar Tarr, Juah Tarr and Morris Gaye and witnessed by Moses David, Mary David and Rufus D. Lewis. The consideration for the transfer or conveyance of the said parcel of **land** is $800.00. Appellant's title deed was probated and registered.

In his answer to appellant's complaint, appellee contended that the subject property is owned by appellant and appellee jointly and hence appellee could not be ejected and ousted from his lawful premises. Appellee attached a true and certified copy of a deed, carrying the imprimatur and

certification of E. Narplah Wreh, Director General, C.N.D.R.A./National Archives, Republic of Liberia, dated on the 8thday of January, A. D. 1998, to substantiate his claim.

It is interesting to note that the true and certified copy of the deed proferted by appellee names both appellant and appellee as grantees and it carries the identical metes and bounds, identical witnesses and identical amount of consideration as the copy of the deed proferted with appellant's complaint. Apart from the difference in probation and registration information, the only major difference between the certified archives copy of the deed proferted by appellee and the photocopy of the deed proferted by appellant is that appellant's copy of the original transfer deed is issued in favor of appellant -Corpu Barclay, while appellee's copy of a true and certified copy of a transfer deed is issued in favor of appellee and appellant, Samson and Corpu B. Digen.

After pleadings rested a regular jury trial was held and the empaneled jury returned a verdict of not liable and awarded the real property to appellee during the December, 1998 Term of the Civil Law Court. Appellant filed a motion for new trial; but this was denied. Thereafter, the assigned judge confirmed and affirmed the verdict of the jury.

Appellant then excepted to the final judgment and announced an appeal to this Court. Appellant filed a bill of exceptions, as required by statute, and completed the other procedural steps for the completion of appeal. This therefore placed this ejectment action before this Court for review.

The issue that this Court must now decide is this: In an ejectment action, where the title deeds proferted by the adverse parties have the identical grantor, identical metes and bounds, and identical consideration, but different grantees, which title deed is superior?

To determine this issue we shall take a recourse to the records. In her testimony, appellant told the trial court that she is a nurse by profession and in the course of her employment in a clinic, she met Oldman David who was sick and had come along with his daughter to the clinic for treatment. After his first treatment, appellant made house calls on Oldman David to continue his treatment. After Oldman David regained his health, appellant continued to make visits to Oldman David. On one of such visits while in conversation, Oldman David informed appellant that he owned a lot of **land** in and around his neighborhood. Appellant then expressed her interest in purchasing the **land**; and after negotiations she selected a spot and an agreement was concluded that she would purchase onehalf (1/2) lot of **land** for L$800.00 (Eight Hundred Liberian Dollars).

For the benefit of this opinion, we shall quote a portion of appellant's testimony explaining the transaction for the purchase of the **land** as recorded on sheet eight of the '7thday's jury session, December A.D. 1998 Term of the Civil Law Court:

"...So I told him that I wanted that **land**. First he told me $850.00 (Eight Hundred Fifty Dollars), the first thing he told me. I told him, Oldman, I beg you; let me pay $800.00 (Eight Hundred Dollars), and he agreed. I went to my house and brought the $800.00 (Eight Hundred Dollars) and he took it and put it in his daughter's hand. Then he told his daughter this is the money the doctor brought for the **land**. The daughter prepared the receipt and give it to me..."

In support of the averments in his answer to the complaint, appellee testified on his own behalf, and the relevant portion of his testimony-in-chief is, as follows:

"One day Corpu said she wanted to build a house. I said okay; let us look for the **land**. She said one Oldman Gbar is selling a piece of half lot. I said let us buy it. We went out there and negotiated and then I told her to wait a minute. On March 9, 1992 from the loan of $20,000.00. I took from the Agricultural Bank, which was in my account. I withdrew $15,000.00. Out of this amount, we went to pay the $800.00 on the **land**. I put her name there to make her feel happy. The $800.00 was paid to Oldman Gbar in the presence of his daughter, Mary and my wife, Corpu Digen, who is now Corpu Barclay. And we paid the money for the **land**. I made the receipt, because I did not know her level of writing well and we give it to the Oldman to sign and he give it to the daughter to sign for him..."

The records reveal that both appellant and appellee testified during trial that Annie David, who witnessed the transaction for the purchase of the **land** and signed the receipt on behalf of her father, Oldman Gbar, a.k.a. Daniel David, was still alive. It should be noted that in their respective testimonies, appellant and appellee named the Oldman's daughter Annie David as the witness to the transaction. Clearly the best person from whom to ascertain the truth is Annie David, daughter of Oldman Gbar, a.k.a. Daniel David. Let us now look at the testimony of Annie David, daughter of Oldman Gbar, a.k.a. Daniel David, as recorded on sheet five of the 8thday's jury session of the December, 1998 Term of the Civil Law Court:

"A. It was 1992 March. My late father was sick, and Corpu Barclay was working at the clinic. So I took my father to the clinic and then luckily we were able to meet her there and she took care of my father. She treated my father and I took him back home. Still he was still sick when I took him back home and he sent me back to the nurse that treated him. And I went back to the clinic and I took Corpu Barclay to the house where my father was sick. And she treated my father and he got well. After some time Corpu Barclay used to go to the house to visit my father and later my father told her, 'My daughter this place is for me'. So after Corpu Barclay told my father, 'I am looking for somewhere to make business.' So my father called me, and say, "Annie, my daughter asked me for place to make her business.' So she, myself and my late father, we all walked to the direction of the swamp area. Then she said no, so my father told her that 'I get a piece of spot, which is a half lot'; and then we all walked there. Corpu Barclay said she liked the place and she asked for the price. My father told her it was $850.00. Then she begged that she was able to pay $800.00. On March 10, she paid the $800.00. I fixed her receipt. I give her the receipt. On March 15, we surveyed the place and we gave her deed. That is all I know about the case."

On the direct examination, a question was put to Annie David, the answer to which is material to the determination of this case.

Q. Madam witness, I am sure that you fear God. You are a lady. The plaintiff says that at the time although married to defendant, she purchased the **land** in her own name while the defendant says that this **land** was purchased by defendant and plaintiff jointly. Refresh your memory and tell this court in whose name did you and your father issued the receipt and the deed?

A. In Corpu Barclay's name.

This testimony of Annie David was not impeached by appellee.

The title deeds of appellant and appellee have some significant differences. Appellee's deed is a true and certified copy, signed by his grantors, who are identical to appellant's grantors. However, appellee's deed is dated the 13th day of February, 1992 while appellant's deed is dated the 10' day of March, 1992. Moreover, while appellee's deed is a certified copy from the archives; appellant presented her original deed at the trial.

During cross examination, the following question was asked of appellant :

A. Mr. witness, you told this Honourable Court and jury that on March 9, 1992 when you withdrew certain money from the bank, the next day March 10, 1992 you went and pay $800.00 for the **land** in question. In count 2 of your answer, where you made the exhibits part of your answer, you said the **land** was bought on February 13, 1992. Please reconcile these two statements of yours?

A. As a matter of fact, I stand here to speak as a defendant. What I speak is the truth. I withdrew 15,000.00 dollars from my account and I have records to prove and then we went to pay for the **land** on the 10'. What is stated here about February, I do know, I rest. (See sheet seven, 11" day's Jury session, December, 1998 Term of the Civil Law Court).

Appellee had another opportunity to clarify or reconcile the dates and this opportunity was by way of the same cross examination when the question was put to appellee, as follows:

Q. Mr. witness, your certified deed tells us that your grantors signed your deed on February 13, 1992, yet you tell us that the money for that **land** was paid on March 10, 1992. Are you telling us that a deed was prepared for you by your grantors and signed before you paid them?

To this question, counsel for appellee objected; and the trial judge sustained the objection on the ground of entrapment. This second opportunity to clarify the conflicting dates of payment of the purchase price of the **land** and the date on the archives copy of the deed was refused by appellee and the refusal was sustained by the trial court.

Now in his own words, appellee says that he does not know about the February date, which is the date on the deed he proferted and relies upon. Who then would know?

Appellee testified that the transaction for the purchase of the **land** was concluded on March 10, 1992 when the true and certified copy of the title deed bearing the names of Samson and Corpu Digen was signed by their grantors and delivered to them as husband and wife on

February 13, 1992. Appellee's claim to the real property as co-owner is buttressed by a certified document of title purported to be signed by both appellant and appellee as grantees, and also purportedly signed by the grantors on February 13, 1992. Yet, appellee says that he does not know about February. Appellee is unable to reconcile this very important aspect of his testimony with his documentary evidence. Simply stated, appellee's documentary evidence contradicts his oral testimony.

Further, appellee brought no witness to clarify these contradicting dates or other contradictions in his testimony.

Now with the contradictions in appellee's own testimony, his inability to reconcile important dates, i.e. the date of alleged payment of the purchase price for the **land** and the date on the deed proferted by him, can it be said the appellee's claim is just and valid? Moreover, appellee named Annie David, daughter of Oldman Gbar, a.k.a. Daniel David, as the only witness to the transaction, and as the person who signed the receipt, for and on behalf of her father, for the payment of the purchase price for the **land**. But Annie David testified as witness for appellant and corroborated appellant's version of the transaction to the effect that she, Annie David, prepared and signed a receipt on behalf of her father acknowledging the receipt of payment of $800.00 by appellant as purchase price for '/2 lot of **land**. Appellee failed and neglected to introduce a scintilla of evidence to either rebut or discredit Annie David's testimony. Under what parity of reasoning then did the jury bring a verdict for appellee in this case?

In the face of the contradiction between appellee's testimony and his documentary evidence, his inability to explain or produce any witness or other evidence to clarify or remove the contradictions, and appellee's own prayer and plea to the jury and the trial court that appellee and his ex-wife own the premises jointly, this Court fails to understand how the jury brought a verdict declaring that ownership and title to the property rested exclusively in appellee and thereby dispossessed appellant and awarded the premises to appellee.

Appellee did not claim exclusive title to the property and no evidence was presented by appellee claiming exclusive title. The records clearly reveal there is no evidence to support the jury's award of exclusive title in the said real property to appellee. So clearly, the weight of the evidence adduced during this trial is against the verdict brought by the jury.

This ugly course of events at the trial court compels us to re-emphasize the role and function of a jury during trial.

A jury is a certain number of men and women selected according to law, and sworn to inquire of certain matters of fact and declare the truth upon evidence to be laid before them. BLACK'S LAW DICTIONARY 855 (6thed). The right to trial by jury is guaranteed by Article 20(a) of the 1986 Constitution. This constitutional right to trial by jury is carried over from Article I, Section 6 1" of the 1847 Constitution. Then the statute prescribe how this right to jury trial may be exercised. Civil Procedure Law, Rev. Code 1:22.1.

Section 22.7 of the aforesaid revised Civil Procedure Law prescribes that an oath shall be sworn to by all jurors and this oath contains the role each juror and the entire jury as a unit play in jury trial. We shall hereunder quote this provision of law governing the oath of a jury:

"Immediately after the selection of jury and before the commencement of the trial, all the jurors composing the jury, including the alternates, shall take the following oath faithfully to try the cause and render a verdict according to the law and evidence.:

"'You and each of you do solemnly swear that you will well and faithfully try the cause now before this court and a true verdict rendered according to the law and the evidence, so help you God.' "

From the clear language of this statutory provision, the role of the jurors is to try the cause of action and render a verdict according to law and evidence. That is to say the duty of the jury is to listen to the facts, consider the evidence produced in support of the facts presented, and render a true verdict, which will support the evidence presented and the law applicable to the condition or circumstances occasioned by the facts.

The matter under review is an action of ejectment. The object of action of an ejectment is to determine who has a superior legal title to real property. Appellant claimed exclusive title and presented evidence both oral and documentary to support her claim. Appellee also claimed title but as a coequal and joint tenant and appellee also presented oral and written testimony to support his claim.

At the close of the trial in the court below, counsel for both parties argued their side of the case and then each requested the trial judge to charge the jury.

Appellee's request to the judge to instruct the jury is, as follows:

"At this stage, counsel for defendant requests this court to charge the jury on the following points of law: (1) best evidence in an action of ejectment; (2) strength of the parties titles in ejectment; (3) certified copies of deeds/documents from the National Archives; (4) joint tenancy in the case of married couples. See sheet three of the 13th day's jury session of the December, 1998 Term of the Civil Law Court.

These are the points of law contained in appellee's request to the trial judge to charge the jury in support of his claim that ejectment will not lie for he is a co-owner or joint tenant based on the evidence he had adduced during the trial.

Appellant on the other hand requested the trial judge to instruct the jury on the following principles of law—the principle of ejectment, best evidence, burden of proof and rights of married woman. Also, appellant's request for instruction on these principles of law are in support of appellant's claim of exclusive title based on the evidence adduced during the trial.

Clearly, based upon the foregoing, the options opened to the jury to render a true verdict were:

a. Ejectment will not lie because the appellee and appellant are joint tenants; or

b. Ejectment will lie because appellant is the sole owner and hence has a better title.

The records reveal no law or evidence that supports the finding of the jury that appellee is the sole owner of the **land**. Clearly, the verdict of the jury is against the weight of the evidence

adduced. Hence, it would have been just and legal to grant appellant's motion for a new trial on the ground that the verdict of the jury is against the weight of the evidence adduced.

The authority to grant appellant's motion for a new trial is supported by statute in the following words:

"After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A motion under this section shall be made within four days after the verdict. No extension of time shall be granted for making a motion under this section." Civil Procedure Law, Rev. Code §1:26.4.

Therefore, in view of the foregoing law, facts and circumstances of this trial, it is the considered opinion of this Court that the trial judge committed a reversible error, when he denied appellant's motion for a new trial.

Since a new trial was not granted and an opportunity for a new or a different empaneled petit jury to hear the evidence and render a true verdict was not possible, this Court hearing this matter an appeal, must now make a determination in conformity with the weight of the evidence contained in the records.

For this Court to make such a determination we shall consider the oral and documentary evidence of appellee, the oral and documentary evidence of appellant, and the oral testimony of Annie David, daughter of Oldman Gbar, a.k.a. Daniel David.

As earlier stated in this opinion, appellee's claim as co-owner of the property suffers two serious defects:

(1) Appellee's own oral testimony contradicts his documentary evidence adduced at the trial; and

(2) Appellee failed and neglected to impeach or discredit the testimony of Annie David, who, appellee had testified, on behalf of her father Oldman Gbar, a.k.a. Daniel David (now deceased), signed the receipt and title deed issued in the names of appellant and appellee, jointly.

It is in view of the above, that this Court rules and holds that appellee did not prove his case nor could he rebut or destroy appellant's evidence in support of her claim of exclusive title to the property.

It should be recalled that appellant's testimony and original title deed were substantiated and corroborated by Annie David, the only witness now alive, whom both appellant and appellee named as witness to the transaction for the purchase of the **land**. Consequently, the evidence brought by this lone witness carries a very great weight in proving what actually transpired; that is, in proving whether the property is jointly owned by appellant and appellee, as asserted by appellee, or whether the property is exclusively owned by appellant, as asserted by appellant. And the evidence produced by Annie David contradicts appellee's evidence and corroborates appellant's evidence.

We find that appellant proved her claim of exclusive title to the premises by clear and convincing evidence; and we therefore hold that appellant is indeed the sole owner of the said real property as described by the title deed in her name.

Our holding is supported by section 25.5 (2) of the revised Civil Procedure Law governing the quantum of evidence required in civil cases as proof of the existence of facts in order to win a case. It is provided by this law, as follows:

"Quantum of Evidence. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence."

We shall now proceed to discuss a secondary issue raised by counsel for appellee; and that is whether or not a legally married woman can purchase real property in her maiden name prior to the dissolution of that marriage. This Court answers this issue in the affirmative.

Apparently counsel for appellee is of the mistaken notion that the name a spouse bears determines whether a marriage contract exists or does not exist. A marital relationship and the rights of the contracting parties that flow from such a legal contract is determined by the revised Domestic Relations Law and other laws of this **land**. Whether or not a married woman bears the name of her husband is a matter of preference and style and it does not affect the right of a woman to own property in her maiden name while married. The purchase of property by appellant during the life of a marriage and the right to control and alienate same is a constitutional right.

The 1986 Constitution provides that every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic. LIB. CONST., (1986) Art. 22(a). It is also provided that the property which a person possesses at the time of marriage, or which may afterwards be acquired as a result of one's own labor, shall not be held for or otherwise applied to the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage; nor shall the property which by law is to be secured to a man or a woman be alienated or be controlled by that person's spouse save by free and voluntary consent. *Ibid,* Article 23(a).

Hence it is the holding of this Court that it is lawful for a spouse to purchase, alienate and control property during the existence or life of a marriage. This constitutional right to control and alienate property however does not bar or prevent the relinquishment of control by one spouse to the other.

Therefore no unlawful inference should be made from appellant's title deed in her own name.

Wherefore, and in view of the foregoing, it is the decision of this Court that the verdict of the empaneled jury is against the weight of the evidence adduced at the trial; and that accordingly, the trial judge committed a reversible error when he denied appellants' motion for a new trial. Further, that appellant proved her exclusive title to the said premises. Therefore, the court below is hereby ordered to resume jurisdiction and give effect to this judgement by placing appellant, Corpu Barclay, in possession of the said real property. Costs are ruled against appellee. And it is hereby so ordered.

Judgment reversed.

Massaquioi v Tolbert [1966] LRSC 11; 17 LLR 219 (1966) (20 January 1966)

HAWAH MASSAQUOI, Appellant, v. DANIEL TOLBERT, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 9, 1965. Decided January 20, 1966. A duly rendered award of arbitrators appointed pursuant to order of court
has the status of a jury verdict and is not a deprivation of constitutional right. 1956 CODE 6 :1270 et seq.

On appeal from a judgment
rendered in an ejectment action on a report of a board of arbitrators, the Supreme Court modified the judgment to conform with the
report and affirmed the judgment as modified.
G. P. Conger Thompson for appellant. Joseph Dennis and James Smythe for appellee.
MR.
JUSTICE MITCHELL

delivered the opinion of the

Court. On the 7th day of December, 1964, the present appellee instituted an action
of ejectment against Bishop S. D. Lartey, Hawah Massaquoi, and Paul Massaquoi in the Circuit Court Of the Sixth Judicial Circuit,
Montserrado County. The complaint substantially alleged that the appellee is the bona fide owner in fee simple of 1 / 16-acre of
land known as a portion of Block No. II of Halfway Farm, Monrovia, and that defendant Lartey entered upon the said premises by encroachment
and without right detained 1,245 square feet of said land. The complaint also alleged that defendants Hawah Massaquoi and Paul Massaquoi
entered into a lease agreement with the appellee in 1956 for a portion of the aforesaid premises for a
period of time and that they
had refused to surrender
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possession when demanded. Defendants appeared and answered and pleadings rested at the reply. In their joint answer the defendants disclaimed
encroachment on the land in question. Thereafter it was mutually agreed that a board of arbitration composed of a chairman and two additional surveyors be appointed and sworn to determine the metes
and bounds of the lands in dispute and tender its report to the court for further action. The plaintiff and defendant were each given
the right to nominate one arbitrator and the Court appointed the third. The board of arbitrators was duly constituted and composed

of the following persons: L. K. Gbuie (chairman), A. B. Lewis, and R. E. Clarke. In harmony with the orders of the court they performed their duty and tendered the following report to the court: "Your Honor : "Pursuant to your instructions we visited the locus and after making a reconnaissance we asked for and obtained the relevant papers from the interested parties and commenced the survey. Existing marks on earth, shown to us and accepted by the interested parties and adjoining owners, were located together with various buildings. "The instrument was oriented to a north point obtained from the accepted bearing of Lynch Street. This procedure was adopted in order to standardize the work due to magnetic attraction, local and otherwise. "None of the lines as delineated on earth by existing marks compared favorably with the deed descriptions. We have therefore shown on plan attached hereto the position of marks found on earth relative to position of lines in accordance with deed description. We might point out that we had no alternative other than to accept marks shown to us on earth by both parties and affected adjoining owners. Consequently the po-

sition of lines shown to conform with the various deed descriptions is controlled in each instance by the mark shown on earth and used as the starting point. "Plan attached hereto shows lines delineated by existing marks on earth pointed out to us by Bishop Lartey bordered red ; those delineated by marks on earth shown to us by Mr. D. Tolbert bordered green ; lines in keeping with deed of Bishop Lartey bordered yellow; lines in keeping with deed description of Mr. D. Tolbert bordered blue. "Please note that according to Mr. D. Tolbert's deed description as shown on plan, he encroaches considerably on undisputed lands occupied by Mr. Frederick Mikpawn; also on land occupied by Mrs. Buchanan. Also please note that if the existing marks on earth shown to us by the interested parties are accepted, the portion disputed by Bishop Lartey and Mr. Tolbert would be that which is colored brown on the plan attached." On the 13th day of May the case was resumed and the award from the board of arbitration was proved. Counsellor J. M. T. Kandakai announced objections to the award for and on behalf of his client, defendant Hawah Massaquoi, which he formally withdrew on the 21st day of May, 1965, and proceeded to prosecute an appeal to this Court by filing on the same day his bill of exceptions, the body of which reads as follows : "Because appellant says that despite the report of the board of arbitration which alleged and we quote : `Please note that according to Mr. D. Tolbert's deed description as shown on plan, he encroaches considerably on undisputed lands. . . .' meaning thereby that no **land could be drawn from the area in question in consideration of Daniel Tolbert's claim except by encroaching on land** not in dispute, including that owned by one Hawah Massaquoi, a ward of appellant-- nevertheless Your Honor rendered final judgment that

Daniel Tolbert's claim be satisfied by giving him land in metes and bounds and a writ of possession
was issued in his favor according to the judgment, in flagrant disregard of the report of the board of arbitration, which report
the court confirmed and on which the said judgment is purported to have been based; hence the said judgment is tainted with gross
partiality against which appellant excepts and prays an appeal to the Honorable Supreme Court of Liberia, October term 1965." The
foregoing is that which appellant's counsel terms and classifies to be a bill of exceptions on appeal from the judgment of the court
below affirming the award from the board of arbitration, even forgetting the all-important fact that appellant was sued as a tenant
by leasehold, which allegation the same counsellor denied in Count 4 of his answer, when he said : "And also because defendants say
that as to defendant Hawah Massaquoi, one of the defendants herein, she entered the land in question under the title of defendant
Bishop S. D. Lartey whose title she accepted and admitted that he was her landlord. Defendant Hawah Massaquoi submits that at no
time was she ever knowingly made to become signatory to any document whereby she purported to have admitted the ownership of the
land, the subject of the action, in the plaintiff as the plaintiff has sought to establish." Yet, in the face of this plea when neither
Francis D. Tolbert nor Bishop S. D. Lartey, who are freehold owners of the land in dispute, excepted to the judgment of the court,
appellant has done so and comes on a bill of exceptions that means nothing less than a folly, a waste of time for the Court and a
demonstration of the counsellor's deficiency in the science of law because it raises no traversible issues as the law requires. Our
law defines a bill of exceptions as follows. "A bill of exceptions is in essence a complaint alleging that the trial judge has committed
one or more

errors, all therein specified, which have resulted in a final judgment adverse to the contentions
of appellant." Richards v. Coleman [1938] LRSC 15; 6 L.L.R. 285 (1938) Syllabus 1. In common law it is held that: CC . . an order is not appealable ... if it does not ... in effect, finally determine
the action, or finally determine some positive legal right of appellant relating thereto." 4 C. J.S. 279 iippea/ & Error § 99. In this case, legal right vested in the appellant was affected by the judgment rendered in the court below.
Hence there is no sense in her appeal since both Lartey and Tolbert whose property rights were in dispute, submitted to the award
and the judgment made thereon. It can therefore be clearly understood that this appeal is only the result of appeals in our courts
according to our law being a right and not a privilege ; and it is our opinion that the earlier our lawmakers become seriously concerned
over the fact, the quicker our courts will be relieved of such unmeritorious matters. When this case was assigned and called for

hearing, appellant's counsel strenuously contended that the trial judge erred by entering a judgment on the award instead of having a jury sit on the case and submit a verdict under the principle laid down in Article I, Section 8th of the Constitution. Appellee's counsel, countering the argument of his adversary, contended that the appellant, not having excepted to the award of the arbitration board, does not enjoy the right of appeal. In the first place we have wondered if appellant's counsel could be sincere in his argument. The constitutional provision relied upon reads thus: "No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land." CONST. Art. 1 Sec. 8. An award from an arbitration board is sufficient to serve as a verdict when no objections are raised against its validity; and such award being predicated upon the law

of the land conforms with the provision of the Constitution relied upon by appellant. The controlling statute provides : "After judgment has been entered upon an award, it shall have the same status as a verdict and shall be proof of the facts stated therein against all parties to the arbitration." 1956 CODE 6:1286. Because in our opinion the judment of the court below is incomplete and liable to promote other litigations growing out of the same cause of action, and because this Court has the authority to affirm, reverse, or give such judgment as ought to have been given in any case before it, we shall take recourse to the award of the board of arbitration for a guide so that transparent justice may be done to all of the parties concerned. The report of the board is distinctly clear in all of its parts. The map which accompanies the report makes it still more understandable to the layman. Heretofore, Bishop S. D. Lartey claimed right and ownership according to his marks to the **land bordered red on the map ; and plaintiff Tolbert claimed right, possession, and ownership to the tract of land** according to his marks bordered in green. The award of the board showing the lay of the land according to defendant Lartey's deed, makes him the rightful owner of the tract of **land bordered in yellow and it is that tract of land** that the writ of possession must possess him of. According to plaintiff Tolbert's deed, he is entitled to ownership and possession of the land diagrammed and bordered on the map in blue, and it is that tract of land he must be possessed of by the writ of possession; he should refrain from further encroachment on undisputed land as he has done heretofore. The foregoing is the unanimous opinion of this Court in correction of the judgment of the court below. The clerk of this Court is hereby ordered to send a mandate to the lower court ordering it to resume jurisdiction and proceed to issue the necessary writ of possession and exe-

cute the same in strict conformity with this opinion under the direction of the board of arbitration with costs against the appellant. And it is hereby so ordered.

Judgment
affirmed as modified.

Tweh v Koffa et al [1979] LRSC 7; 28 LLR 89 (1979) (15 June 1979)

MARY TWEH, Appellant, *v.* **PETER KOFFA** et al., Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT COURT, MONTSERRADO COUNTY.

Heard: May 24, 1979. Decided: June 15, 1979.

1. It is a well-settled principle of law that an injunction will not issue when the plaintiff's title is in dispute, for it is the duty of an equity court to protect acknowledged rights rather than to establish new and doubtful ones.
2. When there is a dispute about ownership to **land**, the practice and procedure is for a jury to decide who has the better title; the proper action being an action of ejectment.
3. Although the purpose of an ejectment is to gain possession, an ejectment action may be instituted for the purpose of proving or establishing title.
4. An injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action, which determines title and places the rightful owner in possession. An injunction has only a restraining or prohibitive power.
5. Two parties who join issue regarding title to real property in an injunction case must look to law and not equity for a settlement of that issue.
6. Where there is no pending suit, such as an ejectment suit to determine ownership to property, said property can neither be held in *status quo* by injunction nor can the party plaintiff be placed in possession, the latter being the distinct function of an ejectment action.
7. In ejectment action, where the right of a party is doubtful, an injunction will not generally be granted to prevent interference therewith until the right is established at law.
8. Nothing is better as a rule of equity procedure than that the complainant is not entitled to a preliminary injunction to protect a right which depends on disputed question to be determined by a court of law.
9. When the principles of law on which rights are disputed will admit of doubt, a court of equity, although satisfied as to what is the correct conclusion of law upon the facts, will not, without a decision of the court at law establishing such principles, grant an injunction.

Appellant brought an action for an injunction against the appellees, claiming that appellees were digging a foundation on her **land** for the purpose of constructing a building, and destroying fruit trees on her **land** . She alleged that if the writ of injunction were not issued against the appellees, irreparable injury would be sustained by her. In support of her case, appellant proferted her deed for the property.
In response, appellees claimed title to the property and proferted their own deed as evidence of their title. In addition to that defense, appellees requested the trial court to quash the writ of injunction since an injunction was not a possessory action and cannot be used to determine title to real property. Appellees contended that an injunction was an equitable remedy, ancillary to a main suit, and that in the absence of a main suit filed against them by appellant that was pending determination, appel-lant was not entitled to the writ of injunction.
The trial judge entertained a hearing and sustained appellees' position on the inappropriateness of the injunction, and quashed said injunction for the reasons advanced by the appellees.
Appellant excepted to the ruling and appealed to the Supreme Court.
The Supreme Court *affirmed* the trial judge's ruling in its entirety for the same reasons stated by the lower court.

Francis N. Torpor appeared for appellant. *Edward N. Wollor* appeared for appellees.

MR. JUSTICE BARNES delivered the opinion of the Court.

Appellant, who was plaintiff in the lower court, filed an injunction suit against the defendants, now appellees, in the Sixth Judicial Circuit Court, Montserrado County, to enjoin and res-train appellees from constructing a house and destroying the fruit trees on a parcel of **land** which appellant claimed to be her bona fide property. In the complaint, appellant stated that if appellees were not restrained, their acts would cause her irreparable injuries.

In support of her case, appellant proferted a warranty deed as proof of her title to the parcel of **land**. Appellees filed an answer praying for the dissolution of the injunction on the grounds that appellant should have filed a main suit of ejectment to establish title during the pendency of which litigation, an injunction could be sought to restrain the acts appellant consi-dered injuries, and that an injunction could not serve the purpose of ejectment. Appellees also proferted a title deed for the **land** in dispute.
In her reply, appellant contended that because she was in possession of the premises, the purpose for an ejectment action did not exist. Therefore, injunction would lie.
After hearing arguments, the court below dismissed the complaint and dissolved the injunction.
Appellant, plaintiff below, noted exceptions and has come before this Court on a regular appeal on a bill of exceptions containing six counts.
The parties having argued their briefs, we shall now proceed to review the contentions raised in the bill of exceptions commencing in the descending order.

Appellant contended in count one (1) of her bill of exceptions that the lower court committed reversible error when the judge in his ruling upheld appellees' contention that appellant should have filed a main suit of ejectment although appellant is in possession of the **land**. We consider it necessary to quote word for word the ruling of the lower court from which this contention and others to follow have arisen:

"Plaintiff's complaint in this injunction action alleges that she is owner of a parcel of **land** in New Kru Town, on which she lives in a house and proferted a warranty deed to the complaint. She complains that the defendants, without any color of right, entered upon the **land** and dug a founda-tion to construct a building and destroyed fruit trees and that if defendants are not restrained she will suffer irre-parable injuries for which she will not recover in damages. She prays court therefore to enjoin, prohibit and restrain the defendants from digging and constructing any edifice on the **land** and to restrain them from trespassing on the **land**.

Defendants countered the complaint with a seven-count answer in which they prayed dissolution of the injunction action, contending in count two of the answer that plaintiff's failure to show the pendency of a main suit in ejectment, to which main suit the application for the writ of injunction will be an auxiliary, renders the preliminary injunction suit quashable.

Section 7.61 of the Civil Procedure Law, Rev. Code 1 - Grounds for Preliminary Injunction, states:

'A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's right respecting the subject of the action, and tending to render the judg-ment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment, restraining the defendant from the commission or con-tinuance of an act which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.'

In keeping with the statute hereinabove quoted, it appears to me that none of the grounds as contemplated by the statute exists in plaintiff's application for preliminary injunction. There is no action of any kind pending before any court the subject of which is the basis of the prelimi-nary injunction, nor in which the judgment of the court would be rendered ineffectual if the acts of the defendants in trespassing on the plaintiff's **land** and digging a foundation to construct a building are not prohibited and restrained. There is no action pending before any court in which plaintiff has demanded or is entitled to judgment and during the pendency of which, if defendants are not enjoined from building on plaintiff's **land**, would produce injury to the plaintiff's action. Can a court of equity prohibit anyone claiming title to real property in favour of another who claims title to the same property? The court says no. Equity will not interfere because there is remedy at law. An equitable remedy will be granted only where no adequate remedy exists at law. *Paterson, Zochonis & Co., Ltd. v. Cooper*, 13 LLR 348 (1959). An action of injunction is neither a possessory action nor an action to recover money for damages done or to decide title to real property, both parties having claimed title to the property and proferted deeds to establish their rights. *Johnson v. Powell and Russell*, [1934] LRSC 32; 4 LLR 221 (1934).

Where a suit in equity or at law is pending, an injunction may be granted to preserve matters in *status quo* until a final determination of the case. But no other action is pending, which may decide the right or title to the **land**, the both parties having claimed and attempted to establish title to said **land**.

Under these circumstances and in view of the citations of law hereinabove raised, it is the considered opinion of this court that the preliminary writ of injunction be and the same is hereby quashed and the preliminary injunction dissolved, with costs against the plaintiff .And it is hereby so ordered."

It is a well-settled principle of law that an injunction will not issue when the plaintiff's title is in dispute, for it is the duty of an equity court to protect acknowledged rights rather than to establish new and doubtful ones. 42 AM JUR. 2d., *Injunction*, §29.

Appellant has claimed title to a piece of property for which she has exhibited a deed. Appellees, on the other hand, have made profert of an adverse title. Equity cannot decide who has cleaner hands. The remedy lies at law. In our jurisdiction, when there is a dispute about ownership to **land** the practice and procedure is for a jury to decide who has the better title. The proper action is therefore an action of ejectment. Also in ejectment, where the right of a party is doubtful, an injunction will not generally be granted to prevent an interference therewith until the right is established at law. Nothing is better as a rule of equity procedure than that the complainant is not entitled to a preliminary injunction to protect a right which depends on a disputed question to be decided by a court of law. When the principles of law on which rights are disputed will admit of doubt, a court of equity, although satisfied as to what is the correct conclusion of law upon the facts, will not without a decision of the court at law establishing such principles, grant an injunction. So if the facts on which the right to the injunction is based are in dispute the injunction will not be granted. *Cooper v. Macintosh*, [1944] LRSC 27; 8 LLR 400 (1944); *Simpson and Lomax v. Obeidi*, [1968] LRSC 12; 18 LLR 273 (1968).

Appellant argued that ejectment would not lie because she is in possession of the property. Although the purpose of an ejectment is to gain possession, an ejectment action may also be instituted for the purpose of proving or establishing title. *Fiske et al. v. Artis et al.[1953] LRSC 4;* , 11 LLR 334 (1953). In that case the action may be sued out by one in actual possession whose right to such property has been trespassed upon by invasion, which if not adjudicated, may lead to an ouster of the one who claims to be in possession. In the instant case, although the appellant is occupying the **land**, the appellees's action of digging a foundation and constructing a house on a portion of said **land**, destroying fruit trees, and showing a deed for the same property are suffi-cient manifestation of appellees' intention of getting said premises, which appellant believes to be her bona fide property, into their possession. The proper and immediate remedy therefore is to settle the dispute as to the ownership, which can be done only at law. After that, if judgment is rendered in appel-lant's favour, equity can then be resorted to for its own remedies, or an injunction may be sued out as an auxiliary suit to restrain appellees and to maintain the property in status quo pending the determination of an action at law for the purpose of preventing injury to the property. An injunction will not issue for the purpose of holding in abeyance a property right. It is therefore our considered opinion that the lower court did not err as to its position on this issue. Hence, count one (1) of the bill of exceptions is therefore not sustained.

Appellant contended in count two (2) of her bill of exceptions that the trial judge's ruling that the

statutory grounds upon which an injunction would issue did not exist in appellant's application for preliminary injunction, was erroneous because it is not supported by the records; that is, the complaint and reply. We are in agreement with the position taken by the trial judge, for his ruling is not only in keeping with the records of the case but is also in conformity with existing statutes. Here is the provision of the relevant statutes:

"A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's right respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act which, if committed or continued during the pendency of the action, would produce injury to the plaintiff." Civil Procedure Law, Rev. Code 1:7.61.

This portion of the statute is so plain that we think it is unnecessary to interpret it. We shall only comment here that whenever acts of a defendant are sought to be restrained -- such as: (a) where the defendant threatens or is about to do or is doing or procuring or suffering to be done, or (b) where the continuance of an act which, if committed or continued would produce injury to the plaintiff -- the spirit and letter of the statute require that there must be a suit pending between the plaintiff and the defendant involving the subject matter of the injunction. In a proper case, the defendant would be restrained so that he will not act in violation of the plaintiff's rights or that defendant would not commit acts or continue to commit acts that would make a judgment rendered in plaintiff's favour ineffectual.

We see no proof or allegation, neither in appellant's com-plaint nor in the reply, of the existence of an action between appellant and appellees touching the subject **land**, except the injunction suit that we are now reviewing.

Appellees contended that the grounds for issuance of an injunction do exist in her pleadings. By that, we suppose she was referring to the allegation that appellees were building a house and destroying fruit trees on the **land** for which she holds a title deed, and if such acts were not restrained, she would incur irreparable loss. Whether these injuries are reparable or not, an injunction will not issue under the circumstances of this case. Before the strong arm of the law can be properly used to restrain, appellant and appellees must first join issue and be in litigation before a court of competent jurisdiction to determine the rightful owner of the property. Were the appellees to be restrained from construction and the **land** held in *status quo,* could equity permit appellant to enter on said **land** to construct? A thing is held in *status quo* pending the outcome of something, say a determination of a matter. But where there is no pending matter what is the use and purpose for holding property (**land**) in *status quo*? Because appellant's contentions gave no answer to these queries, we are in full agreement with the court below that the grounds for issuance of injunction do not exist in appellant's complaint.

Because we consider the other four counts of the bill of exceptions to be couched in the first and second counts, which we have overruled, said counts will not be treated specially.

Appellant has relied on the case *Fiske et al. v. Artis et al.*[1953] LRSC 4; , 11 LLR 334 (1953) in contending that an injunction is not issuable in ejectment and that the court below did not pass upon that issue. We are of the opinion that the judge's ruling quoted earlier was comprehensive and that all issues relevant to a fair determination of the case were considered in said ruling when he ruled that appellant should have filed an ejectment suit, during the pendency of which an

injunction could be prayed for to restrain interference with said property
Appellant has also relied on *Fiske et al. v. Artis et al.[1953] LRSC 4;* , 11 LLR 334 (1953) in support of her argument that an injunction is not issuable in ejectment, the two being separate and distinct actions. That particular principle laid down in that case is inapplicable to this case because of the differences in the facts and the circum-stances that led to the two litigations. Appellants in the *Fiske* case had previously filed an action of ejectment in the Second Judicial Circuit Court for Grand Bassa County against the appellees and then instituted an injunction suit to restrain appellees from leasing a house on said premises, which was the subject of the ejectment suit. In the injunction suit, there was no issue joined as to title, that being an issue before the circuit court sitting in law. The judge nevertheless dismissed the injunction action on grounds that since title was involved the parties should "first establish their rights at law in order to justify the interposition of a court of equity." The Supreme Court, in reversing that judgment and in sustaining the injunction, held that the judge of the lower court erred. We quote the relevant portion of that opinion:

"That the judge of the lower court flagrantly erred in making this ruling is beyond dispute. Since actions involving title to property are possessory actions, they are distinct in character. The issue of title is foreign to the instant action. Moreover, it is settled law that the courts will decide only such issues as are joined between the parties and set forth in the pleadings."
The material difference between the two cases is that in the *Fiske* case an ejectment action involving the same parties and subject matter was already pending determination and that the issue of title to the property was not raised in the injunction pleadings. The plaintiffs in that case had taken all steps necessary for issuance of the injunction. In this case, however, there is no ejectment suit pending determination, even though appellant and appellees are claiming title to the same property by proffering deeds. The circumstances of the two cases being different, the same rule can not apply.
It seems to us that counsel for appellant neither fully comprehended the material difference between the *Fiske* case and the instant case, nor the application of the rule in the *Fiske* case, which he relied upon in support of his argument in the present case.
The main issue in the instant case is whether or not an injunction will issue to enjoin or restrain appellees from constructing a house and destroying fruit trees on a piece property, which is claimed by both the appellant and appellees, in the absence of an ejectment action pending to determine the rightful owner of said property. We hold no. An injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action, which determines title and places the rightful owner in posses-sion. An injunction has only a restraining or prohibitive power. Therefore, two parties who join issue on the title to real property in an injunction case must look to law and not equity for a settlement of that issue. Where there is no pending suit, like in this case, to determine ownership to property, said property can neither be held in *status quo* by injunction nor placed in possession of the appellant, the latter being the distinct function of an ejectment action.

In view of the foregoing, it is our considered opinion that the judge of the lower court did not err in quashing the writ of injunction. The judgment of the lower court is therefore hereby affirmed. Costs are ruled against the appellant.
Judgement affirmed

Ducan v Perry [1960] LRSC 16; 13 LRSC 510 (1960) (14 January 1960)

JOHN W. DUNCAN, Appellant, v. MACDONALD M. PERRY, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 20, 1959. Decided January 14, 1960. 1. Priority of claim to title is a material element in an action of ejectment.
2. Pleadings need not expressly refer to the law relied upon therein. 3. A plaintiff in an ejectment action must rely upon proof
of title in himself, and cannot prevail merely by reason of defects in the defendant's title. 4. A plaintiff in an ejectment action
is required to furnish clear and convincing proof of title. 5. Where the claim to title of a plaintiff in an ejectment action is
based upon a judgment awarding title to the disputed property, the property must be designated with certainty in the judgment. 6.
Where a party has filed a written application for a trial court to instruct the jury upon points of law, the charges upon such an
application should ordinarily be put in writing and made part of the record. 7. Where a defendant in an ejectment action, submitted
a deed to the property in question, but the trial court instructed the jury that the defendant had "no deed in court," the instruction
was prejudicial and a judgment upon the jury's verdict in favor of the plaintiff will be reversed. 8. A verdict must show what was
awarded, and must not be so uncertain that a writ of possession cannot be issued upon it.

On appeal from a judgment upon verdict
of a jury in favor of the plaintiff in an action of ejectment, reversed and remanded with instructions prescribing proper conduct
of the proceedings below. T. Gyibli Collins for appellant. appellee.
Joseph F. Dennis for

MR. JUSTICE PIERRE delivered the opinion
of the Court. Here is an action of ejectment in which the plaintiff alleged ownership of and fee simple title to Lot Number 112 in
Sinkor, Monrovia. He traced the origin of his title back to one C. C. Burke, who sold to Isaac Alpha, and who in turn parted with
title to one N. J. Crawford. In

December, 1948, Crawford by warranty deed passed title of the property to MacDonald Perry, the plaintiff in the court below, who is appellee before us. Deeds from Burke to Alpha, from Alpha to Crawford,
and from Crawford to appellee, were made profert and filed with the complaint, and appear in the records certified to us from the
office of the clerk in the court below. We have checked these deeds and find that their metes and bounds agree in every detail ;

we find that each of them calls for Lot Number 112, the subject of the complaint; and we also find that all three of these deeds were executed in the year 1948--one in April, one in October, and one in December. This is not unusual but it seems quite a coincidence. The defendant appeared and filed an answer. We quote Count "z" thereof, since it has direct bearing on the issue involved. It reads : "And also because defendant says he is the legal owner of Lot Number 112 by virtue of title deed herewith made profert of and marked Exhibit 'A,' and forming part of this answer; this parcel of **land being the identical piece of land** which plaintiff seeks to recover in this case. . . ." The Exhibit "A" referred to in this count, a warranty deed, was made profert and filed with the answer. This deed was executed by one Mary Simpson in August, 1931, and transferred fee simple title of a town lot, also in Sinkor, Monrovia, to the appellant. The metes and bounds of this deed begin at a point different from that shown in the three deeds of the appellee, and are also unlike them in description. Whilst the appellee's deeds call for Lot Number iI2, this deed of the appellant calls for Lot Number 114. The appellant, having alleged his ownership of the aforesaid Lot Number 112 by virtue of a title deed made profert and filed with his answer, it appears to us that the number of his said deed should have agreed with the number of the lot which he claimed to be his in Count "z" of his answer quoted above. For, how

could he consistently claim ownership of Lot Number 112, by virtue of a warranty deed calling for Lot Number I 14 ? It is clear, therefore, that some mistake has been made. A review of the record reveals that, in the year 1931, John Duncan, the appellant, bought a lot of **land** from Mary Simpson out of Block Number 114, she, the said Mary Simpson, having taken title thereto from Angela Dennis-Brown, from whom she purchased. Seventeen years after appellant had purchased this lot and occupied it, that is to say, in 1948, there seems to have been a survey of lands in the area, which occasioned a readjustment of the boundaries between the various blocks in the locality of the disputed property. If there were any doubt up to this time as to the probability of a mistake in designating the two pieces of property, one would think that the testimony of Mrs. Dennis-Brown, from whom the appellant's grantor had taken title, would have been sufficient to establish such a possibility. It is necessary to the fair and impartial adjustment of this dispute that we quote a portion of her examination and testimony herein. On the stand she was examined as follows : "Q. Plaintiff has instituted an action of ejectment against defendant for a parcel of **land** which the defendant is occupying at Sinkor, Monrovia. Please state for the benefit of the court and jury, all facts within your knowledge and recollection touching said property. "A. I do know something about the two parcels of **land in question. One parcel of land** which Mr. Duncan now occupies was originally my **land, and the parcel of land** which the plaintiff, Mr. Perry, is claiming was owned by Mrs. Christiana Burke. Where Mr. Duncan is presently living is Lot Number 114; where the plaintiff, Mr. Perry, is claiming is Lot Number i 12. There is a distinct

boundary line between the two parcels of land. . . . There is presently a road that somebody
made separating the two parcels of land. To my knowledge and understanding, I would say that Mr. Duncan, the defendant, is occupying Lot Number ii4, which I have tried to explain to the plaintiff, Mr. Perry. . . ." Although witness Angela Dennis-Brown had referred
to two pieces of land, and to a road forming a boundary line between them, which should have suggested the elementary method of settlement under such conditions-- arbitration; and although surveyor Tarr Grimes had testified on the stand that his effort to survey, upon
plaintiff's request, the lot occupied by the defendant had been repulsed ; and still further, although it had been clearly shown
that whilst the parties contended over ownership of one lot, two were actually in evidence, their deeds having appeared in the pleadings; yet, it does not appear that such a tangled state of affairs called to the Judge's mind the necessity for having arbitrators designate
the alleged two plots of land, with a view to clearing the entanglement surrounding Lot Number 112, the subject of the suit. But
if anyone, even a layman, had been called upon to select preferences as to the ownership of the lot in dispute, the very fact that
the defendant had been in possession upon a valid deed for seventeen years prior to plaintiff's purchase, should have suggested consideration in favor of the older deed. Not only did the trial court ignore this very apparent and what we consider necessary principle in cases of ejectment, but the record shows that he religiously disallowed, or ruled against any testimony suggesting older title. In the
examination of the plaintiff, the following question touching older title was put to him : "Q. Defendant Duncan furnished you with
copy of his deed which is older than any deed in the chain of

your title ; that is to say, the defendant
acquired title in 1931, whereas you acquired title in 1948. What have you to say about this fact? [Objections] THE COURT. The court
says that in the case, Massaquoi v. Lowndes, [1935] LRSC 5; 4 L.L.R. 260 (1935), the Supreme Court of Liberia held that in civil cases the court shall not allow questions to be put to a witness, raising
affirmative matters not pleaded. Inspection of the answer of the defendant does not satisfy the court that these facts are raised
in the written pleadings ; especially so, that of older title. On this ground, the court disallows the question." We will refer to
this point later in this opinion, with a view to ascertaining whether the principle therein as stated by the Judge could apply in
the instant case. It has been held that: "A recovery by plaintiff in ejectment may be defeated by defendant showing title in himself,
and it has been decided that this is so although he acquired the same subsequent to the commencement of the action . . . . Title
under which defendants in possession claim may always be shown, although it may not be the better one. And the word 'title,' it has

been held, does not necessarily mean a written title, but means any such right as is good in law to resist the title of plaintiff."
15 CYC. 62-4 Ejectment. In view of the above-stated principles of law, the trial Judge should have given consideration to the defendant's trend of cross-examination of the plaintiff, since not only did the plaintiff have written title in himself, but he also had older title. We are of the opinion that the legal principles which control in a particular class of cases do not necessarily have to be enunciated in the pleadings of the parties in order for them to be relied upon in conduct of cases on trial. Title, older title, and superior title have always been controlling principles in cases of ejectment,

both in the English and American courts ; and we know of no time when they did not control decisions in cases of ejectment in the courts of Liberia.
It is very strange, therefore, that the trial Judge should have ruled as he did in disallowing this very relevant question at the trial. The primary objective in suits of ejectment is to test the strength of the titles of the parties, and to award possession of the property in dispute to that party whose chain of title is so strong as to effectively negative his adversary's right of recovery.
In all such cases the plaintiff's right of possession must not depend upon the insufficiency or inadequacy of his adversary's claim; he must be entitled to possession of the property upon a legal foundation so firm as to admit of no doubt of his ownership of the particular tract of **land in dispute. The land** in dispute in this case is a lot which the appellant now occupies and occupied continuously for seventeen years before the appellee's chain of title commenced, and which the said appellant had acquired from a source different from the appellee's grantor. Authorities have held that, in order for a plaintiff to be able to recover title to property in ejectment, title to the particular tract of **land** must have been first vested in him ; and that the strength of the chain of title under which he claims, must be determined by the strength of each of the links which compose it. "Subject to certain exceptions, it is necessary in order to recover that plaintiff should have in himself a good and valid legal title or interest in the premises." is CYC. 17-18 Ejectment. In this case, plaintiff has claimed title to Lot Number 112, and he has also exhibited a chain of title to support that allegation. The defendant, on the other hand, has claimed that he is the owner of Lot Number rI2, but the deed he exhibited to support that claim is for Lot Number 14. More than one witness has testified that the property occupied by the defendant, which he has occupied

from 1931 up to the filing of this suit, and which is in dispute herein, is Lot Number 114, and not Lot Number 112, as he has claimed in his answer. It seems to us, therefore, that since no oral testimony could be taken to explain

a written instrument--in this case the deed--some effort should have been made to locate these two lots on the plot of the City, and particularly Lot Number 112, the subject of action. Unless and until that has been done, we cannot understand how any Judge could feel satisfied that the lot occupied by the Defendant is Lot Number 112 instead of Lot Number 114 as his deed shows. The Judge's final judgment has stated this in no uncertain terms, and we quote the relevant portion thereof for the benefit of this opinion. It reads : "It is therefore adjudged that the plaintiff recover the said piece of land, being Lot Number 112." We have not been able to find anything in the records, which could possibly bear out this positive conclusion of the trial Judge that the lot occupied by the defendant, and which is in dispute, is actually Lot Number 112. Nowhere in the records was it ever proved where Lot Number 112 is actually located. There is some evidence, although inconclusive, as to the possibility of the premises occupied by the defendant being Lot Number 114; but all of the evidence in this case, when taken together, shows very clearly that there is uncertainty as to the proper number of the lot in dispute--that is, whether it is 112 or 114. This point is very strongly urged in Count "9" of the bill of exceptions. "The land should be designated or described with certainty sufficient to enable a writ of possession to be executed. And it has been held that the particular estate or interest should also be designated. IS CYC. 76-77 Ejectment.

In the instant case, not only did the trial court make no effort to consult a map of the area, which would have cleared any and all doubts as to the proper identity of Lot

Number '12, but the surveyor whom the plaintiff took to the area to survey the lot in dispute was not allowed to make the survey, defendant claiming the lot to be his. It does not appear that notice was even given to residents in the area who might have property adjoining so that they might have been informed of the intended survey. The picture might have been much different if the Judge had seen the wisdom of appointing arbitrators who, after notifying landowners in the area of an impending court survey, had cited persons holding deeds for property contiguous to the lot in dispute, and then, armed with an official map, proceeded to the locality, and on the spot made a fair and intelligent survey of the area. That has been our procedure in such cases of ejectment. Coming now to the verdict, we would like to observe that it is peculiar, that the Judge omitted to reduce his charge to writing in view of the elaborate written application filed by the plaintiff, requesting him to instruct the jury on certain points of law in his charge. It is our opinion that, in order to have done justice to this request of the plaintiff, the charge should have been put in writing. And if that precaution had been taken, a subsequent reflectory accusation might have been averted. We have quoted the application herein; the document speaks for itself. It reads: "And now comes MacDonald M. Perry, plaintiff in the above-entitled

cause, and asks this court to instruct the empanelled jury on the following points of law : "I. There is variance between the plea
of the defendant as found in Count '2' of his answer, and what he attempts to prove. In Count 4 2 7 of the answer, the defendant
made the following assertions : 'And also because defendant says he is the legal owner of Lot Number '12 by virtue of title deed
herewith made profert and marked Exhibit 'A' and forming a part of this answer; said parcel of land being the identical piece of
land

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" 2.

which plaintiff seeks to recover in this case.' Plaintiff submits that, despite this position
as taken by the defendant, there is no evidence to show that he is the legal owner of Lot Number rI2; to the contrary, both he and
his star witness Angela Dennis-Brown, testified to the defendant's ownership of Lot Number I14, title to which said latter piece of property is not in issue before this Honorable Court. And also,
on the point of expert testimony, plaintiff submits that witness F. Tarr Grimes, for the plaintiff, being a qualified surveyor, especially
one who took part in the survey earmarking the plot of land owned by the Johnson heirs, of which the lot in question forms a part,
his testimony should be received with weight, and greater weight than other witnesses who
were called to testify and were not surveyors.
And also, on the point that the plea of statute of

"

limitations not having been raised by the defendant in his answer, as to how long he, the said defendant, had possession of the land in question, same should not be considered by the jury. "4. And also, on
the point of admissions in pleadings, plaintiff submits that the defendant having pleaded : 'And also because defendant says he is
the legal owner of Lot Number 112 by virtue of title deed herewith made profert and marked Exhibit "A" and forming a part of this
answer, said parcel of land being the identical piece of land which plaintiff seeks to recover in this case,' as employed in Count
(2 1 of defendant's answer, he has thereby admitted that (r) he knows the parcel of land the plaintiff is claiming to be Lot Number
112; and (2) he is in possession thereof. Plaintiff submits that an admission made by a party himself or his agent acting

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within the scope of his authority, is evidence against the party." We would like to comment that the record does

not show that the defendant entered any objections or exceptions, either to the application itself, or to the Judge's failure to have written a charge thereon ; and because of the position which we have taken in this case, we will refrain from making any reference to this strange application. However, the absence of a written charge becomes significant when we refer to Count "r" of the bill of exceptions, which reads as follows : "And also because defendant positively avers that, whilst instructing the empanelled jury as to the facts submitted in evidence for their consideration in said ejectment suit, Your Honor also said, inter alia, that the defendant 'had no deed in court'; whereas a valid deed marked Exhibit `D-2' had been duly admitted for the defendant by Your Honor, thereby prejudicing

the entire defense of the defendant. To which said remark of Your Honor the defendant excepts." If this allegation, as contained in Count "1" of the bill of exceptions, is true, then we have no hesitancy in saying that this alleged act of the Judge could have prejudiced the interest of the defendant so as to entitle him to a new trial. The Judge, in approving the bill of exceptions did not deny such a serious charge made against him, but instead made this notation in refusing to approve Count "1" of the bill of exceptions. "No written charge requested and delivered. Not approved." In the absence of a positive denial, the refusal to approve this count could be taken to be a refutation of the allegation ; but was that the Judge's intention? The verdict of the jury reads : "We the undersigned petty jurors to whom the aboveentitled cause was submitted, after a careful consideration of the evidence adduced at the trial of said cause

of action, and the law controlling, do unanimously agree that the plaintiff is entitled to recover the lawful possession of the property, Lot Number 112, situated at Sinkor, Monrovia." We are of opinion that the verdict is inconclusive, since it is not based upon any evidence eithei designating the locality in Sinkor of Lot Number 112 to which it refers, or in any manner explaining the situation between the two numbers in relation to the property in dispute. Consequently we do not feel that a writ of possession could properly or intelligently issue for this lot, the correct number of which is so very uncertain. "Whenever a verdict is sufficiently certain to enable the court to give judgment and the sheriff to deliver possession it will be sustained. A verdict must, however, sufficiently show what was awarded to plaintiff, and must not be so uncertain that a writ of possession cannot be issued upon it; and a verdict which is not in accordance with the contention of either party is erroneous." 15 CYC. 166 Ejectment. We deem what we have said herein and the law we have cited in support to be sufficient to justify the position which we now take in this case. But before concluding this opinion, we would like to refer to the decision of this Court, upon which the Judge relied, in denying defendant the right to examine the plaintiff on the question of older title. The case, Massaquoi v. Lowndes, [1935] LRSC 5; 4.

L.L.R. 260 (1935) upon which the Judge relied, and the principle enunciated therein, cannot be made to apply in any way to the issues involved in this case. For, whilst in the Massaquoi case, the defendant in an action of debt entered a bare denial of the facts contained in the complaint, and therefore could not cross-examine on any affirmative matter, in the present case not only in the defendant in court with all of his pleadings, and also with the deed upon which he had based his cross-examination, but older title, upon which he sought to examine the plaintiff, is an im-

portant principle controlling the instant action of ejectment. For clarification of this point we will quote relevant portion of the Massaquoi opinion, reported at 4 L.L.R. 261. "Defendant in the present case filed neither appearance nor answer within the time prescribed by law; but when called at the trial appeared by attorneys and submitted to the jurisdiction of the court. Under the provision of the laws cited, he could rest upon a bare denial, equivalent to a nil debet, only. In spite of this, this counsel, during the cross-examination which the trial court allowed, embarked upon an affirmative defense, whereupon the Judge quite correctly checked him." Need we say any more to prove how entirely different from each other these two cases are? In view of the foregoing it is our opinion that the judgment of the court below should be, and the same is hereby reversed. The Judge resident in the Sixth Judicial Circuit, or any other assigned to preside therein, is hereby ordered to resume jurisdiction and try the case anew. He will appoint a board of surveyors, one to represent the court who shall be chairman, and one to represent each of the parties; and he shall instruct them to notify residents in the area and persons holding deeds to adjoining property, and then proceed with an official map of the particular locality of the City of Monrovia, and on the spot locate Lot Number 112, the subject of this suit, and make a report as to the findings. Costs of these proceedings to abide final determination of this case.
Reversed and remanded.

Ellis v Johnson [2001] LRSC 13; 40 LLR 474 (2001) (5 July 2001)

CHARLES R. ELLIS, Appellant, v. EDDIE T. JOHNSON, Appellee.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 4, 2001. Decided: July 5, 2001.

1. Specific performance is an equitable suit whose essence is to ensure that fair play is done or accomplished.

2. Specific performance will not lie where the party who has paid money for a parcel of **land** is in constructive possession of the funds by virtue of its return to him by the seller on the demand made by him.

3. It is unfair and against the rule of equity to allow a party to have his money back, paid for a parcel of **land** or house spot, and at the same time take possession of the **land** or house spot.

4. He who goes to equity must go with clean hands.

5. Courts of law recognize that a contract may be rescinded by the acts and conduct of a party thereto which are inconsistent with the continuous existence of the contract.

6. Where the seller of **land** refunds to the buyer money paid by the buyer to the seller, the seller owes no further obligation to the buyer to part with his **land** or title thereto to the buyer, and a trial judge commits error in ruling granting specific performance in such a case.

The appellee had paid the appellant the amount of L$35,000.00 for a house spot, which the latter failed to deliver as a result of opposition from certain parties not party to the contract. The appellee, not satisfy with the non-delivery of the house spot and the time given by the appellant to deliver the property, had the matter reported to the Ministry of Justice, whose intervention resulted in the appellant being physically abused, and the repayment to the appellee, through his lawyer, of the amount which the appellee had paid to the appellant. Notwithstanding the repayment of the amount, the appellee proceeded to court to seek specific performance of the contract and delivery of the house spot.

The trial court, after hearing the evidence, ruled granting the specific performance. On appeal, the Supreme Court reversed the trial court's judgment, holding that the lower court had erred in ruling in favour of the appellee. The Court held that once the appellee had received a refund of the amount which he had paid to the appellant for the **land**, he was no longer entitled to the house spot. The Court further held that the evidence which had been presented by the appellant clearly showed that the amount had been repaid by the appellant to the appellee, through the latter's counsel who, while on the witness stand, admitted receiving the amount on behalf of the appellee. The Court reiterated the principle of equity that he who comes to equity must come with clean hands, and it opined that the appellee could not receive the refund and at the same

time seek title to and possession of the property for which he had made payment and been refunded. The appellee's actions and conduct, the Court observed, were tantamount to a rescission of the contract of sale, and hence, the appellant owed the appellee no further obligation under the contract. Accordingly, the Court reversed the judgment of the trial court and ordered that a mandate be send to the trial court to proceed in accordance with the opinion.

Francis S. Korkpor, Sr. of Tiala Law Associates, Inc. appeared for the appellant. James W. Zotaa, Jr. of the Liberty Law Firm appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellant, Charles Robert Ellis, agreed to sell his house spot situated at the Old General Market in Monrovia (commonly known as Waterside) to the appellee, Eddie T. Johnson. The cornerstones demarcating the metes and bounds of the house spot were removed during the Liberian civil crisis. Hence, it was agreed by the appellant and the appellee that a resurvey would be conducted before the house spot could be turned over to the appellee. Subsequently, a survey permit was obtained from the Ministry of Lands, Mines & Energy and appropriate announcements were made to the public of the date of the resurvey. However, the resurvey was thwarted because a group of men disrupted the same upon the orders of the then Acting President of the Liberia Marketing Association (L.M.A.), Mr. Jerry Y. Gofa. While the appellant was making efforts to obtain security protection to have the resurvey done at a later date, the appellee became impatient and demanded the refund of the money he had paid as price for the house spot, the same being an amount of thirty thousand Liberian dollars (L$30,000.00) and five thousand Liberian dollars (L$5,000.00), representing costs of survey and other expenses the appellee had made. In spite of the fact that the appellant had promised to refund to the appellee the thirty-five thousand Liberian dollars (L$35,000.00), and was doing everything possible to raise the money, the appellee became impatient and filed with the Ministry of Justice a complaint against the appellant. As a result of the filing of the aforementioned complaint, security officers went to the appellant's residence where they brutalized and seriously injured him, including damaging his left eye. After the aforesaid brutality was meted out against the appellant, because of the appellee's demand for his money, the appellant, through his lawyer, Jessie Gould (now a circuit court judge) refunded to the appellee, through his lawyer, Counsellor J. D. Baryogar Junius, the amount of thirty-five thousand Liberian dollars (L$35,000.00), for which a receipt to that effect was issued, and regarding which the appellee's counsel in his testimony admitted receiving. The receipts for the thirty thousand Liberian dollars ($L30, 000.00) and five thousand Liberian dollars (L$5,000.00) were marked by the trial court as "CA/1" and confirmed by the said court. All these and other documents were admitted into evidence by the trial court as "D/l" to 'D/6." Yet, and in spite of the fact that the evidence adduced during the trial of the case in the lower court showed that the appellee had been refunded the amount of L$35,000.00, representing the cost price for the parcel of **land** in question and survey thereof, and therefore warranted the court denying the petition for specific performance, the presiding judge, His Honour Varnie Cooper, on the 28th day of October, A. D. 2000 ruled against the appellant and granted the

petition for specific performance. The final judgment of the court was excepted to by counsel for the appellant, and an appeal was announced in open court. Thereafter, a bill of exceptions was approved by the trial judge and duly filed with the office of the clerk of court. The appeal bond was also filed and a notice of the completion of the appeal served and filed, thereby completing the statutory steps required for perfecting an appeal within the statutory time.

At the trial, the appellant produced three witnesses and their testimonies were corroborated. Mr. Charles Ellis himself took the witness stand and testified essentially that he and the appellee had entered into an agreement under which he agreed to sell a house spot to the appellee. It was necessary to locate the meters and bounds of the spot, but the exercise met with resistance from some people. The appellant, however, assured the appellee that the place was his and that it was only a matter of time before he cleared the hurdle so that the appellee could receive the house spot. However, the appellee became impatient and demanded a refund of the thirty thousand Liberia dollars (L$30,000.00), which he had paid for the spot, as well as five thousand Liberia dollars (L$5,000.00), which had been used for the purpose of surveying the **land** and other related expenses. When the appellant did not pay the money as early as the appellee had demanded, or as the appellant had promised, the appellee filed with the Ministry of Justice a complaint against the appellant, which resulted in him being manhandled, serious injuries being inflicted upon his person, including damage to his left eye.

The appellant's testimony established the fact that he refunded in full the amount given him by the appellee, and that the refund was made through Counsellor J. D. Baryogar Junius, who then served as lawyer for the appellee. Further, the next witness who testified for the appellant, Mrs. Marpue Alex, essentially corroborated the testimony of the appellant. The third witness for the appellant, Counsellor J. D. Baryogar Junius, who served as lawyer for the appellee in the case, testified that he did receive from the appellant, thru Counsellor Jessie Gould, the total amount of thirty-five thousand Liberian dollars (L$35,000.00), for and on behalf of the appellee. The receipts issued for the amount paid were identified by the witnesses and marked by the court as "CA/l". The basic and essential point established by the testimonies of the appellant and his witnesses was that even though the appellant had received money from the appellee as purchase price for the house spot in question, the said amount had already been refunded because of the demands made by the appellee.

From the foregoing, this Court deems the following issues to be relevant to the determination of this case:

1. Whether specific performance will lie where the buyer of a parcel of **land** has demanded a refund of the money paid for the parcel of **land** and has received the refund of the purchase price through his lawyer?

2. Whether the final ruling of the judge granting specific performance was supported by the evidence adduced at the trial?

Given the facts and circumstances of this case, specific performance will not lie. Firstly, specific performance is an equitable suit whose essence is to ensure that fair play is done or accomplished. In the instant case, the facts show that the appellee is in constructive possession of all money he paid for the house spot in question and that he seeks to also take possession of the said house spot, as per the October 8, 2000 ruling of the trial judge. It would be unfair and against the rule of equity to allow the appellee to have his money and at the same time take possession of the house spot. That would be tantamount to unjust enrichment for the appellee, at the expense of the appellant. We agree with the appellant that as the appellee is in constructive possession of the refund, representing the price of the **land** as well as related expenses, the appellant had met his obligation to the appellee. We also reiterate herein, as we have done in previous cases, the principle of equity is that he who comes to equity must come with clean hands.

The appellant further submitted that while it was true that he and the appellee had agreed that the former would sell **land** to the latter, yet, by the subsequent conduct of the appellee in demanding and receiving a refund of the price and related amounts paid for said **land**, he (the appellee) had effectively rescinded the contract and discharged the appellant from any further obligations thereunder. Courts of law do recognize recission of contract based on the acts and conduct of a party thereto inconsistent with the continuous existence of the said contract. 17 AM JUR 2d., Contract, § 494.

Clearly the trial judge did not make use of or take into account the evidence adduced at the trial in arriving at a just conclusion. As a consequence thereof, there was a glaring miscarriage of justice. The evidence from the testimonies of the appellant's witnesses established that whatever money was paid by the appellee for the **land**, subject of this law suit, was refunded. Where the seller refunds to the buyer money paid by the latter to the former, there remains no further obligation upon the seller to part with title to his **land** or to transfer such title to the buyer. The ruling of the trial judge should therefore have been in favor of the appellant, and the action for specific performance should have been dismissed in its entirety. This Honourable Court accordingly so holds.

Wherefore and in view of the facts and circumstances stated in the case and the laws controlling, it is the considered opinion of this Honourable Court that the trial court's final judgment of October 8, 2000 should be, and same is hereby reversed. The Clerk of this Honourable Court is ordered to send a mandate to the court below, directing the judge presiding therein to resume jurisdiction over this case and give effect to this opinion. Costs are ruled against the appellee. And it is hereby so ordered.

Judgment reversed.

Smith et al v Barbour [1944] LRSC 5; 8 LLR 229 (1944) (4 February 1944)

MARY ELLEN SMITH, HANNAH J. LEWIS, SUSANNAH L. KENNEDY and T. NIMLEY BOTOE, Appellants, v. JOSEPH W. S. BARBOUR, Appellee.
APPEAL
FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Argued January 19, 1944. Decided February 4, 1944. 1. Where a document is the basis of the proceedings between the parties it should not be ignored or disregarded. 2. Coparcenary estates are created only by descent and never by purchase. 3. An incumbrance, within the terms of the covenant against them, is every right to or interest in the **land granted, to the dimunition of the value of the land**, though consistent with the passing of the fee by the deed of conveyance. 4. An admission, whether of law or of fact, which has been acted upon by another is conclusive against the party making it in all cases between him and the person whose conduct he has thus influenced. It is immaterial whether the thing admitted was true or false.

On appeal from decision of Probate Court denying probate of warranty deed, judgment affirmed.
H. Lafayette Harmon

for appellants.
A. B. Ricks for delivered the opinion of

appellee. MR. CHIEF the Court.
JUSTICE GRIMES

Had the appellants in this case taken the time to study carefully the opinion handed down by His Honor the Commissioner of Probate on July 6, 1942, our docket would not have been encumbered by this unmeritorious appeal nor would such heavy drafts been drawn upon the valuable time of the members of this Court, for the hearing of an appeal, even the simplest, demands time. The facts and the law are so admirably stated in the

opinion that we have deemed it necessary only to reproduce said opinion in its entirety, and to make a few comments in amplification of and elucidation of the points therein brought out in the opinion of His Honor N. H. Gibson, Commissioner of Probate for Montserrado County, which now follows, to wit: "On the 1st of September A.D. 1939, one Mary Ellen Smith of the settlement of New Georgia, leased to Joseph W. S. Barbour of Monrovia, a parcel of five (5) acres of **land** in said settlement for a term of ten io) years certain, to be paid for at the rate of $12.00 a year, but before the expiration of the lease, on the 14th day of April A.D. 194.2, the Lessor executed a deed of conveyance in favour of T. Nimley Botoe of Krutown, Monrovia, for said five (5) acres of

land she had previously leased by agreement to the said Joseph W. S. Barbour. It is this deed of conveyance when offered for probation that was objected to by objector, who predicated his objections upon the terms of the Agreement between Mary Ellen Smith and himself, particularly the 5th and 6th clauses thereof, hence arose the litigation. Written pleadings were filed extending as far as the Rejoinder, and it is these pleadings that we have come to discuss and give our ruling on. "In his contention Counsellor Dukuly, for respondents, suggested that the court should disregard the Agreement made profert of by objector, because he said the document before the court for consideration, is the deed of conveyance and not the Agreement. While that is true, it is also true that the objector's objections are based upon the Agreement between him and Mary Ellen Smith, and which he alleges, she had violated, that is, the 5th and 6th clauses thereof. To disregard the Agreement proferted, would mean disregarding the issue joined between the parties, and to disregard the issue, would necessitate the court's

deciding the contention in an ex parte way, which evidently could not be done without prejudice to objector's case. So then, it is obvious that the court will have to take into account the Agreement since it constitutes the basis of the objections. "To begin with count i of the objections, and count 2 of the Answer, we will observe that while it is true a party may generally convey premises held under leasehold by another, to a third party, and which should be conveyed subject only to the terms of the lease, yet in particular instances, as in this, we do not hesitate to say that in agreements a party is bound by his own acts and the consequences thereof. Clause 6th of the Agreement reads thus : `It is further agreed that this Agreement shall be binding on both parties thereto, their heirs, administrators and assigns.' Mary Ellen Smith well knowing that she had executed an Agreement between herself and Barbour for said five (5) acres of land, and that the 5th clause of which placed her under certain obligations which she cannot disregard with impunity, and without prejudice to Barbour, could not thereafter legally convey said land to a third party unless she had previously given Barbour the option of the purchase, and which he in turn had failed or refused to accept and avail himself of. Mary Ellen Smith's tact therefore in this respect shows a fraudulent intention on her part. In view of the foregoing, count r of the Answer is overruled. As to count 3 of the Answer, the court says, that the question of coparcenary has not been made clear to its mind, that is, as to how and when it was created. An estate in coparcenary arises by descent to two or more persons. "Respondents have argued that the case not being one of ejectment they have not, and they are not required to make profert of the deed under which they claim

title. While that may be true, yet it should not be lost

sight of that coparcenary estates are not created except by descent, and never by purchase, and as respondents claim that their estate is one of coparcenary, it is incumbent upon them to produce some evidence to court upon which said estate was created, and the court expected them to have done so. Since indeed they have not placed before the court evidence that would lead the court's mind to regard three female respondents as coparceners, it is left open to the court, in the absence of such material requirements of the law, to make its own deduction and conclusion. As it is now, the court is not in a position to agree with respondents that said estate is one of coparcenary. "It would be useful to pleaders for us to advance this suggestion that a party pleading should set out in clear and certain terms, such things that he would like the court to take judicial notice of, and not to indulge in mystifying, uncertain and indefinite averments. In view therefore of the foregoing, the court cannot agree with the contention raised in count 3 of the Answer, and therefore overrules said count. "Count 4 of the Answer sets forth that Mary Ellen Smith is an illiterate woman who can neither read nor write, and that said lease contract was 'shoved under her nose by objector for her signature, without her understanding what she was signing etc.' Be that as it may, it might however be urged incidentally here, that although she cannot read nor write as alleged, that condition of hers should furnish no excuse for her, for she could easily have had the agreement read to her by one of the witnesses to her signature, or her lawyer whose professional duty it was. "In count 5 of the Answer the court repeats here with emphasis, that there being nothing before it as evidence that the estate was one of coparcenary, it is compelled to accept Mary Ellen Smith as sole owner

of the estate, and that she had the full right and authority to make said lease. A mere statement of the existence of an estate in coparcenary is not conclusive evidence to the court, for it is possible for any two, three or more females to collaborate and, for fraudulent purposes, style themselves coparceners, when in fact such relation may have never existed. "In count 5 of the Answer it is intimated that Mary Ellen Smith and objector could make no contract to bind the interest of Hannah J. Lewis and Susannah L. Kennedy, in property which they owned in connection with the said Mary Ellen Smith, without their knowledge and consent, and without them and each of them joining in said contract. The court regrets its inability to agree with respondents' contention and we repeat that Hannah J. Lewis and Susannah L. Kennedy have not satisfied the mind of this court of their relation to the premises conveyed by Mary Ellen Smith to Joseph W. S. Barbour by lease. Count 5 of the Answer is not supported, nor is the contention taken therein upheld by this court. Count 6 of the Answer is overruled upon the view taken in section 2 of this Ruling. Count i of Reply sustained. The Agreement of Lease executed by and between Mary Ellen Smith and Joseph W. S. Barbour, on the 1st September A.D. 1939, probated and registered in June 1941, was notice to all concerned of its existence. A party should take advantage of his rights at

the proper time. Counts 2, 3 and 4 of Reply sustained. "Having carefully surveyed the case submitted in all its aspects, traversing the several counts of the pleadings and taking into account the contentions raised in the discussion between the parties, the court therefore rules, that the probation of the deed of conveyance from Hannah J. Lewis, et al., to T. Nimley Botoe, for five acres of land in the settlement of New Georgia, submitted in this case, is hereby denied, and the re-

spondents ruled to pay all cost of this action forthwith : AND IT IS SO ORDERED. "Given officially this 6th day of July, A.D. 1942. [Sgd.]
N. H. GIBSON,
Commissioner of Probate, Montserrado County, RL."

It is to be observed that the deed from Mary Ellen Smith, Hannah J. Lewis and Susannah L. Kennedy to T. Nimley Botoe, to which the Commissioner of Probate made reference in his opinion, covenants, inter alia, that the premises "are free from all incumbrances," which the record proves was not factually correct. The premises were incumbered by a deed of lease for ten years, and a covenant therein stated that: "[T]he said Lessee paying the rents and performing the covenants and agreements aforesaid shall and may at all times during the continuance of this agreement quietly and peaceably have, hold and enjoy the said piece and parcel of **land containing five (5) acres of land** without any manner of let, suit, trouble or hindrance of or from the said Lessor or any persons whomsoever until after the expiration of this Lease Agreement or any part thereof." This was a voluntary limitation by the owner in fee upon herself of the right to convey and pass an immediate right of possession to anyone so long as lessee performed his covenant to regularly and punctually pay for his lease for the period of ten years. Moreover, he, the lessee, in consideration of his building a house upon the premises which would pass with the **land** upon the expiration of the term of lease, secured the sole option to purchase same in the event the lessor ever desired to sell. When the said appeal was called for review before this Court and questions from the Bench were propounded to counsel for appellants, it became clear to our minds in

less than five minutes that counsel for appellants had not realized that the above-mentioned covenants in the lease had created an incumbrance upon the property that would have to be reckoned with and disclosed in the event of any subsequent transfer; consequently he had omitted to cite anything in his brief on the law of incumbrances. His omission this Court has to supply now hereunder: "An incumbrance, within the terms of the covenant against them, is said to be 'every right to,

or interest in, the **land, to the dimunition of the value of the land**, but consistent with the passage of the fee by the conveyance.'
An inchoate right of dower is an incumbrance within the meaning of the covenant against these." 3 Washburn, Real Property § 2385, at 440 (6th ed. 1902). Bouvier defines an incumbrance as : "Any right to, or interest in, **land** which may subsist in third persons, to the diminution of the value of the estate of the tenant, but consistently with the passing of the fee. " 'Every right to or interest in the **land** which may subsist in third persons to the diminution of the **land**, but consistent with the passing of the fee by the conveyance.' I(. . The following are incumbrances: An ordinary lease; an attachment; the lien of a judgment; taxes and municipal claims; an execution sale subject to redemption ; a restriction on the use of **land** for a brewery or blacksmith shop . . . an inchoate right of dower; a private right of way; a railroad right of way. . . . [A]n outstanding mortgage . . . an attachment resting upon **land**; a condition, the non-performance of which by the grantee may work a forfeiture of the estate. . . .

"The vendor of real estate is bound in England to disclose incumbrances, and to deliver to the purchaser the instruments by which they are created, or on which the defects arise; and the neglect of this is to be considered fraud." 2 Bouvier, Law Dictionary Incumbrance 1530-31 (Rawle's 3d rev. 1914) Greenleaf deals with the subject as follows : "The covenant of freedom from incumbrances is proved to have been broken, by any evidence, showing that a third person has a right to, or an interest in, the **land granted, to the diminution of the value of the land**, though consistent with the passing of the fee by the deed of conveyance. Therefore a public highway over the **land** . . . a lien by judgment, or by mortgage, made by the grantor to the grantee, or any mortgagee, unless it be one which the covenantee is bound to pay; or any other outstanding elder and better title, --is an incumbrance, the existence of which is a breach of this covenant. In these and the like cases, it is the existence of the incumbrance which constitutes the right of action; irrespective of any knowledge on the part of the grantee, or of any eviction of him, or of any actual injury it has occasioned to him. If he has not paid it off, nor bought it in, he will still be entitled to nominal damages, but to nothing more; unless it has ripened into an indefeasible estate ; in which case he may recover full damages. It is not competent for the plaintiff to enhance the damages by proof of the diminished value of the estate, in consequence of the existence of the incumbrance, as, for example, a prior lease of the premises, unless he purchased the estate for the purpose of a resale, and this was known to the grantor at the time of the purchase." 2 Greenleaf, Evidence § 242, at 227-28 (16th ed. 1899). In addition to the foregoing the record shows that the lessee, Joseph W. S. Barbour, now appellee at this bar,

had built a house on the premises which, when the lease expired, would have become the property of the
lessor, the remainderman, upon the conclusion of the term. This in itself appears to us to have been a valuable consideration for
the option of the sole right to purchase in the event the lessor ever desired to sell; this option constituted the incumbrance which
gripped the attention of the trial judge. Besides, when the information reached the lessee, now appellee, that the lessor desired
to sell said premises he immediately tendered unto said lessor a sum of fifty dollars as purchase money for the fee simple which,
incomprehensible as it seems to us to be, in view of the option secured, the lessor refused to receive; and the lessor sold the premises
to T. Nimley Botoe. The submission of the lessor that she was illiterate and did not understand what she had demised is not only
without merit but also wholly absurd, since one does not have to be able to read and to write in order to see a building being erected
upon one's property. Furthermore, her alleged illiteracy did not interfere with her receiving without demurrer rent for two and one-half
years on the property so leased. Having by her conduct represented to the world when alone she executed the lease that she was owner
in severalty of the premises demised, the lessor will not be allowed to aver that she was but one of several joint owners. For the law of estoppel provides inter
alia: "Admissions, whether of law or of fact, which have been acted upon by others, are conclusive against the party making them,
in all cases between him and the person whose conduct he has thus influenced. It is of no importance whether they were made in express
language to the person himself, or implied from the open and general conduct of the party. For, in the latter case, the implied declaration
may be considered as addressed to everyone in particular, who may have occasion to act upon it. In such cases the party is

estopped, on grounds of public policy and good faith, from repudiating his own representations. "It makes
no difference in the operation of this rule, whether the thing admitted was true or false : it being the fact that it has been acted
upon that renders it conclusive. . . ." t Id. §§ 207, 208, at 340, 342. In view of the foregoing the only logical conclusion we can
reach is that the judgment of the court below should be affirmed with costs against appellants; and it is hereby so ordered.
Affirmed.

Biggers v Wesley [1977] LRSC 30; 26 LLR 146 (1977) (8 July 1977)

NELLIE JOHNSON-BIGGERS, Appellant, v. JESTINA GOOD-WESLEY, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued May 26, 1977. Decided July 8, 1977. 1. In an action of ejectment, a party who is able to trace his title
from the original grant by the Republic of Liberia will prevail over his opponent who can produce an earlier deed to the land in
question but cannot trace title to the sovereign. 2. No evidence is sufficient which supposes the existence of better evidence. 3.
On motion for a new trial because the verdict was contrary to the weight of evidence, the court properly denied such motion where
the evidence introduced by the movent on the trial was lacking in an essential element of proof. 4. Provisions of an act of the Legislature
are controlling as soon as the act is published.

This was an action in ejectment in which plaintiff claimed title to the land in
question through a will from one William Henry Johnson, who, plaintiff claimed, received title to the property by deed from the then
owner in February 1866. Defendant traced title to the same land to a grant made to an ancestor in 1892 by the President of Liberia.
A trial resulted in a verdict and judgment for defendants, from which plaintiff appealed to the Supreme Court. The Supreme Court
held that despite plaintiff's reliance on a deed as the source of her title, older than the deed to which defendants traced title,
the defendants were able to show a continuous chain of title from the original grant from the sovereign and therefore should prevail.
On plaintiff's motion for a new trial, the lower court judge properly held that the verdict was not contrary to the weight of evidence.
The judgment of the lower court was affirmed.
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Samuel H. Pelham for appellant. for appellees.
MRS.
JUSTICE BROOKS-RANDOLPH

Nete Sie Brownell

delivered the opin-

ion of the Court. According to the record before this Court, one
Matilda A. Roberts sued one Leo L. Lloyd and received judgment against the defendant. At that time one Solomon C. Fuller was sheriff
and was instructed by the court to seize and expose to sale the property of the defendant, Leo Lloyd. On February 6, 1866, Sheriff
Fuller sold 200 acres of land, purported to have been owned by defendant Leo L. Lloyd, to one William M. Davies for the amount of
$so as the highest bidder. As sheriff, therefore, Solomon C. Fuller on February 7, 1866, executed a sheriff's deed for the property
to one William M. Davies. William M. Davies sold the land back to Solomon C. Fuller on February 9, 1866; then Sheriff Fuller sold

the land to one Henry W. Johnson for $zoo. William Henry Johnson executed a will, and it is under this will that the appellant Nellie Johnson-Biggers is claiming as the only surviving heir who is entitled to the zoo acres of land situated in Lower Caldwell. Also from the record appellees show that one Thomas Clark rendered services during the 188o Bassa Expedition and the Republic of Liberia executed to him a deed covering zoo acres of land in Lower Caldwell. This deed was executed by President J. J. Cheeseman in 1892.
Both parties have brought documentary evidence to support their claims. The record shows that the two sets of deeds call for the same parcel of land, as the metes and bounds stated therein are identical and the number of both is "one" on Range Three. Appellant's basic contention is that where both parties have traced their title back to the same source, the party

having the older shall prevail. Appellant relies on Johnson v. Beysolow,ii LLR 365 (1954). The developments regarding the two hundred acres of land include the following: In the year 1966, appellees Jestina Good-Wesley and her brother Alexander Good, heirs of Thomas H. Clark of Lower Caldwell, instituted an action of ejectment against one Dwalobor (alias Larsannah) for the recovery of zoo acres of farm land in the settlement of Lower Caldwell, Montserrado County. The trial resulted in a verdict for the plaintiffs, and on appeal to the Supreme Court the judgment of the lower court was affirmed in January 1971. Immediately after the mandate of the Supreme Court was sent down and read, and the writ of possession issued, and while the sheriff was in course of putting plaintiffs in possession of their property, one Nellie Johnson-Biggers of Virginia, Montserrado County, through the same counsel who represented Dwalobor (alias Larsannah) commenced an action of ejectment and injunction against the Thomas H. Clark heirs for the recovery of the selfsame parcel of land ; hence the judgment of the Supreme Court in the Dwalobor v. Good-Wesley, et al. case became ineffective (21 LLR (1971) 43). The case of Nellie Johnson-Biggers was instituted on February 4, 1971, and when the plaintiff delayed in having her case called, defendants caused the case to be taken up on November 8, 1973, when a verdict in favor of the defendants was obtained. On appeal to the Supreme Court, it was held that the trial judge had overstayed his term time and therefore the case was remanded for a new trial. Biggers v. Wesley, [1975] LRSC 6; 24 LLR 92 (1975). At the September 1976 Term of the Civil Law Court, Sixth Judicial Circuit, the case came up again for trial on October II, 1976. A jury was duly empanelled and, after trial, they brought in a verdict in favor of the defendants, and final judgment was rendered on October 26, 1976. From this final judgment, plaintiff has brought

this case before this tribunal

for review on a bill of exceptions containing 12 counts. The will under which appellant is claiming the 200 acres of land lying in Lower Caldwell, was executed on July I, 1912, by William Henry Johnson, Senior, of the settlement of Virginia, Montserrado County. The deed proferted by appellant is a deed conveyed to Henry W. Johnson, Junior, of Monrovia, Montserrado County, in 1866. Counsel for appellant argued that William Henry Johnson, Senior, and Henry W. Johnson, Junior, are one and the same person, whereas counsel for appellees argued that they were separate and distinct persons. It seems somewhat dubious that they were the same person. But assuming that they were one and the same person, this Court finds absent from the record a deed from the Republic of Liberia to Leo L. Lloyd, to whom, as previously shown, appellant attempted to trace her title. Contesting appellant's claim to title to the said property, the appellees, on the other hand, have been able to trace their right to the zoo acres of land in question through an unbroken chain of title from the sovereign in 1892,.in this case, from President J. J. Cheeseman to appellees. From that time until the present there has been continuous possession of said property. "A plaintiff in an action of ejectment must recover upon the strength of his own title and not upon the weakness of the defendant's title." Bingham v. Oliver, i LLR 47 (1870) ; Walker v. Morris, I s LLR 424 (1963) . Further, William Henry Johnson willed his property to his heir and direct descent of his body, but nowhere in the will are the zoo acres of land mentioned. Thomas Henry Clark of Caldwell, Montserrado County, to whom the deed was issued by President Cheeseman in 1892, left a will in which he referred specifically to the land in question. While the deed proferted by appellant was executed in 1866, and that by appellees in 1892, both parties must

be able to show title from the Republic of Liberia down to their grantor. The appellant has failed to do so. A plaintiff in an ejectment action is required to furnish clear and convincing proof of title. Duncan v. Perry, 13 LLR 510 (196o). In the pleadings counsel for plaintiff raised objections to the judge's ruling as set forth in 12 counts of his bill of exceptions. This Court will proceed to review the record in connection therewith and, where found necessary, will consider the objections interposed. On the cross-examination, witness for the defendant was asked the following question : Q. "You have stated that you are acquainted with Solomon C. Fuller and you do not know of the said Fuller owning any land in Caldwell. I pass you this instrument which has been marked and confirmed by court as P/4. Take it, scrutinize it and tell this court and jury what you recognize it to be?" "OBJECTION : (1) not the best evidence, as the witness has never identified the document in question; (2) he is not the signatory or a witness thereto ; and (3) he has not testified with respect to said deed ; and (4.) traveling beyond the scope of cross-examination." Under the best-evidence rule, the trial judge was correct in sustaining the objections by defendant's counsel. It is common knowledge in the law that "no evidence is sufficient which supposes the existence of better evidence." Rev. Stat. i :25.6 (1). According to the

record, the witness was not a signatory to the document, nor did it emanate from the side for which he gave testimony. On the cross-examination, the credibility of a witness may be tested, but this scope is not intended merely to entrap the witness. Counsel for defendant rested oral testimony and of-

fered in evidence documents marked by the court D/1-76, D/2-76 and D/3-76 to form a part of the evidence in the case, but the plaintiff objected to the admissibility. No reason is given in the record for so doing. It does not require much effort to concede the necessity for admission of documents properly identified, marked, and confirmed by the court. It was for the jury to determine the credibility of the deed, will, and revenue receipts already identified and marked by the court. The plaintiff complained that the trial judge committed an additional error adverse to his interest, when on a motion for a new trial, the trial judge failed to take into consideration the issues plaintiff raised (a) regarding the omission by the jury to describe in the verdict with particularity the land in dispute, and the quantity awarded the defendant, (b) that the verdict is contrary to the weight of the evidence, and (c) that the Republic of Liberia having parted with title to the property in question could not subsequently transfer the same property to another. Further, that in spite of the foregoing issues raised, the trial judge proceeded to limit his ruling to count 8 of the resistance to the motion for new trial by defendant on the sole grounds of the insufficiency of revenue stamps on the motion and affidavit. The Civil Procedure Law provides that "after a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice." Rev. Code r :26.4. The trial judge was in agreement with this rule when he stated in his ruling: "In the opinion of this court, the verdict may be set aside in the interest of justice or when the verdict is contrary to the evidence adduced." But, as the trial judge further stated: "In the mind of this court, the verdict is not contrary to the weight of the evi-

dence ; for the plaintiff's own evidence, which is the will under which she claims, makes no mention of the zoo acres of land she is claiming." In countering the motion for a new trial, the defendant filed a resistance, count 8 of which reads as follows : "And also because defendants say that the motion for new trial ought to be dismissed because neither the motion nor the affidavit carries the required stamp of $1 in keeping with the Act of Legislature approved September 9, 1976, and published October 7, 1976." The trial judge has indicated that when the plaintiff's counsel submitted his argument, he was asked by the court to say something in refutation of count 8 of the resistance, and that in his reply counsel

for plaintiff contended that he had no knowledge of the publication of this act. It will be noted that while appellant contends that the act upon which appellees rely had not been published, the record shows that the act was passed on September 9, 1976, and published October 7, 1976, whereas the affidavit to plaintiff's motion for new trial is dated -October 18, 1976. Appellant does not question the amount of revenue stamps required by the law but the ineffectiveness of legislation until it is published. Because the act in question was published eleven days before the plaintiff filed his motion for new trial, his contention does not hold. The trial judge therefore did not rule erroneously. In view of the foregoing showing that the verdict was in accordance with the weight of the evidence adduced, and that appellant in moving for a new trial failed to meet the statutory requirements, this Court therefore affirms the judgment of the trial judge, and the Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs ruled against appellant. And it is hereby so ordered.
Judgment affirmed.

Pennoh v Pennoh [1960] LRSC 10; 13 LRSC 480 (1960) (14 January 1960)

BLOH PENNOH, Appellant, v. WILLIAM PENNOH, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 21, 1959. Decided January 14, 1960. 1. A person may be sued by any name which identifies or describes that person.
2. Misnomer cannot be pleaded as a defense after a general appearance or plea to the merits. 3. Either a benefit to the promisor or a detriment to the promisee may constitute consideration for a contract.
4. A promise to give real property may be specifically enforced by a court of equity where the donee, in reliance on the promise, has taken possession of the property and constructed valuable and permanent improvements.

On appeal from a judgment decreeing specific performance of a contract to convey land, judgment affirmed.
T. Gyibli Collins for appellant. 0. Natty B. Davis for

appellee. MR. JUSTICE PIERRE delivered the opinion of the Court. Specific performance is an equitable remedy for the enforcement of a contract, written or oral; it n-lay compel a contracting party to do an act, or to omit to do one, depending upon the enforceability of the undertaking. To decree it, equity requires certain fundamental requisites in respect to the contract and its enforcement, that is to say :
I. The contract must be founded upon valuable consideration.
2. The contract must be practicable in its mutual enforcement. 3. Its enforcement must not be contrary to good conscience; it must be of necessary importance to the plaintiff, and at the same time not oppressive to the defendant.

In
many cases where the breach of a contract has occasioned litigation, damages have been found to be an adequate remedy; in such instances,
equity will not intervene by decreeing specific performance. But there are cases where, because of the peculiarity of the circumstances,
neither damages nor any other remedy at law would suffice ; and it is in such cases that specific performance has been invoked to
compel the parties to honor their promises and agreements. The history of this case as culled from the records certified to us might
be briefly stated as follows. Bloh Pennoh, the appellant, is an elderly female relative of the appellee--she is alleged to be his
aunt--and owns a parcel of land upon which she and some of her relatives reside. The complaint alleges that, because of the relationship
existing between herself and the appellee, and also because of the fact that she has no children of her own to
inherit her property
upon her death, she invited and persuaded appellee to build his house on a portion of her

property, and promised that, because of
their relationship, she would agree to make him a gift of the land,
should he build and complete his house, in the same manner as
another of her male relatives had been given the land upon which he had built his house. The appellee is alleged to have requested
more formal and regular arrangement, that of leasing the premises from her. But she insisted that, being without her own children,
she would agree to sell him the property for a nominal sum, but only on the condition that he continue the construction of his house
and complete it; and under no circumstances would she lease him the land.
It is alleged that, thereupon, and after much insistence
from her, construction of the building was commenced; and although repeated efforts were made to secure a deed, the appellant maintained
the original condition of her promise--to execute the deed only on completion of the building. Eventually the building was completed
at a total cost

of $12,000, and appellee leased it to his first tenant, the late Mrs. Samuel B. Cooper,
who occupied it without question or molestation from appellant. It was when appellee affected his second lease of the premises--this
time a Lebanese merchant--that the appellant began molesting the tenant, contending that the building had been constructed on her
property without reference to her. She instituted proceedings in summary ejectment to evict the tenant; and it was at this stage that appellee filed his bill for specific performance of the alleged oral agreement reached
between himself and the appellant, upon the terms of which
said agreement he had built and completed his house. The appellant, then defendant, filed a formal appearance to defend the case;

and because this appearance assumed such importance at the hearing, we have thought it necessary to quote it as follows : "WILLIAM H. KENNEDY, ESQUIRE, CLERK SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY "SIR, "You will please take due and legal notice and spread upon the records of the above named court this appearance of the above-named defendant herewith filed this 17th day of July, 1957, and you will also take due and legal notice that the said defendant will be represented in person and by counsel to defend the above entitled case before said court. "BLOH PENNOH, defendant, by and through her counsel,

[Sgd.] T. GYIBLI COLLINS" In the answer she filed, the defendant raised three points upon which she relied for her defense : I. That she had not been sued in her proper name, since she is not a Pennoh, and had never been known as Bloh Pennoh. 2. That the complaint failed to allege any facts which

could entitle the plaintiff to the relief sought, because there was no showing of mutuality of promise and consent, or of certainty of offer and acceptance, or that the alleged parol agreement was founded upon any adequate, just or valuable consideration. 3. That she denied having made the alleged parol agreement to issue a deed in favor of the plaintiff for the land on which the building was constructed ; on the contrary, she contended that it was the plaintiff who was trying to defraud her out of her property by sharp practice to carry out his wicked intentions. The pleadings progressed as far as the defendant's rejoinder, and were rested without having raised any other issues than those which we have hereinabove referred to as found in the complaint and answer. In considering the first of these three issues--misnomer --it is interesting to state that, not only did more than one witness testify at the trial, to the effect that Bloh Pennoh is the name commonly used by acquaintances in identifying the appellant, and that she had, up to the filing of the case, acknowledged and responded to this name; but she herself had filed her formal appearance in this name, as can be seen from the said appearance quoted earlier in this opinion, thereby admitting its sufficiency of identification of her. We find ourselves in agreement with the Judge's ruling on this point; so we will therefore quote the relevant por tion of his ruling on the law issues, which is as follows : "This court does not hesitate to sustain Count `I' of the reply and overrule Count 1' of the answer as to the issue of misnomer. . . . Our opinion is that defendant has been properly described, and sufficiently too, in the body of plaintiff's complaint. . . ." He relied upon the position taken by this Supreme Court in Kruger v. Johns, 2 L.L.R. 89 (1913), wherein Syllabus "3" says :

"In civil causes, if a sufficient description is given, the misnomer is immaterial." The Judge also relied upon the following quotation : "It is proper, however, to sue a person by the name by which he is generally known, or which he has assumed." 39 AM. JUR. 855 Parties § 6. In addition to the authorities which the learned Judge used to fortify his position, we will add the following quotation from Bouvier : "In contracts, a mistake in the name will not avoid the contract, in general, if the party can be ascertained." BOUVIER, LAW DICTIONARY 2225 Misnomer (Rawle's 3rd rev. 1914). It would seem to us that, if the defendant had intended to rely upon misnomer as ground to dismiss the complaint, she should have appeared specially and in the proper name in which she insists she should have been summoned ; but to appear as "Bloh Pennoh," and then contend that she was not such a person is, in our opinion, just a little bit inconsistent. Not only does her appearance show her to be the proper defendant, but her answer pleads to the merits of the complaint in that name ; and in the said answer she has not denied that the controversy relates to an alleged contract between herself and the plaintiff. Thus she is no stranger to the proceedings in specific performance, brought by the plaintiff. Coming now to the question of whether the complaint alleges facts sufficient to entitle the plaintiff to the relief sought, recourse to the record shows that plaintiff has complained of defendant's refusal to perform her side of an alleged parol agreement made between them. The complaint also alleges that, although it was on the agreed understanding that, upon his performance of an act stated, she would on her part do a certain thing; and that although he has, in keeping with the mutual understanding, performed all that was required of him, she has refused to keep and perform her side of the agreement, contrary to

the mutual agreement reached between them. He further complains that the defendant's refusal to perform her side of the agreement is detrimental to his interest, in that he has spent a large sum of money to construct a house on defendant's land in the hope that either he would have been allowed to buy the land for a nominal sum of money, or that the defendant, in keeping with their mutual understanding and her promise, would have given him a deed of gift for the premises upon completion of the building. He contends that the performance of his side of the mutual understanding being of financial disadvantage to him, and of benefit to the defendant, there is suitable and adequate consideration, and therefore the contract is enforceable, and its enforcement should be decreed in specific performance. "A long series of decisions has established the rule that a benefit to the promisor or a detriment to the promisee is sufficient consideration for a contract. Stated with greater elaboration, sufficient consideration may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss of responsibility given, suffered or undertaken by the other. Any benefit

conferred or agreed to be conferred upon the promisor by any other person to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a sufficient consideration for the promise. "Consideration is clearly sufficient where there is a benefit to the promisor as well as a detriment to the promisee. The delivery of property by the promisee to the promisor furnishes a good illustration of this rule. There may be a benefit and a detriment without an absolute transfer of the title to such property." 12 AM. JUR. 571-72 Contracts § 79. Joseph Williamson, an attorney called in by the appel-

lee to draw up a lease agreement between the parties for the land in question, testified at the trial; and we think it is of importance to the fair determination of this case that Nve quote a portion of his testimony: "Some time during the course of 1956, the exact date not known to me, Mr. Pennoh approached me to draw up a lease agreement between him and Bloh Pennoh, for a tract of land that he had commenced some improvement on. Pennoh and I went over to Bloh Pennoh for a conference on the terms of the agreement. She said to me, after outlining Pennoh's desire to lease the place, that William Pennoh was the son of her late brother, and that she, not having any children of her own, could not lease or sell any of her property to her brother's children, but that she had already told Pennoh that she would give him the land in fee simple, and so she would stand by her promise to him and issue him the deed when she saw that he was really making worthwhile improvement." This testimony of Attorney Williamson bears out the allegations of the appellee as contained in his complaint, and also supports his testimony at the trial. Another witness, Gertrude Greaves, testified, in part, as follows : "In the year 1957, I cannot remember the date and the month, I came from Ganta. I went to the Defendant's house that morning, looking for my brother William Pennoh. When I got there, I rapped at the door. The defendant asked : 'Who is that?' I told her : 'It is I.' She asked me if I went to look for plaintiff. I said : 'Yes.' The defendant said that plaintiff was outdoors. When I got there, he was laying the foundation of this very building. Then I said : 'What you doing here?' He told me that defendant had given him the place to build his house, and that he was building on it. I then went into the house of the defendant to thank her for what she had done for my brother the

plaintiff. The defendant told me that she had decided to divide the property between the three boys. The one which plaintiff is building for him ; where she was living for Harry Pennoh ; and the front for Claudius Pennoh.

I asked her how about us, the girls. She said that the boys would bury her, and since she had no children she would give them the property." Yet another witness, Lawrence Philips testified, in part, as follows : "Last year Bloh Pennoh gave her place to the family so that whosoever wished to build a house might do so. She authorized Claudius Pennoh to build ; she also authorized the plaintiff to build. One day I was made to understand by Alfred Ross that Bloh wanted to sue William Pennoh. Ross told me that it was not good for the family to fight for property among themselves. Hence I approached Bloh Pennoh not to take any legal steps. She agreed. She said, in the presence of Joseph Dennis, that she did not want to make palaver, because she had given the place to William (plaintiff) ; but she had heard, and people had told her, that William had received a certain amount of money from some Syrian people; and William Pennoh, the plaintiff, did not give her anything out of his money." Counsellor Joseph Dennis, of counsel for the Lebanese merchant to whom the appellee had leased the house upon its completion, and against whom the appellant had instituted summary ejectment proceedings, testified, in part, as follows : "I called at her home, and was in company with one Lawrence Phillips, Mrs. Maude Taylor and others. I told the defendant that, because of the relationship between her and William Pennoh, there should not be any case in court. She expressed to me that she had no children, and that, because of the relationship between her and the children of Gabriel Pennoh, she had told William Pennoh that, since she had no children

of her own, she regarded them as her children, and that she had divided the property that she had in Monrovia among them, designating a portion thereof to William Pennoh and the other portions to the other children. During the discussion she expressed that she had agreed to give William Pennoh the parcel of land on which he erected a building; but what motivated her to file the ejectment suit against Kemil Wahab, the occupant of the building erected by William Pennoh, was the fact that William Pennoh had received an amount of $900 as rental for the same building, and had failed to give her a portion thereof, which she felt was not fair, since she had decided and promised to give him that parcel of land." From the testimony of the several witnesses set down herein, in addition to the averments of the complaint in specific performance, it seems just a little more than coincidental that so many persons would have knowledge of some understanding between the parties respecting the construction of the house by appellee on appellant's land. The appellant has denied any knowledge of an understanding between herself and the appellee; nor does she admit ever having given her consent for appellee to build his house on her land. She cannot recall ever having promised to execute any deed to the appellant upon completion of the house. It is therefore peculiar, taking what the appellant has said to be true, that anyone would stand by and observe the construction of a concrete building commence on his property and continue for a length of time sufficient to bring it to recognizable shape; that he would watch construction material being brought in and

utilized to enlarge the edifice under construction ; that he would see it near completion, and eventually completed and occupied by a tenant not of his choosing; and although all of these happenings took place in public view, and therefore must have been with the owner's knowledge, yet no effort is shown ever to have been made to question

either the right of the constructors to build, or their authority to intrude unwarrantedly upon private property. And yet such a party expects a fair and unbiased mind to believe his denial of any knowledge of the construction of the building, and believe that there has not been some understanding between himself and the builder as to the terms upon which the building was allowed to be constructed upon his **land**. From the testimony of witnesses in the court below we have no doubt as to the existence of some understanding between the parties. Such an understanding must have been the basis of the appellee's willingness to construct a building of such value on appellant's **land** without a title in fee or an agreement to hold for years. It is well settled that a contract is an agreement, entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do, or or omit some act, in consideration that the other party shall give, or has given, some valuable thing, or shall do or omit, or has done or omitted some act. The consideration of a contract may be anything which is troublesome or prejudicial in any degree to the party who performs or suffers it, or beneficial in any degree to the other party; an agreement without such a consideration is not a contract but only a promise. "Any oral gift of **land, or promise to give land, followed by the vendee's taking possession of the land** in pursuance of the promise and making valuable and permanent improvements in reliance thereon, may be enforced by a court of equity against the donor or his heirs or grantees with notice. If the promise to give is conditioned on the vendee's making improvements, a compliance with the condition furnishes a consideration for the transaction. But it is not necessary that there be a technical consideration. If the promise to give was wholly unconditional, the same relief will be given to the donee, based upon the same reasons of

estoppel against the donor and virtual fraud upon the donee because of his change of condition as in the case of a parol sale with possession and improvements. The making of the improvements is both an act of part performance and the equivalent, in the view of equity, of an actual consideration." 36 CYC. 681 Specific Performance.

Being in complete harmony with this view, we will quote another authority: it . . . equity will lend its aid to the enforcement of a promise to make a gift of **land** where the donee in reliance on the gift has taken possession pursuant

thereto and erected valuable and permanent improvements . . . . Even a parol gift of **land** may be rendered enforceable in equity by the donee's acts in taking possession and erecting improvements, on the theory that such acts constitute a part performance sufficient to take the case out of the statute of frauds." 49 AM. JUR. 28 Specific Performance § r8. We do not think it is necessary to belabor this well established legal principle any further. And being of the abiding conviction that some promise to give or actual gift of the **land** was made by appellant to appellee, and that, in response to this promise or gift, the building was constructed, we think it only equitably right that appellant be required to perform her side of the contract. It is our opinion that the trial Judge committed no error in decreeing the enforcement of the contract; we cannot see any reason therefore to disturb his said decree. We have therefore affirmed it with costs against the appellant.
flfjtrmed.

Kissell v Diago [1973] LRSC 81; 22 LLR 329 (1973) (23 November 1973)

KISSELL, Appellant, v. C. P. DIAGO, Appellee.
APPEAL FROM THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT, LOFA COUNTY.

Argued October 25, 1973. Decided November 23, 1973. 1. Though a deed may have been probated and registered improperly, and is consequently voidable, it is only void as against a properly probated and registered deed to the same property. 2. A person can only recover **land** on the strength of his own title and not the weakness of his adversary's claim to title.

Though the appellant had withdrawn his case in the lower court, the Supreme Court required appellee's counsel to proceed with argument, because the appeal had been perfected and the lower court had consequently lost jurisdiction in the matter. Appellee had instituted an action in ejectment, claiming appellant was wrongfully in possession of **land owned by him. Both claimed their deeds showed they owned the land** in dispute. However, it appears that the boundaries of their contiguous properties were uncertain. The appellee also contended that appellant had failed to timely probate his deed as required. After trial, judgment was rendered for plaintiff, from which an appeal was taken. The Supreme Court took the view that no court could determine the validity of the deeds at issue until the **land** of both claimants was properly surveyed. For that reason, the judgment of the lower court was reversed and the case remanded for a new trial, with instructions to the lower court that a board of surveyors be appointed to make a survey of the properties, prior to final disposition of the matter. No appearance for appellant. pellee.
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Daniel Draper for ap-

MR. JUSTICE HORACE delivered the opinion of the

Court.
When this case first was reached on the docket, although there was no indication of representation, it was brought to our attention that a submission had been filed by counsellor Daniel Draper on behalf of the appellee informing the Court that appellant had withdrawn his case in the lower court. Because of the absence of appellant the case was reassigned and the Marshall instructed to get in touch with appellant. After several unsuccessful attempts by the Marshal to contact appellant, as reported to us, upon the urging of counsel for appellee the case was again assigned. Ordinarily in the absence of the appellant we would have simply passed on the submission which alleged that appellant had withdrawn, in the trial court, his appeal to this Court, but inasmuch as the submission stated that all the steps in the appeal had been taken and, therefore, the trial court had lost jurisdiction, we required counsel for appellee to present his side of the case. Counsel then submitted his 'brief and argued his side of the case. According to the record before us, appellee instituted an action of ejectment against appellant on April 20, 1970, in the Circuit Court for the Tenth Judicial Circuit, Lof a County, complaining that appellant was wrongfully in possession of a portion of his **land** and claiming damages for the palm nuts which the appellant had seized from some of the people on his **land**. An answer was filed to the complaint. Aside from some frivolous demurrers raised therein, it averred that appellant owned the **land** in question by virtue of a deed he held which he did not make profert of, but giving notice that it would be produced at the trial. Pleadings progressed to the subrejoinder, but in passing on the issues of law the court correctly ignored all pleadings beyond the reply and

ruled the case to trial on the factual issues stated in the complaint, answer, and reply. Before the court could pass on the issues of law appellant filed a motion to dismiss, based on the factual issues and his demurrers thereto, which was resisted and denied by the court. The case came up for trial at the November 1970 Term of the Circuit Court for the Tenth Judicial Circuit, Lof a County. The main facts brought out at the trial can be summarized. Appellee has a Public **Land Sale Deed for 91.90 acres of land** in the Zorzor District of Lofa County, dated June 7, 1961, probated and registered on August 2, 1961; appellant actually seized some palm nuts from appellee's people although the quantity did not tally with the amount alleged in the complaint; appellant has a Public **Land Sale Deed for two hundred acres of land** in the same area, but although his deed was executed in 1958, it was not probated and registered until 1970. It is important to note that

the appellee's deed shows that his boundary commences at the northwest point of property owned by appellant. It is, therefore, clear that the parties to the action are claiming title to the land on the basis of deeds and have contiguous boundaries. Other facts came out during trial, but we do not think them pertinent to the determination of the main issue involved, that is, ownership of the disputed property. Counsel for appellee in argument before us stressed the point that appellant's deed, having been executed in 1958 and probated and registered in 197o, was a voidable instrument because it had been probated and registered beyond the four-month period allowed by statute. This is elementary, but we think the first point to be settled is whether or not the area in dispute is contained in the two deeds or any one of them. Since the property was obtained from the same source, the Republic of Liberia, it follows that the instrument that is legally valid would

take preference over one that is patently invalid and therefore voidable. After reading the record in the case and hearing argument of appellee's counsel, we feel that the question of the ownership of the land in dispute has not been properly determined. A better course would have been to set up a board of surveyors to determine in whose plot or parcel of land the disputed area falls, since both parties have deeds for land in the area, even though one deed is voidable, and the record shows that the parties have contiguous boundaries. It is true that the record shows that appellee made an effort to have the property surveyed in order to determine the boundaries. However, appellant not only did not cooperate but was intransigent in the whole matter. The appellant's attitude was definitely wrong, but the fact still remains that ownership of the property has not been definitely established by the one means that could do so, a survey by qualified surveyors. We cannot ignore the possibility that the disputed property may not be the appellee's or the appellant's. As stated before, we agree that a deed probated and registered twelve years after its execution is voidable, but it would only be void as against a properly probated and registered deed for the same property. Until it is determined what property both or either of the two deeds cover, a court cannot determine whether a voidable deed is void. This Court has held in a long line of opinions that one should recover land on the strength of his own title and not the weakness of his adversary's. Bingham v. Oliver, LLR 47 (187o) ; Savage v. Dennis, 1 LLR 51 (1871) ; Couwenhoven v. Beck, 2 LLR 364 (192o) ; Gibson v. Jones, [1929] LRSC 3; 3 LLR 78 (1929) ; Salifu V. Lassannah, [1936] LRSC 13; 5 LLR 152 (1936) ; Cooper V. Cooper-Scott, [1954] LRSC 14; 12 LLR 15 (1954) Duncan v. Perry, 13 LLR 5io (196o). Text writers maintain the same view.

333 "A well-established principle which has acquired the force of a maxim is to the
effect that the plaintiff in ejectment can recover only on the strength of his own title, and not on the weakness of his adversary's.
This rule is equally applicable in actions of trespass to try title. The defendant is not required to show title in himself, and
he may lawfully say to the plaintiff, 'Until you show some title, you have no right to disturb me.' The plaintiff must recover on
the strength of his own title as being good either against all the world or as against the defendant by estoppel ; and if that title
fails, it is immaterial what wrong the defendant may have committed. It has been said that this rule must be limited and explained
by the nature of each case as it arises, and that the rule is applicable where title is asserted against title (emphasis ours), but
has no application where the defendant makes no claim of title." i8 AM. JUR., Ejectment,§ 20. After considering all facts and surrounding
circumstances, it is our holding that the judgment of the trial court be reversed and the case be remanded for a new trial with instructions
that the trial court will set up a board of surveyors to be appointed in keeping with law in order to determine whose deed covers
the disputed area and to proceed from that point to dispose of the case. The Clerk of this Court is hereby ordered to send a mandate
to the court below to the effect of this mandate. Costs to abide final determination. It is so ordered.
Reversed and remanded.

Kuyette et al v Kandakai et al [1982] LRSC 52; 30 LLR 217 (1982) (8 July 1982)

LANSANA KUYETTE AND MALIKE KUYETTE, Informants, *v.* **HIS HONOR JAMES M. T. KANDAKAI et al.**, Respondents.

INFORMATION PROCEEDING GROWING OUT OF THE EXECUTION OF THE MANDATE OF THE SUPREME COURT BY THE TENTH JUDICIAL CIRCUIT, LOFA COUNTY.

Heard: April 28, 1982. Decided: July 8, 1982.

1. It is unethical and unprofessional under Rule 28 of the Code of Moral and Professional Ethics, for a judge to accept a retainer and to represent the legal interest of a party, in any matter upon the merits of which he had previously acted in a judicial capacity.

2. No application is necessary for the withdrawal of a pleading.

3. A pleading may be withdrawn without court's order with reservation and upon notice to the opposing party and a new one filed upon payment of accrued costs.

4. As a condition for the granting of a writ of error, the plaintiff-in-error, in addition to the payment of accrued costs, must state in his affidavit that the application was not made for the mere purpose of harassment and delay.

5. Where the ruling of a judge in a trial is prejudicial, the remedy is certiorari.

6. A bill of information against the enforcement of a mandate of the Supreme Court, growing out of a decided case, cannot be entertained in the absence of allegation of irregularities in the enforcement of the mandate.

In 1966, the late President William V. S. Tubman, settled a long standing dispute between Alhaji Mamadee Kuyette and Moigbe Sirleaf over a parcel of **land** located in Voinjama City, Lofa County. In deciding the dispute in favor of Alhaji Mama-dee Kuyette, the President directed the then Attorney General of Liberia, James A. A. Pierre, to institute cancellation proceedings against Moigbe Sirleaf on grounds that he had obtained title to the parcel of **land** fraudulently. Even though the **land** was recovered from Moigbe Sirleaf, his deed was not canceled by the Attorney General as directed by the President. Subsequently, Alhaji Mamadee Kuyette died, and his heirs instituted an action of damages against Moigbe Sirleaf in the Tenth Judicial Circuit, Lofa County, in which final judgment was rendered awarding them $10,000.00 in damages. From this final judgment, Moigbe Sirleaf applied for a writ of error to the Justice in Chambers.

However, while the error proceedings were pending undetermined, Moigbe Sirleaf instituted an injunction suit in connection with the same parcel of **land** for which an action had been brought in the Tenth Judicial Circuit Court. Judgment was rendered in his favor, from which no appeal was announced. Subsequently in 1974, he instituted an action of ejectment against the same Lansana Kuyette and Malike Kuyette for the recovery of the identical parcel of **land** subject of the dispute settled by the President. Judgment was rendered in his favor and there being no appeal announced, a writ of possession was accordingly issued. During the enforcement of the ruling, Lansana and Malike Kuyette applied for a writ of error. The alternative writ having been granted and argument had, the Chambers Justice denied the application and quashed the alter-native writ, to which plaintiffs-in-error excepted and appealed to the Full Bench. The appeal was heard, the ruling of the Justice in Chambers affirmed and the lower court mandated to resume jurisdiction and enforce its judgment, thereby putting finality to the error proceedings.

It was during the enforcement of the aforesaid mandate of the Supreme Court that the instant bill of information was filed in which informants alleged, among other things, that Chief Justice James A. A. Pierre, who presided over the error proceedings, participated in the discussion of the **land** dispute and that he was directed by the President to institute cancellation proceedings against Respondent Moigbe Sirleaf, which he failed to do. In-formants also alleged that Counsellor Robert G. W. Azango, who served as counsel for Respondent Moigbe Sirleaf in the error proceedings, presided over as judge in the injunction proceedings, growing out of the same **land** dispute; and that cancellation proceedings against Moigbe Sirleaf are still pending undetermined.

The Supreme Court held that informants should have objected to Counsellor Azango's participation in the trial court and to apply for certiorari if the court overrules their objection. Notwithstanding, the Supreme Court held that the conduct of Counsellor Azango was unethical and unprofessional and entered an order prohibiting him from further participating in the proceedings. With respect to Chief Justice Pierre, the Court held that informants failed to have raised the issue at the proper time, and that their failure to do so constitutes a waiver. The Supreme Court noting that there were no allegations of irregularities in the enforcement of its mandate from which the information grew, *dismissed the Information,* and ordered the judgment in the ejectment action enforced.

John Dennis appeared for informants. *Robert G. W. Azango* appeared for respondents.

MR. JUSTICE SMITH delivered the opinion of the Court

From what we have been able to gather from the records in these proceedings, and closely following the argument of counsel for the parties, this bill of information grew out of and is in connection with a parcel of **land** in Voinjama City, Lofa County, which was the subject of a long outstanding **land** dispute, originally between the late Alhaji Mamadee Kuyette, father of the Informants in these proceedings, and Moigbe Sirleaf, one of the Respondents herein. According to the allegations contained in the bill of information, which is not denied by the respondents, the **land** dispute was settled in 1966 by the late President William V. S. Tubman in favor of Alhaji Mamadee Kuyette, who had complained against the said Moigbe Sirleaf. The parcel of **land** was turned over to Mamadee Kuyette and he thereby came into possession of the property. The President directed the then Attorney General of Liberia, James A.A. Pierre, to institute cancellation proceedings against the said Moigbe Sirleaf as he had discovered that Moigbe Sirleaf had fraudulently obtained title to the parcel of **land** in 1964. However, the presidential directive for the cancellation of the deed of Moigbe Sirleaf was not carried out by the said Attorney General, and Alhaji Mamadee Kuyette later died.

Following the recovery of the parcel of **land** from Moigbe Sirleaf by presidential decision in 1966, the informants, heirs of the late Mamadee Kuyette, instituted an action of damages against Moigbe Sirleaf in the People's Tenth Judicial Circuit Court, Lofa County, claiming the amount of $10,000 which they claimed had accrued to them by reason of the long outstanding dispute over the parcel of **land**, which matter had been decided by the President. The case was heard and a verdict returned by the trial jury in favor of informants; judgment was entered awarding the informants, plaintiffs in the damages suit, the $10,000 damages prayed for. In the process of enforcing the judgment against Moigbe Sirleaf during the February, A. D. 1974, Term of the Tenth Judicial Circuit Court, presided over by His Honor J. Jeremiah Z. Reeves, Moigbe Sirleaf petitioned the Supreme Court for a writ of error against the presiding judge, and according to a certificate issued by the Clerk of the Supreme Court on the 31st day of March, 1980, the error proceeding was still pending before the Supreme Court undetermined.

We have also gathered from the records available to us that an injunction suit in connection with the self-same parcel of **land** was instituted by Moigbe Sirleaf in the Tenth Judicial Circuit Court, Lofa County, against the informants, Lansana Kuyette and Malike Kuyette; that during the May, A. D. 1969, Term of that court, presided over by His Honor Robert G. W. Azango, now counsel for Moigbe Sirleaf (one of the respondents in these information proceedings), the injunction suit was heard by the said presiding judge, who entered a 26-page final decree in favor of the said Moigbe Sirleaf. Although according to the clerk (William Singbe), of the Tenth Judicial Circuit Court, who transmitted a telegram to the Clerk of the Supreme Court on the 7th day of August, 1980, there was no appeal taken from the judgment of Judge Azango, our departed colleague, Mr. Justice Bortue, in his ruling forwarding the bill of information proceedings to the Full Bench noted that from the certified and true copy of the original records on appeal, Counsellor Azango was the presiding judge who heard and decided the injunction proceedings. Justice Bortue also noted that Counsellor Moses K. Yangbe appeared for and

represented the plaintiff, Moigbe Sirleaf, who tendered a bill of exceptions and an appeal bond for $2, 000. 00, all of which were approved by the trial judge on the 4th day of July, 1969.

The Chambers Justice considered the act of Counsellor Azango as purely unethical and unprofessional under *Rule 28 of the Code of Moral and Professional Ethics,* when he accepted retainer to represent the legal interest of Moigbe Sirleaf, plaintiff in the injunction action, over which he presided as judge; and, therefore, entered an order prohibiting the said Counselor Azango from further participation in these proceedings as a lawyer for any of the parties. The learned counsel excepted to the ruling of the Chambers Justice and announced an appeal to the Full Bench.

We have no brief filed by Counselor Azango to support his appeal nor did he, in his argument, cite any law which allows a lawyer to represent any of the parties in a case in which he acted as a judge. However, the learned counsel argued that the case in which he acted as a judge was between Moigbe Sirleaf and Mamadee Kuyette and not between Lansana and Malike Kuyette. He also argued that during the hearing of the error proceedings in this Court which ended in favor of respondent Moigbe Sirleaf, no such issue was ever raised, and, therefore, cannot be raised for the first time in the bill of information growing out of the enforcement of the mandate of this Court in the error proceedings.

It appears to us that the deed of Moigbe Sirleaf not having been canceled as directed by President Tubman in 1966, on the 10th day of June, 1974, the said Moigbe Sirleaf instituted an action of ejectment against Lansana and Malike Kuyette in the Tenth Judicial Court, Lofa County, for the recovery of the said parcel of **land** which had been the subject of a long outstanding dispute decided by President Tubman in 1966.

His Honor Alfred B. Flomo, then presiding over the February, A. D. 1979 Term of the Tenth Judicial Circuit Court, heard the ejectment case and entered judgment based on the verdict of the trial jury brought against the defendants on the 31st day of March, 1979. A writ of possession was, therefore, accordingly issued.

On the 8th day of May, 1979, that is to say, one month and eight days after judgment was entered, the defendants, Lansana and Malike Kuyette, represented by Counselor J. Emmanuel R. Berry, applied to the Chambers of this Court for a writ of error, alleging in substance that:

1.1. There was no notice of change of counsel and yet the trial judge permitted Counselor Robert G. W. Azango to represent co-defendant-in-error, Moigbe Sirleaf;

1.2. Despite the presence of one of the defendants on March 23, 1979, the trial judge granted an application to invoke Rule 7 of the Circuit Court Rules which deals with abandonment;

1.3. Even though co-defendant-in-error Sirleaf did not plead any damages, the trial jury erroneously awarded him $50,000 damages;

1.4. The trial judge committed reversible error when he did not appoint a counsel to take the verdict and judgment in the absence of plaintiffs-in-error's counsel;

1.5. They did not announce an appeal from the court's final judgement because they were not present at the rendition of the final judgment, having gone in search of their lawyer; and

1.6. They have paid the accrued costs as shown by the sheriff's receipt, execution of the judgement not being satisfied.

Defendants-in-error filed their returns, attacking the suffi-ciency of the petition for a writ of error, stating substantially as follows:

1.1. That there was no affidavit stating that the application for the writ was not made for the mere purpose of harassment and delay.

1.2. That the counselors' certificate attached to the application was invalid, because it did not have $2.50 revenue stamp affixed to it; and

1.3. That the accrued costs were not paid in keeping with the statute governing the application for a writ of error.

When the error proceedings were assigned and called for hearing before Mr. Justice Henries, who was presiding in Chambers, the plaintiffs-in-error made application for permission to withdraw their petition at that stage and to file an amended petition. The Chamber Justice held that, our law does not provide for the making of application to withdraw a pleading in order to file amended pleading; that pleadings may be withdrawn without court's order with reservation and upon notice to the opposing party and a new one filed upon payment of accrued costs. Mr. Justice Henries further noted that the application of the plaintiffs-in-error was intended to cure the defects in their petition which had already been attacked in the defendants-in-error's returns, and to grant the application after the case had been called for hearing would work injustice on the opposing party. The application was, therefore, denied and the petition for a writ of error as was pending before the Chambers of this Court and which had been called for hearing, was proceeded with.

After argument was concluded, the Chambers Justice entered ruling denying the application for a writ of error and quashed the alternative writ with costs against the plaintiffs-in-error, holding: (1) That the application was not verified by an affidavit, stating that said application was not made for the mere purpose of harassment and delay; (2) that the accrued cost was not paid by the plaintiffs-in-error as a condition for granting an application for a writ of error. The learned Justice relied on the Civil Procedure Law, Rev. Code 1: 16.24.1(a)(d) and the cases: *Mends-Cole et al. v. Weeks et al.*, 13 LLR 525 (1960); *Holmen v. Montgomery*, [1974] LRSC 19; 23 LLR 19 (1974); *East Africa Company v. McCalla*, 1 LLR 292 (1896); and *Richards v. Coleman*, [1933] LRSC 7; 3 LLR 401 (1933).

Plaintiffs-in-error excepted to the ruling of the Chambers Justice and appealed their cause to the Full Bench. During the October, A. D. 1979 Term of this Court, the appeal in the error proceedings was heard and the ruling of the chambers Justice was affirmed by the Bench *en banc*, thereby putting finality to the error proceedings. Except there was cause for re-argument and an application therefor made to the Bench *en banc* in accordance with procedure, the opinion of the Court as handed down on the 20th day of December, 1979, with Mr. Justice Barnes speaking for the Court, put a definite end and finality to the error proceedings, and, therefore, could never be reviewed by this Bench or any other branch of our government without contravening the law of the **land**. In keeping with our law extant, the judgment of the Supreme Court is final and is not appealable or reviewable. Judiciary Law, Rev. Code 17: 2.2; and PRC Decree # 3, 1980, § 1.3.

In the Civil Procedure Law, Rev. Code 1: 51.2, it is also provided, and we quote:

"Every person against whom any final judgment is rendered shall have the right to appeal from the judgement of the court, except from that of the Supreme Court. The decision of the Supreme Court shall be absolute and final,"

For this Bench to entertain a bill of information against the enforcement of a mandate of this Court, growing out of a decided case, where there is no allegation of irregularities in the enforcement of the mandate, but rather because of alleged irregularities committed during the hearing of the case before the lower court, will not only be acting contrary to law, but will also be inviting untold trouble on ourselves in resurrecting all decided cases from the Grimes Bench to the Pierre Bench. This will result in destroying the internationally accepted principles and rendering this Bench to national and international criticism and self-invited disgrace.

In their bill of information, the informants have alleged and argued before us in substance that:

1. Chief Justice Pierre who, while serving as Attorney General of Liberia, participated in the discussion of the **land** dispute and was directed by the late President Tubman to file cancellation proceedings against the respondent, Moigbe Sirleaf, and who did not carry out the President's directive, presided over the error proceedings in the Supreme Court, which grew out of the said parcel of **land**.

2. Counselor Robert G. W. Azango, counsel for the respondent, who, while serving as circuit judge, presided over the injunction proceedings growing out of the very parcel of **land** and decided it in favor of respondent Moigbe Sirleaf, is counsel for the said Moigbe Sirleaf.

3. That informants did not have their day in court when the ejectment case was heard and determined and judgment entered against them to pay $50,000.00 damages when indeed the complaint did not allege damages, which judgment was being enforced against them.

4. That the late President Tolbert in upholding his predecessor's decision, had ordered cancellation proceedings filed against the said Moigbe Sirleaf, which proceedings were still pending before the Tenth Judicial Circuit Court undetermined; yet, respondent Moigbe Sirleaf and his counsel had filed a bill of information before Judge James M. T. Kandakai, co-respondent herein, to enforce the collection of the $50,000 damages against them.

In their prayer, the informants have asked this Court to summon the respondents to appear and show cause why the bill of information as filed by co-respondent Moigbe Sirleaf before the lower court for the payment by them of the $50,000 damages should not be set aside.

While it is true that under our Code of Moral and Professional Ethics, a lawyer should not accept employment as an advocate in any matter upon the merits of which he had previously acted in a judicial capacity, and a lawyer, having once held public office or having been in public employment should not after his retirement, accept retainer in connection with any matter which he had investigated or passed upon while in such office or employ, we cannot understand why the informants who filed the error proceedings did not ask the Chief Justice to recuse himself from sitting on the error proceedings which they had appealed to the Full Bench from the ruling of Mr. Justice Henries. There is no showing that the Chief Justice was so asked to recuse himself from participating in the final determination of the error proceedings. Moreover, the error proceedings did not grow out of the cancellation proceedings which the Attorney General, prior to his elevation as Chief Justice, was directed by the late President Tubman to institute, nor has it been established that the cancellation proceedings were ever instituted by the said Attorney General prior to his elevation; on the contrary, in-formants themselves have shown that the cancellation proceedings was never instituted until the late President Tolbert directed Minister of Justice, the late Joseph J. F. Chesson, to institute the proceeding. The receiving of a presidential directive to cancel a deed without acting on such directive will not preclude the Attorney General on elevation as Chief Justice from sitting on an error proceedings growing out of an ejectment case touching the subject **land**. Informants not having raised any such issue at the proper time, their act must therefore be considered as having waived their right to do so. There is a legal maxim which says that: "He who is silent when he should speak, assents."

We have not been able to understand the intent of the informants. Are they asking us to nullify the final judgment of the lower court in the ejectment action because they did not have their day in court? It is noted that the aforesaid was one of the issues contained in their application for a writ of error, which was heard and determined against them by the Supreme Court in 1979. In the alternative, are they asking us to set aside the judgment of the Supreme Court of 1979 in the error proceeding and recall the mandate of this Court to the trial court for enforcement, simply because Counsellor Azango, who previously decided an injunction proceedings in favor of Moigbe Sirleaf, carried the legal interest and represented the said Moigbe Sirleaf?

If Counsellor Azango, while serving as circuit judge, heard and decided any phase of the case and thereafter appeared as counsel for one of the parties in the court below to file a bill of information, objection to his representation should have been previously raised before the Court below. If the said Counsellor Azango appeared for Moigbe Sirleaf without a notice of change of Counsel as contended by the informants, proper objection should have been raised before the trial court, and if the court had ruled otherwise, the proper remedy would have been certiorari proceedings against the trial judge. Where the ruling of a judge in a trial is prejudicial, the remedy is certiorari. *Williams v. Horton and Bull*, 13 LLR 444 (1960).

In view of all that has been said hereinabove and the legal citations in support of our position, it is our considered opinion that the bill of information is unmeritorious and the same should therefore be, and is hereby dismissed with costs against the informants.
The Clerk of this Court is directed to send a Mandate down to the trial court for the judge therein presiding to resume jurisdiction and enforce the mandate of this Court in connection with the error proceedings decided by this Court on December 20, 1979, growing out of the case: *"Moigbe Sirleaf, Plaintiff, v. Lansana and Malike Kuyette*, Action of Ejectment". And it is hereby so ordered.

Information dismissed.

Soco v Moore [1963] LRSC 29; 15 LLR 320 (1963) (9 May 1963)

JOHN SOCO, Appellant, v. ELIZABETH MOORE JOHNSON, Surviving Heir of JOSEPH RANDOLPH MOORE, Deceased, Appellee.
APPEAL FROM THE CIRCUIT
COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 25, 26, 1963. Decided May 9, 1963. In an ejectment action, a defense of adverse possession, notorious occupation, or possession of the property for a continuous period beyond the time allowed by statute must be affirmatively proved.

On appeal in an ejectment action, judgment affirmed.
G. Wellington Campbell for appellant.
Cooper and E. Smallwood for appellee. Momolu S.

MR. JUSTICE PIERRE delivered the opinion of the Court. According to the record before us, Thomas Ralph Moore and Joseph Randolph Moore acquired title to zoo acres of land from the Republic of Liberia in 1865; and this property they held jointly until Thomas Ralph's death, when title to the whole vested in Joseph Randolph Moore. During his lifetime

Joseph Randolph Moore, aforesaid, sold half of this land to one Wilmot Dennis, and the remaining ioo acres descended to his only surviving heir Elizabeth Moore Johnson, the appellee in this case. When, in 1959, Elizabeth Moore Johnson sought to transfer title of a portion of this land to her children, she had this portion surveyed and issued deeds for it. When these deeds were offered for probate, a caveat which had been filed by John Soco, the appellant in this case, stopped their probation. Elizabeth Moore Johnson alleges that she then ordered a survey of her entire too acres, and dis320

covered that John Soco was encroaching on 8.16 acres of her property. She accordingly filed this action of ejectment to evict him from the land. In her complaint, not only did she aver that her said Ioo acres is situated in the lower part of the settlement of Virginia in Montserrado County, but she also quoted the boundaries of the original deed for the zoo acres sold to her father and his brother Thomas Ralph Moore, out of which too acres now remained to her. She annexed the said deed to her complaint as Exhibit A. It is shown to have been signed by President D. B. Warner in 1865. John Soco appeared and filed an answer of three counts in which he raised only one issue : the statute of limitations. He contended that from June io, 1929, he had been in open and notorious possession and use of the 8.16 acres in question, and that he had occupied the property under color of lawful title acquired from one Charles H. Christopher of the settlement of Virginia. He also contended that plaintiff, having been under no legal disability to assert her claim to the property, should have brought her suit within the time allowed by statute for the filing of such cases; and since she had not done so, but had allowed more than zo years to elapse, she was barred by statute of limitations. Plaintiff made reply to the answer, and with this reply she filed a copy of objections growing out of the caveat which John Soco, the defendant, had filed in the probate court. Annexed to these objections was a title deed from Charles Christopher to John Soco, for 20 acres of land in the settlement of Virginia. The boundaries of the John Soco deed do not seem to relate in any way to those of the deed filed with plaintiff's complaint. Whereas plaintiff's deed for 200 acres in Virginia is a part of "Range Number 2," the John Soco deed filed with his objections calls for zo acres in "Block Number 2," also in Virginia. Nowhere in the record is it shown that there is any connection between "Range Number 2" and "Block Number

2," although both of them are described as located in the same settlement. Plaintiff's complaint in this case was filed on May 3o, 196o. John Soco, in defense against it, claims protection under the tolling of the statute of limitations, and also alleges that he was protected under color of title right during notorious and open possession and use of the land. He claims,

in his answer and subsequent pleading, that the title he referred to is the deed given him by Charles H. Christopher. It is to be observed that this deed was executed on May 7, 1951. So if this is really the right under which he claimed adverse title, the statute of limitations had not begun to run at the time when plaintiff filed her suit, nine years after issuance of the deed. During oral argument before us, when this point was sought to be clarified, appellant's counsel reminded us that he had not brought any deed into the case, but had merely relied upon his open and notorious use of the land for more than zo years. An inspection of his pleadings will show this to be true ; so we must ignore the deed filed with the objections in the probate court. The only issue for us to decide, therefore, is whether the spot on which John Soco is alleged to have resided for more than zo years, is indeed a portion of the 200 acres acquired by Thomas Ralph and Joseph Randolph Moore in 1865, of which ioo acres has now descended to Elizabeth Moore Johnson, appellee in this case. The case was called for trial in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, sitting in its September, 196o, term, with Judge Joseph Findley presiding. The jury deliberated and returned a verdict in favor of the plaintiff, finding that the defendant was encroaching on the plaintiff's land, and should be evicted. On this verdict, judgment was rendered. From this judgment, appeal has been taken here. During the trial in the court below, one fact testified to by several witnesses was that, prior to the year 1951, John

Soco had resided in a location other than that where he now resides, and where Elizabeth Moore Johnson claims he is now encroaching on 8.16 acres of her land. Here is the examination of witnesses on the point.

Testimony of Momo.

"Q. Mr. Witness, say if you know when John Soco moved on the land in question. "A. Another person built this town in 1951, and his name is Momo Tamba, and it is this builder who put defendant, John Soco on the place. "Q. Mr. Witness, will you please say, if you can, what condition this plot of land was in before Momo Tamba built on it? "A. The place was uninhabited. "Q. Mr. Witness, can you say whether or not the defendant was living on any tract, or any parcel of land on this tract now in dispute, that is to say whether he was living in the rear of where this land is now situated? "A. I know that defendant was living across the road, not near the new road where the town is built, and it was afterwards that John Soco came to live in this new town."

Testimony of Small Josiah.

"Q. Elizabeth Moore Johnson has instituted an action of ejectment against John Soco. . . . You will please state for the benefit of the court and jury all facts and circumstances which lie within your certain knowledge touching the case. "A. After opening

the railroad track to Bomi Hills, one Tamba built a town, the subject of this dispute. At this time, John Soco was nowhere on this property but in the back. After some time, defendant and his elder brother, Bayoh, came and moved into the town with Tamba. This was after the train track had been built. "Q. Please say, if you know, whether or not, prior to

Tamba's building on the area in dispute, there was another town there. "A. No, there was no other town." Thus, two witnesses testified that it was not until the railroad was constructed that this new town was built and the defendant moved into it; and that before that time, he had lived in another town in the rear of he disputed area. Although one of these witnesses testified that the defendant moved into the new town in 1951, the defendant himself, on the stand, admitted that he did not move into the new town until 1958. So whether he moved in 1951, or in 1958 as he concedes, the question still remains whether the statute of limitations can be said to have barred the plaintiff's action of ejectment brought to evict the defendant in 1960. Under 1956 Code, tit. 6, § 50 (a), the statute of limitations can only bar a suit in ejectment more than 20 years after the cause of action accrued. Appellant has contended that the old town where he liver prior to 1958 when he moved to the spot now in dispute, and the new town where he now lives, are both portions of the 20 acres which he claims came to him from his mother who had bought it from one Charles Henry Christopher in 1920. It appears to us that it should have been the appellant's duty in support of this allegation, and indeed it might have been to his advantage to have proved by some survey that this is in truth the case. "It shall be the duty of every party alleging the existence of any fact to prove it." 1956 Code, tit. 6, § 683. Had appellant done so in this case, his defense under tolling of the statute of limitations might have been more effective. As it is, we have his mere averment that these two towns are both parts of a single 20-acre block. He has not proved to which of the two 20-acre blocks the towns belong--whether to that purchased by his mother in 1920, or to that which was sold to him in 1951. Here is appellant's own testimony as defendant in the court below on this point:

"In 1920, my mother bought the place from one Charles Henry Christopher. I was a boy then, living with my mother. In the year 1928, my mother died and my sister was keeping up the place. When keeping up the place, she was sick, and I asked her about the deed. When she showed me this deed the bugs had eaten it up, and I took the deed to the man who sold the land to my mother, Mr. Christopher. I showed him the condition of the deed, and he said the only salvation was to have the property resurveyed. This was in 1951. We made the resurvey

in 1951, and that is the time I carried the deed to the man, and he signed it." This deed, allegedly signed by Charles Henry Christopher in favor of appellant's mother in 1920, and alleged by appellant to have been reissued in 1951, was never introduced into evidence. There has been no explanation as to why it has been kept under cover. As stated earlier in this opinion, the only deed which appeared in the case was that made in favor of John Soco in 1951, and issued by Charles Henry Christopher. According to what we have before us in the record, there does not seem to be any relation between these two deeds--the one issued in 1920 to appellant's mother, and the other issued to appellant himself in 1951. The 192o deed names one grantee; the 1951 deed names another; and the more recent deed does not show on its face that it is an old deed reissued, which should have been the case if it had conveyed the same piece of property. Could it be, then that there are indeed two deeds, and that they refer to different pieces of property? As we said before, appellant should have cleared up these uncertainties, either by a proper survey, or by proving the location of the two towns within the boundaries of one deed.

The grantor, Charles Henry Christopher, took the stand, and further complicated matters respecting the two deeds by testifying as follows : "A. The piece of land that John Soco is sued for, his

mother bought it from me in 1920. The block of land my father, William E. Christopher, bought from Paul H. Bailiff; and John Soco's mother bought it from me in 1920; and I consented and sold her zo acres from the block; there is where she lived from 1920 to her death. "Q. Mr. Witness, the place where John Soco lived in 1920, is it the same place where he is living now? "A. It is the same block, not the same spot. "Q. Mr. Witness, please say, if you can, in what year was the town built which John Soco is now living in on the disputed area? "A. I cannot say what year, but I know it is the same block. "Q. Mr. Witness, is it a fact that you issued to John Soco a deed in the year 1951 for a tract of land in lower Virginia? "A. Yes, John did carry me a deed in 1951 to sign, but it was not the deed I gave him in 1920." This testimony of Mr. Christopher would seem to imply that the deed issued by him in 1920 to Soco's mother was for property on which the old town is built and where she lived up to her death ; and that the deed issued to John Soco in 1951 was for same place in lower Virginia. At least, that is the impression one would get, in the absence of better evidence. This, like other issues appearing in this case, is immaterial in view of appellant's reliance on the statute of limitations as a defense against the allegations laid in the complaint. In relying upon the statute of limitations, the appellant has not disputed the validity of the appellee's title to the 8.16 acres which she claims he is encroaching upon. Whenever the statute of limitations is specifically relied upon as a defense, adverse possession or notorious occupation, or holding of the property for a continuous period beyond the time allowed by statute, must be proved conclusively

if the defendant is to recover under the plea.

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That being so, it was incumbent upon the defendant in the court below to prove that he had lived on the 8.16 acres in dispute, continuously and without interruption, for a period of more than 20 years, at the time when plaintiff brought suit against him in 1960. His own testimony, which has been referred to herein, places the time of his moving into the disputed area at 1958, two years before the plaintiff's case was filed. This leaves us no alternative but to affirm the judgment of the court below. Affirmed.

Alpha v Tucker [1973] LRSC 9; 21 LLR 458 (1973) (1 February 1973)

ISAAC ALPHA, Informant, v. AARON TUCKER, Respondent.
BILL OF INFORMATION TO HOLD RESPONDENT IN CONTEMPT OF COURT.

Argued December 11, 1972. Decided February 1, 1973. 1. The doctrine of res judicata cannot be invoked by a respondent in contempt proceedings on the ground that he has been adjudged in contempt before for disobeying the judicial order the current proceedings are based on, for the doctrine cannot bar a court from enforcing its judgment. 2. A bill of information seeking a citation in contempt cannot also demand relief which would require the original adjudication of an issue by the Supreme Court, as in the present case, where the Court is asked to collect rents for the disputed property, when adequate remedy is available elsewhere. 3. It is the firm sentiment of the Supreme Court that a condition to be studiously avoided is that courts cause their decisions and judgments to be selfdefeating by the failure to adhere to and enforce them.

The dispute giving rise to the present proceedings had first taken legal shape almost twenty years before. Since then three opinions of the Supreme Court had resulted, as well as rulings made in chambers by Justices, and numerous lower court rulings and orders based thereon. The respondent had never obeyed the orders of the Supreme Court as sent down by mandate to the lower courts and had once been found in contempt by the Supreme Court and fined. In the current information presented to the Supreme Court, the informant protested that respondent continued wrongfully in possession of his land contrary to the orders in the case and the findings of a board of surveyors appointed pursuant thereto which had clearly marked the boundary lines of the property owned by each party. The Supreme Court in these proceedings ordered enforcement of its prior mandate placing

the parties on their respective properties and held the respondent in contempt, but in view of his previous fine paid and other circumstances, ruled that upon immedi458

ate compliance with the mandate of the Court he would be purged of contempt. The Court declined to order its Marshal to collect rents on the premises wrongfully occupied by respondent, for such relief it was felt was beyond the scope of a bill of information, since it would be the initial determination of an issue, tantamount to an exercise by the Supreme Court of original jurisdiction.
John W. Stewart for informant. Joseph F. Dennis

for respondent.
MR. JUSTICE HORACE
delivered the opinion of the

Court. On January 17, 1972, informant in these proceedings filed an information in the Supreme Court setting forth what he considered contemptuous behavior on the part of respondent in disobeying mandates emanating from this Court in two previous hearings on the same subject matter. According to the record informant withdrew his information on December 8, 1972, but on the same day refiled. On December 9, 1972, respondent filed his return to the information filed. Because of what we consider the unusual ramifications of the case under review, we think it necessary to relate briefly the history of the matter for whatever clarification it may afford before specifically dealing with the case at bar. Sometime about the middle fifties, Isaac Alpha, informant in these proceedings, instituted an action of ejectment against Aaron Tucker for allegedly encroaching on his property. Since the matter involved the rightful ownership of the property in question, a board of surveyors was appointed in keeping with law, which made its report, accompanied by a map, finding that the plaintiff and defendant in the ejectment action owned separate and distinct parcels of land. Based upon this report the

trial judge ordered the issuance of a writ of possession for the parties to be placed in possession of their respective parcels of land. While the sheriff was in the process of carrying out the court's orders, Marie Davies-Johnson filed a petition before the Justice of the Supreme Court presiding in chambers for a writ of prohibition against Alpha, the trial judge, and the sheriff, protesting the issuance of a writ of possession to place Alpha on the land he was claiming. The Justice in chambers ordered that the alternative writ of prohibition be issued, but upon a hearing before him, apparently lacking full information that later came out, denied the peremptory writ. Upon appeal from his ruling in chambers, the ruling was reversed. The Supreme Court sitting

en banc in a unanimous decision sustained the petition for prohibition, and since the prohibition had some bearing on the ejectment case, among other things, corrected the errors of the trial judge who had ordered a writ of possession for the parties to be placed in possession of properties they already possessed according to the report of the board of surveyors, by ordering the cancellation of the writs of possession. The opinion also stated "parties in ejectment are commanded to return to and remain in the original positions in which the unmeritorious suit of ejectment found them." The facts relating to this phase of the matter are fully recounted in the opinion delivered by Mr. Justice Pierre, now Chief Justice, in Davies-Johnson v. Alpha, 13 LLR 573 (1960). It must be noted here that the report of the board of surveyors in the ejectment case as quoted in the abovementioned opinion, stated in count three thereof that "both parcels of land (that is, plaintiff's and defendant's) are unoccupied, as far as any evidence of improvement could be seen." In light of future developments in the controversy between informant and respondent this fact should not be overlooked. It might also be of interest to note that in

the opinion referred to a letter is quoted, written by G. Slagmolen, Director, Division of Surveyors, Department of Public Works and Utilities, to the Clerk of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, in connection with a piece of land in block 8o, the same block in which Alpha claimed his land is located. Even though the trial judge referred to said letter, the record does not show how it got into either the ejectment case or the prohibition case. In 1963, Isaac Alpha, plaintiff in the ejectment case, filed an information before the Justice in chambers complaining in substance that although the Court had ordered the parties in the ejectment case to return to and remain in their original positions in which the unmeritorious ejectment suit found them, Aaron Tucker, defendant in said ejectment action, in disregard and defiance of the Supreme Court's mandate had encroached upon Alpha's land, and was then constructing a building thereon. According to the record before us, respondent in those information proceedings merely raised the point of jurisdiction, stating that the matter of the ownership of the land in question having been settled in the prohibition case decided by this Court in its 196o decision already referred to, the Supreme Court could not assume jurisdiction over any phase of the matter, as to do so would be assuming original jurisdiction on a matter of this kind, which the Constitution inhibits. The Court expressed the view that respondent did not traverse the points raised in the information and under the principle that what is not denied is tantamount to admission went on to show that it had jurisdiction in such matters. Aaron Tucker was found guilty of contempt and amerced in the sum of $2oo.00. Alpha v. Tucker, 1 5 LLR 561 (1964). Looking through the record further, we find that a mandate with respect to the Court's decision of 1964. was sent to the trial court on January 20, 1964. Apparently nothing. was done about that mandate because we find in

the record another mandate of the same tenor as that of January 20, 1964, forwarded to the trial court on December 15, 1964. It appears that after receipt of the second mandate the trial judge proceeded to enforce it on December 17, 1964, by entering a ruling. "That in keeping with the mandate, supra, the plaintiff is automatically in possession of his property and he is hereby authorized to proceed with the use thereof without any further obstruction. "Since according to records of these proceedings the defendant is unauthorizedly operating on the premises, which resulted in these contempt proceedings, that is by erecting a building thereon, in defiance of Supreme Court rulings or orders, the Sheriff in this peculiar circumstance is hereby ordered to accompany the plaintiff to the spot and see to it that defendant or those occupying under him be immediately removed therefrom. This is being done to avoid further obstruction of plaintiff's occupancy by the defendant. "The Clerk of this Court is further ordered to make up the bill of costs which the court also rules is to be paid by the defendant and (upon failure to pay costs) he shall also issue an execution to recover sufficient (property) covering the entire legal costs in these proceedings and (upon) failure to satisfy said execution the Clerk is further ordered to issue a commitment upon the defendant, place same in the hands of the Sheriff who in the circumstance is ordered to commit the said defendant and have him kept in prison until all amounts involved and incidental to these proceedings are fully paid. "That because of the Supreme Court's special order to this Court to execute its judgment immediately and file returns thereto the Clerk and the Sheriff are ordered to proceed to execute these orders without delay.

"December 17, 1964. "D. W. B. MORRIS, Resident Circuit Judge." Without commenting here specifically on the procedure the trial judge adopted, it would appear that before his ruling could be executed Aaron Tucker made a submission to the Justice in chambers. What followed immediately is not clear, except that the record shows that on February 5, 1965, Mr. Justice Mitchell made the following ruling in chambers which we set forth. "This is a matter which has grown out of an ejectment suit, filed in the Sixth Judicial Circuit, Montserrado County, by Isaac Alpha against Aaron Tucker. In the attempt of the Court to place Alpha in possession of the property, which he claims from Mrs. Davies-Johnson, she filed prohibition to restrain the enforcement of these possessory orders. This matter was heard and determined by the Supreme Court, and in the course of time after consultation with the plot and map of said area in which the property is located, the Supreme Court rendered an opinion and judgment requiring the parties to remain in their original positions as they were before, when this suit was originally instituted. Because at the time and according to the map and plot produced, Marie Davies-Johnson was claiming title to the very tract of **land, and Isaac Alpha was claiming said tract of land** as it would appear. After the rendition

of judgment in this case and for some months thereafter, Counsellor 0. Natty B. Davis again appeared before the Supreme Court with an information stating that Aaron Tucker had disobeyed the mandate of the Supreme Court and had begun to erect a building on the **land of Mr. Isaac Alpha, which according to the map and plot produced before the Supreme Court should have been a tract of land** of 132 ft. away from the

holding of the **land** of Mr. Tucker; and therefore, obviously, he meant to disregard the mandate of the Supreme Court. . . . "The Supreme Court after this matter was heard rendered its judgment holding the aforesaid Aaron Tucker in contempt of court requiring him to pay a fine of $200.00 together with costs of court; but he sought a re-hearing of his petition and Mr. Chief Justice Wilson signed this petition as one of the concurring Justices. Subsequently, for some reasons unknown to me, Mr. Chief Justice Wilson thought it necessary to withdraw his signature from the petition for re-argument which necessarily meant that the fine imposed be collected and that the matter rest. Personally, I am not in positive knowledge of what has happened thereafter, except what the records presently reveal to me. And from which I have concluded the Chief Justice inadvertently gave some orders to Hon. D. W. B. Morris, Resident Judge of the Sixth Judicial Circuit Court, Montserrado County, which to my mind was duplicated by similar orders to the Marshal of this Court to collect the fine of $zoo.00. The bill of costs was accordingly prepared by this Court and served on Mr. Tucker and paid and that should have finalized the matter as far as the records of this Court are concerned; but instead, Judge Morris also resumed jurisdiction and ordered the Sheriff of the Sixth Judicial Circuit Court to dispossess Tucker of the tract of **land** he owned, and place Alpha in possession. "I cannot concede that the Chief Justice did give such orders to Judge Morris because the question of possession of the **land** was not contemplated in the judgment; therefore, when this case was called for hearing the Court approached counsel on both sides to resolve the issues . . . who conceded the view, and counsellor J. Dossen Richards for respondent Isaac

Alpha informed the Court that he had filed returns for his client only to justify himself as being innocent of contempt of Court, because if there was any act done without the order of this Court, it was done by the court below that is, Judge Morris, and not his client. Counsellor Joseph F. Dennis, for informant, conceded the position of counsellor Richards and said that he, too, was of the same opinion and moved the Court for a reversal of the act of Judge Morris. This being the case, it is our ruling that the court below having erred in dispossessing Mr. Tucker of the very tract of **land**, which the opinion of this Court conceded

him of being possessed of, erred in doing so and, therefore, upholds the opinion of this Court delivered by Mr. Justice Pierre in January, 196o. The parties hereto, that is to say, Mr. Aaron Tucker and Mr. Isaac Alpha, are hereby ordered to resort to their status quo as they were before when the suit was originally filed in 1959, according to the opinion referred to, delivered by Mr. Justice Pierre, and that whatever ruling was made by Judge Morris is irregular and the enforcement be and the same is hereby revoked. Costs in these proceedings are disallowed." It is peculiar indeed that no reference was made in Justice Mitchell's ruling to the Court's opinion of 1964 adjudging Tucker guilty of contempt. Checking the record further we find that during the December 1964 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Judge Alfred L. Weeks presiding, a writ of possession was issued commanding the sheriff for Montserrado County to put Aaron Tucker in possession of that portion of the property that he had been dispossessed of by order of Judge Morris. To this writ of possession the sheriff made his return, indicating due execution thereof. Alpha learned what had happened through his counsel and filed a submission on May 27, 1965, before this Court

in which he referred to the two opinions of the Supreme Court hereinabove referred to and in which he stated that the ruling of Mr. Justice Mitchell in chambers had negated the decisions of the Supreme Court en banc and that he thought the Justice had inadvertently overlooked said decisions, "as most certainly it must have been an inadvertence for a Justice in chambers to make a ruling unilaterally which abrogates or sets aside a decision and judgment rendered by this Court en banc." For reasons of both brevity and propriety we will refrain from commenting on all the unpleasant, and we say unnecessarily unpleasant, circumstances attending the hearing of the submission made for Alpha by his counsel, as most of it is already a matter of judicial history. Suffice it to say, that the Court speaking June 12, 1970, held among other things that the writ of possession issued to Aaron Tucker was unauthorized because the Justice in chambers had not ordered it, and the submission had unjustifiably attacked a Justice of the Supreme Court. Therefore, counsel for Alpha, Counsellor 0. Natty B. Davis, was found guilty of contempt and fined the sum of $300.00. It is only fair to state that the ruling of Justice Mitchell in chambers did not abrogate or negate the previous opinions of the Supreme Court. What is unanswered, however, is how Aaron Tucker obtained a writ of possession after that ruling. The majority opinion also directed that "since there is a feeling that the mandate of this Court has not been strictly complied with in accordance with its terms, it is here adjudged that the judge presiding over the Sixth Judicial Circuit will nominate a qualified surveyor and have each of the parties hereto also nominate a surveyor, and they shall proceed to the area in controversy with the plot that served as a basis for the Court's determination in the 1959 opinion referred to supra, and make certain that both parties are upon the premises they were to remain upon in accordance with the

judgment and mandate

of this Court growing out of the prohibition proceedings hereinabove specifically
mentioned." In passing, we should mention that a dissenting opinion to the majority opinion of June 12, 197o, was read and filed
by Mr. Chief Justice Wilson with Mr. Justice Roberts concurring. Out of the above-related facts on the record have come the proceedings
now before us. Informant recounted the facts of the case as reflected in opinions of the Supreme Court in 196o, 1964, and 1970, and
stated that in spite of the last opinion of this Court in 1970, which with slight modification reaffirmed the two previous opinions,
nothing had been done to implement either the opinion or the judgment relating to it up to the filing of his information and that
Aaron Tucker was still enjoying the benefit of the writ of possession illegally issued in his favor in 1965 and was still withholding
informant's property. He also requested that, since the court below had ordered the tenants occupying the property in question not
to pay rent to either of the parties, we should order the sheriff to collect the rents and hold them in escrow pending final determination
of the matter. Respondent filed his return to the information and it may be succinctly summarized. 1. That because of the pronouncement
of this Court in 1970 through Associate Justice Simpson, particularly the portion which reads, "In strict adherence in respect of
adjudication of only issues which have been properly raised, this Court would at this time dismiss the submission of informant and
have the matter ended," the doctrine of res judicata can be invoked against informant. 2. That this is the fourth time the subject
matter is before this Court and in the instance of the first and third occasions this Court made a determination in favor of respondent.
3. That although upon the information filed by

Isaac Alpha charging Aaron Tucker with violating the
Supreme Court's judgment Aaron Tucker was adjudged guilty of contempt, subsequent events showed that this Court was misled, for when
the judge attempted to dispossess Tucker of the property, he initiated proceedings before Justice Mitchell who ordered the lower
court to revoke all orders which tended to dispossess Aaron Tucker. 4. Respondent's answer also sets forth matters mostly de hors the record about what occurred after
the Supreme Court opinion of 1970. 5. Denied the truthfulness of the allegation made in counts 7 and 8 of the information which dealt
with the submission made by Alpha's counsel in 1965, heard by this Court in 197o, and pointed out that in spite of the Court's judgment
respondent was still in possession of the property. Respondent contended that he has not moved an inch from the spot where he was
at the time of the Supreme Court's decision of 1960. 6. That informant seems to be basking in an atmosphere of indecision and clandestine

motives purposely to harass respondent, which this Court should not tolerate. Respondent has raised the doctrine of res judicata as applicable to these proceedings, because of the opinion of this Court in 1970, the relevant portion being quoted by him and which we have restated herein. Aside from disagreeing with his view that the doctrine of res judicata applies, he is himself being inconsistent in raising this contention. This Court in the case of prohibition in 1960 had settled the matter between the plaintiff and defendant once and for all. Apparently the mandate of this Court was not carried out, for in 1963 the same informant in these proceedings brought an information to the Court against the same respondent. This Court adjudged respondent guilty of contempt and he was fined $200.00. When the mandate already referred to in this

opinion of the Court was sent down for enforcement and the trial court sought to enforce it, it was respondent who proceeded to the chambers of Mr. Justice Mitchell and sought to reopen the whole matter, which since then has become more and more complicated. The ruling of the Justice in chambers sought at that time at the instance of the respondent brought forth another submission by informant, for which his counsel was held in contempt and another opinion rendered which was never implemented and, therefore, necessitated the present case. How in the face of these facts can he plead res judicata? He started the avalanche of judicial complexity after two decisions had settled the matter, and his application to the Justice in chambers cannot benefit him. "The decision of a motion or summary application is not to be regarded in the light of res judicata, or as so far conclusive upon the parties as to prevent their drawing the same matter in question in the more regular form." BOUVIER'S LAW DICTIONARY. We have further authority on the point raised. "According to Coke an estoppel must 'be certain to every intent' ; and if upon the face of the record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded and nothing conclusive in it when offered as evidence." Russell v. Place, [1876] USSC 162; 94 U.S. 6o6, 6io (1876) . But, more important, the issue involved is not to determine ownership of the property in question. That issue has been resolved by the opinions of this Court both in 196o and 1964. The question before us is whether the decision of this Court has been executed in keeping with its judgments and mandates. We cannot agree that information to a court that its judgment in a case is being either ignored or defied is instituting a case which has been determined on its merits, because it is only where an action is instituted involving the same parties and subject matter that has been de-

termined on its merits, that the doctrine of res judicata would apply. Kiazolu Wahab v. Soni, [1964] LRSC 8; 16 LLR 73 (1964) . We have been unable to find any authority for the position that the doctrine of res judicata can bar a court from enforcing

its judgment. It is, therefore, our view that the doctrine of res judicata advanced by respondent is not well founded, especially so since the judgment of 1970 by this Court was never implemented or enforced. An interesting feature of this phase of the matter is that we observe in the record that after the opinion by the majority of this Court was given and judgment rendered on June 12, 1970, Mr. Chief Justice Wilson addressed a letter to the Clerk of this Court ordering her not to send a mandate to the court below with respect to said judgment because he felt that the opinion was not really a majority opinion. We do not feel that the learned Chief Justice was right to do this, but apparently his colleagues of the majority either felt helpless in having their judgment enforced or agreed with Mr. Chief Justice Wilson, because up to now nothing further has been done about that opinion and judgment. The next point of interest raised by respondent in his return and argued by his counsel before this Court is that, in the opinion of 1964, the issue of contempt was not decided on its merits but rather by the Court passing on the jurisdictional issues raised by him in his return in that case, and, therefore, respondent was found guilty and fined because he had not denied or traversed the issues raised in the information made to the Court. This is rather a strange line of /reasoning. In 1960, this Court ordered the plaintiff, now the informant, and the defendant, now the respondent, "to return to and remain in the original position in which the unmeritorious suit of ejectment found them." This decision of the Supreme Court was obviously based on the report of the board of surveyors who had found no encroachment and

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that both parcels of land were unoccupied as far as any evidence of improvement could be seen. About three years later, in 1963, Alpha filed an information that, contrary to the decision of the Court in 1960, Aaron Tucker had encroached on his property and was constructing a building. The contention of the respondent was that the Court did not have jurisdiction to determine whether or not Tucker had indeed committed contempt, because the matter of his occupancy of the land had been settled by the 1960 opinion of this Court and any question about the property should be properly before another tribunal. Incidentally, Mr. Justice Simpson, speaking for the majority in the opinion of June 12, 1970, must have held the same view.

"The actual issue of contempt was never traversed by respondent in the return as filed by him; therefore, the same was never adjudicated on its merits by the Court. The determination was that of adjudging respondent guilty of contempt due to non-denial of the execution of a contumacious act by the said respondent." Now let us examine the record on this point. In doing so let us remember that it was the same bench that gave the opinion in both 196o and 1964. Let us also remember that the parties in the ejectment suit were ordered to return to and remain in their original positions before the ejectment suit was instituted. The record reveals the pronouncement by Mr. Justice Mitchell speaking for the Court in its opinion of January, 1964. "The counts quoted supra [referring to respondent's

return] clearly show that respondent has in no way attempted to deny the allegation of the bill of information in respect to his disregard of the mandate of this Court. Such failure to deny is, of course, tantamount to an admission. It has been established to our satisfaction that respondent does have a building under construction, and that said building is situated

on the premises of informant. This is absolutely contrary to our decision and mandate. Moreover, this act has been committed since the rendition of our judgment which ordered the parties to return to and remain in their original positions. This is the first instance in which the authority of this Court has been so outrageously defied, and its power to punish for disobedience deliberately challenged, under the pretext of the dictates of the law of the land." (Emphasis supplied.) Alpha v. Tucker, is LLR 561, 565 (1964). The above-quoted relevant portion of this Court's opinion of 1964 is a clear indication that it passed on the merits of the case, because it stated in no uncertain language that Tucker had not only encroached on Alpha's premises, but had done so in defiance of the Court's mandate of 196o. It is regrettable that this same matter has taken such a tortuous course. It is even more regrettable that this Court has contributed to this situation. We are of the firm opinion that a condition to be studiously avoided is that of courts causing their own decisions and judgments to be self-defeating. "It is the function of a court to declare what the law is, and not what its members as individuals think it ought to be. In determining the law, therefore, courts conform their decisions to legal principles, and not to the desires of any class, or even a majority of the people." 14 AM. JuR., Courts, § 47. "A court must determine all questions properly presented. Questions, however delicate in nature and however willingly they might be avoided, must be passed upon by the court in the conscientious performance of its duty where they are raised by the pleadings. It cannot refuse to exercise a power with which the Constitution and laws have clothed it. In exercising this power, it is the duty of the court to facili-

tate and not to retard the determination of litigated causes. On the other hand, the existence of jurisdiction does not mean that it must be exercised and that grounds may not be shown for staying the hand of the Court." 14 AM. JUR., Courts, § 48. With respect to the count of informant's bill of information requesting us to have the Marshal of this Court collect rents from the tenants occupying the disputed premises, we find ourselves unable to comply, for, in the first place, this would be taking original jurisdiction in a matter that is not in controversy and is being raised for the first time in the bill of information; and, in the second place,

we feel that informant has adequate remedy before the right forum at the proper time. From the record before us and all the attending facts and circumstances, it is our holding: (1) that the mandate of this Court to the trial court based upon the judgment rendered in the prohibition case in 196o be immediately and strictly enforced, taking into consideration the opinion and judgment in the contempt proceedings rendered in 1964; (2) that the respondent is guilty of contempt of Court, but because of his seeming misunderstanding of the gravity of this matter, and having once been amerced in the sum of $zoo.00 in the same matter, he is purged of his contempt of this Court, upon his immediate compliance with its mandate; (3) that the Clerk of this Court will send a mandate to the judge presiding over the Civil Law Court for the Sixth Judicial Circuit, to execute the mandate of this Court without delay and immediately file his return as to the manner he has enforced said mandate; (4.) costs of these proceedings are ruled against respondent. It is so ordered.
Respondent adjudged in contempt.

Smith v Stubblefield et al [1964] LRSC 15; 15 LLR 582 (1964) (17 January 1964)

AMELIA BISHOP, Appellant, v. MOSES DWEH, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 8, 1964. Decided May 22, 1964. 1. In ejectment, older title has preference and is given greater consideration; and according to the rules governing the survey of disputed lands, older metes and bounds which designate older boundaries are preferred.
2. Where a full and complete description of the subject matter of a deed or grant is followed by another description, the first description will control even though the second is equally full and complete. 3. Acts of a board of arbitrators which fail in any respect to exemplify absolute fairness to both sides might suggest suspicion of corruption on part of its members ; and whenever this is the case, the award will be set aside and a new board appointed.

On appeal from a judgment based on a report of arbitrators in an ejectment action, the Supreme Court reversed the judgment and remanded the case for repleading and new trial on issues of law and fact based on a new report of arbitrators.
C. L. Simpson and C. 0. Tunning for appellant. Gargar Richardson for appellees. A.

MR. JUSTICE PIERRE
delivered the opinion of the Court. In order to understand the somewhat complicated picture presented in the pleadings filed in this case, it would seem to be necessary that we go back and give a history of the plot of land which is the subject of this litigation.
That history can be put together from information gathered from the four warranty deeds made profert by the parties and annexed to

their respective pleadings.
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To do this, we will have to begin with the two deeds filed with the defendant's answer. Exhibit B, filed with the answer and forming a part thereof, is a warranty deed from Sarah Jane Stepney to Bill Williams, alias Nabbie, of Kru Town in Monrovia. It was executed on May 21, 190o, and conveys 20 acres of land in Block Number I1 on Bushrod Island. Exhibit A, annexed to the same pleading, is defendant's deed which transferred title in and to a quarter of an acre to her; that is to say, one town lot out of the zo acres her grantor acquired in the year 1900 from Sarah Jane Stepney; and it is dated November 17, 1956. It is on the strength of these two deeds that the defendant-appellant has based her defense in the instant case of ejectment. On the plaintiff's side, profert is also made of two deeds, on the strength of which he claims ownership to five acres of land in the selfsame Block Number i t on Bushrod Island. The older of these two deeds was executed on September 19, 1913, by J. G. Thomas and his wife. It was issued in favor of James W. Cooper and his heirs. His second deed, and the one which transferred title to plaintiff, was issued on March 29, 1948, by Caroline Cooper-Kandakai, heir of the late James W. Cooper. It calls for five acres of land, also in Block Number II on Bushrod Island. Thus it can be seen that neither of these two contestants has traced a chain of title back to the original holder of title to the land--the Republic of Liberia. With this as a background, we come now to review the issues in the case before us on appeal. The plaintiff filed an action of ejectment to evict the defendant from the one-fourth acre which she occupies, on the ground that this one-fourth acre is part of plaintiff's five-acre plot. Pleadings on both sides progressed as far as the defendant's rejoinder and rested. The issues of law were disposed of by Judge Dennis and the facts were by him ruled to trial by jury. At this stage of the case, counsel on both sides decided to submit the

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matter to arbitration, and they accordingly filed application before Judge Findley, who next sat in hearing of the case, and requested that three surveyors be appointed to constitute the board ; one to represent each of the parties and a third to be appointed by the court as chairman. The ruling of the judge on this joint application directed that both sides submit their title deeds to the surveyors who were to proceed to the site of the property involved in the dispute, with the purpose of discovering whether or not there was any encroachment by the defendant on the plaintiff's five acres of land. It seems that the surveyors' investigation took for granted that Block Number z t out of which the two portions of land owned by the parties were carved, had originally consisted of twenty-five acres. Their authority for this

conclusion, or how such a conclusion could in any way affect settlement of the dispute between the parties, was not explained ; nor have we been able to ascertain how or why this conclusion was ever reached. Before reciting the arbitrators' report word for word, we would like to comment and emphasize that the intent of arbitration in ejectment cases is to determine whether or not property belonging to one party, as described by metes and bounds of that party's deed, encroaches upon the other party's described property in keeping with his deed. Now let us see whether the report of the arbitrators conforms to this intent of the order for arbitration in keeping with the ruling of the judge defining the scope of their duties. Here is the arbitrators' report: "The undersigned board of arbitrators in the above cause, in keeping with the court's mandate, made onthe-spot investigation of the dispute between the above-named parties, being armed with their respective deeds, and having been shown the terminal points on the ground of the parcels of land claimed by each party, beg to submit the following report of our findings.
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111 (a) The plaintiff's title deed from Caroline Cooper-Kandakai is dated March 29, 1948, and conveys the southern quarter of Block Number II. The plaintiff's supporting title is based upon warranty deed from J. G. Thomas to Jas. W. Cooper for the said southern quarter of Block Number I I , said quarter being five acres, dated September 18, 1913. (b) The defendant's title deed from C. B. Williams is dated December 17, 1956, for onefourth of an acre of land, a part of Block Number I1. The defendant's supporting title is based upon a warranty deed from Sarah Jane Stepney to Bill Williams dated May 21, 1900, for twenty (20) acres of land.

The title deeds of the respective parties, having been oriented on the ground against the points enclosing the properties of the respec-

tive contestants, were found to be inconsistent. The board thereupon made resort to the respective supporting titles in the reverse order of sequence: that is to say, the plaintiff's supporting title dated 1913, and the defendant's title dated 1900. " (a) As a result of the effort to coordinate the 3· description of metes and bounds in the respective supporting titles with terminal points on the ground, the board discovered that the description or bearings in the defendant's supporting title harmonizes more favorably with the boundary lines of adjacent properties. (b) It is the opinion of the board that Block Number II in its original layout contains 25 acres, 20 acres of which were purchased from Sarah Jane Stepney by Bill Williams in 1900. The remaining five acres were purchased by J. G. Thomas from the unknown owner. (c)

Taking the bearing from the deed of Sarah Jane Stepney's deed to Bill Williams at the southwestern terminal point which is marked by a large tree which was previously designated by the sole heir of Bill Williams, to establish the boundary line between the northern three-quarters, owned by Bill Williams, and the southern quarter owned by J. W. Cooper of Block Number II, later purchased by the plaintiff, Moses Dweh, the attached map shows the location of Bill Williams' 20 acres in green and the five acres of J. W. Cooper in blue. The map shows also the location of the defendant's one lot or one-quarter acre in light green. All buildings in the area are represented in green, including the two buildings of the defendant, which are shown in brown. "4. The board is in unanimous agreement, as indicated on the attached survey plot, that the buildings, as well as the land area of the defendant, fall within the bounded area of the plaintiff. This decision is based upon the boundary description of the original deeds of the parties. "Respectfully submitted, [Sgd.] "J. F. DUNBAR, for plaintiff, [Sgd.] "A. A. AJAVON, for defendant, [Sgd.] "J. K. ANDERSON, for court." The defendant objected to the report of the arbitrators on the following grounds. First, the defendant claimed that the arbitrators had assumed that Block Number originally contained 25 acres, of which 20 acres had been sold to Sarah Jane Stepney, and the other five purchased by plaintiff's grantor from an unknown person. She contended that "the award having shown on its face the inconsistency of the two title deeds, the arbitrators were

without authority to assume the original layout of Block Number ii." Second, she contended that the arbitrators "did not in consonance with defendant's deed, and buttressed by the grantor's deed, commence the survey from the commencement or starting point indicated in the deed. The board could not have therefore arrived at the conclusion which it did." What has struck us as very peculiar about this report is that, whereas it refers to the inconsistency of the two title deeds of the parties, and states that "the description of bearings in the defendant's supporting title harmonizes more favorably with the boundary lines of adjacent properties," the board is nevertheless unanimous in finding that defendant's one lot is within the bounded area of the plaintiff whose grantor's boundaries do not impliedly harmonize quite as well with adjacent properties. The inconsistency of this reasoning is apparent. We should bear in mind, that according to the deeds made prof ert with the pleadings and which were said to be used by the surveyors, the chain of the defendant's title dates back to the year 1900, whereas that of the plaintiff began in 1913. In other words, the arbitrators should have tried to discover and re-establish the boundaries of the 20-acre plot of land sold in 1900, and then they should have endeavored to relate the metes and bounds in the other deeds in the case to those of this

oldest document. There has been no denial of the defendant's averment that her onefourth of an acre is part of the zo acres acquired by her grantor in 1900, nor is there any showing in the report that the five acres of her adversary is not part of those 20 acres, title of which had been vested in Stepney at some time earlier than the year 1900. The report has merely expressed an opinion of the members of the board, that the plaintiff's five acres are separate and distinct from the 20 -acres out of which defendant's one lot was taken. Not only is there no ground for this assumption of the surveyors, but if this assumption is true, then defendant's

one lot could not possibly be a part of the plaintiff's land when they hold titles in separate pieces of property, even though in the same block. In ejectment it is known that older title always has preference and is given greater consideration; and according to the rules governing the survey of disputed lands, older metes and bounds which designate older boundaries are always preferred. "Where a full and complete description of the subject-matter of a deed or grant is followed by another description in the same instrument, the first description will control, even though the second is equally full and complete." 5 CYC. 914 Boundaries. We are of the opinion that this principle applies not only in respect to descriptions of valid deeds in the same instrument, but also with respect to determination of the better of two boundaries for the same land in dispute where the two boundaries are for property from legitimate sources; and especially would this seem to be so where the older description is not ambiguous or uncertain, or erroneous. It has not been claimed by the arbitrators in their report that the description in the deed executed in 1900 is either ambiguous or uncertain ; on the contrary they have reported that it is in harmony with the boundary lines of other properties in the area. We must have to conclude, therefore, that the metes and bounds in this deed should have controlled the survey and that the starting point shown therein was the proper starting point for the surveyors to have used. Coming back to the question of inconsistency of descriptions in the deeds of the parties, it is interesting to note that the arbitrators have assumed that J. G. Thomas, under whom the plaintiff now holds title, acquired his five acres from an unknown owner. Although there is no showing from whence Sarah Jane Stepney acquired her title to 20 acres in 1900, the report makes no mention as to whether her grantor is known or unknown; and

115 remember, we said earlier in this opinion, that neither of the parties has traced title to the original holder, the Republic of Liberia. The map referred to in the report is not among the documents certified in the records from the court below; but reading this part of the report, one gets the impression that there should be no encroachment of one party's property on the other's. According to the report, Williams' 20 acres is demarcated on the map in green, and Cooper's five acres from J. G. Thomas is in blue. Even though the defendant's quarter of an acre, which she acquired from Williams, is said to be in a shade of the Williams' color--green--and

although the report has concluded that the said quarter of an acre is a part of the five acres--yet it does not show how the light green quarter of an acre could be part of the, blue five acres. Instead of clearing up the dispute, as was the intention of the order for arbitration, the report of the arbitrators seems to have rendered the issues involved more complicated and confusing; and in this respect we are of the opinion that the defendant's objections to the report were well-founded and not without meritorious grounds and should therefore have been sustained. It was the understanding of the parties--and it is so stated in the stipulations signed by and between them-- that the cost of the joint survey should have been born equally by both sides. Notwithstanding this mutual undertaking signed by both parties and ordered by the court, the appellant has complained that the cost of the survey was unilaterally borne by the plaintiff; and she has contended that this could be responsible for the glaring bias shown in the surveyor's report.

When this point was argued here, we inquired of appellee's counsel as to why his client had felt independently authorized to bear an expense which should have been shared by both sides. His explanation was to the effect that when the defendant was asked to contribute her share of the cost of the

survey before it was done, she had refused to do so and that she had also refused to deliver her deed in order to facilitate the survey. We cannot accept this explanation. The signed stipulations of the parties having been made the subject of a court order, any violation of its terms was a deliberate disobedience of those orders for which the violator should have been held in contempt and punished. But this explanation reveals a situation which throws doubt on the thoroughness, if not the fairness, of the work done by the surveyors when it reveals that the defendant refused to submit her deed for the purpose of the survey. It is to be recalled that the report of the surveyors states specifically that ". . . the above-named parties, being armed with their respectives deeds. . . ." terminal points on the ground were examined by the surveyors. We would hesitate to accuse the surveyors of partiality, but we do not hesitate to say that this part of their report, taken in the light of the explanation made by appellee's counsel, appears to be false because, if his explanation is correct, then it is not true that both parties were armed with their respective deeds at the survey. In view of the circumstances, we have no alternative but to conclude that a fair and proper survey was not made. Our statute on arbitration provides as follows : "A copy of an arbitration award shall be served on the parties to the arbitration who shall have not less than four days thereafter to file written objections to the award. The objections may be based on any one or more of the following grounds only: corruption of the arbitrators; gross partiality; want of notice of the time or place of the proceeding; or error of law apparent on the fact of the award." 196 Code, tit. 6, § 1283. We are of the opinion that acts of a board of arbitrators which fail in any respect to exemplify absolute fairness to both sides might suggest suspicion of

corruption on part of its members; and whenever this is the case, the

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a new board appointed. But, be all of this as it may, it does not seem to us that the official plot of this area in Monrovia (Bushrod Island), was ever consulted during this survey. It is our view that in all cases of dispute over real property, the government plot of the area in dispute should be a necessary guide in determining the issues involved. Tt is therefore our considered opinion that the report of the arbitrators has failed to clear up the important point in this case; and it should therefore be set aside. In view of the foregoing, we have no alternative but to reverse the judgment, set aside the arbitrators' report and remand the case to the lower court with the following instructions : i. That the parties replead from the complaint of the plaintiff to allow both sides to trace their respective titles back to the Republic of Liberia. 2. That after the law issues raised in the new pleadings have been disposed of, another board of arbitrators be appointed, the chairman of which shall be a qualified surveyor from the government's office of lands and surveys. 3. That the new board, in their report, state the exact number of acres originally contained in Block Number II and that the said board, in company with the parties on both sides, proceed to the area and there inspect all deeds involved and make the survey accordingly, beginning with that issued earliest in term of years. 4. That the official plot of Bushrod Island, if one is in existence and available, be used as the guide of the survey; and that the arbitrators' report then state clearly whether the defendant's one lot encroaches on plaintiff's five acres or is part of a 20-acre plot acquired from Sarah Jane Stepney. Costs of this case will abide final determination after another hearing in the court below. And it is so ordered.
Reversed and remanded.

Bishop v Moses Dweah [1964] LRSC 45; 16 LLR 108 (1964) (22 May 1964)

AMELIA BISHOP, Appellant, v. MOSES DWEH, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 8, 1964. Decided May 22, 1964. 1. In ejectment, older title has preference and is given greater consideration; and according to the rules governing the survey of disputed lands, older metes and bounds which designate older boundaries are preferred.
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On appeal from a judgment based on a report of arbitrators in an ejectment action, the Supreme Court reversed the judgment and remanded the case for repleading and new trial on issues of law and fact based on a new report of arbitrators.
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MR. JUSTICE PIERRE
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To do this, we will have to begin with the two deeds filed with the defendant's answer. Exhibit B, filed with the answer and forming a part thereof, is a warranty deed from Sarah Jane Stepney to Bill Williams, alias Nabbie, of Kru Town in Monrovia. It was executed on May 21, 190o, and conveys 20 acres of land in Block Number I1 on Bushrod Island. Exhibit A, annexed to the same pleading, is defendant's deed which transferred title in and to a quarter of an acre to her; that is to say, one town lot out of the zo acres her grantor acquired in the year 1900 from Sarah Jane Stepney; and it is dated November 17, 1956. It is on the strength of these two deeds that the defendant-appellant has based her defense in the instant case of ejectment. On the plaintiff's side, profert is also made of two deeds, on the strength of which he claims ownership to five acres of land in the selfsame Block Number i t on Bushrod Island. The older of these two deeds was executed on September 19, 1913, by J. G. Thomas and his wife. It was issued in favor of James W. Cooper and his heirs. His second deed, and the one which transferred title to plaintiff, was issued on March 29, 1948, by Caroline Cooper-Kandakai, heir of the late James W. Cooper. It calls for five acres of land, also in Block Number II on Bushrod Island. Thus it can be seen that neither of these two contestants has traced a chain of title back to the original holder of title to the land--the Republic of Liberia. With this as a background, we come now to review the issues in the case before us on appeal. The plaintiff filed an action of ejectment to evict the defendant from the one-fourth acre which she occupies, on the ground that this one-fourth acre is part of plaintiff's five-acre plot. Pleadings on both sides progressed as far as the defendant's rejoinder and rested. The issues of law were disposed of by Judge Dennis and the facts were by him ruled to trial by jury. At this stage of the case, counsel on both sides decided to submit the

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tive contestants, were found

to be inconsistent. The board thereupon made resort to the respective supporting titles in the reverse order of sequence: that is to say, the plaintiff's supporting title dated 1913, and the defendant's title dated 1900. " (a) As a result of the effort to coordinate the 3· description of metes and bounds in the respective supporting titles with terminal points on the ground, the board discovered that the description or bearings in the defendant's supporting title harmonizes more favorably with the boundary lines of adjacent properties. (b) It is the opinion of the board that Block Number II in its original layout contains 25 acres, 20 acres of which were purchased from Sarah Jane Stepney by Bill Williams in 1900. The remaining five acres were purchased by J. G. Thomas from the unknown owner. (c)

Taking the bearing from the deed of Sarah Jane Stepney's deed to Bill Williams at the southwestern terminal point which is marked by a large tree which was previously designated by the sole heir of Bill Williams, to establish the boundary line between the northern three-quarters, owned by Bill Williams, and the southern quarter owned by J. W. Cooper of Block Number II, later purchased by the plaintiff, Moses Dweh, the attached map shows the location of Bill Williams' 20 acres in green and the five acres of J. W. Cooper in blue. The map shows also the location of the defendant's one lot or one-quarter acre in light green. All buildings in the area are represented in green, including the two buildings of the defendant, which are shown in brown. "4. The board is in unanimous agreement, as indicated on the attached survey plot, that the buildings, as well as the land area of the defendant, fall within the bounded area of the plaintiff. This decision is based upon the boundary description of the original deeds of the parties. "Respectfully submitted, [Sgd.] "J. F. DUNBAR, for plaintiff, [Sgd.] "A. A. AJAVON, for defendant, [Sgd.] "J. K. ANDERSON, for court." The defendant objected to the report of the arbitrators on the following grounds. First, the defendant claimed that the arbitrators had assumed that Block Number originally contained 25 acres, of which 20 acres had been sold to Sarah Jane Stepney, and the other five purchased by plaintiff's grantor from an unknown person. She contended that "the award having shown on its face the inconsistency of the two title deeds, the arbitrators were

without authority to assume the original layout of Block Number ii." Second, she contended that the arbitrators "did not in consonance with defendant's deed, and buttressed by the grantor's deed, commence the survey from the commencement or starting point indicated in the deed. The board could not have therefore arrived at the conclusion which it did." What has struck us as very peculiar about this report is that, whereas it refers to the inconsistency of the two title deeds

of the parties, and states that "the description of bearings in the defendant's supporting title harmonizes more favorably with the boundary lines of adjacent properties," the board is nevertheless unanimous in finding that defendant's one lot is within the bounded area of the plaintiff whose grantor's boundaries do not impliedly harmonize quite as well with adjacent properties. The inconsistency of this reasoning is apparent. We should bear in mind, that according to the deeds made prof ert with the pleadings and which were said to be used by the surveyors, the chain of the defendant's title dates back to the year 1900, whereas that of the plaintiff began in 1913. In other words, the arbitrators should have tried to discover and re-establish the boundaries of the 20-acre plot of land sold in 1900, and then they should have endeavored to relate the metes and bounds in the other deeds in the case to those of this oldest document. There has been no denial of the defendant's averment that her onefourth of an acre is part of the zo acres acquired by her grantor in 1900, nor is there any showing in the report that the five acres of her adversary is not part of those 20 acres, title of which had been vested in Stepney at some time earlier than the year 1900. The report has merely expressed an opinion of the members of the board, that the plaintiff's five acres are separate and distinct from the 20 -acres out of which defendant's one lot was taken. Not only is there no ground for this assumption of the surveyors, but if this assumption is true, then defendant's

one lot could not possibly be a part of the plaintiff's land when they hold titles in separate pieces of property, even though in the same block. In ejectment it is known that older title always has preference and is given greater consideration; and according to the rules governing the survey of disputed lands, older metes and bounds which designate older boundaries are always preferred. "Where a full and complete description of the subject-matter of a deed or grant is followed by another description in the same instrument, the first description will control, even though the second is equally full and complete." 5 CYC. 914 Boundaries. We are of the opinion that this principle applies not only in respect to descriptions of valid deeds in the same instrument, but also with respect to determination of the better of two boundaries for the same land in dispute where the two boundaries are for property from legitimate sources; and especially would this seem to be so where the older description is not ambiguous or uncertain, or erroneous. It has not been claimed by the arbitrators in their report that the description in the deed executed in 1900 is either ambiguous or uncertain ; on the contrary they have reported that it is in harmony with the boundary lines of other properties in the area. We must have to conclude, therefore, that the metes and bounds in this deed should have controlled the survey and that the starting point shown therein was the proper starting point for the surveyors to have used. Coming back to the question of inconsistency of descriptions in the deeds of the parties, it is interesting to note that the arbitrators have assumed that J. G. Thomas, under whom the plaintiff now holds title, acquired his five acres from an unknown owner. Although there is no showing from whence Sarah Jane

Stepney acquired her title to 20 acres in 1900, the report makes no mention as to whether her grantor is known or unknown; and

115 remember, we said earlier in this opinion, that neither of the parties has traced title to the original holder, the Republic of Liberia. The map referred to in the report is not among the documents certified in the records from the court below; but reading this part of the report, one gets the impression that there should be no encroachment of one party's property on the other's. According to the report, Williams' 20 acres is demarcated on the map in green, and Cooper's five acres from J. G. Thomas is in blue. Even though the defendant's quarter of an acre, which she acquired from Williams, is said to be in a shade of the Williams' color--green--and although the report has concluded that the said quarter of an acre is a part of the five acres--yet it does not show how the light green quarter of an acre could be part of the, blue five acres. Instead of clearing up the dispute, as was the intention of the order for arbitration, the report of the arbitrators seems to have rendered the issues involved more complicated and confusing; and in this respect we are of the opinion that the defendant's objections to the report were well-founded and not without meritorious grounds and should therefore have been sustained. It was the understanding of the parties--and it is so stated in the stipulations signed by and between them-- that the cost of the joint survey should have been born equally by both sides. Notwithstanding this mutual undertaking signed by both parties and ordered by the court, the appellant has complained that the cost of the survey was unilaterally borne by the plaintiff; and she has contended that this could be responsible for the glaring bias shown in the surveyor's report. When this point was argued here, we inquired of appellee's counsel as to why his client had felt independently authorized to bear an expense which should have been shared by both sides. His explanation was to the effect that when the defendant was asked to contribute her share of the cost of the

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survey before it was done, she had refused to do so and that she had also refused to deliver her deed in order to facilitate the survey. We cannot accept this explanation. The signed stipulations of the parties having been made the subject of a court order, any violation of its terms was a deliberate disobedience of those orders for which the violator should have been held in contempt and punished. But this explanation reveals a situation which throws doubt on the thoroughness, if not the fairness, of the work done by the surveyors when it reveals that the defendant refused to submit her deed for the purpose of the survey. It is to be recalled that the report of the surveyors states specifically that ". . . the above-named parties, being armed with their respectives deeds. . . ." terminal points on the ground were examined by the surveyors. We would hesitate to accuse the surveyors of partiality, but we do not hesitate to say that this part of their report, taken in the light of the explanation made by appellee's

counsel, appears to be false because, if his explanation is correct, then it is not true that both parties were armed with their respective deeds at the survey. In view of the circumstances, we have no alternative but to conclude that a fair and proper survey was not made. Our statute on arbitration provides as follows : "A copy of an arbitration award shall be served on the parties to the arbitration who shall have not less than four days thereafter to file written objections to the award. The objections may be based on any one or more of the following grounds only: corruption of the arbitrators; gross partiality; want of notice of the time or place of the proceeding; or error of law apparent on the fact of the award." 196 Code, tit. 6, § 1283. We are of the opinion that acts of a board of arbitrators which fail in any respect to exemplify absolute fairness to both sides might suggest suspicion of corruption on part of its members; and whenever this is the case, the

award should be set aside and a new board appointed. But, be all of this as it may, it does not seem to us that the official plot of this area in Monrovia (Bushrod Island), was ever consulted during this survey. It is our view that in all cases of dispute over real property, the government plot of the area in dispute should be a necessary guide in determining the issues involved. Tt is therefore our considered opinion that the report of the arbitrators has failed to clear up the important point in this case; and it should therefore be set aside. In view of the foregoing, we have no alternative but to reverse the judgment, set aside the arbitrators' report and remand the case to the lower court with the following instructions : i. That the parties replead from the complaint of the plaintiff to allow both sides to trace their respective titles back to the Republic of Liberia. 2. That after the law issues raised in the new pleadings have been disposed of, another board of arbitrators be appointed, the chairman of which shall be a qualified surveyor from the government's office of lands and surveys. 3. That the new board, in their report, state the exact number of acres originally contained in Block Number II and that the said board, in company with the parties on both sides, proceed to the area and there inspect all deeds involved and make the survey accordingly, beginning with that issued earliest in term of years. 4. That the official plot of Bushrod Island, if one is in existence and available, be used as the guide of the survey; and that the arbitrators' report then state clearly whether the defendant's one lot encroaches on plaintiff's five acres or is part of a 20-acre plot acquired from Sarah Jane Stepney. Costs of this case will abide final determination after another hearing in the court below. And it is so ordered.
Reversed and remanded.

Lartey et al v Corneh et al [1966] LRSC 44; 17 LLR 403 (1966) (30 June 1966)

BOIMA LARTEY, ALHAJI J. D. LANSANAH, MUSA FON JEH, FRIMA KAMARA, TETEE OF MANDO, et al., Surviving Heirs, Descendants, and People of CHIEF MURPHEY and VAI JOHN, Deceased, of Vai Town, Bushrod Island, Monrovia, Appellants, v. ALHAJI VARMUYAH CORNEH, Attorney in Fact for the People and Tribal Authority of Vai Town, SUNDIFOO SONI, Paramount Chief of Vai Town, and all other Persons Acting Directly or Indirectly for or on behalf of the People and Tribal Authority of Vai Town, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 16, 17, 1966. Decided June 30, 1966. 1. Under the rule of idem sonans, if a name misspelled in a document conveys to the ear a sound practically. the same as the correctly spelled name when properly pronounced, the name as pleaded is a sufficient identification of the person referred to, and no advantage can be taken of the misspelling. A deed executed by the President of Liberia granting certain lands in fee simple to a named chief and tribal residents and "his heirs, executors, administrators and assigns forever" in consideration of "the various duties of citizenship hereafter to be performed" by them must be construed as vesting legal title in the tribal authority as trustee for the tribal residents. An equitable title or right to beneficial occupancy vests in the tribal residents. In such case, the statutory prohibition against alienation of the lands by the trustee constitutes a bar against descent of legal title to the heirs or descendents of the chief named in the deed. Consequently they cannot succeed in an ejectment action against the tribal authority, the incumbent paramount chief, and the tribal residents. 1956 CODE 1 :271.

2.

On appeal from a judgment in favor of defendants on the pleadings in an ejectment action, the judgment was affirmed. Morgan, Grimes and Harmon Law Firm for appellants. 0. Natty B. Davis, Nete Sie Brownell, and Anthony Barclay for appellees.
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MR, JUSTICE SIMPSON delivered the opinion of the

Court. In consequence of written directions to the clerk of the circuit court of the Sixth Judicial Circuit, Montserrado County, sitting in its law division, December term 1963, a writ of summons was issued to the present appellees as defendants in an action of ejectment instituted by the present appellants.

The complaint alleged that the plaintiffs were the direct heirs of Chief Murphey and Vai John, deceased, of Vai Town, Bushrod Island, Commonwealth District of Monrovia, Montserrado County, who was the owner in fee simple of a certain 25-acre tract of land by virtue of "an aborigine land grant deed from the Republic of Liberia to the said Murphey, the residents of Vai Town (Vai John's People), and that title had descended to plaintiffs by inheritance, as appears more fully by a copy of the said aborigine land grant deed, hereto annexed marked Exhibit A and made a part of this complaint." The complaint also alleged that the defendants were unlawfully and arbitrarily withholding the said parcel of land from the plaintiffs without any color of right whatsoever. In a special appearance, the defendants questioned the jurisdiction of the court over their persons. In an answer subsequently filed, the defendants contended that the plaintiffs were not the proper parties to bring an action of ejectment for recovery of property belonging to the Vai Community, commonly known as Vai Town. It was the defendants' further contention that the tribal authorities of Vai Town were the proper parties to maintain an action in respect of the subject property, predicated upon the fact that the fee for these communal holdings was vested in the aforementioned tribal authorities as trustees. As an additional plea in bar the defendants contended that the deed made profert by the plaintiffs conveyed a communal holding granted by the Republic to Chief Murvee Sonii and residents of Vai Town (Vai John's

People), and that the name "Murphey" constituted but an incorrect spelling of the name of the chief, Murvee Sonii, who was commonly called Murphey. The defendants asserted that this aboriginal grant was not intended to devolve on the heirs of Vai John but was intended to be enjoyed in common by all the residents of Vai Town under the supervision and administration of the tribal authorities. In addition to the above-named pleas in bar there were certain pleas in abatement to the effect that not all of the defendants were named in the complaint or in the writ of summons; instead, the words et al. were inserted, which constituted a bad plea. Lastly, it was averred in the answer in the court below that Vai John was never seized of the subject property, since the grant from the Republic was made in 1906 whereas Vai John had passed unto the great beyond during the year 1899, quite 6 years prior to the alienation of the fee by the Republic to Murvee Sonii and the residents of Vai Town. The pleadings rested with the rebutter as filed on the 4th day of November, 1963, and thereafter, on the 15th day of May, 1964, his Honor John A. Dennis, then presiding by assignment over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, ruled on the issues of law. In his ruling, the judge held that under the principle of idem sonans, Murphey was but a corruption of Murvee, and as both names sound alike, they refer to one and the same person.
This Court is of the opinion that that particular portion of the trial judge's ruling was in consonance with law. This Court further takes cognizance of the fact that Murvee is a name strange to the English language, the same being Vai in derivation, whereas Murphey constitutes a name that uses English language as its source of origin. The next point touched upon by the trial judge which we feel

ourselves compelled to deal with here relates to the question of possession of the fee. It was claimed by

the appellants in their complaint that they were the direct heirs of the late Murphey and Vai John and that title to the subject property had descended to them by inheritance. To buttress this contention they made profert of a document over the signature of President Arthur Barclay entitled "Aborigines Deed." We find it relevant to quote the following portion of this deed :

"To all to whom these presents shall come:

"Whereas it is the true policy of this Government to induce the aborigines of the country to adopt civilization and to become loyal citizens of this Republic; and whereas one of the best means thereto is to grant lands in fee simple to all those showing themselves fit to be endowed with the rights and duties of full citizenship as voters; and whereas Murphey and the residents of Vai Town (Vai John's People) have shown themselves to be persons fit to be entrusted with said rights and duties.

"Now, therefore, know ye that I, Arthur Barclay, for and in consideration of the various duties of citizenship hereafter to be legally performed by the said Murphey and the residents of Vai Town, I, Arthur Barclay, President of the Republic of Liberia, for myself and my successors in office, have granted, and by these presents do give, grant, and confirm unto the said Murphey and the residents of Vai Town, his heirs, executors, administrators, and assigns forever, all that piece or parcel of land situate, lying and being in the Island Bushrod in the County of Montserrado and bearing in the authentic records of said Bushrod Island the number one (r) (1st range) and bounded and described as follows. . . ." This deed clearly shows that the grant was intended for both Murvee and the residents of Vai Town, since they had shown themselves fit to be entrusted with certain rights and duties, amongst which was the basic right of franchise which could only be exercised by one possessing

real property in pursuance of Article I, Section Tr of the Constitution. Having established this, let us now have recourse to our Aborigines Law as same relates to tribal lands :

"Each tribe is entitled to the use of as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right to the possession of such land as against any person whomsoever. "The President is authorized upon application of any tribal authority to have set out by metes and bounds or otherwise defined and described the territory of the tribe thus applying. A plot or map of such survey or description shall be filed for reference in the archives of

the Department of State within six months after the completion of such survey. The omission of a tribe to have its territory so delimited shall not, however, affect in any way its right to the use of the land." 1956 CODE I :270. "The interest of a tribe in lands may be converted into communal holdings upon its application to the government. The proposed holding shall be surveyed at the expense of the tribe making the application. The communal holding shall be vested in the members of the Tribal Authority as trustees for the tribe, but the trustees shall not be able to pass title in fee simple in such lands to any person whomsoever." 1956 CODE I :271.

"If a tribe shall become sufficiently advanced in civilization, it may petition the government for a division of the tribal land into family holdings. On receiving such a petition, the government may grant deeds in fee simple to each family of the tribe for an area of twenty-five acres." 1956 CODE :272. The above three sections, in varying extents and for different purposes, relate to interests in real property as owned by those of our compatriots who have been desig-

nated aborigines by our Aborigines Law. The sections establish a jus in re to public land by tribes to an extent necessary for farming and other enterprises by the particular tribe. Section 270, however, gives only beneficial occupany to lands publicly owned ; the fee remains in the Republic. Section 271 relates to ownership of land where both the legal and equitable titles have been granted by the government to the tribe. Here, although the total fee passes at the time of the alienation thereof by the state, the legal title thereupon vests in the tribal authority as trustees. The equitable title or the right to beneficial occupancy of the property vests in the people of the tribe resident in the particular area. It therefore follows that where the statute imposes a total restriction upon a transfer of the fee by the tribal authority to any person or persons whatsoever, it is impossible for the fee to be passed by descent as to make available the right to maintain an action at law against the residents who in reality are the cestui que trust. All of this is in harmony with the legal maxim jus descendit et non terra.

Obviously, Section 272 is here inapplicable. Reference to the deed as signed by President Arthur Barclay clearly shows that the grant was not a division of tribal land into family holdings but was in effect the grant of a communal holding to a certain class of people. The common law, in speaking of defenses to actions of ejectment, has this to say : "Generally speaking, whatever shows that the plaintiff is not entitled to the immediate possession of the premises claimed constitutes a good and valid defense in an action to recover the possession. Since the plaintiff in an action of ejectment must, as a general rule, recover, if a recovery may be had, on the strength of his own title, and not from the weakness or want of title of his adversary,

the defendant, unless estopped from controverting the plaintiff's title, may rest on his

possessions
and attack the title under which the plaintiff claims. Though offering no evidence of title in himself, he may in any legitimate
manner assail or destroy the title of the plaintiff and thereby prevent a judgment in his favor." i8 AM. jUR. 50-51 Ejectment § 52.

The above cited law is in harmony
with the several pronouncements of this Court to the effect that the immediate right to possession of property to the exclusion of
the defendant constitutes an indispensable requisite to the maintenance of an action of ejectment. Additionally, where two or more
parties are possessed of a common interest in and to a particular piece of property, and there is no evidence to show that one party
has granted unto the other special possessory rights in respect of his common interest, an action at law is not maintainable by one
of the said tenants as against his cotenant in possession. We have carefully explored the other portions of the trial judge's ruling
on the issues of law presented by the parties in their pleadings and have been unable to find any reversible error contained in the
same. In our view, the judgment of the trial judge dismissing the complaint and subsequent pleadings possessed sound basis in law;
and therefore the same is hereby affirmed with costs against appellants. And it is hereby so ordered.
Judgment affirmed.

Caranda v Fiske et al [1958] LRSC 3; 13 LRSC 154 (1958) (25 April 1958)

D. C. CARANDA, Relator-Objectant, v. His Honor, I. VAN FISKE, Commissioner of Probate, Montserrado County, J. D. KENNEDY, Acting
Clerk, Monthly and Probate Court, Montserrado County, MICHAEL JOHNSON, A. G. WILLIAMS, D. F. TOLBERT, HOWAH GBAPPY, W. D. RICHARDS
and his Wife, D. A. RICHARDS, GABRIEL TAPLA JUWDA, RACHEL RICHARDS-BANKS and PRESLEY DUNBAR, Respondents.
SUBMISSION ON CHARGES OF
JUDICIAL MISCONDUCT IN PROCEEDINGS BEFORE COMMISSIONER OF PROBATE, MONTSERRADO COUNTY.

Argued March 26, 1958. Decided April 25,
1958. 1. It is improper for the Commissioner of Probate to admit to probate a document of title to land where such title is under
dispute in an appeal pending before the Supreme Court. 2. It is improper for the Commissioner of Probate to admit to probate a document
of title where a caveat has been filed imposing a stay. 3. It is improper for the Commissioner of Probate to adjudicate a controversy

respecting a document of title wherein he is named as grantor. 4. A caveat is a notice not to do an act, given to some officer, ministerial or judicial, by a party having an interest in the matter.

Relator, as objectant to probation of a deed in the court below, entered exceptions to admission of the deed to probate, and thereupon appealed to this Court, and filed a submission alleging the commission of irregularities by respondents in the course of the objection proceedings. This Court found that the record of the proceedings below disclosed gross irregularities meriting censure of the respondent Commissioner of Probate.

D. C. Caranda, relator-objectant,
pro se. Joseph F. Dennis for respondents.
MR. JUSTICE PIERRE delivered the opinion of the Court.

During the October, 1957, term of this Court, among the cases heard and determined was that of D. C. Caranda versus W. D. Richards, et al., proceedings of objection to the probation of warranty deed for Lot Number 11, Monrovia. This case had originated in the Probate Court, and was presided over therein by His Honor, I. Van Fiske, Commissioner of Probate for Monrovia. The records in the case revealed that, conditioned upon a caveat filed in said court by Counsellor D. C. Caranda, objections to the probation of a warranty deed were entered by him. Hearing of the objections and the resistance thereto was had, and the Probate Commissioner dismissed the objections and ordered the deed probated. To this ruling Counsellor Caranda took exceptions and announced an appeal to the Supreme Court. The Commissioner approved both the bill of exceptions and the appeal bond of the objectant; but when the notice of appeal was requested to be issued and served, the Commissioner ordered the clerk not to issue for service; and though objectant Caranda made several requests in writing, the Commissioner still refused to have the clerk issue this document necessary for the completion of the objectant's appeal. It was not until after the expiration of five months following the date of his ruling that he ordered the notice of appeal issued and the records forwarded to the Supreme Court. Although we condemned this act of the Commissioner as appearing to be deliberately intended to frustrate the objectant's appeal, we would not overlook or condone the objectant's negligent failure to have taken steps to compel the Commissioner to have his notice of completion of appeal issued and served within proper legal time, so as to have given this Court appellate jurisdiction over the cause. · It was during the argument of the above case that relator, then objectant referred to certain acts of the respondent Commissioner in the handling of the objection proceedings, which he felt were glaringly prejudicial to

his interest involving vested property rights, irregular, and calculated to defeat the ends of justice.
Because we did not feel that reference to these acts could have formed a part of the case then being heard--since no record had been made profert to support the references thereto--we refused to entertain argument on these alleged acts of irregularity at that time; so we made no reference to them in our opinion. Since then, relator Caranda has filed a submission in which he complained of these alleged acts of the Probate Commissioner, and has also filed documentary evidence of the truthfulness of his allegations. This is the origin of the case now to be determined. The submission filed by the relator against the Commissioner of Probate, and the other respondents is to the effect that, some time in the year 1952, the relator, claiming fee simple title to a certain parcel of land in Monrovia, being Lots Numbers II and 12, situated in the Fair Grounds area of Monrovia, filed a caveat in the Probate Court, thereby intending to question the validity and stop the passage of any document affecting the said lots of land. According to the records in this case, that caveat is still filed in the Probate Court. As a result of the stay imposed by the said caveat, relator was informed, and filed objections to the probation of a warranty deed to one Gabriel Tapla Juwda, one of the respondents herein, for a half lot of land in Lot Number II, said lot being part of the property covered by the caveat. As has been said before herein, the objections, with the resistance thereto, and with other pleadings, were passed upon by the respondent Commissioner who, in a ruling handed down on April 3, 1956, dismissed the said objections and ordered the deed probated. The relevant record and ruling are, word for word, as follows : "On June 6, 1955, the Commissioner of Probate for Montserrado·County directed the clerk of court to request the Secretary of Public Works and Utilities to survey farm Lots Numbers 7, 8, 9, 1o, II, and 12, Half-

way Farm, Monrovia, growing out of an objection filed by D. C. Caranda, objectant, versus W. D Richards and D. A. Richards his wife, and Gabriel Tapla Juwda, Rachel Richards-Banks and Presley Dunbar respondents. On February 23, 1956, the Department of Public Works and Utilities submitted a report and a map which was made and drawn by surveyor B. Joseph K. Anderson of the Bureau of Surveys, Department of Public Works and Utilities. Accordingly, on March 9, the court circularized the names of all persons owning land within said vicinity. After said publication, Counsellor D. B. Cooper announced the interest of the Prout's heirs, in which he said the said heirs owned the oldest title for said property. The surveyor being present, the Court would at this time request him to explain his map and the survey, and also to inform the court if he was furnished any deed by objectant D. C. Caranda, the date and year of said deed. "At this stage

the report of the Department of Public Works and Utilities having been read, the objection filed by Counselor D. C. Caranda against Tapla Juwda's deed is hereby overruled and said deed ordered probated and registered. Since this court is incompetent to try title, if Counsellor Caranda bases his 1946 title upon the report of the Bureau of Surveys, the proper forum would be the Circuit Court which is clothed with the power of trying title; and it is hereby so ordered." This ruling seems a bit strange when it admits the Probate Court's lack of jurisdiction over title to realty, yet relies upon and approves the making of a survey and map of the land in dispute, and then finally dismisses the objection for the implied reason that the 1946 title of the objectant could not stand against older title appearing in issue. However, this opinion is not intended to review this phase of the matter, which belongs to the province of another tribunal. It was to this ruling of the Probate Commissioner that

the objectant took exceptions and announced an appeal to the Supreme Court. Perfection of this appeal was delayed for five months by the respondent Commissioner's orders to the clerk not to issue objectant's notice of appeal. Whilst the appeal was still pending, and before it could be heard by the Supreme Court, the respondent Commissioner proceeded to pass several warranty deeds related to the property covered by the caveat filed in his court, not including the deed which was the basis of the objections appealed for final determination by the appellate court. Listed below are three of the deeds in question, which were appended to the submission as exhibits. Exhibit "D" : Warranty deed from Rachel Banks and W. D. Richards to Roy V. Hunter for one-fourth acre of land in Lot Number 12. The date of conveyance is not inserted, but it is shown to have been probated on May 17, 1956, just one month and fourteen days after appeal from the ruling had been granted. Exhibit "E" : Warranty deed from I. Van Fiske to Peter W. Doe for one-eighth acre of land in Lot Number 12. The deed is dated and was probated on October i i, 1956, six months and a few days after his ruling which was appealed from, and before the appeal could be heard. Exhibit "F" : Warranty deed from Rachel Banks and W. D. Richards to D. F. Tolbert for one-sixteenth acre of land in Lot Number i 1. The deed is dated July i i, 1946, and was probated on the i3th of August of the same year ; that is to say, just three and four months respectively after his ruling which was still on appeal. Among the points of striking interest raised by the re-

lator in his submission is one which we regard to be graver than anything else complained of therein, and is contained in Count "D" of the said document. For the benefit of this opinion we will quote this count, word for word. It reads as follows : "That, during

the pendency of the appeal, two of the respondents-appellees, Rachel Richards-Banks and W. D. Richards, having given the Commissioner of Probate Fiske a portion of the property in controversy, passed title accordingly; and he, in turn, sold same to other persons, and probated the deed in his court; and your relator makes profert of Exhibit 'E' in support thereof." Because of the seriousness of the above charge, we particularly inquired of the respondent Commissioner's counsel, during the argument, as to the truthfulness of the allegation. He had denied it in his returns, and did so again in answer to our question. He stressed the point that it was not during the pendency of the case that the Commissioner had acquired the property from the respondents, but that it was in the year 1954. Perhaps it did not appear material to him that, in 1954, the caveat covering the property in question had already been on file for two years in the Probate Court. He could not deny, however, that the Commissioner had passed-title to a piece of property in controversy before him, and before the appellate court had finally decided the issue respecting property. It is peculiar that the Commissioner made no effort to support his said denial with a copy of the deed giving him the title which he later passed on to his grantee even though the other side had made profert the transfer deed passing the title, which he signed and probated during pendency of the appeal. There is, therefore, an absence of proof in the premises, beyond the fact that it was most irregular for the Commissioner to have ( ) , probated a document of title to land in an area where all of the property involved is in dispute and the subject of appeal before

the Supreme Court; and (a), probate a document whilst a caveat imposing a stay remained filed in his court; and (3) , sit on the passing of a document as Probate Judge, and at the same time be named as grantor in the said document. "When a Judge of a Monthly and Probate Court is interested in any matter pending before the Court over which he presides, the clerk of such Court shall summon the justice of the peace or stipendiary magistrate who has seniority in tenure in that jurisdiction to hear and determine such matter." 1956 Code, tit. 18, § 65. We do not think it is necessary to dwell any longer on the legality of the relator's contention on this point, but will observe that knowledge of the above-quoted statute, and considerations of propriety as well, should have dictated a different course of action on part of the Probate Commissioner. As we have said before in this opinion, the relator herein, as objectant in objection proceedings upon probation of the deed, was under no legal disability which prevented him from taking the proper step at the time which would have compelled the Commissioner of Probate to perform a duty mandatorily his. The relator's act of negligence in this regard deprived us of an opportunity of passing upon certain irregular phases of the Commissioner of Probate's work in relation to the several documents mentioned herein which were probated without regard for an existing caveat filed in his court. It is our opinion, however, that the relator is not without adequate legal remedy insofar as testing the validity of the title

to these pieces of property is concerned ; therefore we not make any further comments on these documents, which have been irregularly probated, and which seem to have passed title to the property in dispute. We now address ourselves to the legal correctness or incorrectness of the acts of the respondent Commissioner in disregarding a caveat filed to stay the probation of documents relating to lands mentioned in the said caveat.

We have already dwelt upon the illegality of the Probate Commissioner's sitting on the probation of a deed in which he was named as grantor; and we will say no more on that score, save to advise that it would be well for him to perform his duties in future in strict conformity with the statutes controlling such duties. He is without legal authority to act in any manner, in the performance of any phase of his several duties, not specifically laid down in the laws of the land. We come now to consider the functions of a caveat, and what effect it should have on documents relating to lands mentioned therein. According to Judge Bouvier's definition of the word, it is : "A notice not to do an act, given to some officer, ministerial or judicial, by a party having an interest in the matter.. . . It is also used to prevent the issue of land patents ... and where surveys are returned to the land office, and marked 'in dispute,' this entry has the effect of a caveat against their acceptance. . . ." BouviER, LAW DICTIONARY Caveat (Rawle's 3rd rev. 1914) . It has also been defined as follows : "A formal notice, or caution, given by a party interested, to a court, judge, or public officer, against the performance of certain judicial or ministerial acts ; a caution, entered in the spiritual court to stop probates, administrations, faculties, and such like, from being granted without the knowledge of the party that enters." 6 CYC. 706 Caveat. Thus it is clear that authorities are generally agreed as to what constitutes the office of a caveat; and in view of everything that has happened in this case, the respondent Commissioner must have been conversant with the functions of this document, since he undertook to inform the caveator of the presentation of the deed for probation. So that, knowing that the caveat should have stopped all documents relating to the lands in Lots Numbers II and 12, he correctly informed the caveator of respondent Juwda's intention to probate a deed for a portion of the said lands. The question then arises: What prevented him from act-

ing in the same manner with respect to the other deeds subsequently presented? Another gross irregularity committed by the Probate Commissioner in respect to the passage of these documents is that they were probated whilst an appeal questioning the probation of a deed calling for land covered by the caveat was still pending before the appellate

court. The fact that he undertook to ignore the appeal he had granted in the objection proceedings throws into sharp relief his act of ordering the clerk of
court not to issue the notice of appeal, which would have enabled the appellate court to pass upon his work. That is behavior unbecoming any Judge. We cannot in words sufficiently forceful condemn the many acts of prejudicial and apparently deliberate irregularity committed
by the Commissioner of Probate, as shown by the records and documents made profert with
and complained of in the submission filed
by the relator. We do not feel that other persons named in the submission as parties respondent could be made to answer for the

many illegal and improper judicial acts of the respondent Commissioner; hence we have excused them from responsibility and blame.
In view of objectant's neglect to have employed process within his reach to compel the Commissioner to perform his legal duty, which
would have enabled this Court of last resort to pass upon the irregularity of the Commissioner's refusal to order issuance of the
notice of appeal, we find ourselves powerless to recall the several deeds probated by the Probate Commissioner whilst the caveat
remained on file in the Probate Court. We give this ruling however, without prejudice to the relator's right to test the validity
of the title these deeds have sought to pass by proper and adequate legal remedy before a court of competent jurisdiction. In view
of the foregoing, we are of the opinion that no other deed or document relating to any of the lands covered by the caveat now filed
in the Probate Court should

be allowed to be probated whilst the said caveat remains so filed ; and this is our order. The Commissioner of Probate should realize the magnitude of his illegal acts, as reviewed herein, and give no
further cause for similar charges to be made against him in future. Our legal inability to reverse the probation of the several deeds
passed in disregard of the filed caveat does not legalize their probation or excuse his acts of illegality in manner of their passage;
nor does it justify his improper act of presiding over the probation of a deed in which he is grantor; nor can it condone the irregularity
of disregarding an appeal granted by him, and which was still pending when the deeds were probated. Because we are of the opinion
that the illegal and improper acts of the Probate Commissioner have occasioned these proceedings, in which the relator seeks judicial
redress; and because we also feel that he is legally entitled to the same, it is our ruling that all costs of these proceedings should
be borne by the respondent Commissioner; and it is so ordered.

Coleman v Demery [1965] LRSC 23; 16 LLR 319 (1965) (1 January 1965)

SUPPLEMENT THREE CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
JOANNA E. COLEMAN, Appellant, v. MARY E. SCHWEITZER
and REBECCA A. DEMERY, Heirs of DANIEL B. WARNER, Deceased, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

1. A trial court's charge to the jury must be reduced to writing at a party's request. 2. Title to real property
cannot be conveyed by mere delivery by the grantor to the grantee of a deed of prior conveyance without the execution of a new deed
from the grantor to the grantee.

On appeal, a judgment on a jury verdict in favor of plaintiffs in an ejectment action was affirmed.

PER CURIAM.
This was an action of ejectment brought in the Circuit Court of the First Judicial Circuit, Montserrado County, at its
May, 1924 term, by Mary E. Schweitzer and Rebecca A. Demery, plaintiffs below, now appellees, against Joanna E. Coleman, defendant
below, now appellant. The case was tried at the February term, 1926, of said circuit court and resulted in a verdict and judgment
in favor of plaintiffs. Thereupon the defendant, being dis-

satisfied with said verdict and judgment,
brought the case up to this Court for review by a bill of exceptions. The facts, so far as can be gathered from the records of the
case, appear to be as follows. Jacob Warner, grandfather of the appellees, was possessed during his lifetime of a piece of **land** in
the City of Monrovia, described as Farm Lot Number 13 and containing ten acres, one quarter-acre of which he reserved for a burial
ground. On April 8, 1836, the said Jacob Warner and his wife Mary Warner, for a consideration, made and delivered to their son, Daniel
Warner, father of the appellees, a mortgage deed for said piece of **land together with a piece of land** containing ten acres in the
settlement of Caldwell. This mortgage was evidently redeemed because, at the death of the said Jacob Warner, it formed a portion
of his estate and was divided into 40 lots, each containing about a quarter of an acre. Meanwhile one half acre was sold to Samuel
Benedict and plots of one quarter of an acre each were sold to John Stewart, D. B. Brown, John N. Lewis and William Curl, respectively.
The administrators of the estate of Jacob Warner, in their deed to William Curl described his plot as being Lot Number 24 for which
the said Curl paid the sum of $25. On the death of the said William Curl, Anthony D. Williams, administrator of his estate, sold
said **land to John H. Chavers, describing it as being the 24th part of a plot of land** formerly belonging to Jacob Warner and containing

ten acres with the exception of a small reserve for a family burial ground. On the death of John H. Chavers, his widow Henrietta Chavers, executor of his estate, sold said piece of **land to Thomas W. Howard, Sr., from the sum of $14, said land** being described as in Lot Number 24 and being the 24th part of a plot of **land** formerly belonging to Jacob Warner, deceased, and containing ten acres, with the exception of a small reserve for a family burial ground. The said deed to Thomas W. Howard, Sr., came into

possession of Joanna E. Coleman, the present appellant, who claimed title to the said ten acres of **land** with the exception of the quarter acre reserved for the Warner burial ground alleging that the said **land** was given as a birthday present to her brother, Thomas W. Howard, Sr., deceased. She proceeded to dispose of a portion of said **land** and claimed ownership of the remaining portion; hence this action of ejectment. · There are ten points in the bill of exceptions but most of them are without weight. The points which claim our attention are as follows : "4. Because that before defendant began her argument to the jury, she asked Your Honor to reduce your charge to writing which request, although supported by law, Your Honor neglected to do. "5. Because Your Honor denied defendant's motion for a new trial when the verdict was not supported by evidence. "6. Because Your Honor on March 7, 1928, rendered final judgment in favor of plaintiff.
With regard to the fourth point we will observe that the judge of the court below erred in neglecting to reduce to writing his charge to the jury. This was error on the part of the court, as was observed in the case the judge of a court is bound to reduce his opinion to writing when requested by either party. The court did not err in denying the motion for a new trial because, in our opinion, the evidence clearly supported plaintiffs' claim to property in dispute and the jury could not have legally arrived at any other conclusion.
To recapitulate the evidence in the case, we find as follows. Farm Lot Number 13 was owned by Jacob Warner, grandfather of appellees. Said **land** was divided into 40 quarter-acre lots, one of which was reserved for a family burial ground. Some of the said lots were sold

at various times, either by the owner or by D. B. Warner and Charles Butler, administrators of the estate : that is to say, two lots to Samuel Benedict; one lot to John Stewart; one lot to D. B. Brown; one lot to John N. Lewis ; one lot to William Curl, being the Lot Number 24, sold by the administrators of his estate to John H. Chavers and subsequently by the administratrix of the estate of John H. Chavers to Thomas W. Howard, Sr., whose heirs are at present entitled to said lot.
One lot was sold to D. B. Brown. The remainder of the lots became the property of Daniel B. Warner, father of the appellees, from

whom they inherited said property. On the other hand, the appellant has produced no evidence to support her claims and has shown not even a proper title to said piece of **land** or any portion of it. Her claim to the property is on the ground that T. W. Howard, Sr., handed the deed to T. W. Howard, Jr., as a birthday present, and she inherited it from the latter is untenable, because property is not transferred in that manner, but by duly executed deed from the grantor to the grantee, probated and registered. The evidence of D. E. Howard, one of the heirs of T. W. Howard, Sr., tends to show that the claim of the defendant to the property in question is supported neither by law nor the facts of the case. Respecting the quantity of **land** conveyed in the deed to William Curl, we will observe that it is commonly the habit of persons transferring a part of the **land** owned by them to insert in the transfer deed the courses and boundaries of the whole site, mentioning the fraction of the **land** transferred. This appears to have been the case in the matter at bar. The deed, however, clearly shows that the amount of **land sold to William Curl, was a 24th part of the land** in question which was doubtless intended for one of the plots in Lot Number 13. The position taken by the plaintiffs that the decree set up by defendant changing the number 24 to 13 has neither

force nor effect, while legally sound, will have no weight in the case as the circumstances clearly show that the **land** sold to William Curl, was included in Lot Number 13, as it mentioned the family burial ground in the said deed. In view of the foregoing, we are of the opinion that all of the remaining portion of Lot Number 13, hereinbefore described, not legally sold is the property of the appellees. The judgment of the court below should therefore be affirmed, appellant to pay all costs of the action. Affirmed.

Hoff v Senwahn et al [1983] LRSC 83; 31 LLR 321 (1983) (8 July 1983)

EDWARD D. E. HOFF, Appellant, v. **BOIMA SENWAHN , ALHAJI MOMDU SWENWAHN,** and **THE PEOPLE OF TOSO TOWN,** Tombay Chiefdom, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Heard: June 9, 1983. Decided: July 8, 1983.

1. The insertion of two venues in a single affidavit, one before the justice of the peace and the other before the circuit court, does not invalidate the affidavit, but is rather a mere surplusage. It is error, therefore, for a trial judge to dismiss a defendant's answer on that ground.

Growing out of a dispute over a parcel of **land** situated in Grand Cape Mount County, ownership to which was claimed by the appellant and the appellees, the appellees instituted an action of ejectment against the appellant. Following the filing of the answer in the case by the appellant, the appellees filed a motion to dismiss the answer on the ground that the affidavit attached to same was venued in the circuit court and before the resident circuit judge. The trial judge agreed with the appellees and dismissed the answer. A trial was held in which the appellant claimed that the judge overruled most of the main defenses raised by him, and that he was therefore deprived of his right to due process of law. Following the presentation of the evidence, the jury returned a verdict in favour of the appellees. Judgment was rendered thereon, and an appeal announced by the appellant to the Supreme Court.

The Supreme Court, agreeing with the contention of the appellant that the trial judge had erred in dismissing his answer on the ground that the affidavit attached thereto was defective, and consequently ruling out his main defenses, reversed the judgment of the trial court and remanded the case for a new trial.

The Court held that the fact that appellant's affidavit inserted in one corner that the case was venued before the circuit court and before the resident circuit judge was mere surplusage and could form a basis for invalidating the affidavit and the answer. The Court, having concluded that there was proper basis for reversal of the judgment of the trial court, ordered a new trial beginning with the disposition of the law issues.

M Fahnbulleh Jones appeared for the defendant/appellant. Clarence E. Harmon appeared for the plaintiffs/appellees.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Appellant appealed from a judgment of the Fifth Judicial Circuit Court, Grand Cape Mount County, rendered in favour of appellees, plaintiffs below, in an action of ejectment instituted by appellees before that court during its February 1979 Term. Predicated upon the aforesaid judgment, from which an appeal was announced, appellant filed, within the time allowed by law, an approved bill of exceptions praying for a reversal of the said judgment. The case is therefore before this Court for review.

An examination of the records certified to this Court concerning the case revealed the following facts: Appellant asserted that he is the owner of the ten acre plot of **land claimed by him and that he had been occupying said land** notoriously, ostensibly and continuously, and had so enjoyed said **land** without any molestation or interruption since 1895 or thereabout; and that since then he had made conveyances to either purchasers or interested parties.

Appellees, on the other hand, averred that for more than five generations the people of Toso Township had lived on the disputed **land**, but without title deed.

Appellees, however, indicated that they were advised to be title conscious and to acquire deeds for the **land** or lands they occupied at a Tribal Council in Robertsport, Grand Cape Mount County, in 1977. The people of Toso Township thereafter obtained the necessary legal

instruments for the acquisition of deeds for the two thousand acres of **land** they occupied and claimed to own. Other facts showed that the appellees filed an action of ejectment against the appellant for allegedly occupying and withholding ten (10) acres of **land** illegally and without any justification. An examination of the records also revealed that the ten (10) acres allegedly occupied illegally were part and parcel of appellees' 2,000 acres by virtue of a public **land** sale deed executed and signed by the late President William R. Tolbert, Jr., on the 12th day of November, 1976, probated on the 27 th day of May, 1977 and registered subsequently. The **land** in dispute is situated at the eastern side of Lake Piso, northeast of the City of Robertsport in Grand Cape Mount County.

An inspection of the records revealed further that the public survey of the two thousand acres of **land** was conducted and consideration given prior to the issuance by the government of the public **land** sale deed to the tribal people of Toso Township and Tombay Chiefdom through their paramount chief.

We also observed from the records that subsequent to the execution of the public **land** sale deed by the late President on the 12th day of November 1976, a caveat was filed by one A. Dondo Ware, Sr., on the 27th of November, 1976, against the probation of the said deed in his dual capacity as a title holder and counsel for the caveator, among whom was the appellant in these proceedings.

Appellant contended that the caveators were not informed when the deed was presented to enable them to file objections. The records, however, showed that the deed was probated and registered six months thereafter. The records further showed that between the time of probation and the time of filing this case the appellant succeeded in negotiating the sale of the ten acres of **land**, allegedly belonging to him in fee simple from his great ancestors, to the Government of Liberia for the construction of a government hospital in consideration of which the appellant received $10,000.00 (Ten thousand Dollars).

This purported sale of the ten (10) acres of **land** by the appellant sparked off a bitter animosity and protests from the people of Toso Township and Tombay Chiefdom. It was in consequence of the foregoing transaction that this action of ejectment was filed to oust and evict the appellant from that portion of **land** constituting the ten acres, apparently lying within the two thousand acres, a portion of which the appellees claimed to be part and parcel of their 2,000 acres.

The issue in this case is which of the parties have a paramount title deed to the **land** under dispute. This issue will be disposed of eventually. The synopsis of appellant's seventeen-count bill of exceptions is that he did not have his day in court as he should have, or as required by law. He claimed that certain vital aspects of his main arguments were overruled by the trial court judge, which deprived him of the right to appropriately defend himself. He also asserted and the records also revealed that judgment was rendered in favour of the appellees without their having properly introduced sufficient evidence to substantiate their claim.

The summary of the several controverted issues of mixed law and facts disclosed by the records in this case cannot be properly resolved because of the abatement of the entire answer of the

appellant by the trial court. We have therefore focused our attention only on the ruling on the motion to dismiss.

The appellees raised the issue of defective affidavit because on the right of it, the affidavit was shown to be venued in the Fifth Judicial Circuit, Grand Cape Mount County, before the resident circuit judge.

On the left corner of the same affidavit, it was shown to be venued in Grand Cape Mount County, and it was sworn and subscribed to before a justice of the peace, Samuel K. Massallay, who was commissioned as such for the said County.

The unique controversial issue to be decided is what is the legal effect of the venue of the affidavit in the Fifth Judicial Circuit Court before a resident judge of that court. It is clear on the face of the affidavit that on the left corner of the said document, it is shown to be venued in Grand Cape Mount County, and that it is signed by a justice of the peace of that County. The affidavit also contained the exact title of the case. Given these factors, it is our opinion that the insertion of the venue in the Fifth Judicial Circuit Court for Grand Cape Mount County and before the resident circuit judge, are mere surplusage and do not invalidate the affidavit. Brown et al. v. Allen et al., 2 LLR 113 (1913); BLACK'S LAW DICTIONARY 1612.

The ruling of the trial judge overruling the answer of the appellant, being erroneous, the same is hereby reversed. The case is remanded to the court of origin for proper disposition of the issues of law raised in the pleadings in conformity with this opinion.

The Clerk of this Court is therefore ordered to instruct the judge presiding over the Fifth Judicial Circuit to resume jurisdiction and proceed with the case in accordance with this opinion. Costs to abide final determination of the case. And it is hereby so ordered.

Judgment reversed; case remanded.

Bestman et al v Dunbar et al [1969] LRSC 14; 19 LLR 207 (1969) (7 February 1969)

TOM N. BESTMAN, et al., trustees of the BASSA BROTHERHOOD I & B SOCIETY, Appellants, v. HON. S. BENONI DUNBAR, SR., Circuit Judge, Sixth Judicial Circuit, Montserrado County, and D. R. HORTON, Appellees. APPEAL FROM RULING OF JUSTICE PRESIDING IN CHAMBERS DENYING WRIT OF ERROR TO CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT.

Argued October 16, 1968. Decided February 7, 1969. 1. An aggrieved party who has failed to object to a judgment at the time of its issuance, may not raise objections to it subsequently in a related

proceeding. 2. A party must presume upon his rights at the time they arise, or be deemed to have waived them, should he not.

In
1965 a judgment was handed down against the present plaintiffs in error, in an ejectment suit brought by them for recovery of land
held by the Society. The issuance of a deed was ordered in the name of the Society and its titular head in his representative capacity.
At the time of judgment, the aggrieved parties took no exception, nor appealed from the judgment. Subsequently, during the process
of enforcement, plaintiffs in error applied to the Justice in chambers for a writ of error, objecting to the original judgment upon
which the enforcement proceedings were based. The writ was denied to them, and an appeal was taken from the ruling. Ruling af firmed,
as modified with respect to providing for the eventuality of death of the representative of the Society named in the deed.
Nete Sie
Brownell and T. G. Collins for appellants. Lawrence A. Morgan and John W. Stewart for appellees.

MR. JUSTICE ROBERTS delivered the
opinion of the court. 207

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LIBERIAN LAW REPORTS

Reverend D. R. Horton, who died in November 1967, was the founder and leader of the organization known as the Bassa Brotherhood Industrial and Benefit Society, with membership composed mostly of persons of
Bassa Tribe origin. As time evolved and the Society progressed, it acquired property in Monrovia, a ten-acre block of land in the
area known as Bassa Community, and one hundred acres in Bong County. While he was still a member of the Society, the other members,
headed by Mr. Tom N. Bestman, entered an action of ejectment against him in 1965 for the recovery of the land situated in Monrovia
and Bong County, which they claim he withheld from them. Because this cause did not arise from the trial, but rather from a sequel
to the trial, its consideration herein is not essential. Issues of law and fact having been heard, concluded, and a verdict returned
on August 15, 1965, Judge Hunter, who presided over said case, made the final judgment. "In view of the foregoing, the verdict of
the jury is hereby confirmed and affirmed, and this court hereby adjudges the Bassa Brotherhood Society to possess the ten acres
of land in Monrovia City according to the metes and bounds on their deeds assigned them by the grantor, B. J. K. Anderson. This possession
is to include all members of the Bassa Society whose names appear on this deed, and as for the r,000 acres of land in Totota, since
said portion of land has been disposed of by the Government of Liberia for reasons best known to the Government, Rev. Horton as head
of the Society, as well as the Church, is to associate with the group and again apply to the President for the r,000 acres of land
which he has already promised, or the value thereof, and this is to be done within thirty days from the date of this judgment, and
the clerk of this court is hereby ordered to prepare a writ of possession to put the Bassa Society in possession of their ten acres
of land in Bassa Community and their deeds

thereto turned over to them as a group to be kept wherever
they feel. And if the i,000 acres of land is acquired, the Bassa Society
is also to be put in possession, or given the value thereof.
And it is hereby so ordered. "Given under my hand and Seal of Court this iith
day of March, 1966.
"JAMES W. HUNTER,

Assigned Circuit
Judge."

To this ruling of the judge, plaintiffs in error, now appellants, took no
exceptions which would qualify them for announcement of an appeal, but to the
contrary,
defendants in error, now appellees, excepted and announced that they would
appeal. The appeal was perfected and before the case could
be called for hearing, for reasons unknown to us, they filed an application
requesting a withdrawal of the appeal. Strangely, the
application was resisted by plaintiffs in error, in substance contending that
defendants in error had no legal right to withdraw
their appeal. The resistance was overruled by this Court, and at the close of
our March 1966 Term, the application having been granted,
the lower court was ordered to resume jurisdiction and enforce its judgment.
It was during the process of this enforcement that plaintiff
in error applied to Mr. Justice Roberts in chambers for a writ of error. In
their petition they raised issues that should have been
raised against Judge Hunter, had they excepted to his ruling, as Judge
Dunbar's enforcement was in absolute harmony with the ruling
made by Judge Hunter. We find it necessary to quote the relevant portion of
the ruling of Judge Dunbar, and thereafter the entire
petition. "Touching the ruling of Judge Hunter, this court fails to see why
it is misunderstood by anyone, because the mandate from
the Supreme Court authorizes the enforcement of the final judgment of the
trial judge, and his final judgment reads: 'That the ten

acres of land, the subject matter of the proceedings, are to be turned
over to the Bassa Brotherhood
Society according to the metes and bounds of the deeds, and those persons
whose names appear on said deeds.' According to this deed
for the ten acres, Reverend Horton's name appears therein, and he is a member
of the Bassa Brotherhood Society as we know, so that
if the deed has been turned over to him, it is in keeping with the final
judgment of Judge Hunter. With respect to the i,000 acres
of land situated somewhere in Totota, this land, for reasons best known
to the Government, has been disposed of to individual citizens,
and according to the final judgment of Judge Hunter, the members of the Bassa
Brotherhood Society are to get together and approach
the President for r,000 acres of land elsewhere. Whether this has been
done, we cannot say. Therefore, it will be advisable for the

other members of the Brotherhood Society to contact their leader and member, Dr. Horton, in order to make the final adjustment among themselves. This matter is closed as far as the court is concerned. And it is so ordered." The petition reads : "I. That the said plaintiffs in error, acting in their representative capacity, instituted the above ejectment suit against codefendant in error D. R. Horton, also a member of said Society, for the recovery of their portion of the ten-acre plot of land in Monrovia, as well as of their t,000 acres of farm land in Totota, as described in their deeds made profert with the complaint. "2. That said codefendant in error admitted the claim to the ten-acre plot of land in Monrovia, and alleged in his pleading that he was prepared to put them in possession of said property, but that the plaintiffs in error were not authorized members of the Society to be put in possession thereof; he also admitted their claim to the r,000 acres of farm land in Totota,

and informed the court at the trial that said property has been sold by the Government to other parties. "3. That at the trial of the case, plaintiffs in error established their title to the premises which were the subject of their claim, and thereupon obtained a verdict and final judgment in their favor; to which judgment codefendant Horton excepted and prayed an appeal to the Supreme Court, but which appeal has been lately withdrawn so that the final judgment of the trial court may be enforced. "4. But notwithstanding the premises above set out, Judge Dunbar made a ruling on the r 5th day of the current month to the effect that since codefendant Horton's name appears in the deed for the ten-acre plot of land in Monrovia, he also being a member of the Society, if the deed for said property is delivered to him and he be placed in possession thereof, such act is in keeping with Judge Hunter's judgment and should be carried out; whereas such construction of the judgment was not interpreted with reference to the verdict of the jury 'that the plaintiffs are entitled to their ten acres of land' ; it being sufficient if the judgment shows distinctly that the matter has been determined in favor of one of the litigants in respect to the subject matter of the action. (See final judgment--verdict of the jury; also Civil Procedure Law, 1956 Code 6 :86o, 816.) "5. That Judge Dunbar erred in attempting to put the defeated party in the ejectment suit in possession of said property merely because his name is in said deed, or his relationship with the Society as one of the trustees." (See Civil Procedure Law, 1956 Code 6 :980.) The petition presents a confusing and conflicting picture, especially counts one, four, five, and the prayer thereof. Count one avers that appellee, D. R. Horton, up to the time of the filing of the petition, was still a member of the

Society; it obviously follows that he was a member of the said Society when the ejectment suit was filed. This tends to regard Dr. Horton as coplaintiff in the ejectment suit, since the suit was entered in the name of the Society of which he was still a member. Count five tends to show that his relationship with the Society has been severed ; however, this not being the main issue involved in the denial of the peremptory writ, we shall proceed further. In count four petitioner contends that the judgment of Judge Hunter has not been interpreted by reference to the verdict of the jury. If the judgment varies from the sense of the jury's verdict, it was done by Judge Hunter and not Judge Dunbar. Judge Dunbar attempted to implement that judgment; hence, plaintiffs in error should have taken the exceptions they thought necessary before Judge Hunter, at the time of judgment. It was physically impossible for the judge to have delivered the deed in the hands of all members of the Society. In Judge Hunter's judgment, he referred to Dr. Horton as head of the Society and the Church. Obviously Judge Dunbar had no alternative but to deliver the deed to Reverend Horton. We would like to here mention that in the error proceedings there is no showing that Reverend Horton has been relieved of this position and someone else appointed in his place. Notwithstanding their disagreement with this construction of the verdict, as rendered by Judge Hunter, plaintiffs in error, in their conclusion, prayed that said judgment of Judge Hunter be effectuated.

In practice, it is required of every person to take advantage of his rights at a proper time, and neglecting to do so will be considered a waiver. The error was assigned, argued, and on January i8, 1968, the Justice presiding in chambers concluded that: "The ruling of the enforcing judge is in no way dis-

similar to that of the trial judge. Judge Hunter ruled that the property should be possessed by members of the Society whose names appear on the deed and refers specifically to Reverend Horton as the head of the organization, as well as the Church. Who is more competent to secure the property and interest of the Society than its head, who had in the past been the custodian of such property of the Society? Commenting on count four, it seems but right procedurally for plaintiffs to have excepted to the ruling of Judge Hunter if they were not in agreement with his judgment. The ruling of Judge Dunbar is no deviation from that of Judge Hunter. And if plaintiffs failed to except to the former ruling and appealed therefrom, they have voluntarily waived their rights so to do and cannot now take advantage of same. If Judge Hunter's judgment was contrary to the verdict of the jury, plaintiffs in error are now barred from raising this contention. "Because of the above, it is the ruling of this court that the peremptory writ prayed for be denied and

the alternative writ quashed, with costs against plaintiff in error." From the brief comments we have made here antecedent to quoting the ruling of the Justice, it is evident that we are in accord with that ruling. The ruling being legally sound, the same is hereby affirmed, with the modification that subsequent to the death of Reverend Horton, the deed in litigation is to be turned over to the trustees of the Bassa Brotherhood Society, and is to include all those whose names now appear on the deed. Costs against appellants.
The clerk of this Court is, therefore, ordered to send a mandate to the court below to resume jurisdiction and enforce its judgment, as modified. And it is hereby so ordered. Affirmed as modified.

Cole v Philips [1981] LRSC 12; 29 LLR 125 (1981) (29 July 1981)

SAMUEL B. COLE, Appellant, v. **ROBERT A. PHILIPS**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: June 1, 1981. Decided: July 29, 1981.

1. Courts will only pass upon issues initially joined between the parties and specifically set forth in their pleadings. Matters of defense not set up in defendant's pleadings shall not be considered by the appellate court.

2. Where motion papers served on the adversary are signed, the omission to sign the original filed with the court constitutes a harmless error and does not warrant a dismissal of the motion.

3. Whatever defense a party may have to a pleading or motion, it should initially be interposed in the trial court and passed upon thereat in order to legally enable the appellate court to examine the same, otherwise it will not be entertained on appeal.

4. Although damages may be awarded by the jury in an action of ejectment for wrongful detention and possession, there, however, can be no damages for wrongful withholding in the absence of an award of possession of the **land** sued for.

5. Where evidence of title is insufficient in an ejectment action to support a finding, the Court will order the case remanded for an accurate survey by a board of arbitrators.

6. Where the jury in an ejectment action awards damages, without any mention of the **land** sued for, it is impossible to issue and serve a writ of possession because of uncertainty, and the court shall appoint a board of arbitration to survey the disputed **land**.

In an action of ejectment instituted by appellee, the jury returned a verdict awarding appellee $4,500.00 as general damages, but the verdict made no mention of the property sued for. A motion for a new trial was filed, but only the copy served on the appellee was signed by counsel for appellant. The original papers filed with the court was inadvertently not signed. Appellee failed to interpose a resistance to the motion. Not-withstanding, the court denied the motion; whereupon, a final judgment confirming the verdict was rendered, and a writ of possession ordered issued. It is from this final judgment that appellant announced an appeal to the Supreme Court.

The Supreme Court held that even though general damages may, in proper cases in ejectment, be awarded for wrongful withholding of the property, the general damages awarded in the instant case was unreasonable, especially in the absence of the award of the property sued for. The Supreme Court held that it is impossible to issue and serve a writ of possession in a case where there is no certainty on the property sued for. Accordingly, the Supreme Court remanded the case to the trial court with instructions to appoint a board of arbitration to make an on-the-spot impartial survey of the area in dispute to determine: (1) whether appellant is occupying appellee's **land** sued for; and (2) whether appellant had encroached upon a portion of appellee's **land**, and if so, to what extent.

MacDonald Krakue appeared for appellant. *Stephen Dunbar, Sr.* appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Appellee sued out an action of ejectment against appellant in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to recover one town lot. Appellant filed an answer claiming ownership to two town lots with different numbers and different metes and bounds, apparently located in the same area. After issues of law were decided, the case was ruled to trial by a jury under the direction of the court. The trial was concluded with a verdict for appellee.

A motion for a new trial was filed, and although no resistance was interposed thereto by the appellee, the trial court *sua sponte* rejected it because the original was not signed. Thereafter, final judgment was rendered confirming the verdict. The appellant, not being satisfied with the judgment, perfected an appeal therefrom and the case is now before this forum for review and final adjudication.

In counts one, two and three of the brief of appellant, which are the amplifications of counts one, two and three of the bill of exceptions, appellant contended that the trial court failed to comprehensively pass upon the issues of law raised in the answer and the reply. In these counts, appellant claimed that the issue of older title and statute of limitations were raised, but when we were about to focus our attention on the contentions, they were waived by counsel for appellant during the arguments before this Bench. However, our comments in this opinion on those waived three counts of the bill of exceptions are mere *dictum.*

According to the testimony of appellant, which was corroborated by Mrs. Elizabeth Barclay Cooper, the grantor of the appellee and Mrs. Georgia Manley Cole, the wife of appellant, when the grantor of appellee approached appellant about appellant's alleged ownership to the property

in dispute, appellant offered the sum of $1,500.00 representing the amount appellee paid to his grantor for the **land**. The grantor of appellee, Mrs. Elizabeth Barclay Cooper, accepted the amount with the understanding that it was o refund the money that appellee had paid to her for the one town lot in question. However, appellee refused to accept the money. The offer made by appellant had been emphasized during the trial of this case by the trial judge as well as the jury; we will therefore consider whether it has any legal significance in this case.

There are two reasons why we cannot consider the offer as our guide in the determination of this case; namely (1) Mrs. Elizabeth Barclay Cooper is not a party to this action and (2) the amount of $1,500.00 offered by appellant in order to settle the matter out of court was not accepted by appellee, therefore, the offer has no legal importance, nor is it binding on either party. 15 C.J.S., § 6 and 7, pp. 716 and 717

According to count five of the bill of exceptions, the trial judge is quoted as saying in his charge to the jury:

"Each of them (the parties) is bound to show the title of the one from whom it was purchased and right until it gets to the Republic."

Appellant claimed that under the law, it is the plaintiff who must recover upon the strength of his own title and not upon the weakness of that of the defendant. Generally, this contention is legally sound, but we wish to mention that the trial judge made no mention about any defect in the title of either party. However, we will quote the relevant portion of the charge:

"In ejectment action, the parties must necessarily rely upon title, and the best title is that given by the Republic with reference according to the date of issuance, the older being preferred. This, in our opinion, is the principle of law which might assist you in determining the owner of this disputed **land**."

The portion of the charge complained against and quoted hereinabove, is entirely different from what is quoted in count five of the bill of exceptions. Further, in count two of his answer, appellant did aver the issue of older title and relied upon his deed; therefore, count five of the bill of exceptions is not supported by the records; and it was the statutory duty of the judge to sum up the evidence and instruct the jury on law applicable to the case before its retirement to consider the facts and render a verdict. BLACK'S LAW DICTIONARY 241, 293, 295, (4th ed.); and Civil Procedure Law, Rev. Code 1: 22.9.

Count five of the bill of exceptions is therefore not sustained.

Appellant raised the contention in count six of the bill of exceptions that he filed a motion for a new trial on the 4th of February 1980, and signed the copy of the motion that was served on counsel for appellee, but inadvertently omitted to sign the original thereof filed in the office of the clerk of court. He claimed that because the signed copy was served on counsel for appellee, there was no resistance interposed by him. However, the trial judge *sua sponte* refused to entertain the motion. The records in this case shows that the only stage at which reference was

made to the motion for a new trial was in the final judgment, which gives color to what is complained of by the appellant.

Furthermore, there is no denial in the records of the truthfulness of the averment stated in count six of the bill of exceptions; hence, in the absence of a denial, expressly or by necessary implication, the contention is taken as admitted. *Ibid.,* 1: 9.8 (3); and *Cavalla River Company, Ltd. v. Pepple,* [1933] LRSC 13; 3 LLR 436 (1933). Courts of justice will only pass upon issues joined between the parties and specifically set forth in their pleadings. Matters of defense not set up in defendant's pleadings shall not be allowed. Notice should be given by one party to the other of all matters of facts or law relied upon in prosecuting an action. *Clark v. Barbour,* 2 LLR 15 (1909).

The omission on the part of appellant to sign the original copy of the motion for a new trial should have been regarded by the trial judge as harmless error which does not affect the rights of either party. Civil Procedure Law, Rev. Code, 1: 1.5. Therefore, the trial court was in error as a matter of law by *sua sponte* rejecting the motion for a new trial. Consequently, count six of the bill of exceptions is well taken; hence, same is sustained.

These are the summaries of the contentions raised in the motion for a new trial: (1) dissimilarities of **land** described in the respective deeds of the parties; (2) older title; (3) lack of proof of the $4,500.00 damages awarded (4) that plaintiff now appellee, was attacked for not proferting his grantor's title and that it was only at the trial, and in the absence of counsel for defendant, now appellant, that the title of appellee's grantor was introduced at the trial, and marked by court as P/2; (5) in ejectment, plaintiff must rely upon the strength of his own title and not upon the weakness of his adversary; (6) the verdict is indefinite as to the quantity of **land** awarded. Appellant submitted that a verdict must be certain as to what **land** was awarded as a writ of possession cannot be uncertain.

We have already passed upon the effect of failure to deny the salient points tendered in the motion for a new trial, therefore, we will now address ourselves to count eight of the brief of appellant in which he attempted to traverse count six of the bill of exceptions:

"Appellee says further that the judge committed no reversible error in denying the motion for a new trial on the ground of which he did. It is mandatorily required that verification and/or signing is required in every pleading by a party himself or his attorney. The purpose of said representation constitutes a certificate that the document is not properly verified, and that it may be stricken as though the document had not been served."

We wonder what effect count eight of the brief has on the motion for a new trial at this level, in the absence of a resistance filed to the motion in the trial court?

Appellee, in support of count eight of his brief, quoted above, cited *Knowlden v. Reeves et. al.[1954] LRSC 22;* , 12 LLR 103, 107 (1954). In that case the trial court gave an oral charge which in count five of the bill of exceptions was considered as adverse to the appellant. Therefore, this Court in passing upon count five of the bill of exceptions in that case held that:

"This Court cannot adequately review the issues raised in count "five" in the absence of a written charge, which plaintiff had a right to apply for, and which would have enabled us to pass upon the said issue In the case at bar, the issues summarized above were raised in a written motion and counsel for appellee had every opportunity to have resisted in the trial court in the light of count eight of the brief.

In our opinion, whatever defense a party may have to a pleading or motion, it should initially be interposed in the trial court and passed upon thereat in order to legally enable the appellate court to examine the same; otherwise, it should not be entertained. *Clark v. Barbour*, 2 LLR 15 (1909). Appellee should have resisted the motion for a new trial, and, having failed so to do, in the proper time, any contention by appellee at this level which tends to oppose the issues raised in the motion for a new trial will not be considered by the appellate court for the first time. This Tribunal can only exercise appellate jurisdiction in all matters of law and facts raised in the trial court. PRC DECREE NO. 3.

Appellant contended that the verdict is uncertain as to what lands were awarded. In order to resolve this contention, it is necessary to quote pertinent portions of the verdict and it reads:

"We, the petty jurors to whom the case *Robert A. Philips Plaintiff, v. Samuel B. Cole*, defendant, action of ejectment, was submitted, after a careful consideration of the evidence adduced at the trial of said case, we do unanimously agree that "the plaintiff is entitled to recover four thousand five hundred dollars damages ($4,500.00). Respectfully submitted."

Although this is an action of ejectment and, in keeping with law, damages may be awarded by jury in a proper case for wrongful detention and possession of the realty, yet, there is absolutely no mention in the verdict of the one town lot claimed by appellee in the complaint, or any portion thereof, and in the absence of any award of possession of the **land** sued for, it is legal and logical that no damages for wrongfully withholding the property can be assessed against the defendant, now appellant.

The award of damages was unreasonable and therefore not justified by law. In the case *Duncan v. Perry*, 13 LLR 510 (1960), cited by counsel for appellant, the relevant portion of the judgment in that case reads:

"It is therefore adjudged that the plaintiff recover the said piece of **land**, being lot number 112."

In the instant case, as we have said earlier, no mention was made in the verdict of any **land** whatsoever, say nothing about lot number and/or quantity of **land**; notwithstanding, the trial court in confirming the verdict in the final judgment, ordered that appellant be evicted and appellee put in possession of **land** which was not awarded by the jury in the verdict.

In *Duncan v. Perry*, cited *supra*, it is quoted:

"The **land** should be designated or described with certainty sufficient to enable a writ of possession to be executed, and it has been held that the particular estate or interest should be designated."

There is no evidence in the records as to whether appellant occupies and withholds from appellee the one town lot sued for or any portion of it. It is therefore impossible to issue and serve a writ of possession in this case because of uncertainty.

Where evidence of title is insufficient in an ejectment action to support a finding, the Court will order the case remanded for an accurate survey by a board of arbitrators. *Addo v. Jackson*, [1975] LRSC 25; 24 LLR 306 (1975) .

In *Duncan v. Perry*, cited *supra*, and in *Wolo* v. *Samobollah*, 22 LLR 22 (1972), this Court was faced with similar situation; consequently, the two cases were remanded with instructions to submit each to a board of arbitrators.

Therefore, we have no choice but to invoke the doctrine of *stare decisis* by ordering the trial court to resume jurisdiction over the case with instructions that a board of arbitration consisting of competent legally qualified surveyors be appointed to make an on the spot impartial survey of the area in dispute to determine whether appellant is occupying appellee's one town lot sued for, or whether appellant had encroached upon a portion thereof, and to what extent? This must be done within a specified time in the presence of the interested parties on whom notice must be served for their participation in the survey. Costs to abide final decision. And it is so ordered.

Judgment reversed; case remanded.

Deline v Porte et al [1969] LRSC 17; 19 LLR 221 (1969) (7 February 1969)

NANCY SHOEMAKER-DELINE, Appellant, v. ARAMINTA B. SHOEMAKER-PORTE, by and through her husband, MOSES A. PORTE, ROSE SHOEMAKER-MOORE, by and through her husband, HARRY MOORE, and LYDIA SHOEMAKERDYER, by and through her husband, ERIE DYER, heirs of WILLIAM BYRD SHOEMAKER, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 6, 1968. Decided February 7, 1969. 1. An answer must join issue on the merits of the case as raised in the complaint, or be deemed not to have raised a justiciable issue. 2. Arbitration must properly be invoked by one of the parties before the verdict of the jury, or by both, after a verdict, in order to empower the court to apply arbitration. 3. Each averment of a pleading shall be simple, concise and direct, and not,

as in the instant case, clouded and uncertain, as occasioned by proferted deeds to property not at issue.

Plaintiffs sued in ejectment, claiming wrongful possession by defendant of two separate parcels of land to which plaintiffs had title. Defendant denied the allegations in the complaint and proferted deeds to three other parcels of land. No request was made before trial for arbitration. The trial court dismissed the defenses of the defendant and held her to a bare denial. The jury's verdict for plaintiffs was affirmed by the court and judgment entered, from which defendant appeals. The judgment was affirmed with the modification that a surveyor be appointed to fix the boundaries of plaintiffs' land.
The Simpson law firm, by G. P. Conger-Thompson for appellant. N ete Sie Brownell for appellees.
MR. JUSTICE MITCHELL

delivered the opinion of the
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court.

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The appeal arose from an action of ejectment in the Circuit Court of the Sixth Judicial Circuit. According to the record on appeal, plaintiffs claimed right of title and possession to two parcels of land situated in Crozierville, Montserrado County, bearing the numbers two and three. They averred further that the said two tracts of land were originally purchased and owned by William Byrd Shoemaker I, the grandfather of the plaintiffs, which descended on his death to their father, William Shoemaker II, the only heir and have thus descended to the plaintiffs. They made profert of the relevant deeds for the property and alleged that defendant was unlawfully withholding possession of the property.
The defendant denied the unlawful withholding of the property and submitted deeds to three other parcels of land. The pleadings in the case rested at the surrejoinder, and at the June 1967 Term of the Circuit Court, Sixth Judicial Circuit, Hon. Joseph Patrick Findley, judge presiding by assignment, heard the issues of law involved in the pleadings and dismissed the legal defenses in defendant's answer and rejoinder because, as he claimed, no justiciable issue had been raised by her. Subsequently, the case was called for trial of the facts before Hon. John A. Dennis, presiding over the December Term of the aforesaid court. The case having been heard, the jury returned a verdict in favor of the plaintiffs, to which the defendant excepted and filed a motion for a new trial. The motion was denied and the court rendered judgment affirming the verdict. It is from this judgment the defendant excepted and brought her case on appeal for review by this Court on a bill of exceptions containing four counts. When this case was called for argument, appellees' counsel contended that the court had no alternative but to dismiss the answer and rejoinder of the defendant, because they presented no justiciable issue. On the contrary, appellant's counsel maintained that since his an-

swer specifically
denied that the property described in plaintiffs' complaint is the tract of land that the appellant occupies, this denial raised
a justiciable issue and, therefore, should not have been disposed of in any
other manner than by the inception of a board of arbitrators composed of
competent surveyors, to determine the metes and bounds of the deeds at issue.
We would like to make this reference
in passing: this is a case of ejectment in which plaintiffs claim ownership
to two tracts of land, lots no. two and three, composed
of thirty and sixty acres, respectively, and making a total of ninety acres.
They also allege that the defendant below, now appellant,
withholds possession thereof from them. It is nowhere averred, neither in
plaintiffs' complaint nor in defendant's answer, that this
land is contiguous to any property owned by the defendant. The defendant
in her answer categorically denies withholding plaintiffs'
property and avers that she is located on blocks no. four, five, and six,
which descended to her from her father. She also attempted
to introduce into the case third parties whom she alleged were rightful and
legal owners of the property that the plaintiffs sought
to recover by ejectment. This appears to be a departure from our system of
pleading because, in the first place, defendant was sued
for withholding possession of lots two and three, and she made profert of two
deeds with her answer, for lots five and six, which
was not the property described in plaintiffs' complaint. This was not a
response to the allegations in the complaint. Moreover, in
count two of the answer, she did not aver that the third parties, whom she
claimed were rightful owners of the property in litigation,
had gained title by adverse possession. This, in substance, made .her answer
more complicated and of less legal effect. According
to our Civil Procedure Law, 1956 Code, tit. 6, § 251 (in part) : "Each
averment of a pleading shall be simple, concise and direct."
We are not in complete accord with the ruling of the

trial court with reference to its refusal to send
a recognized surveyor to the spot to make a survey of plaintiffs' land
claimed according to their deeds. But we will treat this point
later in this opinion. However, for the evasive manner in which the
defendant's answer joined issue with the plaintiffs' complaint
by presenting an issue separate and distinct from the allegations of the
complaint, it is our opinion that the court below had no
alternative but to dismiss such defense. Count one of the bill of exceptions
is, therefore, not sustained. When the defendant was
on the witness stand, she testified to the fact that lots two and three in
the Settlement of Crozierville, containing 3o and 6o acres
of land, respectively, which was the property of William Byrd Shoemaker
II and which plaintiffs claim to be their property, was not
her property and she made no claim thereto. Besides this, the metes and
bounds of the defendant's deeds made profert, show no connection

with the plaintiffs' property, as was pleaded by her in her answer, because she only produced deeds for lots five and six, which had no bearing on the case. This was verified by the testimony of the witnesses produced at the trial. Hence, it is our opinion that the jury's verdict was in accord with the evidence produced at the trial. Count two, therefore, of the bill is not sustained. The verdict of the jury being in accord with the thrust of the evidence, the court did not err in denying the motion for a new trial, and, obviously, the court below did not err in rendering final judgment thereon, since the plaintiffs were entitled under the law to recover on the strength of their title. There was a motion to intervene filed during the course of the case by Messrs. Sam Jordon, et al. However, because this motion was later withdrawn by the movents, it does not warrant our attention and consideration. The appellant did not plead adverse possession, nor did

she produce title in any form showing that the tracts of **land were contiguous to the land of the plaintiffs, or in any way connected therewith. She did not deny that the lots of land** sued for by the plaintiffs were the property of the plaintiffs, or that they did not own **land** in the area. Instead, she endeavored to set up a third-party claim, which was evasive and inconsistent, and by this means she did not present a triable issue or, in other words, she did not join issue on the merits; which Professor Ballentine in his commentaries described as "creating or raising an issue of fact in the pleading," which is considered not well taken if it does not go to the merits of the case. In this case, the disparate deeds made prof ert failed to join issue, and there was no necessity for a board of arbitrators to determine the boundaries between the **land** of the plaintiffs and the defendant. Our Civil Procedure Law, 1956 Code, tit. 6, ch. 26, specifically provides for the manner by which arbitration is invoked, and in this case, neither of the parties having requested arbitration prior to, nor after the verdict when both parties would have had to consent, there was no authority for the court sua sponte to have done so. Therefore, the judgment of the court below is hereby affirmed, with instructions that in placing the plaintiffs in possession of their **land**, the said plaintiffs through the court shall engage the services of a competent surveyor to accompany the sheriff to the spot and determine the boundary lines for lots two and three, located in Crozierville, Montserrado County, before placing them in possession thereof. Costs are hereby ruled against the defendant. And the clerk of this Court is hereby ordered to send a mandate to the court below informing it of this opinion. And it is hereby so ordered.
Affirmed, as modified.

Cooper v Gissie et al [1979] LRSC 35; 28 LLR 202 (1979) (20 December 1979)

SAMUEL B. COOPER, SR., Appellant, *v.* **PETER GISSIE,** RICHARD DeSHIELD, SEKOU JABATEH, and ANTHONY BARCLAY, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 17, 1979. Decided: December 20, 1979.

1. In ejectment, the principles are definite that there must be title in the plaintiff to entitle him to ownership of the property he claims.
2. Where both sides allege that their titles derive from the Republic of Liberia, documentary evidence to support this claim must be annexed to the pleadings.
3. Where both sides trace their titles to the State for the same piece of property, and have exhibited deeds in support of their respective claims, the more recent deed is the proper subject for cancellation.
4. The principle is that plaintiff must always recover on the strength of his own title, and not on the weakness of his adversary's.
5. Our law on the correction of deeds for public **land** requires that the President investigates the alleged errors complained of as appearing on the face of a Government deed, and if satisfied that error exists thereon shall order the defective deed canceled, and after the deed containing the errors has been canceled by a court, he shall deliver to the applicant under his hand and official seal the corrected deed which shall be registered by the Registrar of Deeds.
6. Title, older title, and superior title have always been the controlling principles in cases of ejectment.

Appellant sued out an action of ejectment based on a public **land** sale deed of 1947. Appellees defended their title based on a claim traced to an 1858 public **land** sale deed. Appellees also challenged appellant's deed as being void because the considera-tion was not stated. Appellant then had the court, sitting in equity, order the correction be made on his deed to provide for the consideration.

At trial, a verdict and judgment of not liable were entered for appellees and on appeal, the Supreme Court ruled that the older deed bestowed superior title in the appellees. The Supreme Court also ruled that appellant's deed was void as the procedure adopted for its correction was inconsistent with the law on the correction of errors on a public **land** sale deed. It therefore affirmed the judgment of the trial court.

Stephen Dunbar, Sr. appeared for the appellant. *Philip J. L. Brumskine* and *Daniel S. P. Draper* appeared for the appellees.

MR. JUSTICE PIERRE delivered the opinion of the Court.

This is a suit in ejectment, and in ejectment the principles are definite that there must be title in the plaintiff to entitle him to ownership of the property he claims. *Gibson v. Jones*, [1929] LRSC 3; 3 LLR 78 (1929), *Yamma v. Street*, [1956] LRSC 20; 12 LLR 356 (1956). There must be a complete chain of title from the source of all title, the State, to the parties, without missing links; and where both sides allege to be able to trace their titles to the Republic of Liberia, documentary evidence to support this claim must be annexed to the pleadings. *Walker v. Morris*, [1963] LRSC 42; 15 LLR 424, 426,427 (1963). Where both sides trace their titles to the State for the same piece of property, and have exhibited deeds in support of their respective claims, according to the position taken in *Walker v. Morris*, cited above, the more recent deed is the proper subject for cancellation. See *Davies v. Republic*, 14 LLR 246 (1960).
Moreover, the plaintiff must be able to establish a better title and a more perfect chain than his adversary, to connect himself with the property and thereby entitle him to stand in litigation, and this is so even where his adversary's title might be faulty. The principle is that plaintiff must always recover on the strength of his own title, and not on the weakness of his adversary's, *Salifu v. Lassannah*, [1936] LRSC 13; 5 LLR 152 (1936). These are principles known in the practice for as long as our courts have handled ejectment. With this as a background, let us look at the title positions of the parties on both sides, and we will begin with that of the plaintiff/appellant.

On the 30th of September, 1947, President Tubman signed a public **land** sale deed in favour of Samuel B. Cooper, plaintiff/ appellant in this case, and thereby sold to him sixty and three-fifth acres of public **land** in what was known at the time as Paynesville, in Montserrado County. A portion of this property is claimed by the plaintiff/appellant to have been encroached upon by defendant/appellees, as a result of which this action of ejectment has been brought.
In the complaint filed by plaintiff/appellant, he proffered one deed, issued to him in 1947 by President Tubman; and since this deed gave him title from the State he has relied upon it as the only authority upon which he claimed in the ejectment he sued out. Under normal circumstances this would seem to be in order. But defendants/appellees appeared and filed an answer, and Anthony Barclay, claiming by motion to be grantor to defend-ants, moved the court to intervene to fulfill his obligation under the terms of a warranty deed executed by him in favour of defendants; this motion was granted by court. The intervenor then joined defendants in an amended answer, to which plaintiff filed an amended reply; but we shall traverse these later.
On the appellee's side, the records before us show that on the 19th day of June, 1858, President Stephen Allen Benson caused to be carved out of the public domain in Montserrado County and in a settlement known at the time as Ammonsville, ten acres of **land**, and conveyed the same to Gabriel Ammons. Again on the 3rd of December, 1859, that is to say 88 years before

President Tubman issued the plaintiff's deed, President Benson had executed public land sale deed whereby one hundred acres of public land were granted, sold and conveyed to the said Gabriel Ammons in the aforesaid settlement of Ammonsville in Montserrado County. These two instruments have been proffered with the pleadings in this case, and are found in the records certified to us from the trial court below. The deed for the ten acres bears the number one, and that for the hundred acres is number two.
On the 13th day of January, 1892, the heirs of Gabriel Ammons sold the second piece of property aforesaid bearing the number two in the records for Montserrado County and containing one hundred acres to Arthur Barclay; this warranty deed is also in the records certified to us from the lower court. These one hundred acres descended to Anthony Barclay, son of the aforesaid Arthur Barclay who is intervenor herein, and is defending the rights of the defendants in this case.

In December 1972, intervenor Anthony Barclay sold to Richard DeShield, and in July of 1974 he also sold to Peter Gissie and Madam Yei pieces of property from the aforesaid one hundred acres of lot number two. Both of these deeds have been annexed to the pleadings of defendants/appellees, and have also been certified by the clerk of the trial court, and they appeared in the records before us, thus completing a chain of title to the land in dispute; i.e., from the State to Gabriel Ammons, and from Ammons to Arthur Barclay and then to Arthur Barclay's son Anthony who sold to defendants/appellees.
It is important that we mention at this point that neither side has explained what appears to be a gap in the records with respect to the exact location of the property in dispute, that is to say, whether the property sold to the appellees' side by President Benson in 1859 is the same locality as that sold to appellant by President Tubman in 1947, 88 years later. There would seem to be no controversy on this point as important as it would seem to be, therefore we have assumed that this is so; that is, that what was known in 1859 as Ammonsville, had become known as Paynesville in 1947 when President Tubman sold to Appellant Cooper. And it is upon this that we now proceed to decide the rights of the parties in keeping with the pleadings, the records before us and the law controlling in ejectment. It is also important to mention that what was known as Paynesville in 1947 when Appellant Cooper acquired title to his 60 3/5 acres is now called Paynesward.
In the amended answer which appellees filed, not only did they deny appellant's right to recover against them but they also claimed (a) that the only deed which appellant relied on and which was annexed to his complaint, is a void document because it does not contain any amount as a consideration to make it a valid contract; (b) they also say that although appellant would seem to have taken title from the Republic of Liberia - the source from which they and their privies took, their original deed is 88 years older than the appellant's, and therefore is preferred accord-ing to our practice and procedure. Let us consider these two points in the order of their presentation.

Recourse to the pleadings of plaintiff/appellant—the com-plaint and the amended reply, show that two deeds are annexed. Both are signed by President Tubman on the 30th day of Septem-ber, 1947. Both are shown to be recorded in Volume 59 and on pages 499/500 of the Archives of Montserrado County, and both are shown to have been ordered registered by Commissioner of Probate S. Raymond Horace on the 9th of October, 1947. One of these two deeds - that is, the one attached to the complaint, carries no amount as consideration in its body as should have been done. The other annexed to the amended reply shows that $30.50 cash consideration was paid

into the Bureau of Revenues, as the law required. This point had been raised in appellants' amended answer, and they had contended therein that the first deed proffered with the complaint being devoid of consideration, could not support a complaint in ejectment.
The appellant must have conceded this contention, for included in the records although not attached to his amended reply, he proffered a deed which carries the $30.50 consideration as aforesaid and he also proffered the court's decree which had corrected appellant's deed to include the amount of considera-tion. That decree has been quoted hereunder for the benefit of this opinion:

"COURT'S FINAL DECREE

A decree in equity must be supported by evidence. Among the several scopes and functions of equity is one of which being in case of mistake or omission. Petitioner in these proceedings has invoked the aid of equity to supply the amount of $30.50 which is omitted in the deed from the Republic of Liberia to him.

A deed being in the nature of a written contract is not legal unless it carries a valuable consideration.

It having appeared satisfactory to the court from both the oral and written evidence in this case, and based upon the law of contracts found in the 1956 Code, the petition be and the same is hereby granted.

The clerk of this court is hereby ordered to send a copy of this final decree to the Ministry of Foreign Affairs to be channeled to the Bureaus of Archives or wherever said deed should be recorded so as to have the same corrected by inserting the amount of $30.50. AND IT IS SO ORDERED.

Given under my hand in open court

this 24th. day of October A.D. 1973.

Sgd. John A. Dennis

ASSIGNED JUDGE, CIVIL LAW COURT"
Although plaintiff/appellant appeared to have conceded the defect in the deed proffered with his complaint, he did not withdraw either the complaint or the defective deeds but merely included in the records the judge's decree of correction as well as the deed corrected. Hence, the complaint with the defective and the corrected deeds are in the records before us to be given consideration. No where in his pleadings had he said just what effect he intended the equity court's decree and the corrected deed should have with respect to the case and the court could not do for him what he failed to do in his own interest.
Moreover, in counts 4 and 6 of defendants/appellees' amended answer, they questioned the procedure adopted for the purported correction of the plaintiff's deed in which no monetary consideration is mentioned. Here are the two counts of the amended answer raising the issue:

"4. And also because, as to counts 1, 2, and 3 of exhibit 'A,' defendants say that it is quite surprising that the said exhibit 'A' is now distinctly different from the deed which plaintiff exhibited at the conference of August 7th, 1973 to which reference has already been made, in that, the deed exhibited at the conference aforesaid did not have therein any consideration whatsoever, whereas plaintiff's exhibit 'A' now contains a monetary consideration of $30.50 (Thirty Dollars and Fifty Cents). Defendants submit in this connection, that the subsequent insertion into plaintiff's deed of the amount of $30.50 can avail plaintiff absolutely nothing unless said alteration had been effected by a court sitting in equity, and in strict accordance with the statute controlling the correction of deeds for public lands and even then, only after proper notice had been served defendant and their grantor whose property rights were likely to be affected therein growing out of the longstanding dispute between plaintiff and defendants over ownership of the identical property in question.

> 6. And also because, further as to counts 1, 2, and 3 of the complaint with particular reference to count 1 thereof, defendants say that there is no evidence in the entire complaint to support the fact that plaintiff's deed of 1947 was ever corrected in accordance with the statute in that, according to the relevant statute, the procedure is that upon application of any person holding a deed for **land** drawn or purchased from the Government which is believed to contain errors, the President shall make such investigation as he may deem advisable, and if he finds that an error does in fact exist, he shall after the deed containing the error had been canceled by a court of equity, deliver to the applicant under his hand and official seal corrected deed which shall be registered by the Registrar of Deeds. This mandatory statutory procedure plaintiff has neglected to follow and his failure in this regard is fatal to his action in its entirety, especially since such failure establishes beyond all doubts the complete want of any kind of legal title in plaintiff."

According to these two counts of the appellees' amended answer, no valid deed was annexed to the complaint, to warrant this necessity for the appellees to have to prove their title to the **land**. The deed annexed to the complaint, they contended, had been shown to be defective, and the appellant's own act of seeking correction in equity is tacit admission of the deed's defectiveness. Even the procedure adopted for correcting the deed has been questioned and there would seem to be merit in the challenge against the legality of the procedure. An exami-nation of the decree correcting the deed showed that it was done in 1973; yet, the corrected deed is shown to have been signed by President Tubman in 1947— a physical impossibility, since the corrected deed could not have been signed by a President who was no longer in office. A deed for public **land** must be signed by the President in whose administration the correction took place.

Our law on the correction of deeds for public **land** requires that the President investigates the alleged errors complained of as appearing on the face of a Government deed, and if satisfied that error exists thereon shall order the defective deed canceled, and "after the deed containing the errors has been canceled by a court of equity, he, the President, shall deliver to the applicant under his hand and official seal the corrected deeds which shall be registered by the Registrar of Deeds." Property Law, 1956 Code 29:110
According to this law, (1) the President should have ordered the deed canceled after he had satisfied himself that error or omission did appear on its face; (2) he should have under his hand and official seal signed and delivered a corrected deed to the plaintiffs; and (3) this corrected deed should then have been probated and registered in the Archives of Montserrado County.

Only by this method would the law seem to have been complied with.
We know that President Tubman could not have ordered correction of a deed in 1973 when he was no longer in office; and we know that the present incumbent in the Presidential office had nothing to do with this deed because his name does not appear on its face. We also know that no corrected deed was issued after the decree of the judge, as the law required should have been done; and we know still further that the corrected deed sought to be attached to the appellants' complaint was never probated and registered as the law also required should have been done. The decree ordering the clerk of court to send a copy thereof to the Ministry of Foreign Affairs to be channeled to the Bureau of Archives to have the same "corrected by inserting the amount of $30.50" in the already recorded document in the official records of the county, would seem to have no legal basis in this case and must therefore have to be declared a nullity.
This Court said in *Roberts v. Roberts*, 1 LLR 107 (1878), that "interlineations in deeds will be presumed to have been made contemporaneous with the execution of the instrument, unless there are reasons to suspect that fraud has been committed which is a question for the jury". Put simply, there is no valid title deed attached to the plaintiff's complaint.

In 25 AM. JUR., *Ejectment*, §26, the rule of evidence in ejectment cases is stated as follows:

"Since in ejectment the plaintiff must as a general rule, recover upon the strength of his own title and not upon the weakness of his adversary's, where his title is controverted, the burden of proof is upon the plaintiff to establish title in himself, or at least such title to the premises in controversy as will entitle him to the possession thereof unless the defendant has a better title. Until the plaintiff has made a prima facie case by showing title sufficient upon which to base a right of recovery the defendant is not required to offer evidence of his title, and if the plaintiff fails in his proof of title, he cannot recover, however weak and defec-tive the defendant's title may be."
There does not seem to us to be any way in which the glaring and flagrant failure to have corrected the defective deed attached to the complaint could be effected according to our law, and therefore, we cannot see how the complaint in this case of ejectment can stand.
We come now to consider the second important point in this case, to wit: older title in ejectment cases. In the case *Duncan v. Perry*, 13 LLR 510, 514-515 (1960), this Court said title, older title, and superior title, have always been controlling principles in cases of ejectment both in the English and American courts, and we know of no time when they did not control decisions in cases of ejectment in the courts of Liberia. We still maintain that position today.

In *Johnson et. al. v. Beyslow*[1954] LRSC 2; , 11 LLR 365, 377 (1953), in which case the question of older title held by one of the parties to the same piece of property was the issue, this Court said: "An inspection of the deed proferted 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 favour by Jehudi Ashmun." That is still a basic principle in

ejectment in Liberia today.
In view of the circumstances and of the law quoted hereinabove, we have no alternative but to affirm the judgment of the trial court. The Clerk of this Court is hereby instructed to send a mandate to the trial court, commanding the judge presiding therein to resume jurisdiction over this cause and give effect to this judgment. And it is hereby so ordered.

Judgment affirmed.

Smart et al v Daniels et al [1937] LRSC 4; 5 LLR 369 (1937) (22 January 1937)

TOBIE J. SMART for his Children, EMMA DELNOTT SMART, P. F. SMART, J. W. SMART, and G. T. R. STEVENS for his Wife, MATE SMARTSTEVENS, Appellants, v. H. C. DANIELS and T. J. R. FAULKNER, Administrators of the Estate of the late M. K. DANIELS of Barnersville, Appellees.
APPEAL FROM PROBATE PROCEEDING.

Decided January 22, 1937. Whenever a person claims title to **land** upon a deed shown to have been
forged,

the court, upon proof thereof, will order the cancellation of said deed.

In proceeding to probate property of M. K. Daniels,
deceased, appellants were awarded certain property. On proceeding to reopen and cancel their deed, appellees' petition was granted.
Afflrmed on appeal.

A. B. Ricks for appellants. No appearance for appellees. MR. JUSTICE DIXON delivered the opinion of the Court.
The history of these proceedings is as follows : On the death of the late M. K. Daniels of Barnersville which took place during the
first part of the year 1934, H. C. Daniels and T. J. R. Faulkner were appointed administrators of the estate of the deceased, and
an inventory was by them taken when certain tracts of **land**, No. and No. 4, reputed to be the property of the deceased during his
lifetime, were included in the said inventory with other blocks of **land**. **The said two blocks of land**, numbered one and four, as aforesaid,
were supposed to have been conveyed to Tobie J. Smart in one deed produced to the court by said Tobie J. Smart acting for himself
and for his children, Emma Delnott Smart, P. F.

Smart and Ida Maie Smart-Stevens, wife of G. T. R. Stevens,
who claimed the said pieces of **land** by virtue of the aforesaid deed. They set up in their petition laying claim to the property that

said tracts of land were the bona fide property of the late Louise E. Daniels, the deceased wife of the late M. K. Daniels, who, they claimed, was a relative of the children of Tobie J. Smart from whom they legally derived title by descent and that the said pieces of land had been transferred first from M. K. Daniels and his wife, Louise E. Daniels, of Barnersville, Montserrado County, to the late B. J. K. Anderson and that the said B. J. K. Anderson had retransferred same to Louise E. Daniels, the wife of M. K. Daniels, in 'fee simple, a copy of which deed they filed with the petition, and prayed the court to have same struck from the inventory of the estate of the late M. K. Daniels, as they claimed that they were next of kin to his late wife who, they alleged, had died seized in fee simple of said premises. As to the said claims of theirs, apart from the mere copy of the purported transfer, there is no record of any evidence before this Court. Yet it appears from the petition of the administrators of the estate, that the court in the first instance granted the petition of Messrs. Smart and Stevens. The administrators thereupon filed another petition which is the subject matter of these proceedings, asking the court to reconsider its former ruling, and to cancel the purported deed of the respondents now appellants for the two pieces of land, as the signature of M. K. Daniels and Louise E. Daniels thereto attached were by them averred to have been forged. When the court met to hear the case, Judge Brownell presiding, the petitioners were present and were also rep resented by their lawyers, E. G. Freeman and Charles T. 0. King. The respondents having failed to file any answer or other resistance to the petition of the petitioners and not having appeared at court in person or by counsel,

the petitioners asked for judgment by default, which request the court granted, and they proceeded to submit evidence, synopsis of which we intend giving hereunder; and as there was no rebutting evidence on part of the respondents, there was no issue of law raised in the trial in the court below nor in the bill of exceptions now before us. Notwithstanding these circumstances, Counsellor A. B. Ricks appeared before this Court in behalf of the appellants, and filed a brief which was not supported by the records in the case, as he himself was compelled to admit. Such practices by some lawyers affect the reputation of the profession and may have a tendency to make the courts of the country appear in a bad light if not promptly checked. But, for good and sufficient reasons, we have decided at this time only to make this reference as a warning to all whom it may concern. Witness H. C. Daniels took the stand and stated in substance : that he was the nephew of the deceased M. K. Daniels, and was familiar with his home. He knew that at the time when the purported deed of the respondent was issued, the said M. K. Daniels had been working on his house, doing some carpentry work, had had a fall and hurt himself severely, and his wife had asked him to come to Monrovia and get a doctor. He went to Dr. Payne, who demanded written authority from Mrs. Louise E. Daniels for his expected professional visit. The witness returned to Bargersville, and delivered the

message from- the doctor, whereupon Mrs. Louise E. Daniels said to him, "Henry, you know I cannot write," so she asked him to write her name and she made her cross on the letter. Dr. Payne then went and, having given the necessary treatment, M. K. Daniels recovered from his illness. He further testified that in the month of May of that year, 1913, M. IC Daniels did not come to Monrovia, nor did the late B. J. K. Anderson visit Barnersville ; and that the last time the late Mr. Anderson had

been in Barnersville was in 1903. That James W. Cooper, one of the supposed subscribing witnesses to the purported deed, did not go to Barnersville until 1919, which was his first trip. "I know this, because I was living there, and he told me so." The witness Jacob Dennis had never been to Barnersville. He the said H. C. Daniels said further that once he had been a registrar, and that then the said :\I. K. Daniels had registered himself on the same ten acre block of **land. "The only piece of land** assessed in the name of Louise E. Daniels, at that time, was a twenty-five acre block as an immigrant allotment." T. J. R. Faulkner, one of the administrators called as a witness, testified that when he was appointed administrator, the deed for these pieces of **land** was in the possession of Tobie J. Smart, but he withheld it; and when he came before the court, he said he had no other deed of the estate than those which he had handed in to them, the said administrators, as he, Smart, had taken in custody the property of the deceased at his death. The administrators thereupon went to the State Department, and having searched the records succeeded in locating the registration of this property in the name of M. K. Daniels in the form of two deeds, one for twenty acres, and one for ten acres. "We were then ordered," said he, "to take the survey of the property and to hand over all the deeds that were in the name of Louise E. Daniels to Mr. Smart. When the surveyor struck the line, we found that the two pieces of property that were upon the deed from the State Department and the thirty acres transferred to Mrs. Louise E. Daniels by the late B. J. K. Anderson were the same corners and bearings. Then we brought the matter into court and represented it to set one deed aside, as they both called for the same places. It was not until then that Mr. Smart brought into court the deed in question showing that the **land** had been transferred from Mr. and Mrs. Daniels to the late

B. J.

K. Anderson and that the deed in favor of Mrs. Daniels was a retransfer of the same property back to Mrs. Daniels. We then questioned the authenticity of the signature, and that has brought this case." 'Mr. Faulkner said also, that after many years' experience and contact with Mr. Daniels, he did not recognize this signature as being genuine, or in any way

a facsimile of any of those he had been accustomed to, or acquainted with, and besides he understood that Mrs. Daniels could not write, and he saw no cross of hers duly witnessed,
that had been affixed to the deed. He was asked if he knew the handwriting of Mr. Daniels and he answered in the affirmative. Some
memoranda of Mr. Daniels were shown him which he acknowledged were all in Mr. Daniels' handwriting; and the signature was that of
Mr. Daniels. But the signature on these memoranda did not correspond with that on the supposed deed. Witness W. L. Shaw on the stand
said that he knew the deceased well; that he was very familiar with his writing. He identified the signature on the document marked
"A," which was a book, the writings on pages i 17 and 147 of which witness Faulkner stated to be the genuine handwriting and signature
of Mr. Daniels, signed by himself, and he also averred that according to his certain knowledge Mrs. Daniels was not able to write.
Moses Daniels whilst on the stand averred that Mrs. Daniels could not write. A statement from the Bureau of Internal Revenue setting
out the full statement of Mrs. Daniels' land on the assessment list was presented in court. This Court says that the judgment of
the court below appears to us to have been substantially supported by the evidence, and hence should be affirmed. And moreover, inasmuch
as the record tends further to show that the deed upon which Tobie J. Smart was claiming title to blocks Nos. r and 4. in behalf
of his children was a false deed, a copy of this opinion should be sent to the Honorable the Attorney General with a request that
he cause an investi-

gation to be made into that phase of the evidence presented so that if evidence
can be procured to show that the deed which brought this dispute was forged by Tobie J. Smart, as the record suggests, or by any
other person, the appropriate criminal prosecution may be instituted ; and it is hereby so ordered. Affirmed.

Scott v Sawyer [1976] LRSC 9; 24 LLR 500 (1976) (2 January 1976)

RELDA DENNIS SCOTT, et al., Appellants, v. MILDRED SAWYERR, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 3, 1975. Decided January 2, 1976. 1. Actions of ejectment are required to be tried before a
jury, which is to decide all issues of fact. 2. Admissions of a party constitute evidence against the party. 3. The best evidence
that an issue admits of should be allowed at the trial. 4. All issues of law must be decided by the trial judge before sending the

case to the jury. 5. After alleging fraud, the party alleging it must establish the allegation at the trial. 6. When the trial judge himself rules on the issues of fact duly joined in a proceeding in which a jury trial is mandatory, he commits reversible error.

An action in ejectment was initiated by appellants. At the hearing in the lower court the trial judge resolved issues of fact, including fraud, raised by the pleadings. He also overlooked some issues of law. The trial judge rendered judgment on his findings without a jury. An appeal was taken by the plaintiffs. The Supreme Court held that the judge had patently committed reversible error by not empanelling a jury to decide issues of fact as required in actions of ejectment. The Court also pointed to the failure of the judge to resolve all issues of law. The judgment was reversed and the case remanded to the lower court to be properly handled.

Moses K.
Yangbe for appellants. for appellees.

Francis Gardiner

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.
500

501

For military service rendered the Republic of Liberia in Maryland County, George Henry Shaw was granted um acres of bounty land in what is known today as Sinkor, Monrovia, in Montserrado County. This Too acres was part of block No. 3 in the aforementioned area of Sinkor, and President Stephen Allen Benson signed the deed on July 23, 1857. The property descended through a continuous chain to the late Wilmot Dennis, whose heirs have brought this suit of ejectment against the appellees. Four title deeds which are listed below were made profert with the complaint filed in May 1953. T. From the Republic of Liberia to George Henry Shaw. 2. From George Henry Shaw to Levi James. 3. From Levi and Lucretia James to Wilmot E. Dennis. 4. Quitclaim deed from Henry Dennis and Thelma Reeves (mother of the sons of Gabriel Dennis) to Louise D. Alston, all heirs of the late Wilmot Dennis. Also made profert with the complaint was the last will and testament of Louise D. Alston, leaving her share of the Too acres to her grandchildren, plaintiffs Relda Dennis Scott and Gabriel Dennis Scott, the appellants herein. Several defendants were sued and separate answers were filed, one by defendant Margret Watkins, and the answer of Mildred Sawyerr and the other defendants. In the Margret Watkins answer two points were raised : (T) that she is not occupying any land owned by the plaintiffs, since the property she holds under warranty deed from Joshua King and J. B. Tisdell is different, both as to number and description, from the plaintiffs' land ; (2) that whereas the plaintiffs' several deeds call for land in block No. 3 in Sinkor, her property is in block No. 6. This would seem to show separate pieces of property, not likely to have even contiguous boundaries.

However, this is one of the issues in this case, and because of the position we have taken herein, we shall refrain from making further comment on it. Plaintiffs' reply to this answer was a reaffirmation of their position taken in the complaint. The answer of the other defendants raised several issues of law and facts, among them the following: 1. That the plaintiffs' deed from the Republic of Liberia to George Henry Shaw is a fraudulent document, because the said deed alleged to have been executed pursuant to an Act of the Legislature passed in 1887, cannot support a deed which had been executed in 1857, before the Act was passed. 2. That the bounty deed allegedly executed in favor of Shaw for ioo acres of land, pursuant to an Act of the Legislature authorizing the issuance of bounty land deeds to war veterans, is further illegal and patently fraudulent, because the said Act allotted 3o acres to war veterans for service rendered. 3. That the said bounty deed purported to have been signed by President Stephen Allen Benson in 1857, was never probated and registered as shown by the certificate of the Secretary of State, dated June 2, 1969. 4. That the deed from George Henry Shaw to Levi James was not probated and registered according to law ; which further establishes the fraudulent character of plaintiffs' claim to the land in question. 5. That in plaintiffs' further effort to perpetrate fraud upon the defendants, they are claiming land which the defendants occupy in block No. 6, as will more fully appear from deeds annexed to their answer, and marked exhibits "D," "F," and "G." Here again it would appear that two different blocks of land in Montserrado County were in issue, instead of contention over one; this should have necessitated some position on the part of the trial court to ascertain the facts. However, this is said in passing.

To this answer the plaintiffs filed a reply in which they traversed the several counts contained therein. As to count one, they denied the truthfulness of the allegations thereof, and said that the defendants had fraudulently misquoted the complaint with respect to the year in which the Act was passed, pursuant to which the President executed the bounty land deed to George Henry Shaw. For, whereas their complaint had asserted, and the deed made profert therewith shows, President Benson had signed the deed on July 23, 1857, pursuant to an Act providing for relief for the State of Maryland in Liberia, approved February 7, 1857. The defendants in their answer state that plaintiffs had claimed that President Benson had signed the deed "pursuant to an Act of the Legislature promulgated in 1887." An examination of the deed shows that the Act pursuant to which the deed was executed by the President was approved February 7, 1857. Count two of the answer questioned the President's authority to execute a bounty land deed for more than 30 acres, in accord with the statute under which he executed the said deed. In the reply to this count of the answer, the plaintiffs quoted section one of an Act passed

and approved December, i856--January, 1857, which we have quoted below. "That the President be and he is hereby authorized and requested for the relief of the State of Maryland in Liberia, to adopt measures for the foundation of an allied military force effective and defective of volunteers in this Republic to assist the State of Maryland in Liberia to settle the difficulties subsisting between that State and those of the aboriginal inhabitants, who are hostile within its jurisdiction. The officers of said volunteer Army shall be approved of and commissioned by the President and shall be governed by the military laws and regulations of the Republic of Liberia. Each volunteer of said military

Corps shall also be entitled to the month's payment in advance and a promise of one town lot and one hundred acres of land and shall be required to continue until the cessation of hostilities."
They concluded count two of their reply by denying, in view of this quoted section, the truthfulness of the contention that the President had no statutory authority to execute a bounty land deed for more than 3o acres. Their count three, which replies to counts three, four, five, and six of the answer states that with reference to the failure of the plaintiffs to probate the deed dated July, 1857, from the Republic to Shaw, and the deed from Shaw to Levi James, dated October, 1857, were both executed before October 1, 1862, the date on which the Act with respect to the effect of failure to probate and register documents relating to real property was enacted. They say, therefore, that this contention of the defendants' answer is untenable. Count four of the reply attacks count seven of the answer for inconsistency, and the plaintiffs say that although the defendants have denied in their answer that they are occupying plaintiffs' portion of block No. 3, and that their property is block No. 6, yet the answer has challenged two of the deeds in the plaintiffs' chain of title for failure to probate and register them. They say that defendants thereby seek to claim that block No. 3 and block No. 6 are identical. In count five of the reply the plaintiffs have pleaded as follows : "With further reference to count 6 of the answer, in which defendants are contending that plaintiffs' chain of title is defective because the deed from George Henry Shaw and Levi James is not registered and probated ; this contention is designed to mislead the court. Plaintiffs submit that there is no deed proferted by the plaintiffs which is signed jointly by and from George Henry Shaw and Levi James as falsely stated in count 6 of the answer."

Count nine of the reply attacks exhibits "F" and "G," annexed to the defendants' answer, being two warranty deeds from Joshua King, et al., as grantors to codefendant Francis Gardiner, and a warranty deed from Joshua King alone to co-defendant May Weedor, which two warranty deeds were not witnessed by at least two or more persons as the law requires. They have relied upon the Property

Law contained in the 1956 Code, section one thereof. They say that this defect in the grantor's deed affects all of the defendants except Margret Watkins, who filed a separate answer. Count ten of the reply refers to defendants' exhibits "B" and "C," which are certificates from the Ministry of Foreign Affairs, certifying that the records in the archives do not show that the deeds of George Henry Shaw and Levi James were ever registered according to law. They have defended against this by saying that since these two deeds were executed prior to October, 1862, when the law relating to the effect of not probating and registering documents in respect to real property was passed, these deeds are exceptions to the law, having been executed before the law was passed. Counts six, seven, and eight reaffirm the plaintiffs' position with respect to the defendants' illegally occupying their property in block No. 3, as contended in their complaint; they deny all and singular the entire answer of the defendants as well as those issues of both law and fact contained in the answer, and they deny any acts of fraud having been committed by them, as pleaded in the defendants' answer.

Thus we have stated all of the issues raised in the pleadings on both sides in this case. These were the issues which came for hearing and disposed of the points of law before Judge Emmanuel S. Koroma. The judge heard argument from counsel on both sides and ruled, dismissing plaintiffs' case. He did this after traversing all of the points in the pleadings ; and because we think it very necessary to justify the posi-

tion we have taken in this opinion, we will quote the concluding paragraph of the judge's ruling dismissing the case. "Therefore and in view of the foregoing, the court feels that the plaintiffs could not claim the land by any weakness of their adversaries, when in deed and in fact the said plaintiffs' title is not genuine. Since the Act for the bounty deed does not conform with the deed of the plaintiffs now in question, which Act the plaintiffs have used as support in their argument, this court cannot entertain this action under such provision of the law. Therefore, the said action is hereby dismissed, costs against the plaintiffs." To this ruling the plaintiffs took exceptions, and announced an appeal from it to the Supreme Court. Before going further we would like to here remark that not only do we disagree with this position of the judge, but declare it erroneous and, therefore, reversible.

The bill of exceptions composed of seven counts was approved by the judge with the notation "With exception on all counts not in conformity with the records." What records could the judge have been referring to, since he had dismissed the case without trying it? All that was before him were the pleadings of the parties, to which he added his ruling dismissing the case. We have decided to remand this case so that it might be properly handled by another judge in the trial court; therefore, we will not discuss the merits or demerits of the issues raised in the pleadings of the parties. But we will determine the issues raised in the bill of exceptions.

That the judge failed to pass upon fraud although it had been raised by the parties on both sides in their pleadings before him.
2. In ejectment the issues involve law and fact, and,
I.

therefore, the case should have been ruled to trial by jury. 3. The judge failed to pass upon all of the issues of law

raised in the pleadings, as the law required him to do
in every case, before determining it. 4. The judge failed to pass upon the effect which the portion of the statute quoted had in
determining whether or not President Stephen Allen Benson was justified in executing a bounty deed for zoo acres, instead of only
3o acres, as contended by the defendants. 5. The judge also failed to pass upon an admission made by one of the parties, and to explain
what effect this should have had on the case. Besides these five points, and others which we do not deem necessary to mention, the
judge in his ruling dismissing the case declared that the document which began the plaintiffs' chain of title, the bounty land deed
issued by President Benson in 1857, was not genuine. In other words, he decided without a jury that a title deed executed in compliance
with a provision of a statute quoted in a pleading "was not genuine" and that no legal effect should be given to it. We wonder how
the judge could have concluded that he had any such authority. In Duncan v. Perry, 13 LLR 510 (1960), the Court said that where a defendant in an ejectment action submitted a deed to the property in question, but the trial court instructed the jury that the defendant had no deed in court, the instruction was prejudicial and a judgment upon the jury's
verdict in favor of the plaintiff will be reversed. That was where the matter was allowed to go to the jury; how much more erroneous
for the judge himself to have declared that the plaintiffs' deed submitted with the complaint was "not genuine," following which
he dismissed their complaint. Other facts, such as several deeds on both sides and a will, constituting evidence which should have
been allowed to go to the jury in a case involving real property, the judge alone passed upon. As we have said, this was an erroneous
decision on his part. The Constitution says

that no one may be deprived of his property except by judgment
of his peers or the law of the land. Article I, Section 8th. We construe judgment of his peers to be a verdict of the jury, and the
law of the land in ejectment matters which involve issues of law and fact require a jury to decide the issues of fact. Johns v. Witherspoon,
[1947] LRSC 15; 9 LLR 376 (1947) ; Pratt v. Phillips, 10 LLR
(1 949).

Admissions of a party have always been held to be evidence against him. Bryant v. African Produce Company, [1940] LRSC 4; 7 LLR 93 (1940) ; Bank of Monrovia v. Kobbah, [1950] LRSC 2; 10 LLR 281 (195o). The bill of exceptions

claims that one of defendants admitted by letter that she was occupying a part of block No. 3, although she has denied it in the answer. In the circumstances, and in view of the Supreme Court's holding in such cases, the judge should have allowed the jury to pass upon this allegation of fact, at least for the purpose of affording this defendant an opportunity to deny that she had written such a letter. His failure to have done so was prejudicial to the interests of the parties on both sides.

It was erroneous for the judge to have ignored passing upon the recited text of a statute alleged to have been enacted and approved, authorizing the President to grant a town lot and one hundred acres of land as compensation to war veterans, especially since the existence of such statute had been questioned and made the basis of the defendants' defense in the case. Moreover, the judge's definition of a bounty land deed is wrong when measured by the section of the Act for relief of the State of Maryland in Liberia, quoted in count two of the plaintiffs' reply. That section is clear as to what the lawmakers intended the war veterans to be granted as compensation for military service. If, however, the judge felt that such a statute did not exist, he should have allowed the case to go to trial, and ask for production of the law giving the President the authority to issue a deed for one hun-

dred acres. The best evidence that the issue admits of should be allowed to be produced at the trial. The judge's contention that the bounty deed should have said how the property was to be acquired in fee simple, is an issue of law which he should have settled by his ruling, but he failed to do this and his failure to do so was error. This Court has said so many times that we are sure there is no necessity to repeat it in this case, that all issues of law must be passed upon in every case before sending it to trial, or determining it finally. One of the most recent cases in which this principle was again stressed, is Claratown Engineers v. Tucker, [1974] LRSC 48; 23 LLR 211 (1974). In ejectment as we have said earlier in this opinion, trial by jury is mandatory, irrespective of what was pleaded, so long as issue was joined by and between the parties. There is a long line of opinions to support this position, but for the benefit of this case, let us refer to Pratt v. Phillips, io LLR 325, 329 (I9so). In that case Judge Edward J. Summerville, in another case of ejectment, rendered judgment on the award of the arbitrators without a jury, and there was no attack upon it by the defendant. The Court reversed the judgment and remanded the case for a new trial. We quote a salient portion of the opinion. "Ejectment . . . supports the idea of adverse possession, hence a trial of the legal titles of the contending parties. It being a mixed question of both law and fact the statute provides that such trial is to be by a jury, with the assistance and under the direction of the court." We come now to consider the issue of fraud raised by the parties, and which the judge failed to have a jury pass upon. It is not sufficient to merely allege that fraud has been committed, but the party alleging the fraud must prove it at the trial. After

alleging fraud, the party alleging it must produce the evidence tending to establish the allegation at the trial. In the absence of evidence in

support of allegation, the decree of the court in favor of the plaintiff will be reversed.
Henricksen v. Moore, 5 LLR 60 (1936). In Beysolow v. Coleman, [1946] LRSC 4; 9 LLR 156 (1946), the Court held that when fraud is alleged, a jury must pass upon the evidence in support of the allegation. In view of what we have said herein, we have no alternative but to reverse the judgment and remand this case, with instructions that the issues of law be properly passed upon, and the case then be tried before a jury on its merits. Costs are to abide final determination. Reversed and remanded.

McCauley v Doe [1973] LRSC 79; 22 LLR 310 (1973) (23 November 1973)

ELIZABETH L. McCAULEY, Appellant, v. JAMES N. DOE, Sole Executor of the Estate of C. B. WILLIAMS, deceased, Appellee.
APPEAL FROM
THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 15, 1973. Decided November 23, 1973. 1. When the authority of a party to sue in a representative capacity has been challenged, he is required to submit proof of the authority claimed. 2. In the present case, the claim of being the sole executor of an estate should have been supported by the production of letters testamentary.
3. Mere possession of a deed does not necessarily establish title. Such possession must be factually alleged in a pleading to afford the adverse party an opportunity to contest the claims. 4. Any behavior of the jury, during and immediately after service, which can be regarded as prejudicial or reflecting prejudice against the losing party is a proper ground for a new trial.

Appellee began an action in ejectment as executor of an estate, contending appellant was wrongfully occupying land owned by the estate. The defendant challenged the authority of the plaintiff to sue as executor of the estate. She also claimed that she had obtained title to the land but offered no proof with her answer, although she submitted a deed at the trial which was denied admission into evidence by the trial judge. In the plaintiff's reply no attempt was made to respond to the charge that he had failed to furnish proof of being the sole executor of the estate he claimed he represented. A jury verdict was returned for the plaintiff. It would appear that after the verdict was announced some of the members of the jury joined the jurors serving that term in a sort of celebration, for they

began to dance and make merry in court because the plaintiff had won. An appeal was taken from the judgment by the defendant. The Supreme Court reversed the judgment of the lower court and in order for the issues on both sides to be properly presented remanded the case for retrial.

Alfred J. Raynes and Joseph F. Dennis for appellant. D. W. B. Morris and Edward N. Wollor for the appellee. MR. CHIEF JUSTICE PIERRE delivered the opinion of the court. According to the record certified to us from the trial court, the following history of this case can be obtained. 1. On September 3o, 197o, the plaintiff, who is the appellee here, filed an action of ejectment in the Civil Law Court in Monrovia complaining that the defendant, appellant in these proceedings, had wrongfully and unlawfully entered upon his sixty-acre tract of land in the settlement of Barnesville in Montserrado County, and that she was withholding the aforesaid property from his use and possession. He annexed to his complaint a bountyland deed executed in consideration of services rendered the Republic by George W. Herbert and S. N. Caddell, which was executed by President William D. Coleman, issued in 1897. The deed also shows that consideration for the grant was military service rendered the Republic by the aforesaid Herbert and Caddell, which was certified by proper authority. Herbert and Caddell transferred their rights in the certificate to Bill Williams, and he was thereupon named in the deed as grantee and owner of the land. We have not been able to find in the record any other document which would seem to be even remotely related to the complaint, except the affidavit. 2. The defendant appeared and filed an answer in which she denied the sufficiency of the complaint against her. In counts one and two of the said answer, she alleged the writ upon which she had been brought under the jurisdiction of the court was defective, in that no division of the Civil Law Court in which she should appear had been mentioned in the writ, and that the said writ was further defective for having ordered her to formally appear four days after summons, instead of the ten days

required by the Civil Procedure Law. Inspection of the defendant's appearance and answer shows, however, that she did appear and filed an answer within the ten days allowed. Therefore, these two alleged defects in the writ would seem to have been cured by her own act. Count three of the answer asserts that the plaintiff has not proferted title, whereby he could lay claim to the property in Bill Williams' deed. She also contended in count four of her

answer that the plaintiff has represented himself as being "sole executor" of the estate of the late Bill Williams, and had sued in this capacity, but that he had failed to profert any evidence of the fact that he is the executor. She says, further, that he did not annex to his complaint a will appointing him such executor, nor had he exhibited any letters testamentary from the Probate Court to verify his claim to being the executor of the estate. In count five of her answer she denied that she is occupying any land owned by the plaintiff and says that the land she occupied is her property acquired by legitimate purchase. 3. Because we think it is necessary to the just determination of this case, and in view of the issues raised in the answer, especially in counts three and four thereof, we have decided to quote the text of the plaintiff's reply. Plaintiff requests that counts 1, 2, 3 and 4 of the answer be striken from the pleadings because said counts are pled as demurrers which do not constitute defendant's substantive defense against plaintiff's claim, as laid in the complaint. Plaintiff alleges further that said counts and their averments are not statutory grounds for the abatement of a civil action. "2. Plaintiff submits further to counts i and 2 that, having acquired jurisdiction over defendant's person, the court cannot dismiss plaintiff's application for relief on the grounds of the alleged unmeritorious defects as stated by defendant in said counts i and 2 of her answer.

"3. And also because plaintiff denies that defendant is the owner of the parcel of **land for which this action is instituted, in that, defendant is not in lawful possession of said land**, and failed to profert the muniment of her title showing from whom she purchased of the said land as contended in count of her answer. Wherefore, plaintiff prays that said count be overruled. "4. Plaintiff further submits as to counts 3 and 4 that it is not required of executors to exhibit evidence of their representative capacity when entering an action. It is enough to only allege that they are executors of an estate. It is therefore incumbent on the defendant to allege and prove the contrary." As can be seen, no attempt was made to traverse the important issues raised in counts three and four of the defendant's answer; but we shall say more about that later. 4. Count three of the reply alleges that the defendant failed to profert her deed upon which she based her claim to ownership of the property. Plaintiff contended in count four of his reply that it was enough for him to have alleged only that he was executor of the estate of the late Bill Williams, and he denied that it was necessary for him to have exhibited evidence of this fact. These are the issues presented in the pleadings for our consideration. Trial of the case commenced on September 25, 1971, Judge John A. Dennis presiding, and ended in a verdict for the plaintiff. Judgment was rendered for plaintiff, and the defendant announced and completed his appeal to the Supreme Court. In Anderson v. McGill, 1 LLR 46, 47 (1868), this Court said that on the claim of an administrator that he was clothed with authority to sue for the estate, the burden of proof rested upon such administrator to establish the truthfulness of his claim to legal representation of the estate. "The evidence

necessary to the proof of the authority of an administrator is his letters testamentary."

It would seem that a sole executor, such as plaintiff claims to be, should be able to more easily establish the fact of his authorized representation, since unlike an administrator his appointment must be by will. This being so, what objection should an executor have to producing evidence of his appointment to serve an estate? Especially when the issue was raised in the pleadings of his adversary, as in this case. The former Civil Procedure Law required that "Every action shall be prosecuted in the name of the real party in interest, but any of the following persons shall be entitled to sue in his own name without joining with him the party for whose benefit the action is brought: (a) an executor; (b) an administrator; (c) a guardian; (d) a trustee; (e) a party with whom or in whose name a contract has been made for the benefit of another; or (f) a person so authorized by a statute of the Republic of Liberia." 1956 Code 6:91. We interpret this statute to mean that in any one of these enumerated cases, the party suing for another should be able to produce proof of his authority to serve in the capacity for which he claims to have been appointed. Otherwise, as in the present case, estates might be unnecessarily exposed to the schemes of land-hungry imposters. In passing on the issues of law in this case the judge took the view that it was not necessary for the executor to submit proof of having been appointed in the capacity claimed and he relied upon the Civil Procedure Law. "Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to oraise an issue as to the legal existence of any party or the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a repre-

sentative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge." Rev. Code i :9.5 (1). Would ejectment be a special matter contemplated under this statute? We do not think so and, therefore, hold this statute to be inapplicable to the judge's reasoning. We think that the judge's interpretation of this statute was in error. When acting upon it, he overruled the defendant's answer which called for proof of the plaintiff's claim to having been appointed to serve as executor of Bill Williams' estate. The above section does not allow or permit an executor to refuse to show evidence of his appointment, when he sets himself up as the representative of an estate in litigation

and his authority to represent the estate is questioned in the pleadings of his adversary. Moreover, the Decedents Estates Law provides that "Letters granted to fiduciaries by the court are conclusive evidence of the authority of the persons to whom they are granted until the decree granting them is reversed or modified upon appeal or the letters are suspended, modified or revoked by the court granting them." Rev. Code 18:107.3. It is a fundamental principle of our procedure and practice, that he who alleges the existence of a fact is bound to prove it. In the circumstances, why wouldn't the executor want to produce evidence of having been appointed the executor of the estate of Bill Williams? It is in the best interest of legatees and creditors that evidence of the appointment of executors and administrators be produced in court to thereby protect estates from fraud and from interference by unauthorized persons. The record does not show when Bill Williams died, but the record does show that he acquired this property in 1897, seventy-six years ago. According to the record, no subsequent deed being indicated, this property has not changed hands since the grantee named in the deed ac-

quired it in 1897. We assume, therefore, that Bill Williams died still possessed of it. This would seem to place this title among the old real-estate titles in the Country. To intelligently and fairly determine the issues in this case, it would seem to be necessary that answers to certain questions be known: (I) When did Bill Williams die, for a comparatively young man like plaintiff to be his executor? (z) When were letters testamentary issued to the executor of his estate? (3) Where is Bill Williams' will? It is our opinion that there must be a will for a "sole executor" to function in such capacity. And if there is a will and the executor is so functioning, then there must also be letters testamentary. Where are these documents, and why would the plaintiff refuse to exhibit them when his authority to act upon them was challenged by the defendant? During the trial, according to the record for September 25, 1971, the plaintiff and two other witnesses testified to the property in question being owned by the late C. B. Williams, alleged son of the late Bill Williams. Nowhere in the record is it shown whether C. B. Williams ever made a will, or how his estate was administered after his death. If the property in issue descended to him and he has since died, it would seem more reasonable that the , plaintiff would be executor of his estate, rather than that of Bill Williams, his father. But there is nothing in the record to clarify this important point. As the record stands, all that in any way connects James Doe, the plaintiff, with the property involved, is his own assertion of being Bill Williams' "sole executor." There isn't the least scrap of any evidence to show that he is indeed executor of the Williams' estate, which would have clothed him with authority to sue. Nor is there anything to connect him with C. B. Williams, who we assume acquired the property after his father's death. There are no papers made profert from the probate court

in either of the two estates, Bill 'Williams' or C. B. Williams'. An entirely different situation would have been presented had the plaintiff sued as the representative of the estate of C. B. 'Williams instead of the estate of Bill Williams. But as I have said, the record on this point is not clear, so we have the plaintiff representing himself as sole executor" of Bill Williams' estate, though he testified that C. B. Williams was owner of the property in dispute and that the said C. B. Williams was his uncle. It is difficult to find a more confused state of facts in any land dispute. Now let us consider the claim of the defendant. As we have seen in count three of the plaintiff's reply, no deed was made profert with her answer to support her claim to ownership of the property she occupies. She testified at the trial that at the time the plaintiff filed his case against her, her deed was at the Executive Mansion awaiting the President's signature. No one disputed her, so we assume that she told the truth. According to her testimony in the court below she acquired title to two acres of public land in the Settlement of Barnesville in 1970. She produced a public land sale deed at the trial to support her testimony, although she had not given notice of the existence of any such deed in her answer. The deed was offered and was marked by the court, but was denied admission into evidence. However, the following facts were ascertained from the testimony of witnesses at the trial: (I) that defendant's two acres of land **were carved out of a block known as No. 37 on the map of the area, whereas the plaintiff's deed involves block No. (2) that the Land** Commissioner and the Commissioner of the Township of Barnesville where defendant's two acres are situated, had designated and certified them as being unencumbered public land, and had thereupon ordered it surveyed for her to ((

purchase. Consequently, that everything necessary for her to have done to acquire legitimate title to the property had been done. Therefore, she concluded that the property was hers and she had accordingly built her house upon it. Without going into any more of the many salient points which are shown to have been presented on both sides, we would like to observe that the mere possession of a deed executed in a party's favor, does not necessarily establish such party's claim in an ejectment suit. Notice of the existence of such deed must have been given in the party's pleadings, so as to afford his adversary opportunity to contest such claim. The fundamental principle of pleading and practice, that of giving notice, is a very old maxim in our practice. In count five of the appellant's brief, it is stated that after a verdict had been returned in the plaintiff's favor, the jurors serving that term of the court, including some of those who had served on the panel, began to dance and make merry in court because the plaintiff had won. It is also stated in that count of the brief that

the plaintiff himself joined in the merriment, and in his moment of jubilation made the remark: "The woman (meaning the defendant) came from Biafra to our land in Liberia." During appellant's argument of this point, we inquired of counsel why this alleged fact had not been made a part of the record of the trial so that it could have been included in the bill of exceptions. We were told that there was so much confusion in court after the verdict that nothing could be entered on the record. This observation was not denied by the appellee. It is unfortunate that an incident of this kind should have happened in our courts, because it is grossly irregular and contrary to our concept of what the atmosphere should be in which a fair and impartial trial can be had. It is possible that nothing ulterior took place to influence the jury's verdict. But it is also possible that the merri-

ment on the part of the jury after a verdict was returned was an outward manifestation of some previous understanding or arrangement which might have influenced their verdict. That possibility also cannot be ruled out. In such circumstances the Court will always rule with the latter possibility in mind, and grant a new trial. When a similar thing happened during trial in Shaheen v. C.F.A.O., 13 LLR 278 (1958), this Court remanded the case for a new trial on that ground alone. When a jury has been impaneled to try the issue joined, their every act until discharged must remain under close scrutiny by the court, by the parties on both sides, and by the world at large. In McBurrough v. Republic, [1934] LRSC 3; 4 LLR 25 (1934), the Supreme Court reversed the judgment because the trial judge communicated privately with the jury in his chambers in the absence of the parties. The Court regarded this as improper behavior by the judge. We strongly condemn any behavior of a jury, during and immediately after service on a panel, which can be regarded as prejudicial, or reflecting prejudice against the losing party. Any such behavior when brought to the Court's attention would be proper ground for a new trial. Because of the position we are taking in this case, we will make no further comment on the issues except to say that whether or not there was title in the defendant, the plaintiff's authority should have been so well established in his complaint that no doubt was left as to the legitimacy of that authority. In ejectment suits plaintiffs recover on the strength of their titles or positions, without regard to whether or not the defendant has any defensible claim at all. It is, therefore, our opinion that in order for the issues on both sides to be properly presented, and thereby permit the court an opportunity to intelligently pass upon them, the judgment in this case is hereby reversed, with

instructions that the parties be permitted to replead in the court below, if they elect to do so, and that a new trial be had thereafter. Costs are ruled against the appellee. It is so ordered.

Reversed and remanded.

Tarwon v Williams et al [1993] LRSC 19; 37 LLR 256 (1993) (23 July 1993)

MARTHA L. TARWON, Appellant, v. **SAMUEL K. WILLIAMS** and **ROGER K. MARTIN**, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 5, 1993. Decided: July 23, 1993.

1. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall deemed denied or avoided.

2. An agreement is a contract entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do or omit some act in consideration that the other party shall give or has given some valuable thing, or shall do, or omit, or has done or omitted some act.

3. An oral gift of **land, or promise to give land** followed by the vendee's taking possession of the **land** in pursuance of the promise and making valuable permanent improvements in reliance thereon, may be enforced by the court of equity against the donor or his heirs or grantees with notice.

4. Where the promise to give is conditioned on the vendee's making improvements, compliance with the condition furnishes the consideration for the transaction, and it not necessary that there be a technical consideration.

5. Where the promise to give is wholly unconditional, the doctrine of *estoppel* will apply against the donor in favor of the donee because of the change of condition as in the case of a parol sale

possession and improvements. The making of the improvements is both an act of part performance and the equivalent, in the view of equity, of actual consideration.

6. Equity will lend its aid to the enforcement of a promise to make a gift of **land** where the donee in reliance on the gift has taken possession pursuant thereto and erected valuable and permanent improvements.

7. The assent of the offeree may be inferred from circumstances and acts, as well as from words. If the parties have not stipulated otherwise, the acceptance need not be in the particular form nor evidenced by express words. The subsequent acts of the party to whom the offer is made constitute a sufficient assent so as to make a perfect mutuality of agreement and obligation between the parties.

The crux of this petition is that appellant, defendant in the trial court, and her partner entered into a lease agreement for a period of twenty calendar years certain with an optional period of five years. Although appellant did not personally sign the lease agreement as lessee, due to unavoidable circumstances, she initiated the negotiation and paid the amount due on the lease from 1983 up to the institution of this action in 1989. In 1983, appellant's partner left the premises but appellant remained thereon and paid the annual rental up to and including 1989. Thereafter, appellant entered into an oral agreement with appellee, which provided that upon the expiration of the original lease and its optional period, appellant would lease the premises for an additional twenty-five years. Based on the oral agreement, appellant developed the premises by erecting additional improvements thereon.

Notwithstanding this oral agreement, the co-appellant filed summary proceedings to recover possession of real property against appellant, alleging that lessee, who signed the original lease, did not assign the lease to her when he left in 1983. Consequently upon its expiration, appellant became a tenant at will. The trial court ruled in favor of appellee. The Supreme Court *reversed* the trial court, holding that the appellant was a lessee by implication and therefore still had the optional five years. The Court further held that appellee could elect to extend the lease for twenty-five years after the expiration of the five years.

Frederick D. Cherue and Frank W. Smith for appellant and *Roger K Martin* for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellant Martha L. Tarwon, was the fiancee and business partner of one Mr. John B. Johnson in Bong Mines. The appellant decided to extend their business in Monrovia, and therefore came to Monrovia to investigate the possibility of leasing a vacant lot to build on for their business. When she got to Monrovia, a friend took her to Mr. Samuel K. Williams, the appellee, who consented to lease the vacant lot for Two Hundred Forty ($240. 00) Dollars annually. She then brought in her business partner, Mr. John B. Johnson, whom she introduced to the appellee. Unfortunately for her, when the time came for the preparation of the lease agreement, she had to leave the city to go see her sick mother in Grand Gedeh County. Upon her return, the lease agreement had been executed and signed between Mr. Samuel K. Williams, as lessor, and Mr. John B. Johnson, as lessee for ten calender years certain with an optional period of five (5) years. This was January 24 1979. After building the house on the **land**, the appellant and her fiancee, John B. Johnson, lived on the premises until 1983, when they separated. Mr. John B, Johnson left the premises and went back to Bong Mines while the appellant remained on the **land**. The appellant's arguments are evidenced by receipts on records showing that she paid the annual lease of Two Hundred forty ($240.00) Dollars from 1983 to 1988/89.

According to the appellant's testimony, which was corroborated by witness Zack Johnston, the appellee found a Lebanese merchant who wanted the premises and therefore he asked the appellant to leave the premises claiming that she has not been forthcoming with payment of the lease.

The appellant refused to vacate the premises on ground that she had a leasehold interest. The appellee, however, contended that there was no lease agreement between them nor was she married to Mr. John B. Johnson with whom he executed the lease agreement, and there was no evidence that Mr. John B. Johnson had made an assignment of the lease to her. The appellee, in fact, contended that Mr. John Johnson who leased the premises and built the house turned same over to him on 30th of January 1989. Therefore, the appellant was a tenant at will. The appellant argued vehemently that after the departure of Mr. John B. Johnson from the premises in 1983, she and the appellee came to an agreement that she will remain on the premises and continue to pay the same rent, and that after the expiration of the ten (10) years with the optional period of five (5) years, appellee would enter into another agreement for Twenty-five (25) years with her. Predicated upon this agreement, she built another house on the **land** making it two houses and paid the two hundred and forty ($240.00) dollars per annum up to the time of filing the complaint against her for summary ejectment by the appellee.

According to the testimony of the appellant as corroborated by her witnesses, she was leasing the **land** from the petitioner, Samuel K. Williams, predicated upon the agreement signed between him and her partner, John B. Johnson. It was also revealed that this lease agreement was signed in 1979. When Mr. John B. Johnson vacated the leased **land**, Martha L. Tarwon remained on the premises and paid the same rent of two hundred forty ($240.00) dollars yearly. The appellant paid these annual rents from 1983-1989 when the appellee told the appellant that his daughter had found a Lebanese man who would like to rent the place, and that therefore she should vacate the premises.

Appellant, on the other hand, maintained that she and Johnson, her partner, lived together for eight (8) years and it was during that time that she negotiated with appellee for the premises and invited her partner. However, because she was at home with her sick mother, the lease agreement was concluded between Mr. Samuel K. Williams and her partner. The appellee does not recognize her as a partner, yet, he recognized and requested her to take possession of the premises and pay the same rent from 1983-1989, the period of the first agreement. She even paid the rent for 1990 which amount appellee kept for three (3) days and then returned it.

The appellee maintained that Mr. John B. Johnson, lessee, turned the place over to him on January 30, 1989 and that Mr. John B. Johnson still had the agreement. Yet it was appellant, and not Mr. Johnson, who paid the rent from 1983-1989.

We shall quote for the benefit of this opinion counts four and six of the appellant's answer and counts four and six of the petitioner's reply. Appellant's answer, at counts four and six state:

"(4) AND ALSO BECAUSE RESPONDENT submits as to count two (2) of the purported petition, the allegations therein are false and misleading and had been asserted only with the sole intent and purpose of cheating respondent and depriving her of her hard earned labor and property right; to the contrary, respondent is not a tenantat-will as falsely alleged but a lessee occupying the premises under a valid lease agreement entered into by and between plaintiff as lessor and respondent and her partner and agent, John B. Johnson, for a period of fifteen (15) years, ten (10) years of which has already expired leaving five (5) years more, at an annual rental of Two Hundred Forty ($240.00) Dollars, which respondent has substantially paid annually up to 1989. The petitioner's attempt to oust respondent of possession is therefore malicious, iniquitous, and dishonest. The said lease agreement is in the possession of petitioner and respondent hereby gives notice to petitioner to produce the same at the time of the trial of this case, in the event a trial becomes necessary. Respondent also proferts herewith copies of her rental payment receipts marker "B/4, forming cogent part of this answer".

"(6) AND FURTHER BECAUSE RESPONDENT also submits that petitioners's demand upon respondent to vacate his premises as alleged in count two (2) of the purported petition is ungodly, mischievous, inequitable and dishonest, in that the initial period of the lease has not as yet expired; secondly, both petitioner and respondent agreed that upon expiration of the first term, respondent will enjoy another term of twenty-five (25) years upon terms and conditions to be agreed upon, and in reliance upon these promises, respondent has built two (2) dwelling houses on the premises with total value of more than Fifteen Thousand ($15,000.00) Dollars, which property respondent has not even enjoyed for good five (5) years. Respondent maintains that the entire action is only vexatious and an attempt for petitioner to unjustly enrich himself at the expense of respondent, a conduct which every court of justice frowns upon and should not be countenanced nor condoned by this Honourable Court. Respondent hereby gives notice that at the time of the hearing of this case, she will produce the assessed valuation from the Real Estate Tax Division of the Ministry of Finance, Republic of Liberia."

In traversing these issues, the appellee said in his reply:

"(4) As to count four of said purported answer, petitioner says that he reiterates and affirms his petition against respondent in its entirety. Because respondent is a tenantat-will, does not have any property right on the premises sued for, was given possession with all the structures already built on said premises, and does not have any lease agreement with petitioner for the premises sued, it is inconceivable that respondent will contend that she has a valid lease agreement with petitioner for the premises sued for and lamentably fails to produce same but rather feels satisfied to contend that petitioner has said instrument, which contention is preposterous considering respondent's assertion that she and her partner and agent, John Johnson, entered into said alleged lease agreement with petitioner. It must be a fictitious and concocted lease agreement otherwise, why is it that respondent does not have a copy of same? Why is it that her partner and agent, John Johnson, does not have a copy thereof, including her other agent, Counsellor Alfred B. Flomo? Respondent submits that nowhere among R/4 does the receipt for the payment of rent for the period 1989 appear as is falsely stated in said count 4 of the fabricated answer. Said count four (4) of the unmeritorious answer should therefore be overruled for respondent's failure to produce any document granting her leasehold right on the premises sued for." "(6) And also because petitioner says that count six (6) of respondent's answer is repetitious of count four (4) of said answer. Petitioner therefore reiterates count four (4) of this reply. Said count six (6) of the unmeritorious answer of respondent should be overruled and dismissed along with the entire answer for bad pleading. For one cannot be dishonest or iniquitous who seeks to recover the possession of his property wrongfully detained by a tenant-at-will".

We do not think that count six (6) of the answer is repetitious of count four (4) of the answer. For count six (6) raises the issue of the oral agreement between appellee and appellant to enter into another twenty-five (25) years agreement at the expiration of the first term, which appellant said motivated her to build another house, thereby making two (2) dwelling houses on the premises with total value of more than fifteen thousand ($15,000.00) dollars, which property appellant has not enjoyed for good five (5) years were not raised in count four (4):

"Averments in a pleading to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denial or avoided." Civil Procedure Law, Rev. Code 1: 9.8(3)

In count four (4) of the reply, appellee maintained that appellant was given the premises with all the structures already built on said premises. Yet, during the trial, the following questions were posed to the appellee on the cross and these were his answers:

Question: Mr. Witness how long before the defendant rented your premises did you construct a building thereon?

Answer: Yes, I constructed that building myself. It was built by a man. In other words it was built by a man who leased the place from me and turned it over to me.

Question: Thank you, Mr. witness. Would you mind telling the court who is this man who leased your premises, built the house, and turned same over to you, if you know?

Answer: The name of he man is John B. Johnson.

Question: Tell us, Mr. witness, when did this John B. Johnson turn your premises over to you if you can remember?

Answer: He turned the place over to me January 30, 1989.

Question: Mr. witness, when did the defendant Martha Tarwon rent your premises if you can remember?

Answer: She has been renting almost five years now.

Question: Do you normally issue her receipt for such payment of rent?

Answer: Yes, I do give receipt.

Question: Mr. witness, we quote herein one of the receipts issued to Martha Tarwon which reads thus: "Liberia Nov. 6, 1983, Received $240.00 from Miss Martha Tarwon for the payment of **land** leased from Mr. Samuel Williams for the year A.D. 1983. Signed S. K. Williams." Do you remember issuing such receipt?

Answer: Except I see it and compare it with my receipt books.

Question: Please take this then and compare it with your record and tell the court whether it is the same receipt?

Answer: I have two receipt books in which I wrote receipts for funds received. One of the books is here with me and other is at home and therefore I cannot easily compare it to answer your question correctly.

The answer given to this last question is evasive, for one does not have to compare his writing with a receipt book before admitting whether or not it is his writing.

The following questions were posed to the lone witness of the appellee, John Gonkerwon:

Question: Did we understand you to say also that defendant, Madam Martha Tarwon, is a tenant at will of your father, the plaintiff?

Answer: As far as I am concern, she was a renter.

Question: Mr. witness, tell us how long have you known defendant Martha Tarwon, since you are friendly with her?

Answer: I have known Martha Tarwon since 1981.

We quote the testimony in chief of the appellant's second witness in person of Zack Johnston:

"Being acquainted with Mr. Samuel K. Williams and Mrs. Martha Tarwon, I am prepared to stand and tell this Honourable Court that when Martha Tarwon took sick last year, I am the one who carried the amount paid as usual, based on the agreement between Mrs. Martha Tar-won and Mr. Samuel K. Williams. On several occasions, I delivered the amount she usually paid and Mr. Williams issued receipts which I knew to be lease payment between the plaintiff and the defendant. In fact, the last amount that I carried for 1990, as an advance payment, was received by Mr. Samuel K. Williams. He did not issue a receipt, stating that the lady who writes the receipt was not available. Three days later, when I returned there for the receipt, I was told by Mr. Williams that his daughter has gotten luck from one Lebanese Merchant for the premises. Therefore he does not want to keep the money anymore, and so he gave the money back top me".

The witness was then cross-examined as follows:

Question: Mr. Witness, in your testimony in chief, you said that you were the one who used to go to the plaintiff to pay the rent for defendant Martha Tarwon, and you stated that you have paid the rent for 1989. Am I correct?

Answer: Yes.

Question: You have identified court's marked D-SE/02, which is dated March 8, 1988. I pass same back to you and request that you look at it and tell this court whether it is this receipt that you referred to as payment for the year 1989.

Answer: Identifying the receipt, I stated that I usually paid in advance. And this receipt is for 1989.

Question: I put to you that the receipt marked by court DSE/02 identified by you is not for the payment of rent for the year 1989 and that the payment of the rent for the year 1989 has not been made. What do you have to say to that?

Answer: I stated to the court that the lease payment was always in advance, so 1989 the money was paid in 1988. This is how the receipt was prepared.

Question: Mr. witness are you telling this court that when you paid the rent on March 8, 1988 that money for which receipt D-SE/02 was issued was payment in advance not for 1988 but, for 1989?

Answer: It was payment in advance for 1989. We also quote the testimony of the third witness of the appellant:

"Some part of 1979, I went to visit Martha in Bong Mines. She told me that she was building in Town here. She said she and her husband John B. Johnson leased a place from Mr. Williams. So

while they were building this house she and myself went to Mr. Williams. Then I told her that I know him to be a Gio man but he and I are not that close. I went to him and said thanks, and anytime I wanted to see Martha Tarwon, I will go to the place where she was building. I left and went to Europe. Martha was making business on Carey Street. She and her husband were there, where I left them. After I came back I went there to look for them, at that time Martha Tarwon and John B. Johnson were not together anymore. Then I went to her and asked her about this place that they were leasing. She told me that she was still paying the money: "Johnson is not paying the money again I am the one paying the lease." So she and myself went to Mr. Samuel K. Williams and I told him thanks, and from that time Samuel K. Williams was a brother to us. To my surprise, I heard Sam had taken Martha to Court. That is all I know"

Question: Did we understand you to have told this court that Martha Tarwon, the defendant in this case, is the one who told you that she was building in town here at the intersection of Gardnersville and Barnersville?

Answer: I followed Martha Tarwon to the site where she was building this house.

Question: You also said that John B. Johnson was the husband of Martha Tarwon, tell this court did you attend their wedding ceremony, and if so, please state the city in which they were joined together in holy wedlock.

Answer: John Johnson went to the family and show himself to the family that he was going to marry Martha legally but before marrying her we have to do the traditional way first. But I did not say that they were married. Maybe it will happen but so far this is all I know. I never saw them in church.

After the appellee had asked the appellant to move, he also wrote the tenants that were paying to the appellant not to pay anymore money to her. This clearly establishes that the appellant was in charge of the premises, collecting her own rents from the tenants.

The appellant in count six of her answer alleged, among other things, that "both petitioner and respondent agreed that upon the expiration of the first term, respondent will enjoy another term of twenty-five (25) years upon terms and conditions to be agreed upon, and in reliance upon these promises, respondent built two (2) dwelling houses on the premises with total value of

more than fifteen thousand ($15,000.00) dollars which property respondent has not even enjoyed for good five (5) years". The appellee did not deny this allegation. Besides, the appellant regularly paid the leased amount up to 1990 when the appellee himself returned the 1990 rent.

"A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do or omit some act in consideration that the other party shall give or has given some valuable thing, or shall do, or omit, or has done or omitted some act." *Karmo v. Yemgbie*, 13 LLR 84, 86 (1957).

This Court has also held that:

"Any oral gift of **land, or promise to give land**, followed by the vendee's asking possession of the **land** in pursuance to the promise and making valuable permanent improvements in reliance thereon, may be enforced by a court of equity against the donor or his heirs or grantees with notice. If the promise to give is conditioned on the vendee's making improvements, compliance with the condition furnishes a consideration for the transaction. But it is not necessary that there be a technical consideration. If the promise to give was wholly unconditional, the same relief will be given to the donor, based upon the same reasons of estoppel against the donor and virtual fraud upon the donee because of his change of condition as in the case of a parol sale with possession and improvements. The making of the improvement is both an act of part performance and the equivalent, in view of equity, of an actual consideration." *Pennoh v. Pennoh*, 13 LLR 480, 489-490 (1960).

Further, the authorities on this subject maintain that:

"...equity will lend its aid to the enforcement of a promise to make a gift of **land** where the donee in reliance on the gift has taken possession pursuant thereto and erected valuable and permanent improvement".

"...Even a parol gift of **land** may be rendered enforceable in equity by the donee's acts in taking possession and erecting improvements, on the theory that such acts constitute a party to take the case out of the statute of frauds". *Ibig* at 490.

After the hearing of the summary proceeding to recover possession of real property in the civil law court, judgment was rendered in favor of the petitioner. The respondent excepted and announced an appeal to the Supreme Court which was granted. The court ordered the issuance of a writ of possession. The respondent then fled to the Chambers Justice with a petition for prohibition. The petitioner now, and respondent in the prohibition, did not contest the petition. Instead, this is what the counsel for respondent said at the call of the case:

"At this stage, counsel for respondent, Counsellor Roger K. Martin of the Martin Law Offices, wishes to inform Your Honour that in order to expedite this matter, and in the interest of justice and fair play, and also in view of the fact that the respondents' counsel withheld the filing of their returns to the petitioner's petition, we therefore requests Your Honour to grant petitioner's petition thereby permitting the petitioner herein to perfect her appeal announced to the full bench since the petitioner has already filed her bill of exceptions on the 18'h day of December, A. D. 1989 after the rendition of the final judgment against the petitioner on the 9'h day of December, A. D. 1989. And respectfully submits."

With the above submission, the Chambers Justice, His Honour J. D. Baryogar Junius, then granted the prohibition. The defendant believing that she was still in charge of the premises, wrote one of the tenants, in person of Abraham Jubor, telling him that he has to conform to the new increment of one hundred thirty-five ($135.00) dollars as per our discussion. Failure to do, he will be given fifteen (15) days to leave the premises. This letter was referred to counsel for petitioner, Counsellor Roger K. Martin, who wrote the defendant informing her that the letter has been referred to them and therefore she must desist from tampering with the tenants on the premises otherwise, she will be arrested and that they have instructed all tenants on the premises not to deal with the defendant.

We feel that if the petitioner's counsel decided not to contest the prohibition, then he should have also known that things should have remained in *status quo ante.*

Therefore if the respondent was in charge of the premises prior to the decision, then on the summary proceedings she should have remained in charge of the premises until final judgment because the purpose of the prohibition was to have her remain on the premises until final judgment.

We quote hereunder count 5 of the prohibition:

"THAT following a protracted period of trial, the respondent judge rendered his final judgment on Saturday, December 9, 1989, in which he adjudged your humble petitioner liable and ordered her to be evicted, ousted and vacated from the premises although petitioner set up and proved legal defense of leasehold right and equitable title to said premises, having built the two (2) houses and consistently paid taxes thereon in accordance with the provisions of said lease. In this case, title is at issue and therefore should have been determined by a trial jury under the direction of the court. Thus, the trial and determination of this case without the aid of a jury was contrary to law and those rules which ought to be observed at all times, for which prohibition will issue to restrain such usurpation of power."

The Counsel is hereby seriously reprimanded not to repeat such actions, which we feel is highly contemptuous.

We do not sustain count one of the bill of exceptions because the magisterial court does not have concurrent jurisdiction with the circuit court. With reference to the twenty-five (25) years promised, which led respondent to build another house on the premises, the petitioner may either have the respondent enjoy the twenty-five (25) years or refund the amount she spent in putting up the building.

As to the respondent being a tenant-at-will, we observed that after John **B.** Johnson, whom petitioner claimed was the lessee, left the premises, the petitioner recognized the respondent as the lessee and continued to receive the lease rents from her from 1983 to 1989. We also observed that from respondent's letter to Abraham Jubor of March 22, 1990 and petitioner's reply, through his counsel, of March 26, 1990, the respondent was in complete charge of the premises, paying the rent to petitioner and collecting her own rents from her tenants.

This is what the authorities have said:

"The assent of the offeree may be inferred from circumstances and acts, as well as from words. If the parties have not stipulated otherwise, the acceptance need not be in any particular form nor evidenced by express words. The subsequent acts of the party to whom the offer is made may constitute a sufficient assent so as to make a perfect mutuality of agreement and obligation between the parties". 46 AM. JUR., *Sales, §* 48.

In view of the foregoing and the surrounding circumstances, the judgment of the lower court is hereby reversed. We hold that the respondent was a lessee by implication and therefore still has the 5 years optional period. The petitioner may fulfill his promise by extending the lease for 25 years more at the expiration of the 5 years optional or refund the amount the respondent maintains she has spent in the construction of the building predicated upon the oral promise to lease the **land** for another 25 years as indicated in count 6 of her answer and testimony in chief. Costs in these proceedings are ruled against appellee. And it is hereby so ordered.

Judgment reversed.

Kiazolu v Pearson et al [1988] LRSC 87; 35 LLR 550 (1988) (29 December 1988)

HAWAH KIAZOLU, Informant, v. **HIS HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, the Sheriff for Montserrado County, et al., Respondents.

INFORMATION PROCEEDINGS.

Heard: November 7, 1988. Decided: December 30, 1988.

1. A judgment of a court is not binding upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard.

2. A judgment is not binding or conclusive on a stranger to the litigation. A stranger to the litigation is a person who is not a party, or in privity with, or represented by a party, and who has not been served with process and. does not by actual intervention bring himself within the litigation.

3. Res judicata means that there is an existing final judgment rendered upon the merits of a cause, and which was rendered without fraud or collusion, by a competent court of jurisdiction, and is conclusive as to the rights, questions and facts in issue as to the parties and privies, in all other action in the same or any other judicial tribunal of concurrent jurisdiction.

4. A person not party to an action or proceeding, who is not cited or summoned to appear is not bound by a court's judgment in such action or proceeding.

5. Realty cancellation proceeding does not concern itself with collection of rents.

6. A court's mandate is a command, order or direction, written or oral which the acting court is authorized to give, and a person is bound to obey. It is a judicial command and precept proceeding from a court or judicial officer directing the proper officer to enforce a judgment, sentence or decree.

7. When emanating from an appellate court, a mandate is a precept or order issue upon decision of an appeal or writ of error, directing action to be taken, or disposition to be made of a case by an inferior court.

Informant filed a bill of information before the lower court, contending that although she was not a party to a decision rendered earlier by the court, the sheriff of the lower court, claiming that he was acting in obedience to a mandate from the Supreme Court, had instructed her tenants to pay rents to the court. Her bill of information was granted by the judge of the lower court, who ordered the sheriff not to collect rents from informant's tenants. In a subsequent term of the lower court, the assigned judge ignored his predecessor's ruling and ordered the sheriff to collect rents from informant's tenants. Informant petitioned the Chambers Justice for a writ of prohibition. The writ was issued and served and that case remains pending in the Chambers undecided. Informant filed this bill of information before the Supreme Court because the sheriff continued to collect rents from her tenants on the ground that he had the judge's order to do so. The Supreme Court, after traversing the issues raised in the bill of information, held that a judgment is not binding on a party who, as in the case of the informant, was neither cited nor summoned and did not act to intervene or otherwise bring herself into the original lawsuit or under the jurisdiction of the court. Hence, the information was granted.

M Fahnbulleh Jones for the informant. Isaac C. Nipple for the respondents.

MR. JUSTICE BELLEH delivered the opinion of the Court.

This bill of information grows out of the opinion and judgment of this Court rendered during its March, A . D. 1988 Term in the case: Republic of Liberia by and through the Minister ofJustice, Honorable Jenkins K .Z . B. Scott, v. Morve Sone, Varmuyah Corneh and all those claiming under the Aborigine Grant Deed of 1931, 35 LLR 126 (1988), in an action to cancel an Aborigine Grant Deed purportedly signed in 1931 by Edwin J. Barclay in favor of Morve Sone et al. for 25 acres of **land** lying and situated in Vai Town. This Court affirmed the judgment of the trial court and declared null and void the said Aborigine Grant Deed. It was while the civil law court was in tho process of enforcing the mandate of this Court when this bill of information originated. We deem it appropriate to quote verbatim relevant portions of that said bill of information:

COUNT 1. That Informant is one of tho decedents and/or heirs of tho Residents of Vai Town (Vai John's people) who were residents of Bushrod Island in the area now and known as Vai Town to whom tho Republic of Liberia during the incumbency of Arthur Barclay as President of Liberia in the year 1906 executed an Aborigine Grant Deed to Chief Murphy and the Residents of Vai Town (Vai John's people).

Copy of the said Deed is hereto attached and marked Exhibit "IMF/1.

COUNT 2. Your Informant says that during the September Term A.D. 1964 of the Civil Law Court for the Sixth Judicial Circuit Montserrado County, in entering a decree for reformation of a lease agreement, the court presided over by the late His Honour Roderick N. Lewis entered a final decree and in said decree reformed the Lease into a Tribal Title Deed which was signed by Ciafa Laleiba, Chief of Vai Town, Janoka Balonfonde and Sekou Sonii et al. as Grantors to your Informant Hawah Kaizolu-Wahab as Grantee. Which Tribal Title Deed was signed on the 8th day of June, 1950 and the Court's Final Decree entered on the 27 th day of October, A. D. 1964. Copy of the Decree which incorporates the Tribal Title Deed is also hereto attached and marked Exhibit IMF/2".

COUNT 6. Informant says that Respondents Boima Lartey, Alhaji J. D. Lassanna, Brima Kamara, Meata Kiadii, Daba Kaidii, Carteen Mardi Ami, Belleh et al., surviving heirs and Decedents of Chief Murphy and the Residents of Vai Town (Vey John's people), Plaintiffs, instituted an action of ejection against Alhaji Varmuyah Corneh, Alhaji Sundifu Sonii, Alhaji Siaka Sheriff, .Adama Sheriff, Alhaji Boakai Sonii, Molley Sameah, Alhaji Abud Kaozolu, Boakai, et al., Defendants, claiming interest and title in the 25 acres of **land**, Bushrod Island. This case is pending in this Court and is listed on the docket of this Court, No. 241 and is still undecided. This case came up for disposition of the law issues before His Honour Frank W. Smith, Assigned Circuit Judge, presiding over the December Term 1981 of the Civil Law Court

for the Sixth Judicial Circuit. In disposing of the issues of law, Judge Smith ruled that all rents accruing from the 25 acres of **land** should be held in escrow until the final determination of the Ejection suit. Based upon this ruling, the sheriff of the court in collecting the rents from the tenants elected to demand rents from the tenants of your Informant Hawah Kaizolu-Wahab.. Whereupon, your Informant filed a Bill of Information before Judge Smith stating in substance that she was not a party to the ejection suit and therefore the Ruling of Judge Smith ordering the sheriff to collect the rents and keep them in escrow did not affect her. Judge Smith assigned the Information for hearing. The Informant was represented by tho Wakolo Law Office in person of Counsellor M.. Fahnbulleh Jones and the plaintiffs were represented by the Carlor, Gordon, Hne & Teewia Law Firm in person of Counsellors James D. Gordon and David D. Kpomakpor. After hearing arguments pro et con 'Judge Smith on the 22' day of January, 1982, ruled as follows "Court's ruling on the Bill of Information. A careful perusal of the Complaint in the Ejection suit involving Boima Lartey et al, v. Alhaji Varmuyah Corneh et al., we have discovered that the Defendant Hawah Kaizolu-Wahab is not one of the Defendants whom the Plaintiffs sought to eject. During the argument, counsel for Plaintiffs also admits that the Informant is not one of the party defendants. In the opinion of the court and rightly so, the order of court as entered in this case to keep the rents in escrow only affects the tenants of party/defendants and not all who are living on the premises in question and not sued. This being the case, said Informant and her tenants are hereby excluded from the court's ruling in the motion for sequestration, not being a party to the suit. The sheriff of this court is hereby directed to take notice of this Ruling. And it is hereby so ordered. Given under my hand this 2' day of January, A. D. 1982 with the Seal of Court. Frank W. Smith, Assigned Circuit Judge. The plaintiffs did not except to this ruling of Judge Smith. Copy of the said ruling is to hereto attached and marked exhibit " IMF/3".

COUNT 7. Your Informant says that because His Honour Hall W. Badio, assigned circuit judge presiding over the December Term 1985 of the Civil Law Court for the Sixth Judicial Circuit, elected to disregard the ruling of Judge Smith and your informant proceeded by a writ of prohibition before His Honour Elwood L. Jangaba, then Justice presiding in Chambers for a writ of prohibition. The writ was issued and served and the said case is still pending in the Chambers undecided. In the petition for a writ of prohibition, count one, thereof, it is averred that Petitioner Hawah Kaizolu-Wahab, now informant in these proceedings is the owner of five and a half lots situated and lying in Bushrod Island in the area of Vai Town which deed grows out of the 1906 Deed executed by the late President Arthur Barclay to Chief Murphy and the Inhabitants of Vai Town. And proffered the Tribal Title Deed referral to, supra, and the 1906 Deed also referred to, supra. Copy of the writ of prohibition and the petition are hereto attached and marked exhibits "IMF/4" and "IMF/5" respectively to form a part of this information.

COUNT 8. Your informant says that in the case Republic of Liberia v. Morve Sonii et al, respondents bill of equity for cancellation of public **land** sale deed of 1931 for twentyfive acres of **land** situated in the Bushrod Island acres instituted in the Civil Law Court and finally determined by this Court, your informant is not a party directly or indirectly to said action either as plaintiff or respondent nor was she summoned nor did she voluntarily appear in the

proceedings. The reason being that your informant holds a genuine title deed for five and a half lot carved out of the twenty-five acres of **land** which has not been contested or attacked in any court in this Republic. The said deed was executed since the 9th day of June 1950 and confirmed by court's decree on the 27 day of October, 1964. Informant requests court to take judicial notice of her exhibit..

COUNT 9. Your informant says that despite all the law and facts recited herein, because of the ruling of Judge Badio in the cancellation proceedings decided by this Court during its March Term 1988, the Sheriff for Montserrado County is compelling the tenants of your informant to pay the rents due her to him, to be held in escrow as in keeping with Judge Badio' s ruling. The tenants are A-Z Corporation; Bridge way Store; Bazzi Brothers; Halabi Brothers/Waamo Rose Industry, Inc.; Electro motor; Hamidan Brothers, etc., occupying the five and a half lots, which was contrary to the ruling of Judge Badio which was confirmed by this Court.

Respondents having been served with the writ of information, filed an eleven-count returns which we hereunder quote word for word:

COUNT 1. Respondents answering the bill of information say that count one of the bill of information is misleading in that, Informant has never been any of the descendants and /or heirs of the residents of Vey Town (Vey John's people) when the Aborigine Grant Deed to Chief Murphy of 1906 was issued. Informant entered upon the **land** she now occupied that is inclusive in the 25 acres of **land**, by a Lease Agreement concluded by and between Informant and Ciaffa Jaleiba and Varmuyah Corneh et al. that were claiming title to the 25 acres of 1 and under the 1931 Deed, hence, Count One must be dismissed.

COUNT 2. And also because Respondents say that Count two of the Bill of Information is a fallacy and contradicts Count One, in that, according, to Judge Lewis' decree which Informant relied upon for which informant is claiming under the 1906 Deed yet of late, the judge held 'This case was instituted by the Petitioner Madam Hawah Kaizolu-Wahab, one of the residents of Vai Town and also a Vai woman who in her petition alleges that by virtue of her being one of the Vai residents in Via Town and by virtue of the fact that she has as other Vais in the area, improved, developed a certain portion, of **land** covered by the Deed from the Republic of Liberia to the people of Vai Town through the then Chief, Morve Sonii, she is entitled to the sole possession, enjoyment and ownership of the piece of property described in the Lease Agreement by and between them executed since the 8 th day of June, A. D. 1950 and recorded in Volume 63, Pages 898-899 of the records of Montserrado County." Respondents submit that, the relevant portion of Judge Lewis' Judgment herein recited, settled the allusions averred in Count One that Informant is one of the decedents and/or heirs of the residents of Vai Town (Vey John's people)

during the incumbency of Arthur Barclay as President of Liberia in the year 1906 when he executed an Aborigine Grant Deed to Chief Murphy. Respondents aver that Informant having entered upon the five and a half lots by means of a Lease Agreement entered into by and between More Sonii, Varmuyah Corneh et al. and/or their designees or heirs, on the 8th day of June A. D. 1950 which Lease Agreement was later reformed into Tribal Title Deed for five and a half lots which was executed by Chief Ciafa Jaleiba, Janoka Balafonde et al. under the 1931 Deed, clearly demonstrates how well Informant Hawah KaizoluWahab's acquisition of the five and half lots is plagued, by subtle and fraudulent designs. In that fraud is the obtaining of a material advantage by unfair or wrongful means; it involves moral obliquity. It must be proved to sustain the common 1 aw action of deceit. Fraud is proved when it is shown that a false representation has been made (1) Knowingly or (2) without belief in its truth, or (3) recklessly and carelessly, whether it be true or false. Respondents therefore submit that informant's petition before the Civil Law Court that Judge Lewis passed upon set forth substantially that "in her Petition she alleges that by virtue of her being one of the Vai residents in Vai Town and by virtue of the fact that she has, as other Vai in the same area, improved, developed a certain portion of the **land** covered by the Deed from the Republic of Liberia to the people of Vai Town through the then Chief, Morve Sonii, she is entitled to the sole possession enjoyment and ownership of the piece of property described in the lease agreement by and between them executed since the 8t h day of June, A. D. 1950 and recorded in volume 63 Pages, 898-899 of the records of Montserrado County." Here, Informant Hawah Kaizolu-Wahab had settled the right of ownership of the **land** under the 1931 Deed and not the 1906 Deed. Respondents therefore submit that the fraudulent Deed of 1931 which was that creator of Hawah Kaizolu-Wahab creature Tribal Title Deed having being canceled by the judgment of this Honorable Court, all other antecedent instruments such as the Hawah Kaizolu-Wahab's Tribal Title Deed and/or its remnants died and was buried with its fraudulent creator the 1931 purported Deed, on July 29, 1988 by Your Honours judgment. It must be understood that Judge Lewis had no authority to pass title to Hawah Kaizolu-Wahab on the basis of ethnicity and/or out of a fraudulent deed.

COUNT 3. And also because respondents further answering say that the opinion of this Court as reported in 17LLR, page 105, Syl. 6, text at 114, which Informant relied on as being the basis of the genius of her title to the five and half lots grew out of a lease agreement that was entered by and between Varmuyah Corneh et al. and informant on June 8 1950, which lease agreement also became the off-spring of the 1931 fraudulent deed allegedly obtained by Morve Sonii, Varmuyah Corneh and all those claiming under the Aborigine Grant Deed of 1931. It follows therefore that at the time the Opinion in 17 LLR was delivered and judgment thereon handed down, neither Judge Lewis nor Justice Mitchell or the entire Supreme Court knew in 1964 that More Sonii, Varmuyah Corneh et al. had obtained the 1931 Aborigine Grant Deed they all along arrogated by fraudulent means. Respondents contend that it is of great importance that courts should be free from reproach or suspicion of unfairness. The party may be interested only that his particular suit should be justly determined, but the state and the community is concerned not only for that, but that the judiciary shall enjoy an elevated rank in the estimation of mankind.

The party who desired it might be permitted to take the hazard of a biased decision, if he alone were to suffer his folly, but the state cannot endure the scandal and reproach which would be visited upon its judiciary in consequence. Although the party consents, he will invariably murmur if he does not gain his cause; and the very man who induced the judge to act whom he should have forborne will be the first to arraign his decision as biased and unjust. Respondents hold therefore that the opinion of 1964 reported in 17LLR, page 105, that gave support to Informant's Tribal Title Deed, that grew out of the fraudulent deed of 1931 which the July 29, 1988 Judgment of Your Honours canceled. This therefore demonstrates the scandal that party litigants often bring upon the judiciary the world over, when their misleading pleadings induced a Judge to make a bias decision. Respondents submit that the facts the 1931 Aborigine Grant Deed fraudulent acquisition having been made known to your Honors, which necessitated its cancellation, can Your Honors set aside Your Honours' judgment of July 29, 1988, elude said judgment which informant wants you to do, and give recognition to Informant's spurious Tribal Title Deed which is the off-spring of the 1931 deed. Respondents say that Your Honours are men of discernible judgment and wisdom, and pray that this Court having been misled by the informant then appellant in the writ of error proceedings reported in 17LLR and informant even now still bent on misleading Your Honours. Your Honours should deny the granting of the bill of information and have the writ vacated.

COUNT 4. Respondents say that further to count three, the doctrine of res judicata becomes extremely applicable in this case, in that, the cancellation filed against Morve Sonii, Varmuyah Corneh et al., that were claiming under the 1931 fraudulent deed, she being one of one of these that were claiming title to the 25 acres portion thereof under the 1931 Deed. See Judge Lewis' final judgment, photo copy of which is attached and marked respondents' exhibit "CMD/2P" to form part of those returns. For the benefit of this Court we quote the authorities of res judicata as they are relevant to this case. "A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by a judgment a thing definitely settled by judicial decision; the thing adjudged." 34 CLC 1966, Res judicata; res adjudicata. `The doctrine of res judicata or estoppel by judgment, as it is sometimes less accurately termed, is a rule of law founded on the soundest consideration of public policy. It means of the question to be discussed between the parties and a final judgment be obtained by either party, the parties are concluded, and cannot canvass the same question in another action. It is founded upon two maxims of the law, one of which is that a man should not be twice vexed for the same cause the other that is for the public good that there be an end of litigation. . . .' Wisconsin v. Torinus,.28 Minn. 175,179; N.W. 725 ,726 (1881). It follows therefore that the July 29 1988, Judgment having concluded the rights of all those that were claiming title under the 1931 Aborigine Grant Deed which Informant Hawah Kaizolu-Wahab is one, she cannot reopen this case by bill of information. Count three must therefore crumble.

COUNT 5. And also because respondents say that count four being analogous to count three, same should be dismissed.

COUNT 6. And also because respondents further say that count five of the information lacks any legal efficacy and/or nationality, in that, at no time Boima Lartey and Alhaji J.D. Lassanna et al. were aware of informant being possessed with any Tribal Title Deed, nor were the respondents aware of the existence of such deed until when informant and others filed a Petition for a writ of prohibition before the Chambers of Justice Jangaba, which Your Honours revoked before respondents got to know that informant had purportedly obtained a tribal Title Deed under such fraudulent means from Varmuyah Corneh et al. Respondents submit that with regard to not making Informant Hawah Kaizolu-Wahab a party to the ejectment suit, respondents maintain meticulous law suit against Morve Sonii, Varmuyah Corneh and all those that were claiming under the 1931 Aborigines Grant Deed. Informant in those proceedings having therefore obtained her alleged title from Varmuyah Corneh et al., she by inference became a party to the cancellation proceedings filed by the Republic of Liberia, by & thru the Minister of Justice, Honourable Jenkins K. Z. B. Scott. Count five should therefore crumble.

COUNT 7. And also because respondents say that Count Six of the Information relating to the ejectment suit pending before this Court as raised by tho informant can no longer be entertained, in that, the legitimate ownership of the 25 across of **land** having been established by the Republic of Liberia, the grantor to Chief Murphy of the 25 acres, all those that were claiming under the 1931 Aborigines Grant Deed are subject to criminal evacuation, they being criminal trespassers on respondents' 25 acres of **land** as of July 29, 1988, when this Honourable Court handed its judgment. Count five should therefore be dismissed.

COUNT 8. And also because respondents say that Count Six of the Information being in substance the same as Count Five, and the July 299 1988, judgment of the Supreme Court of Liberia which canceled the 1931 Deed which judgment concluded the rights of all those that were claiming under the 1931 deed, Informant Hawah Kaizolu-Wahab has no exceptional rights nor can she be considered a privilege child to be excluded from criminal evacuation, for informant obtained five and half lots from her alleged grantors through the same fraudulent means, and since the grantor has become a perishable good and now laid at the bottom of the sea, the grantee cannot survive the judicial decision of this Court which brought the case to finality in July 29, 1988. Count six must therefore be dismissed.

COUNT 9. And also because Respondents say that count seven of the information is fatally deceptive and transcended the maxim of equity, which is righteousness, in that, never has there been a time when Chief Murphy or any of his heirs ever issued any instrument be it a lease agreement to Hawah Kaizolu-Wahab, or much more, a Tribal Title Deed to her, the informant. Therefore, informant claimed at this stage that her spurious deed "grows" out of the 1906 Deed is very delusive for which count seven must crumble, same being clumsy.

COUNT 10. And also because respondents say that Hawah Kaizolu-Wahab, the mere fact obtained her alleged Tribal Title Deed from the 1931 Deed of Morve Sonii, Varmuyah Corneh and all those that were claiming under the 1931 Deed, by implication of alleged title, became a party to the Suit filed by the Republic of Liberia, she should have been the one to have filed a motion to intervene and/or join her grantors and assert the genuineness or otherwise of her title. She have neglected to so do, she cannot medicate her silence by Bill on Information in the Supreme Court. She is therefore estopped. Count eight must therefore be dismissed.

COUNT 11. And also because respondents say that informant is criminally trespassing and unlawfully withholding the five and a half lots, her fraudulent title having derived its strength and origin from the 1931 Deed that had been canceled on July 29, 1988,/by this Honourable Court.

Count nine must therefore be dismissed and informant be made to pay costs of these proceedings.

The contention of informant as contained in the bill of information is that informant is one of the decedents and/or heirs of the decedents of Vey Town (Vey John's people) who were residents of Bushrod Island in the area now known as Vai Town, to whom the Republic of Liberia, during the incumbency of President Arthur Barclay as President of Liberia, in the year 1906, executed an Aborigine Grant Deed to Chief Murphy and tho Residents of Vey Town (Vey John's people). According to informant, during the September A.D. 1964 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, with His Honour Judge Roderick Lewis presiding by assignment, the said judge entered a final decree in favor of informant, whereby the court reformed the lease agreement executed by and between Chief Ciaffa Jaleiba et al. into a Tribal Title Deed for five and a half (51/2) lots, which was signed on June 8, 1950 by tho said Chief Ciaffa Jaleiba, Chief of Vai Town, Janoka Balonfonde and Sekou Sonii et al. as grantors to informant Hawah Kaizolu-Wahab as grantee, and the court's final decree entered on the 27 th day of October, A. D. 1964.

According to informant, in the case Republic of Liberia, v. Sonii et al., 35 LLR 126 (1988), a case styled as a bill of equity for cancellation of public **land sale deed of 1931 for 25 acres of land** situated in the Bushrod Island area, which was instituted in the civil law court and finally determined by this Court, informant was not a party directly or indirectly to said action, either as plaintiff or respondent, nor was she summoned nor did she voluntarily appear in the proceedings.

The reason being the informant holds a genuine title deed for five and a half lots carved out of the 25 acres of **land**, which has not been contested or attacked in any court in this Republic.

Informant further contended that because of the ruling of Judge Badio in the cancellation proceedings decided by this Court during the March, A. D. 1988 Term, the sheriff of Montserrado County is compelling the tenants of informant to pay the rents due her to him, to be held in escrow as in keeping with Judge Badio's ruling.

From the foregoing the following issues are pertinent in the determination of this case by this Court:

1. Whether or not the informant is bound by the judgment of this Court rendered in the cancellation proceedings dated July 29, 1988; and

2. Whether or not Judge Pearson proceeding in the civil law court for Montserrado County went contrary to the mandate of this Court for which an information will lie.

Regarding the first issue, as to whether or not informant is bound by our judgment rendered in the cancellation proceedings on July 29, 1980, we must first of all take recourse to our legal authorities to determine who is bound by the judgment of a court.

According to the case Gbae et al. v. Gbeby[1960] LRSC 50; , 14 LLR 147 (1960), this Court held that "a judgment is not binding upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard." Authority further hold that , "[a] stranger, within the rule that a judgment is not binding or conclusive on a stranger to the litigation, is a person who is not a party, or in privity with, or represented by, a party, and who has not been served with process and does not by actual intervention bring himself within the litigation." 50 C.J.S. §820 at 383.

Respondents have not denied that informant was not a party in the cancellation proceedings nor was she served with any process in connection with the proceedings to bring her under the

jurisdiction of the court. However, respondents maintained that the five and a half lots for which informant holds a title deed was fraudulently carved out of the 25 acres of **land** covered by the 1931 deed recently ordered canceled by this Court during the March 1988 Term; and that because informant is one of those claiming under the 1931 deed, by virtue of the cancellation of said deed, she had been brought under the jurisdiction of the court during the proceedings. Therefore, the judgment of this Court under the principle of res judicata binds her.

Res judicata is defined as "the principle that an existing final judgment rendered upon the merits without fraud or collusion, by competent court of jurisdiction is conclusive of rights, questions and facts in issue as to the parties and their privies, in all other action in the same or any other judicial tribunal or of concurrent jurisdiction." BALLENTINE' S' S LAW DICTIONARY 1105 (3rd ed.)

In the instant case, there is no showing that informant was personally served with precept during the cancellation proceedings before the Civil Law Court for Montserrado County, nor is there any showing that she was represented by a counsel since the judgment would have had the tendency to affect her interest.

Our statute on joinder of parties, Civil Procedure Law, Rev. Code 1:5.51, When joinder required, states: "1. Parties who should be joined: Persons: (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitably affected by a judgment in such action shall be made plaintiffs or defendants therein." Regarding compulsory joinder, it is provided that: "When a person who should join as a plaintiff refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff. When a person who should be joined according to the provisions of paragraph 1 has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned to appear in the action." Civil Procedure Law, Rev. Code 1:5.51(2). Under the provisions of Civil Procedure Law, Rev. Code 1:5.55, As to defendants, the code states, "All persons may be joined in one action as defendants against whom there is asserted jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any question of law or fact common to all of them would arise in the action."

In keeping with the laws cited, there being no evidence that informant was a party in the cancellation proceedings, nor was she cited or summoned to appear in the action, we are of the opinion that she is not bound by our judgment in the said cancellation proceedings.

Regarding the next issue, as to whether or not Judge Pearson of the Civil Law Court to whom the mandate of this court in the cancellation proceedings was directed, went contrary to the mandate from this Court, we hold in the affirmative. According to informant, she was not a party directly or indirectly in the cancellation proceedings, yet, when the mandate from this Court was sent to the Civil Law Court, Montserrado County, the sheriff for Montserrado County undertook to compel the tenants of informant to pay rents due her to him, to be held in escrow as in keeping with Judge Badio's ruling, contrary to our mandate, because the said mandate makes no mention of any rents or its collection from any tenants by the sheriff of Montserrado County, since under our practice 'and procedure, cancellation proceeding does not concern itself with collection of rents. For the benefit of this opinion, we hereunder quote verbatim our judgment as well as the mandate sent to the Civil Law Court of Montserrado County:

Republic of Liberia, by & thru the Minister of Justice, Honorable Jenkins K. Z. B. Scott v. Morve Sone, Varmuyah Corneh, et al.

JUDGMENT
At the call of this case, Counsellor Varney Sherman represented the Appellants while the Ministry of Justice represented the Appellee.

After listening to arguments from both sides and having perused the records and applied the relevant laws, it is hereby

ADJUDGED
That the Judgment of the court below granting the Petition for Cancellation of the 1931 Aborigine Grant Deed for 25 acres in favor of Appellants should be and the same is hereby affirmed "

The Clerk of this Court is hereby ordered to send a Mandate to the 6t h Judicial Circuit Court, Montserrado County, instructing the presiding judge therein to resume jurisdiction in this case and enforce its judgment. Costs ruled against Appellants. And it is so ordered.
GIVEN UNDER OUR HANDS AND THE
SEAL OF THE HONORABLE SUPREME
COURT THIS 29TH OF JULY, A. D. 1988.

NOTE: Mr. Justice Azango not being present when this case was heard, did not sign this Judgment."
MANDATE

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA MARCH, A. D. 1988 TERM. TO: THE ASSIGNED CIRCUIT JUDGE, CIVIL LAW COURT, SIXTH JUDICIAL CIRCUIT MONTSER-RADO COUNTY, MONROVIA

GREETINGS:
In keeping with instruction of the Honorable Supreme Court of the Republic of Liberia, I have the honor to transmit the accompanying certified copy of the Judgment handed down by this honorable Court, on the 29th day of July, A..D. 1988, in the case:

Republic of Liberia by & thru the Minister of Justice, Honourable Jenkins K. Z. B. Scott, appellee, versus Morve Sone, Varmuyah Corneh and all those claiming under the Aborigines Deed of 1931, appellants

You are hereby commanded to execute tho foregoing Judgment immediately and file your RETURNS to this Mandate, as to how it was executed.' AND FOR SO DOING, THIS SHALL BE YOUR LEGAL SUFFICIENT AUTHORITY."
GIVEN UNDER MY HAND AND THE SEAL
OF THIS COURT THIS 3RD DAY OF AUGUST, A. D. 1988.
Emily N. Badio, \
ACTING CLERK, SUPREME COURT OF LIBERIA.

"Mandate" is defined as follows:
"A command, order or direction, written or oral which court is authorized to give and person is bound to obey, a judicial command and precept proceeding from a court or judicial officer directing the proper officer to enforce a judgment, sentence or decree."

"A precept or order issue upon decision of an appeal or writ of error, directing action to be taken, or disposition to be made of a case by inferior court." BLACK'S LAW DICTIONARY 1114 (4t h ed.).

From what we have narrated, it can be clearly seen that Judge Pearson went contrary to our mandate and therefore the act of the sheriff whereby he collected or solicited rentals from informant's tenants to be kept in escrow must be declared ultra vires and void ab initio.

WHEREFORE, it is our considered opinion that the bill of information should be, and the same is hereby granted.

The Clerk of this Court is therefore ordered to send a mandate to the Civil Law Court for Montserrado County, and the judge presiding therein to resume jurisdiction over this matter, ordering the Ministry of Lands, Mines & Energy to conduct a survey, demarcating the metes and bounds of the 25 acres **land** as contained in the 1906 Deed executed by President Arthur Barclay in favor of Chief Murphy et al of Vai Town, Bushrod Island, Monrovia, Liberia, thereby giving effect to this judgment. Costs disallowed. And it is so ordered.

Information granted.

Glapoh v Sawmilling Co [1970] LRSC 13; 19 LLR 451 (1970) (29 January 1970)

J. SAYOU GLAPOH, Appellant, v. BOLADO SAWMILLING COMPANY, by and through its manager, LORENZO BOLADO, Appellee.
APPEAL FROM THE CIRCUIT
COURT OF THE NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Argued October 15, 1969. Decided January 29, 1970. 1. Injunctive relief is granted
on equitable considerations which are assessed within the broad discretionary powers given to the court in such cases, subject to
appellate reversal when discretion has been palpably abused. 2. An injunction may not issue when title to **land** forming the basis
of the action has not been finally determined. 3. A trial court may dissolve a writ of injunction upon its own initiative after termination
of pleadings, without a motion made therefor. 4. The trial judge is empowered, after issuance of a preliminary injunction, to subsequently modify or suspend it before the final hearing. 5. The preliminary writ should only issue from the trial court when it has been clearly
evidenced by the petitioner that immediate and irreparable injury will result to him during the interval before the final hearing.
6. A preliminary injunction cannot be made final until after the respondent appears to show cause why the injunction should not be

made permanent 7. Since under provisions of L. 1963-64, ch. III, Civil Procedure Law, § 5177, the Supreme Court may modify any judgment of a lower court, and realizing that continued tree cutting may diminish the value of the land at issue, the Supreme Court, though affirming the judgment of the lower court, may modify the judgment to the extent of restraining the respondent from further tree cutting pending the final determination of title to the property claimed by both parties in the untried ejectment suit. 8. The judge of a trial court is the master of his own record in a proceeding.

An injunction suit was instituted to restrain the appellee sawmilling company from its timber harvesting on the ioo acres claimed by appellant as his and disputed by the company, which also claimed title to the same tract. Subsequent to the suit for injunctive relief, the petitioner in that proceeding began an action in ejectment, which remained untried to the time of this opinion. After the preliminary writ of injunction had been issued, the respondent company moved for dissolution of the restraining order. In the absence of the petitioner, who had opposed the motion, the court set bond and permitted
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the company to continue operations pending final determination of the motion to dissolve the writ, which was, thereafter, vacated by the trial court after a hearing. The petitioner appealed from both aspects of the lower court's conduct and decree. The judgment was affirmed, with the modification that until title to the acreage at issue was finally determined in the ejectment suit, the company was to refrain from its timber harvesting on the tract claimed by the appellant. lant.
Stephen Dunbar and S. Raymond Horace for appelPeter 'linos George for appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the

court. On February 9, 1968, J. Sayou Glapoh, petitioner, filed an action of injunction against Bolado Sawmilling Company, in the Circuit Court of the Ninth Judicial Circuit, Bong County, sitting in its Equity Division. The complaint averred that the petitioner was the owner of one hundred acres of land, situated, lying and being on the western side of the Gonota Nyaniquellie Road, Nyanborquellie Chiefdom, as can more clearly be seen from the copy of his deed made profert and marked exhibit "A," and that he was entitled to the title, enjoyment, use, possession and occupancy of the said tract of land. That notwithstanding his long ownership and possession of the said premises, and also the improvements he had made thereon, respondent had deliberately and without color of right, entered upon and was using the said property to its own benefit, thereby depriving petitioner of the use and enjoyment of his property. In its answer, the respondent categorically denied operating on any land owned and possessed by the petitioner, but that they operated on a parcel

of **land** owned by the late Joel Tolbert which they did by permission of the co-

administrators of the
estate of Joel Tolbert, and there was no encroachment made on any **land** owned by the petitioner. In support of this allegation made by the respondent in its answer, there is in the records a letter from one Henry G. Grimes, Geodetic Engineer, Public **Land** Surveyor, Bong County, R.L., which said, among other things that he had made a resurvey of the Tolbert estate's realty situated in the area of the Bolado Sawmilling Concession and occupied by it, and that he had found that Tolbert's area made no encroachment on Glapoh's area whatsoever. After respondent filed its answer, it moved the court for dissolution of the injunction and to grant bail so that the operations of the company would not grind to a halt on the writ of injunction since title had not been determined by the court. Immediately thereafter petitioner filed a bill of information, informing the court below that respondent had wantonly violated the writ of injunction, because notwithstanding that it enjoined, restrained and prohibited the company and all persons directly or indirectly engaged in its operations, work had continued. The court heard argument, dissolved the injunction and granted bail so that the company could continue operations pending the determination of the ejectment suit now before the said court, which would determine title. The plaintiff excepted to the court's decree and has come before us for review on a bill of exceptions comprising six counts. Count one of the bill reads : i. Because on the 9th day of February, 1968, petitioner filed an action of injunction against the respondent in which an interlocutory writ of injunction was issued against the respondent, commanding and enjoining it and its agents to stop and desist from all operations upon the parcel of **land being too acres of land** owned by petitioner, the subject matter of these injunction proceedings ; and the Sheriff did on the said
"

9th day of February, 1968, go on the scene of operations and there notified Mr. Guillermo Revuelta, the superintendent of the Bolado Sawmilling Company, in the presence of nearly fifty odd workers, that a writ of injunction had been issued against the said company, and that he was traveling to Monrovia to make further service upon the respondent but that in the meanwhile they should cease all operations thereat. But that in violation of the said writ of injunction and in defiance of the court's orders, respondent never stopped the operations but continued to saw lumber and take away several truck loads to Monrovia. . . ." This one-hundred-acre tract of **land** which petitioner refers to in this count, is the subject matter of an ejectment suit already pending before the Circuit Court of the Ninth Judicial Circuit, and although the

matter is still in litigation, he claims that the operations should cease by virtue of the writ of injunction and remain suspended indefinitely. In view of the dispute over title and the bond which was required, the court's action seems to have been entirely correct, and there appears to have been no violation of any injunction. Injunctive relief is granted on equitable considerations and to those only who can show an equity entitling them to the remedy. A court in granting relief does so in the exercise of its discretion with the view of administering justice to the parties and this Court may not disturb the exercise of this discretion except if it is shown to have been palpably abused. An injunction does not lie except when there is a trespass and trespassing does not lie unless bona fide title is established in the one who claims ownership to the land. This had not been done, since the suit of ejectment still remains undetermined. In Wahob v. Adorkor, [1954] LRSC 30; 12 L.L.R. 152 (1954), the Court said that an action of injunction may be dismissed

by the trial court without motion of the defendant. Further in the opinion, at pp. 155-156, the Court continued: "We are of the opinion that the filing of a motion to dissolve an injunction is surely an expeditious means of bringing the case to a judicial termination upon the issues raised in the answer, but its absence will not prevent the dissolution of said injunction upon defendant's 'sufficient answer to the complaint verified by oath.' In the instant case the answer is verified by oath. Hence, the trial judge was right after the resting of pleadings to hear same and if sufficient grounds are shown in said verified answer, to support same." "Generally, a judge having the power to issue a preliminary injunction does not in doing so exhaust his power over the order, but may subsequently modify or suspend it before the trial, where it appears that the injunction was improvidently granted or that the continuance thereof in its original form would result in serious injury or unnecessary hardship." 28 AM. JUR., Injunction, § 311. The foregoing displays that the trial judge did have a right to exercise his discretion in dealing with the injunction, and although the field manager had been informed of the issuance of the writ of injunction and the service thereof and had not put a halt to his work immediately, it constituted no error on his part that he did not consider it in violation of the injunction. Count two contends : "And also because on the 14th day of February, 1968, respondent filed a motion for dissolution and bail; and on the 17th of February, 1968, petitioner filed a resistance to said motion for dissolution; but that despite the fact that no assignment was made or served on petitioner to appeal and oppose the motion and argue his resistance, the court in violation of statute granted bail thereby giving respondent permission to continue its operations, not having first disposed of

the motion. To this act on the court's part

petitioner excepted." Our statute is clear on this point, for our Civil Procedure Law, 1956 Code, tit. 6, § 1082, says that an injunction is never made permanent until the respondent has appeared to show cause why the writ shall be dissolved and why a permanent injunction shall not issue against him. The initial writ, therefore, is regarded as the preliminary one which should only issue after the judge has been fully satisfied by the evidence presented by the petitioner that immediate and irreparable injury, loss, or damage will result to him from the prospective actions of the respondent. The respondent below operated a concession given by the Government, where three or more hundred Liberian citizens earned their livelihood and contributed to the economy of the Country, who were about to be thrown out of employment and the Government lose income merely because a single citizen was claiming a contested right to a small tract of land said to be situated within the locality of the operation. This count charges the judge with granting bail to the respondent without the knowledge of the petitioner so that the operation could continue pending a determination of the injunction suit. We cannot agree with this view because, in the first place, this was the preliminary writ issued, and secondly, being a suit in equity the judge enjoyed discretionary power. "Injunctive relief, whether prohibitory or mandatory, is granted or withheld in the exercise of a sound judicial discretion and in conformity with settled equitable principles and considerations." 28 AM. JuR., Injunctions, § 21. In Young v. Embree, [1936] LRSC 21; 5 L.L.R. 242 (1935-36) this Court held that injunction does not lie where title to real property is an issue involved ; more especially, where the party sought to be enjoined sets up adverse possession to said

land, and in order to authorize punishment for the violation of an injunction, the acts complained of must be clearly embraced within the restraining clause of the injunction, so that the language of an order of injunction should not be extended to cover acts not fairly and reasonably within its meaning.
As has already been said, title to the property still has not been determined, and the trial judge commented at length on this in his ruling. Count two, therefore, is not sustained. Count five alleges : "And also because on the 22nd of February, 1968, when for the first time upon an assignment petitioner's counsel appeared in court, he insisted on making record against the court's adverse action on the application for bail, and also the court's disposition of petitioner's bill of information." In relation to this count, the court declined such request, ruling that it would be attended to in the final judgment. We cannot forget that this was an injunction suit, and in such a case title had to be unquestionably vested in the petitioner. Moreover, the judge was master of his own record, hence, if appellant desired to make a record not applicable to the facts and circumstances, the court in its own right was vested with the authority to deny the privilege. Count five is not sustained. Count six raises objections to the trial court's references to the pending ejectment suit and its effect upon the injunction proceedings, which were entirely proper, in view of our comments

above. Count six is not sustained. The one and only legal issue involved in this case that attracted our attention very strongly is the question of the cutting down or destruction of live trees on the property, which must have a tendency to diminish the value thereof. However, since under ch. III, § 5117, of our Civil Procedure Law, L. 1963-64, this Court enjoys the right to reverse, affirm or modify any judgment of a court be-

low, and, realizing that until such time as the ejectment suit is finally disposed of and title determined, the trees, whether shade, ornamental, fruit or any other kind, should remain on the property uncut, it is, therefore, our judgment that the decree of the lower court be affirmed, with the modification that the appellee in this case abstain from cutting any trees from this particular tract of **land** until such time as the ejectment suit above mentioned is concluded in the manner aforesaid. This opinion, of course, does not include the whole area in which the Sawmilling Company operates, but rather it refers only to the particular ioo-acre tract now in litigation. Costs are hereby ruled against the appellant and the clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment. And it is hereby so ordered. Affirmed as modified.

Alpha v Tucker [1970] LRSC 55; 20 LLR 120 (1970) (11 June 1970)

ISAAC ALPHA, Informant, v. AARON TUCKER, Respondent.
BILL OF INFORMATION TO ASCERTAIN INADVERTENT ERROR BY JUSTICE PRECIDING IN CHAMBERS.

Argued May 13, 1970. Decided June 12, 1970. 1. No one denies that a Justice presiding in chambers may only rule in accord with prior decisions of the full Court ; in the matter of the interpretation of such ruling, the full Court, and the individual justices comprising it, will seek only to effect justice and the sovereignty of the Supreme Court as manifested in its opinions.

In a series of events arising from a suit of ejectment, first commenced in 1955 by the informant herein against the respondent, the record of the proceedings and the orders resulting therefrom became clouded and uncertain, leading to the present proceeding. The respondent applied to Mr. Justice Mitchell in chambers for relief after the lower court, in enforcing the Supreme Court's mandate, ordered respondent removed from the **land** at issue. The Justice set aside the order of the lower court and the informant applied to the full Court, alleging, in effect, that the ruling of the Justice negated two prior decisions of the Supreme Court. The majority disagreed and found that

the ruling was in accord with the Court's opinions, but for the sake of greater clarity in a clouded situation, though affirming the ruling of the Justice, the Court ordered a re-survey of the property at issue. As a further incident to these proceedings, counsel for informant was adjudged in contempt of the Court and fined accordingly, with which the minority also disagreed.

0. Natty B. Davis for informant. No appearance for

respondent. MR. Court.

JUSTICE SIMPSON

delivered the opinion of the

This is the third time, and we hope the final time, that proceedings have been heard in this Court predicated upon the same subject matter, a controversy in respect of a portion of property situated on Newport Street, in the City of Monrovia. The submission upon which the present proceedings are based was styled : "Informant's formal submission regarding possible inadvertence on part of court." Count one of the submission held that in 1959, while sitting en'banco, this Court decided a matter of prohibition which grew out of a land dispute between informant Isaac Alpha and Aaron Tucker. It was further stated that the Court found the ejectment suit to be unmeritorious and dismissed it, at the same time holding that the parties retain their status quo prior to the filing of the suit. The same count one additionally stated that at a subsequent time the respondent violated the decision of this Court handed down in 1959, and thereupon he was held in contempt and accordingly penalized by this Court. Reference was made to these two opinions of the Supreme Court, and the Court was requested to take judicial notice of its own record. Count two initially discussed the matter of the filing of a petition for reargument which was signed by a concurring Justice, who subsequently withdrew his signature. Count two then proceeded to state, and in view of the gravity that we attach to what the remainder of the count did in fact state, we shall include in this opinion the pertinent portion : "This having been done, the decision and judgment of the Court rendered en banco were ordered enforced and it was by and from the enforcement of said judgment that proceedings were instituted by respondent in the chambers of Mr. Justice Lawrence E. Mitchell, the Justice then presiding in chambers, and which brought forth from the said Justice in chambers a ruling that negated informant's right to the said piece of

land, but placed respondent in possession of same by a formal writ of possession, thus abrogating, setting aside and making the decisions and judgments of this

Court rendered in the prohibition case in 1959, and the contempt of court case in 1963, void and of no legal effect." Count three thereupon alleged that the Justice may have inadvertently overlooked or lost sight of the decision and judgment of this Court which were rendered en banco. In the circumstances, the informant respectfully presented the entire case with all of the facts and attending circumstances to the bench en banco, for the purpose of affording the necessary relief, "as most certainly it must have been an inadvertence for a Justice sitting in chambers to make a ruling unilaterally, which abrogates or sets aside a decision and judgment rendered by this Court sitting en banco." The prayer in the submission concluded : "Wherefore, your informant most respectfully prays that the Court sitting en banco will, in the review of this submission, render such decision upholding the two previous decisions rendered by this Court en banco, hereinabove referred to. That the Court will grant such further and other relief as the nature of the case requires and the ends of justice demand." Although filed on May 27, 1965, this submission was not taken up by the Court until this present sitting. At the call of the case, when the records were being read in open Court, and the submission itself was being read, the Court became a bit concerned about the tenor of the submission, especially so when a serious charge was, in a veiled manner, being preferred against one of the Justices. However, with the view to administering justice with cold neutrality, we proceeded to inquire of counsel for the informant, in the person of 0. Natty B. Davis, what specific portion of the ruling made by the Justice wantonly abrogated and rendered ineffectual two prior recorded opin-

ions and judgments of the Supreme Court. As the crux of the case centers around the ruling of the Justice, we proceeded to inquire of this ruling. Memory being as evasive as it sometimes is, coupled with the fact that the selfsame Justice was herein being seriously charged, glances were directed at him and from the bench he himself even mused that he could not remember rendering any such ruling. Counsellor Davis was at this stage requested to throw some light upon the ruling which he had so emphatically referred to. He thereupon importuned the Court to permit him to have his client himself come before the bench and make certain clarifications to the Court. Due to the fact that the record shows representation solely by way of counsel, the particular request for pro se representation of the informant was denied. Counsel at this stage found himself in an apparent predicament, for he claimed that the submission was filed predicated upon information received by him from his client, for he was personally outside the country when the ruling of Mr. Justice Mitchell was made. The Court then proceeded to have read its two previous opinions referred to, supra, the second of which, incidentally, was delivered by Mr. Justice Mitchell himself. The first opinion which grew out of the prohibition proceedings had held that the map submitted by the Director of the Bureau of Surveys, of the Department of Public Works and Utilities, in the person of Mr. G. Slagmolen, clearly shows that the defendant

in the ejectment suit was not encroaching upon any property owned by the plaintiff and, in the circumstances, both parties should remain in the position in which they found themselves at the time of the filing of the suit in ejectment. The Court in the prohibition proceedings further held that the trial judge had erred in ordering issued a writ of possession in the ejectment proceedings, since the survey report had clearly shown that no encroachment existed. The contempt proceedings which were subsequently

brought showed in the record that Tucker also had been fined in the sum of $zoo.00, or alternatively, ordered imprisoned for failure to pay. These proceedings were adjudicated primarily upon the issue of jurisdiction of this Court to entertain contempt proceedings of the nature and type filed by informant in the contempt proceedings. The Court this time held that it was possessed of the requisite jurisdiction to try the contempt proceedings in the exercise of its jurisdiction in respect of having strict adherence given to its judgments, and mandates in pursuance thereof. The actual issue of contempt was never traversed by respondent in the return as filed by him, therefore, it was never adjudicated on its merits by the Court. The determination was that of adjudging respondent guilty of contempt due to the tacit admission of the execution of a contumacious act by the respondent. A careful inspection of these two opinions showed without a doubt that this Court intended that the parties remain in status quo. When counsel for informant was pressed to show the marked deviation from the two previous rulings by Mr. Justice Mitchell in his ruling of 1965, the Court was importuned to suspend hearing of the matter to allow counsel for informant an opportunity to fully acquaint himself with all attending facts and circumstances. He thereupon filed a second submission wherein he petitioned the Court to order a full-scale investigation into the allegations contained in his first submission. The case was then again suspended, and upon the resumption thereof, the ruling of Mr. Justice Mitchell, as handed down on Friday, February 5, 1965, it being the fifth day's session of Court, was read in its totality. Due to the stress that has been laid on the supposed irregularity attached to this ruling of Mr. Justice Mitchell, we shall herein include the last portion thereof. "I cannot concede that the Chief Justice did give such orders to Judge Morris because the question of possession of the land was not contemplated in the judg-

ment ; therefore, when this case was called for hearing the Court approached counsel on both sides to resolve the issues of the subject matter, who conceded the view and counsellor J. Dossen Richards, for respondent Isaac Alpha, informed the Court that he has filed a return for his client only to justify himself as being innocent of contempt of Court,

because if there were any acts done without the order of this Court, it was done by the court below, that is, Judge Morris, and not his client. Counsellor Joseph F. Dennis for informant conceded the position of counsellor Richards, and said that he too is of the same opinion and moved the Court for a reversal of the act of Judge Morris. This being the case, it is our ruling that the court below having erred in dispossessing Mr. Tucker of the very tract of land which the opinion of this Court concluded he was possessed of erred in doing so, and therefore, upholds the opinion of this Court delivered by Mr. Justice Pierre on January 15, 196o. The parties hereto, that is to say, Mr. Aaron Tucker and Mr. Isaac Alpha, are hereby ordered to resort to their status quo, as they were before when the suit was originally filed in 1959, and according to the opinion referred to, and delivered by Mr. Justice Pierre, and that whatever ruling was made by Judge Morris is irregular and the enforcement be and the same is hereby revoked. Costs in these proceedings are disallowed. And it is hereby so ordered." After this ruling had been read, counsellor Davis immediately arose and requested a withdrawal of his second submission which had urged the Court to order a fullscale investigation into the facts and circumstances attending upon the alleged ouster of his client from premises which he had been ordered to remain upon by order of the Court. Nothing however was then said by counsel regarding the flagrant attack on Mr. Justice Mitchell that he had made in the submission filed on May 27, 1965.

Being one of the oldest practicing counsellors at this bar, coupled with the fact that the counsellor is also a former Associate Justice of this Court, it was our hope and our ardent desire that he would at that juncture exemplify a degree of penitence for the wrong that he had meted out to the Justice. Instead, being totally engrossed in the substance of the case, and the restoration of his client to land supposedly wrongfully dispossessed of, while on his feet he continued by importuning the Court to make certain that its mandate of 196o, growing out of the prohibition proceedings, be strictly observed. There is an adage hoary with age that courts generally do not do for litigants that which they ought to do for themselves. An examination of the submission filed by counsel for informant shows that it deals solely with the issue of the alleged illegal ouster of his client from premises which, by order of this Court, he was to have remained on. Counsel then requested that a second look be taken at the ruling of Mr. Justice Mitchell which had, he claimed, in effect abrogated and made ineffectual two prior opinions and judgments of the Supreme Court. A reading of the ruling quoted above, clearly shows that it in no manner abrogated nor rendered ineffectual any prior judgment of this Court. Quite to the contrary, the ruling of Mr. Justice Mitchell upheld the two prior opinions, one of which he had himself written. In strict adherence in respect of the principle requiring adjudication of only those issues which have been properly raised, this Court would at this time simply dismiss the submission of informant and have the matter ended. Before closing this opinion,

we should like to state that we have just received, an hour or so prior to coming into Court, the dissenting opinion being filed by two of our colleagues. The right of dissent is inherent in each and every one of us as Justices ; however, we are of the firm conviction that personalities should be divorced from,

issues when we sit upon such a high pedestal for the purpose of dispensing justice. The novel practice of bringing into the body of opinions exchanges during our deliberations is upsetting, to say the least. However, we here deliberate and judge only in accordance with our consciences, the rest is left with public opinion and the God of our Father, to judge. However, this is a tribunal of denier resort, the tabernacle of ultimate justice and, therefore, we must look carefully at the end results of justice and not solely at the vehicle or instrumentality through which justice is dispensed. Since there is a feeling that the mandate of this Court has not been strictly complied with in accordance with its terms, it is here adjudged that the judge presiding over the Sixth Judicial Circuit will nominate a qualified surveyor and have each of the parties hereto also nominate a surveyor, and they shall proceed to the area in controversy with the plot that served as the basis for the Court's determination in the 1959 opinion referred to, supra, and make certain that both parties are upon the premises they were to remain upon in accordance with the judgment and mandate of this Court growing out of the prohibition proceedings hereinabove specifically mentioned. Due to the contumacious act of counsellor 0. Natty B. Davis in condemning a Justice of this Court whose only protection that he has available to him is the power to hold in contempt, the counsellor is hereby found guilty of contempt of Court, and fined in the sum of $3oo.00 to be paid over to the Marshal of this Court within ninety-six hours of the time of the rendition of this judgment, failing which he shall be denied the privilege of practicing law within this Republic for a period of one calendar year. Costs are ruled against informant. And it is hereby so ordered. Affirmed, as modified; contempt of court adjudged.

MR. CHIEF JUSTICE WILSON

and MR.

JUSTICE ROBERTS

dissenting. Those of us to whom the duty befalls to sit in judgment of our fellow man must in doing so be ever cognizant our decisions are exposed not only to man but to God ; and it behooves us, therefore, to do so in reverence, the fear of God, and without respect of persons, keeping in mind the blind symbol of justice we represent, which .knows no friend

nor foe, but is controlled solely by the facts involved in the given case, and the law controlling. It is because of the foregoing, from which we are unwilling to deviate, that we cannot bring ourselves to agree with the majority opinion of our colleagues, and have elected, therefore, to herein register the grounds leading to our difference in opinion. The history of these controversies dates back as far as 1955 to 1956, when Isaac Alpha instituted an action of ejectment against Aaron Tucker, contending that Aaron Tucker had entered upon and was witholding from him without any justifiable cause whatsoever, a parcel of land. After pleadings rested, because of the contention of Mr. Tucker that the land he occupied was separate and distinct from that of Mr. Alpha, the matter was submitted to a board of arbitrators who reported in substance that not only were the parcels of land separate and distinct but that Mr. Tucker had not encroached upon Mr. Alpha's property. A judgment was entered, quite strangely, in favor of Alpha and a writ of possession issued, which would have placed him in possession of block no. 8o, in the City of Monrovia. Fortunately, before this precept could be executed, one Marie Davies Johnson proceeded to the chambers of this Court and sued out a writ of prohibition, contending therein that she owned a portion of block no. 8o, which contention was supported by a map of the Department of Public Works, which found its way into the record of the ejectment trial in a manner unex-

plained by the record. She further contended that she had not been summoned and was, therefore, not under the jurisdiction of the Court. Therefore, the judgment affecting her property, by reason of the writ of possession, was illegal and should not be enforced. This Court in its decision delivered on January 15, 1960, held that the action, in view of the report of the arbitrators, should have been dismissed, and further, that the writ of possession issued was unwarranted. The parties were ordered to remain on the properties occupied by them before the institution of the ejectment suit. A few years later, the parties to the ejectment suit again appeared before us, this time in contempt proceedings instituted by Mr. Isaac Alpha, in which he complained that Mr. Tucker had, in absolute disobedience to the orders of this Court directing that the parties in ejectment confine themselves to the premises occupied by each of them before the ejectment suit, entered upon a portion of informant's parcel of land and was in the process of constructing or had constructed a building thereon. The respondent filed a return, setting up demurrers to the jurisdiction of this Court to entertain the contempt proceedings, which were overruled by this Court, respondent adjudged guilty of contempt, and fined the sum of $200.00, together with costs. A copy of this opinion, with the Court's judgment, was forwarded to the court below under mandate requiring the judge presiding to make return as to the manner of execution thereof. Hon. D. W. B. Morris, presiding by assignment over the Sixth Judicial Circuit Court, received the mandate and summoned the parties to be present for the reading and disposition of said mandate. According to the minutes of the Circuit Court for Thursday, December 17, 1964, the parties were notified to be present . on that day, but only informant Alpha and his counsel

appeared, whereupon, the judge entered the following rule :

"That in keeping with the mandate, supra,
the plaintiff is automatically in possession of his property and he is hereby
authorized to proceed with the use thereof without
any further obstruction. "Since according to records of these proceedings the
defendant is unauthorizedly operating on the premises
which resulted in these contempt proceedings, that is, by erecting a building
thereon, in defiance of the Supreme Court ruling, the sheriff in this
peculiar circumstance
is hereby ordered to accompany the plaintiff to the spot and see to it that
defendant, or those occupying under him, be immediately
removed therefrom. This is being done to avoid further obstruction of
plaintiff's occupancy by the defendant. "The clerk of this
court is further ordered to make up the bill of costs which the Supreme Court
also ruled be paid by the defendant, and for failure
to pay them he shall also issue an execution to recover sufficient property
covering the entire legal costs in these proceedings,
and upon failure to satisfy said execution the clerk is further ordered to
issue a commitment upon the defendant, place same in the
hands of the sheriff who in the circumstance is ordered to commit the said
defendant and have him kept in prison until all amounts
involved incidential to these proceedings are fully paid. "That because of
the Supreme Court's special order to this court to execute
its judgment immediately and file a return thereto, the clerk and the sheriff
are ordered to proceed to execute these orders without
delay. And it is hereby so ordered. "D. W. B. MORRIS,
Resident Circuit Judge."

It appears that before this ruling could be enforced,
respondent Tucker proceeded to the chambers of Mr. Justice Mitchell and made
an application which is not in the record, but implicit
in the ruling of Mr. Justice

Mitchell. It protested the order of Judge Morris dispossessing Tucker under
the mandate to enforce the writ of possession. "This is a matter which has
grown out of an ejectment suit, filed in the Sixth Judicial
Circuit, Montserrado County by Isaac Alpha against Aaron Tucker. In the
attempt of the court to place Alpha in possession of the
property, which he claims from Tucker, Mrs. Marie Davies-Johnson filed
prohibition to restrain the enforcement of the possessory
orders. This matter was heard and determined by the Supreme Court, and in the
course of time, after consultation with the plot and
map of said area in which the property is located, the Supreme Court rendered
an opinion and judgment requiring the parties to remain
in their original position as they were before, when this suit was originally
instituted, because at the time, according to the map
and plot produced, Marie Davies-Johnson was claiming title to the very spot
or tract of land, as it would appear. After the rendition

of judgment in this case, and for some months thereafter, counsellor 0. Natty B. Davis again appeared before the Supreme Court with information stating that Aaron Tucker had disobeyed the mandate of the Supreme Court and had begun to erect on the premises a building on the **land of Isaac Alpha which, according to the map and plot produced before the Supreme Court, should have been a tract of land** 132 feet away from the holding of the **land** of Mr. Tucker; and, therefore, obviously he meant to disregard the mandate of the Supreme Court, if that exists. The Supreme Court after this matter as heard, rendered its judgment, holding the aforesaid Mr. Tucker in contempt of Court, and required him to pay a fine of $2oo.00, together with costs of court; but he sought a pre-hearing by his petition and Mr. Chief Justice Wilson signed this petition as one of the concurring Justices. Subsequently, for some reasons

unknown to me, Chief Justice Wilson thought it necessary to withdraw his signature from the petition for re-argument, which necessarily means that the fine imposed be collected and the matter set at rest. Personally, I am not in positive knowledge of what has happened thereafter, except what the records presently reveal to me, and from which I have concluded that the Chief Justice inadvertently gave some order to D. W. B. Morris, Resident Judge of the Sixth Judicial Circuit, Montserrado County, which to my mind was duplicated by similar orders to the Marshal of this Court to collect the fine of $200.00. The bill of costs was prepared accordingly by this Court, served on Mr. Tucker and paid, and that should have finalized the matter as far as the records of this Court are concerned, but instead Judge Morris also resumed jurisdiction and ordered the Sheriff of the Sixth Judicial Circuit Court to dispossess Mr. Tucker of the tract of **land** he owned, and place Mr. Alpha in possession of the same. I cannot concede that the Chief Justice did give such orders to Judge Morris because the question of possession of the **land** was not contemplated in the judgment ; and, therefore, when this case was called for hearing, the Court approached counsel on both sides to resolve the issues of the subject matter, who conceded the view, and counsellor J. Dossen Richards for respondent Isaac Alpha informed the Court that he filed a return for his client only to justify himself as being innocent of contempt of Court, because if there were any act done without the order of this Court, it was done by the court below, that is, Judge Morris and not his client. Counsellor Joseph F. Dennis for informant conceded the position of counsellor Richards and said that he, too, was of the same opinion and moved the Court for a reversal of the act of Judge Morris. This being the case, it is our ruling that the

court below having erred in dispossessing Mr. Tucker of the very tract of **land**, which the opinion of this Court concluded he was possessed of, erred in doing so and therefore, upholds

the opinion of this Court delivered by Mr. Justice Pierre on the 15th day of January, 196o. The parties hereto, that is to say, Mr. Aaron Tucker and Mr. Isaac Alpha, are hereby ordered to resort to their status quo as they were before when the suit was originally filed in 1959, according to the opinion referred to, and delivered by Mr. Justice Pierre, and whatever ruling was made by Judge Morris is irregular and the enforcement be and the same is hereby revoked. Costs in these proceedings are disallowed. And it is hereby so ordered. "LAWRENCE E. MITCHELL, Associate Justice, Supreme Court of Liberia, Presiding in chambers." Although the writ of possession ordered issued by Judge Morris has been quashed by the Justice in chambers, which prevented Tucker from being ousted from that portion of Alpha's premises upon which he had encroached and out of which encroachment the contempt proceedings grew, we find in the record a writ of possession venued in the December Term, 1964, before Alf red L. Weeks, assigned Circuit Judge which directs, among other things : "You are hereby commanded to put Aaron Tucker, of Monrovia, the above-named respondent, in possession of that portion of said property that he has been dispossessed of, in keeping with orders of Hon. D. W. B. Morris, Resident Circuit Judge." The return to this writ states : "On the loth day of February, 1965, I placed Aaron Tucker of Monrovia, respondent in possession of a parcel of property situated in the City of Monrovia,

Montserrado County in keeping with orders of Co'urt. I now make this as my official returns to the office of the Clerk of this Court." The informant, aware of all the foregoing circumstances and occurrences, petitioned this Court for redress by enforcement of its prior rulings. The application of informant's counsel to have his client allowed to address the Court on certain obscure facts, was denied, and in lieu thereof a second affidavit was submitted requesting an investigation by the Court of the facts in the proceeding. At this point the Chief Justice circulated a letter among his colleagues suggesting a means whereby the matter might be adjudicated. To this letter Mr. Justice Mitchell replied, among other things : "Therefore, I am respectfully requesting that the matter will continue to be heard by the full bench with the exclusion of you since, to my mind, you are already prejudiced to me in this matter." This contention of our colleague brings us to the second phase of our disagreement with the majority, to the effect that they are competent to form a quorum since Mr. Justice Mitchell, by the excerpt of his letter quoted, has placed himself in the position of a party-principal in interest. Although it is not the practice of this Court to ask a Justice to disqualify himself, under the circumstances it seems that Mr. Justice Mitchell should have done so. Let us now look at the reported opinion of this Court. In these contempt proceedings, Alpha v. Tucker, r5 LLR s6o, 565 (1964), Mr. Justice Mitchell said : "It has been established to our satisfaction that respondent does have a building under construction and that said building is situated on the premises of informant. This is absolutely contrary to our decision and mandate. Moreover, this act has been committed since

the rendition of our judgment which ordered the parties to return to and remain in their original positions." It is our opinion, although not expressly so ordered in the reported opinion, that this Court intended the court below to remove respondent from that portion of the premises on which he had encroached. The question then arises whether or not the setting aside by the Justice of a writ of possession did nullify our two previous decisions. The majority holds that the Justice's ruling, out of which these proceedings grew, does not in any way interfere with our two previous decisions, for nowhere in the ruling is there an order directing the ousting of informant from his premises and the possessing of respondent thereof. While this might appear to be true, we cannot overlook the age-old adage which says that actions speak louder than words. We must remember, too, that there was a writ of possession and that it was in favor of informant and not respondent. To order a re-survey indicates an awareness of the obvious and seems an ineffective device to avoid the consequences of the obvious. We come now to the third aspect of our disagreement with our colleagues, to the finding that counsel for informant is guilty of contempt of Court. Under our law, an appeal may be taken from the ruling of a Justice in chambers to the ·Court en banco, where counsel has a right to, as vigorously as is necessary, attack the ruling as he would a ruling of a court below. Similarly, every party aggrieved by acts of such Justice has a right to present his grievance before this Court in whatever form is available to him. In this case, informant through his counsel averred that the Justice probably inadvertently overlooked the decision of this Court and ordered respondent possessed of informant's premises ; Qur colleagues

contend that because the ruling of the Justice does not expressly so command, counsel for informant acted contemptuously in the charges he made. A statement which might impair respect for the trial judge made by an attorney in good faith to protect the interests of his client and in the honest belief that it is relevant and without reckless disregard of the truth or to impair the respect due to the court, has been held not to constitute contempt of court. In re Rotewein, 291 N .Y . 116, 51 N.E. znd 669. In the absence of a showing that the averments in the submission are unsupported by any facts sufficient to lead a rational mind to the conclusions set forth in the submission, or that counsel intended to belittle the Court, or rather the Justice, we cannot bring ourselves to agree that the submission made by him in good faith, believing that the writ of possession was indeed ordered issued by the Justice, constitutes contempt of Court. Penalizing a lawyer who makes a fair and truthful presentation to court of an alleged injustice done to his client by a Justice, as is being done by a majority of our colleagues especially so when one of the majority

is the charged Justice, could be establishing the precedent that any Justice who makes an objectionable ruling in chambers from which an appeal may be applied for,
would oblige this Court en banco to hold the lawyer appealing in contempt and thereby prejudicially blocking the processing of any
appeal, which would constitute a denial of a constitutional right which this Court isn't competent to do. What is to our opinion
contemptuous in this case is the conduct of Mr. Aaron Tucker who appears to have attempted to manipulate all concerned in this proceeding,
by his conduct in general and his written attempt to obtain a postponement of the hearing. We have, therefore, withheld our signatures
from the judgment of the majority of the Court.

Kromah et al v Koroma et al [1979] LRSC 36; 28 LLR 212 (1979) (20 December 1979)

BOYMAH KROMAH, FODAY KAIDII, OLDMAN GRAY, E. BALLAH BURPHY, et al, representing the Vais of Fanima, Informants, *v.* HIS HONOUR E. S. KOROMA, Assigned Circuit Judge, presiding over the June Term, A. D. 1978, of the Sixth Judicial Circuit, Montserrado County, and DAWODA HARMON, LAMINE COLEMAN and all of the tenants of DAWODA HARMON, LAMINE COLEMAN and LAMINE YATES et al., Respondents.

INFORMATION PROCEEDINGS.

Heard: November 12, 1979. Decided: December 20, 1979.

1. Acts which tend to belittle, degrade, obstruct, interrupt, prevent or embarrass the Court in the administration of justice is contemptuous.
2. The entry of a ruling, judgment or order in a case contrary to the mandate of the Supreme Court constitutes contempt of the Supreme Court by the judge and such judge shall be held liable in contempt.

The decree canceling a public sale deed was affirmed and confirmed by the Supreme Court and the mandate executed by the judge presiding over the trial court. Subsequently, the defendants in the cancellation proceeding appeared at the same trial court, under the gavel of another judge assigned there, and moved the trial court to enforce the same mandate of the Supreme Court by the issuance of a writ of possession in his favor. The motion was granted and the writ of possession issued. The informants, being plaintiffs in the cancellation proceedings, fled to the Supreme Court through a bill of information. After a hearing, the Supreme Court *reversed* the

trial court's ruling on the motion, confirmed the nullification of the public **land** sale deed, *granted* the information, and adjudged the trial judge liable in contempt of the Supreme Court for ignoring the mandate of the Court and proceeding improperly.

M. Fahnbulleh Jones and *S. Raymond Horace* appeared for informants. *Joseph P. H. Findley* appeared for respondents.

MR. JUSTICE BARNES delivered the opinion of the Court.

On May 6, 1975, this Court decided the case *Harmon v. Republic*, [1975] LRSC 11; 24 LLR 176 (1975), which was a bill in equity for the cancellation of public **land** sale deed and relief against fraud. This Court affirmed and confirmed the judgment of the lower court canceling appellant's deed. Since that time the case has become a perennial legal controversy before the Supreme Court.

In 1976, information proceedings were brought before this Court alleging that co-respondent Dawoda Harmon was attempt-ing to obstruct the enforcement of the Court's mandate by sending a telegram to the President of Liberia stating that this Court had "deprived him of his legitimate right and title to **land** purchased from the Government of Liberia." An investigation was conducted by the Ministry of Justice upon the directive of the President of Liberia and the allegation was found to be incorrect. After hearing arguments on both sides of the case, this Court held that: "It is clear that the respondent has not told the whole truth about the telegram and this leads us to wonder whether the rest of his returns can be accepted as true and whether the maxim *falsus in uno falsus in omnibus"*, is applicable to him. The Court further held that: "In any event it has been established that the respondents instituted proceedings in another branch of government which had the effect of stopping this Court's mandate, thus delaying and impeding the administration of justice. In *Richard v. Republic*, [1948] LRSC 4; 10 LLR 13 (1948), this Court held that acts which tend to belittle, degrade, obstruct, interrupt, prevent or embarrass the Court in the administration of justice is contemptuous." The respondent was adjudged guilty of contempt and fined the sum of five hundred ($500.00) dollars.

Predicated upon the decision of this Court affirming the final decree of the trial court, the Clerk was directed to send a mandate to the lower court for the enforcement of its judgment. There was dissatisfaction with the manner in which the judge assigned to the 1976 September Term of the Civil Law Court, Montserrado County, executed the mandate, that is, instead of only ordering the public **land** sale deed of Dawoda Harmon canceled, he also ordered a writ of possession issued to the informants in the information proceedings. The issuance of the writ of possession affected the property rights and interest of other citizens and residents of Fanima Town, Bushrod Island, Monrovia, Liberia. In consequence thereof, John T. Pratt, Vice Governor et al., representing the Grebo and Kru citizens residing in the area, filed a bill of information against Boymah Kroma et al., representing the Vais of the same area growing out of the case *Republic of*

Liberia v. Harmon, bill in equity for the cancellation of public **land** sale deed and relief against fraud.
On the 29th day of April, 1977, this Court handed down an opinion dismissing the information on jurisdictional grounds. *See Pratt et al. v. Kroma et al.*[1977] LRSC 21; , 26 LLR 64 (1977). The informants complied with the decision of the Court. Subsequently, on the 18th day of May, 1977, the same informants filed another bill of information against the same respondents, including His Honour Frank W. Smith, who was presiding by assignment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, when the Court's mandate was sent down for execution. *See Pratt et al. v. Smith et al.*[1977] LRSC 32; , 26 LLR 160 (1977).

The second bill of information growing out of the case of bill in equity for cancellation of public **land** sale deed and relief against fraud was heard on June 2, 1977, and decided July 8, 1977. In deciding the issues raised in the bill of information, this Court held that: "It was error to have ousted and evicted the persons residing in Fanima Town in the manner it was done, if what has been alleged in the bill of information is true." The Court further held that: "When the public **land** sale deed of Dawoda Harmon for fifteen (15) acres of **land** in Fanima Town was canceled and the reason it was canceled was because of misrepresentation and fraud, the matter of ownership resorted to *status qua ante;* that is to say, the title and ownership vested in the descendants of Hawa Gabi Bassie and the inhabitants of Fanima at the time the 25.8 acres of **land** was granted them by President H. R. W. Johnson in 1888. All other persons living on the 25.8 acres of **land** except by permission of the owners are intruders and it is the right of the owners to evict such trespassers by due process of law."
In traversing the issue that in equity proceedings complete remedy should be given in order to avoid a multiplicity of suits, the Court held that whilst it is in agreement with this principle, when the Court decreed the cancellation of Dawoda Harmon's Deed, it was as far as it could go in cancellation proceedings because it placed title and ownership clearly in the legal ownership of the 25.8 acres of **land** on the strength of the Native Township Grant Deed.
The Court also said in that Opinion that because the judge erred in ordering the issuance of a writ of possession in cancellation proceedings, his ruling in executing the mandate of the Supreme Court was thereby revoked. The Court finally said: "In order to put a finality to this matter, the judge presiding over the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, at its June 1977 Term, should proceed at once to complete the execution of the mandate of the Supreme Court in the *Harmon v. Republic* case, decided May 6, 1975, and immediately make returns as to how this has been done.
When the Court's mandate was sent down to the Civil Law Court for the Sixth Judicial Circuit, His Honour Frederick K. Tulay, now Associate Justice, presiding by assignment during the June Term, A. D. 1977, properly executed the said mandate to the satisfaction of all the parties.

Subsequently, during the March Term, A. D. 1977, of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, respondents in these information proceedings in a motion filed before His Honour Judge Brathewaite, who was at the time presiding by assignment, moved the lower court to order the clerk to issue a writ of possession in favour of respondents in the light of the court's ruling of August 31, 1977, over the signature of His Honour Frederick K. Tulay, now Associate Justice of the Supreme Court of Liberia. Judge Brathewaite heard the motion and entered a ruling which placed the parties in the same position as if no motion had been filed. Therefore, after the motion was heard there was no need for either party to have taken exceptions

to his ruling.
During the June Term, A. D. 1978, of the Civil Law Court for the Sixth Judicial Circuit, respondents again filed another motion before Judge E. S. Koroma, who was presiding by assignment over that court. In essence, the motion of respondents herein brought to the attention of the Court that the mandate of the Supreme Court in the *Pratt et al. v. Smith et al.* case had not been enforced and requested the court below to have it enforced.
We fail to comprehend how counsel for respondents could have presented to the court for consideration false and mislead-ing information. The ruling of Judge Tulay, now Associate Justice of the Supreme Court of Liberia, fully complied with the mandate of this Court. Therefore counsel for respondents did not act in an ethical and professional manner. We would like for counsel to take note and govern himself accordingly.
Without taking judicial cognizance of the ruling of Judge Tulay, now Associate Justice, which ruling formed a part of the records, Judge Koroma entered a ruling ordering the issuance of a writ of possession to the respondents to be immediately executed and returns made to him by the sheriff, placing respondents in possession of property within the metes and bounds of the 25.8 acres of **land** described in the Native Township Grant deed from the Republic of Liberia to Hawa Gbai Bassie and the inhabitants of Fanima Town. The deed was signed by President H. R. W. Johnson in the year 1888.
We do not know the source of the judge's authority to order the issuance of a writ of possession to respondents in these proceedings. For in the first place, the public **land** sale deed of respondent Dawoda Harmon had been canceled and rendered null and void, growing out of a final decree of the lower court, confirmed and affirmed by the Supreme Court during its March Term, A. D. 1976. In addition, there was the ruling of Judge Tulay on the enforcement of the Court's mandate. Yet, Judge Koroma elected to have grossly ignored the applicable law relating to the enforcement of this Court's mandate.

A recourse to the records in these proceedings showed that the writ of possession that was ordered issued by Judge Koroma contained the same metes and bounds described in the public **land** sale deed from the Republic of Liberia to Dawoda Harmon which had been canceled by decree of the lower court. Where did the judge get the deed upon which a description could be made? No wonder why counsel for informants, when presenting his argument said that: “Justice had fled the court room and men had lost their reasons.” We think that the action of the co-respondent judge constitutes disobedience to this Court's mandate and he should be held in contempt.
In his argument respondents’ counsel conceded the error of the co-respondent judge for ordering the issuance of a writ of possession in favour of the respondents because the same was in violation and disobedience to the mandate of the Supreme Court. In deciding this case we uphold the ruling of His Honour Judge Frederick K. Tulay, now Associate Justice, in executing the mandate of this Court. For the benefit of this opinion we quote the pertinent part of the ruling:

" . . . this court does not see it fit to send another directive to the Director of Archives, Ministry of Foreign Affairs, but to now go on records once and for all, that the public **land** sale deed which was issued by the Republic of Liberia over the signature of William V. S. Tubman, President of Liberia, in favour of Dawoda Harmon, be and the same is hereby canceled, made null and void as if no such deed had ever been issued to him by the Republic of Liberia. The parties to the original suit are hereby placed in *status quo*; that is to say, they are in the same

position in which they were before the canceled deed was ever issued in favour of Dawoda Harmon."

Therefore, the ruling of the co-respondent judge ordering the issuance of the writ of possession in favour of respondent Dawoda Harmon, placing him in possession of fifteen (15) acres of **land**, the deed issued to him by the Republic of Liberia having been canceled, and which **land** falls within the 25.8 acres of the Native Township Grant Deed issued from the Republic of Liberia to Hawa Gbai Bassie and the inhabitants of Fanima Town, Bushrod Island, Monrovia, Liberia, is hereby revoked, canceled and made null and void. And it is the right of the owners of the property to evict any trespassers by the due process of law.
It is our considered opinion that because of Judge Koroma's disobedience and disregard to the mandate of the Supreme Court, he is adjudged in contempt and fined the sum of two hundred ($200.00) dollars to be paid within fifteen days from the date of this Judgment. The information is hereby granted. The Clerk of this Court is instructed to send a mandate to the lower court commanding the judge presiding therein to take judicial cognizance of this opinion. And it is hereby so ordered.

Information granted.

Koon v Jleh [1999] LRSC 4; 39 LLR 329 (1999) (21 January 1999)

SAMUEL KOON, Appellant, v. **PETER JLEH**, substituted by KOFA GBE, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard December 9, 1998 Decided January 21, 1999.

1. The power of arbitrators appointed by court on agreement of the parties may be exercised by the majority unless otherwise provided by the arbitration agreement.

2. The court is obligated to affirm an award made by the arbitrators where the parties by stipulation agreed the award shall be binding on them, unless grounds provided by the statute are sought for vacating and nullifying the same.

3. Under the doctrine of estoppel, a person party to a stipulation is estopped from declaring his action illegal and in so doing taking advantage of his own action.

4. A stipulation is an agreement, admission or concession made in a judicial proceeding by the parties thereto in respect of some matters therein for the purpose of ordinary avoiding delay, trouble and expenses.

5. Courts should receive a fair and liberal construction, in harmony with the apparent intention of the parties and the spirits of justice and in furtherance of fair trials upon merits rather than a narrow and technical one calculated to defeat the purpose of their execution; and in all cases of doubt, that construction should be adopted which is favourable to the party in whose favour it is made.

6. Courts are bound to enforce stipulations which parties validly make, when they are not unreasonable or against good moral or sound public policy. The primary rule is that courts, if possible, ascertain and give effect to the intent of the parties.

7. On application of a party to the arbitrators or on submission of the court to the arbitrators on such conditions as the court mat order, the arbitrators may modify or correct the award upon the grounds stated in the statute, or amend the award for the purpose of clarifying it.

8. Objections of the findings or decision of the arbitrators must be in writing and served on the arbitrators and the other parties to the arbitration within five days after receipt of notice of the application.

9. It is mandatorily required by statute that the time limitation for filing a written objection after the service of a signed copy of the arbitrator's award on the application and other parties concerned shall be strictly followed.

Appellant Samuel Koon instituted in the Civil Law Court for the Sixth judicial Circuit, Montserrado County, an action of ejectment against Appellee Peter Jleh, claiming that the latter

was encroaching on the western half of his **land**. Following the resting of pleadings, and because of the intricacy of the dispute, the parties agreed and applied to the court for the appoint of a board of arbitration comprising surveyors to survey and report their findings to the court, which report, the parties stipulated would be binding on them. The first arbitration report, with the dissent of one arbitrator, concluded that the appellee was the legitimate owner of the **land** in dispute.

Notwithstanding the case remained undetermined from 1976 to 1994 when the parties again applied to the court for the appointment of another arbitration board, which application was granted and a new board appointed. The new arbitration also found for the appellee, which findings and conclusions were confirmed by the trial court. From this judgment, the appellant, plaintiff in the lower court, appealed to the Supreme Court, contending that the trial court had violated the statute in sua sponte confirming the arbitration award within two days rather than thirty days as provided by the statute, and further, that the court had acted contrary to law in submitting the award to counsel to study in order for the court to pass upon the report, since the law was that the court would pass on the award only after a written motion of a party to confirm the award.

The Court rejected the contentions of the appellant, holding that the parties to the arbitration agreement had agreed to be bound by its terms and by the findings and conclusions of the arbitration board, and that the appellant was therefore estopped from repudiating his act on ground of illegality. The Court opined that as the agreement had not been entered into under coercion and was not violative of public policy, the trial court was under an obligation to give effect to the intention of the parties which was that the award would be binding on the parties. Accordingly, the trial court was legally bound to enforce the award made by the majority of the arbitrators and to render final judgment thereon, and that therefore the trial court did not act in error in affirming the award of the board of arbitration.

As to the contention that the parties had the right to object to the award within thirty days and that therefore the trial court acted in error in *sua sponte* affirming the award before the expiration of that period and without the motion of a party, as allegedly required by law, the Court stated that under the statute a party desiring to object to the award had to do so within five days of the date of notice of the award and not thirty days as contended by the appellant. The Court noted that the appellant had violated the statute in not asserting objections to the award within the time prescribed by statute, and that as such the contention in that respect was subject to dismissal.

Accordingly, the Court affirmed the judgment of the trial court and ordered enforcement of the award.

Snosio E. Nigba of the Legal Services Inc. appeared for appellant. *J. D. Gordon* of the Gordon Law Offices appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The parties in the above entitled cause are before this Honourable Court on appeal from a final judgment of His Honour Varney D. Cooper, then presiding judge over the Civil Law Court, Sixth Judicial Circuit, Montserrado County, during its September Term, A. D. 1994. The court, after arguments on the report of the board of arbitrators, rendered final judgment in favour of Appellee Peter Jleh. The appellant, Samuel Koon, not being satisfied with the final judgment of His Honour Varney D. Cooper, has come to this Court, sitting *en banc,* for a review of said matter as the organic and statutory laws of this **land** provide.

The ejectment case, as culled from the certified records before us, may be succinctly stated as follows.

On February 4, 1976, Samuel Koon instituted an action of ejectment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, against Peter Jleh, alleging that he owned in fee simple one-half lot or one eight acre of **land** situated on Bushrod Island, Point Four Area, Monrovia, Montserrado County, Liberia. He further alleged that Peter Jleh was encroaching upon the western half of said **land**.

Peter Jleh, the appellee filed an answer and later withdrew the said answer and filed an amended answer in which he denied encroaching upon the appellant's **land** and asserted that he owned one lot, a portion of which was in block two, situated on Bushrod Island, Montserrado County, which lot was a portion of King Peter's property. The appellee further asserted that he had purchased the said lot from Buku Faye, one of the descendants of King Peter.

Because of the intricacy involved in determining the legitimate owner of the **land**, both parties agreed to submit the controversy to a board of arbitrators, duly approved by the court, in the application for which they stipulated as follows:

"APPLICATION
Plaintiff and defendant in the above entitled cause of action by and through their respective counsels hereby apply to this court for the appointment of a board of arbitration and for cause submit the following, to wit:

(1) That they have observed carefully from their respective deeds proferted with the pleadings that the metes and bounds as well as their block numbers are separate and distinct, which in itself requires nothing less than the appointment of competent and qualified surveyors, to be appointed by the parties and the court, to proceed on the disputed area in order to determine which of the parties its in fact encroaching upon the **land** of the other.

(2) That the parties hereto, that is plaintiff and defendant do hereby further stipulate and agree that a majority award of the board shall be binding upon the parties hereto upon which judgment shall be rendered by court.

25 cents revenue stamp affixed to the original
Given under our hands this 8th day of
April A. D. 1976.
SDG: Roosevelt S. T. Bortu
Attorneys & Counsellors-at-Law,
The P. Amos George Law Firm, counsel for plaintiff
SGD: James Doe Gibson
Counsellor-At-Law for defendant.
APPROVED: ASSIGNED CIRCUIT JUDGE"

The majority report of the first board of arbitrators is now hereby quoted as follows:

"DEPORT OF BOARD OF ARBITRATORS
His Honour, The Circuit Judge
Sixth Judicial Circuit
Montserrado County, R. L.
Temple of Justice
Monrovia, Liberia.
Samuel Koon PLAINTIFF VERSUS Peter Jleh DEFENDANT ACTION OF EJECTMENT

The board of arbitrators, consisting of three surveyors, were duly qualified in this case by the court, to survey, investigate, and report our findings to said court. The facts were found as alleged by the plaintiff, as follows:

1. On October 18, 1976, at 9:30 a. m. We, the board of arbitrators were all present; the deeds were presented to the board by the two parties.

(2) One warranty deed from S. N. H. Speare to Samuel Koon Block #7, for 'A lot, situated on Bushrod Island, probated December 8, 1975, registered in vol. 176-75, at pages 377-379.

(3) One warranty deed from Buku Tay, legal heir of the late King Peter, to Peter Jleh, Block #2, for one lot, situated on Bushrod island, probated November 15, 1974, registered in vol. 102-74, pages 384-388.

"THE MEMBERS OF THE ARBITRATION BOARD TO THE SO CALLED ARBITRATION CONDUCTED BY OTHER MEMBERS.

On the 16th of October 1976, a board of arbitration was appointed by Your Honour to conduct arbitration in the case Samuel Koon, plaintiff, versus Peter Jleh, defendant, in an action of ejectment. Plaintiff Samuel Koon's **land** is within and forms part of Block No. 7, owned by Hawah Somboe Gbassee, and Defendant Peter Jleh's **land** is within and forms part of King Peter's Reserve in Block No. 2, Bushrod Island. We were instructed to conduct a thorough survey within the 2 Blocks, Nos. 7 and 2, to determine what relationship if any existed between them and report thereon.

Because of heavy rain, we did not perform this duty on the 16th but on the 17th of October 1976. We went to Block No. 7 and the chairman insisted that we should go in a nearby house and call for the deeds of Hawah Somboe Gbassee and King Peter respectively for inspection. I told him that we should remain on the field and conduct the survey but he refused and we went to the house of Mr. Cummings where a deed was presented by Henry Logan, owned by Bubu Tay, the heir of King Peter, according to him. Hawah Somboe Gbassee's was also present, to which

Mappy, one of the members objected, claiming same to be illegal. But Chairman Dunbar said it was alright. Mappy having objected to Hawah Somboe Gbassee's deed, took same from the table and threw it down and Fahnbulleh, the grandson of Hawah Somboe Gassee reacted and Mr. Mappy pushed him and confusion ensued, which resulted into a big fight.

After the fight, we got together to conduct the duty assigned to us and I suggested that we should conduct survey in Block No. 7 and proceed to Block No.2 and conduct survey there too, in keeping with the court's instructions but they refused, saying that block No. 2 is within block No. 7 and they accordingly conducted their survey against which I strongly protested and abstained from taking part.

OBJECTIONS: I objected to the so called arbitration made by Joseph Dunbar and Mappy on the following grounds:

1. That the entire survey and/or arbitration conducted by them is unfair and illegal and against the instruction of the court.

2. That it is impossible to get block No. 2 from block No. 7.

3. That block No. 2 is on the right hand side of the motor road from Monrovia to Brewerville, whilst lock No. 7 is on the left hand side of the said road.

4. That the distance between block No. 2 and 7 is about 4 miles.

Respectfully submitted:
SGD: S. Newton Speare
SGD: S. Newton Speare
PUBLIC **LAND** SURVEYOR, MO. CO.
DATED: October 18, 1976."

Accordingly, the court approved the stipulation on the 8THof April 1976, and appointed three surveyors, one being the chairman to conduct a survey of the disputed area and submit its findings. The survey conducted revealed that Peter Jleh, the defendant in the trial court, who is now appellee, is the legitimate owner of the property. But prior to determination of the result of the arbitration award, lawyers for both parties died and Peter Jleh, the defendant, later died also and had to be substituted by his wife, Kofa Gbe Munah, of Point Four. For reliance, see Civil Procedure Law 1: 5.31(1), *Substitution in case death.*

This case remained on the docket from 1976 to 1994, when both parties again appeared in court and requested for the assignment of the case. The parties in the case, upon their appearance in count, requested for the second time that the controversy be submitted to a board of arbitrators, which request was granted and another board of arbitrators was constituted comprising of three qualified surveyors, namely, Stephen T. Freeman, chairman; Molley Y. Traub, member; and Anothy T. Sharpe, member.

The surveyors proceeded to the disputed area and conducted a survey of the spot and on the 16thday of November, 1994 the three surveyors submitted their findings, which we herewith quote verbatim:

"REPORT INVOLVING SURVEY OF A DISPUTED PARCEL OF **LAND** BETWEEN THE HEIRS OF THE LATE PETER JLEH AND SAMUEL KOON SITUATED IN THE BOROUGH OF NEW KRU TOWN, MONTSERRADO COUNTY.

Upon directive from His Honour Varney D. Cooper, Sr., assigned circuit judge, Six Judicial Circuit, Civil Law Court, Montserrado County, a board of arbitrators was appointed to survey a parcel of **land** in dispute involving the heirs of the late Peter Jleh and Samuel Koon. The board members comprised:

1. Mr. Stephen G. Freeman— Chairman

2. Mr. Molly Y. Traub— Member, representing the heirs of the late Peter Jleh.

3. Mr. Anthony T. Sharpe— Member, representing Mr. Samuel Koon.

The purpose of the survey was to determine the ownership of the laid with respect to the documents (deeds) presented by the parties through the court to the board.

Prior to the execution of the survey exercises, the usual survey notices were served to would be claimants to be present to identify their respective property boundaries. Some of the property owners responded to the notices, they identified the boundaries, and the survey exercises were carried out successfully without hindrance.

The legal documents (deeds) for both parties (the heirs of the late Peter Jleh and Mr. Samuel Koon), presented to the board to facilitate the technical implementation of the survey exercises have the following information:

A. One warranty deed from Buku Tay to Peter Jleh for one (1) lot, probated November 15, 1974, registered in Volume 102-74, pages 384-388, located on Bushrod Island, bearing Block # 2.

B. One (1) warranty deed from S. N. H. Speare to Samuel Koon for half lot, probated December 8, 1975, registered in Volume 176-75, pages 377-379, located on Bushrod Island, bearing Block # 7.

To the judgment of the court, the appellant's counsel excepted and gave notice that he would file with the court a motion to vacate the award in keeping with statutes.

The trial judge having dealt with the case in its entirety, including the pleadings filed, issues of facts and law, ruled in favor of Appellee Peter Jleh.

For the benefit of this opinion, we hereby quote the court's final judgment as follows, to wit:

"Court's Final Judgment

This action of ejectment was instituted since 1976 and has been on the court's docket from that time up to the present. During this term of court, upon the request of both parties, the board of arbitrators, consisting of three qualified surveyors, was appointed to survey the two properties of the parties, based upon their deeds, which they were ordered to pass over to the court to assist (the surveyors) in performing their work. The chairman, in person of Joseph F. Freeman, was appointed by the court, while the other two surveyors were appointed one each by the party of interest. After a protracted delay, the arbitrators finally presented their reports. Two of the parties, the chairman Stephen G. Freeman and member Money Traub presented a majority report, and Anthony T. Sharpe presented a minority report. The majority report went into detail and explained the technical aspects and concluded that:

(a) the survey was done in normal survey order;

(b) the deed of the late Peter Jleh is older than that of Samuel Koon. The minority report also confirmed that the deed of the late Peter Jleh is older than that of Samuel Koon and according to him same was not survey.

Section 64.4 of the Civil Procedure Law says that the power of the arbitrators may be exercised by the majority unless otherwise provided by the arbitration agreement. Section 64.10 of the same book orders the court to confirm an award unless grounds are sought for vacating and nullifying same. This court is not aware of any written objection rejecting the majority report; hence, to put an end to this controversy which has lasted for over twenty years, the court, taking into consideration the survey map submitted by the majority hereby confirms and affirms the report of the majority in keeping with the map. Consequently, this Court hereby declares that the area marked in red according to ground location P/11, P/12, P/13, and P/14, belong to Defendant Peter Jleh, according to deed registered in volume 102, pages 386388 and probated November 14, 1974, and he is to be put in possession of same. And it is hereby so ordered.

Given under my hand and Seal of Court this
5th day of December A. D. 1994
SGD: Varnie D. Cooper, Sr.
Assigned Circuit Judge
Presiding, Sixth Judicial Circuit,
Civil Law Court"

To the above-mentioned final judgment of December 5, 1994, the appellant excepted, and announced an appeal to this Honourable Court, which was accordingly granted by the trial court.

From the certified records transmitted to this Court and the two-count bill of exception filed, the appellant basically contended that the trial judge committed reversible error, with respect to the board of arbitrators' findings and award, when he ruled: "that the clerk is ordered to pass same to counsel for study and they are to report to this court on December 2, 1995, at the hour of 10:00 a.m. in order for the court to pass upon said report;" and that said ruling was illegal and arbitrary because according to the statutes, thirty days is allowed for plaintiff to file a written notice stating his objection to said award in compliance with the Civil Procedure Law, Rev. Code 1: 64.10. Further, appellant contended that section 64.10 does not *sua sponte* order the court to confirm an award within two days as was erroneously done by the trial judge in the instant case. The law, appellant said, requires the judge to pass on the award only after a written motion of a party to confirm said award, if there is no written motion urging for the vacating or modifying of said award.

In response thereto, appellee contended, amongst other things, that the entire bill of exceptions is not worthy of consideration for reason that the appellant failed and neglected to take the initial steps by filing a written motion to the board of arbitration in compliance with section 64.8 of our Civil Procedure Law which provides that an application to the arbitration by a party shall be made within five days after service of signed copy of the award on the applicant. Written notice of the application shall be given by the arbitrators forthwith to the other parties to the arbitration. Objections to the application must be in writing and served on the arbitrators and the other parties to the arbitration within five days after receipt of the notice of the application. Hence, the failure on the part of the appellant to file a written motion to the majority report within five days constituted waiver and latches, and as such the entire bill of exceptions should be overruled and denied.

Predicated upon the contentions of the parties as couched and summarized from the certified records, briefs and arguments before this Honourable Court, we consider that these issues are germane for the determination of this case:

1. whether or not in a judicial proceeding parties are, bound by the terms and conditions of the stipulation they entered into and are therefore estopped from repudiating their actions as illegal;

(2) whether or not courts are bound to enforce stipulations which parties validly make; and,

(3) whether or not the failure to file a written objection to the board of arbitrators' report in the court below can be raised in the bill of exceptions for the first time as would make it cognizable before the appellate Court.

We shall now traverse issues (1) and (2), which are "whether or not in a judicial proceeding, the parties thereto are bound by the terms and conditions of the stipulation they entered into and are therefore estopped from repudiating their own actions as illegal" and "whether or not courts are bound to enforce stipulations which parties validly make. In answering those questions, we must take recourse to the records. A thorough review of the records in this case revealed that on February 4, 1976, Samuel Koon instituted an action of ejectment in the Sixth Judicial Circuit Court, Montserrado County, against Peter Jleh, alleging that he owned in fee simple one half (1/2) lot or one eight (1/8) acre of **land**, situated on Bushrod Island, Point Four Area, Monrovia, Montserrado County. He further alleged that Peter Jleh was encroaching upon the western half of his **land**. Peter Jleh, the appellee, filed an answer and later withdrew the said answer and filed an amended answer in which he denied encroaching upon the appellant's **land** and asserted that he owned a lot, a portion of which was in block two, situated on Bushrod Island, Montserrado County, which lot was a portion of King Peter's property. The appellee further asserted that he purchased his said lot from Buku Tay, one of the descendants of King Peter.

On the 8th day of April A. D. 1976, because of the intricacy involved in determining the legitimate owner of the **land**, both parties agreed to submit the controversy to a board of arbitrators, duly approved by court, in which they stipulated in count two (2) of said stipulation. "That the parties hereto, that is, appellee and appellant do hereby further stipulate and agree that a majority award of the board shall be binding upon the parties hereto upon which judgment shall be rendered by the Court."

Our candid interpretation and construction of this clause, or paragraph two (2) of the stipulation entered into and signed by the parties on April 8, 1976, is that they understandingly agreed without any coercion, that they were submitting their **land** dispute or controversy to a board of arbitrators composed of three (3) members, whose majority award shall be binding upon them and that the court shall render its final judgment upon the award of the majority submitted by the board of arbitrators in their report.

With respect to the principle of law of stipulation and its enforcement, Mr. Justice Barclay, speaking for this Court in the case *Smith v. Page, [1952] LRSC 7; 11* LLR 146, 150 (1952), said: "Since appellant was a party to these stipulations, he is now estopped from declaring his action illegal and by so doing taking advantage of his own action." Further, and in support of the case herein above cited, Mr. Justice Henries, speaking for the Court, supported the principle of law on stipulation, in the case *Stereo Hotel v. S & A Construction and Trading Company,* [1973] LRSC 4; 21 LLR 415, 421 and 427 (1973) held: " that the trial judge was guided by the stipulations, it is necessary to determine whether the stipulation should have had any effect on disposition of the case in the court below. According to legal authority, a stipulation is an agreement, admission or concession made in a judicial proceeding by the parties thereto in respect of some matters therein for the purpose of ordinarily avoiding delay, trouble and expenses."

This principle of law alluded to above is also confirmed in 50 AM JUR., *Stipulation, §* 2, which provides: "The primary rule in construction of stipulations is that the court must, if possible, ascertain and give effect to the intent of the parties" For reliance, see also 83 C.J.S, *Stipulation, §* 17 and 50 AM JUR., *Stipulations, §* 12.

With regard to issue two (2), concerning the enforcement of stipulations which parties validly make during a judicial proceedings, it is the holding of this Court, relying on the principle of law herein above cited, that stipulations entered into by parties to the effect that the suit is binding on them and that they are estopped from repudiating their own action as being illegal is upheld and confirmed. We further hold that as regards stipulations, courts "should receive a fair and liberal construction, in harmony with the apparent intention of the parties and the spirits of justice and in furtherance of fair trials upon merits, rather than a narrow and technical one calculated to defeat the purpose of their execution; and in all cases of doubt, that construction should be adopted which is favorable to the Party in whose favor it is made." For reliance, see *Brown v. Cavalla River Company Limited,* [1954] LRSC 27; 12 LLR 136, 139 (1954).

In addition to the above, this Court also confirms the principle of law that "Courts are bound to enforce stipulations which parties validly make, when they are not unreasonable or against good moral or sound public policy. The primary rule in construction of stipulations is that the court must, if possible, ascertain and give effect to the intent of the parties. For reliance, see 83 C.J.S., *Stipulation,* § 11

Turning to the third issue, which is whether or not the failure of the appellant to file a written objection to the board of arbitrators' report within statutory time can be raised in the bill of exceptions for the first time and cognizable by the appellate court, a careful perusal of the records in this case revealed that appellant in his bill of exceptions, contended that he excepted to

the trial judge's ruling of November 30, 1994, indicating in the said exception that the ruling was illegal and arbitrary because, according to existing statutes, thirty day (30) is allowed to a plaintiff to file a written notice stating his objections to said award. Appellant further stated that he objected to the said majority award, as contained in the minutes of court of November 30, 1994, and that he gave notice that he will file a motion to vacate said majority award within the statutory time of thirty days (30), in keeping with the Civil Procedure Law, Rev. Code 1: 64.10.

The appellee responded that the entire bill of exceptions is not worthy of consideration by the court for reasons that the appellant failed to take the initial steps by filing a written motion to the board of arbitrators report or award in keeping with Chapter 64, Section 64.8 of the Civil Procedure Law.

This Court observes that on November 30, 1994, when the board of arbitrators presented to the trial court their report or award, same was immediately served on the parties by the clerk of court upon the orders of the trial judge. The appellant in these proceedings there and then objected to the arbitrator's awards and gave notice that he would file a written motion to vacate said majority award within thirty days (30).

The contention between the parties is that the appellant maintained that the motions for modification, correction or clarification of award by arbitrators shall be made in writing within thirty days (30) after service of the signed copy of award on the applicant, whereas the appellee contended that after the service of the signed copy of award on the applicant, he is mandatorily required to file his objections in writing and serve same on the arbitrators and other parties to the arbitration within five (5) days after receipt of the notice of application.

For the purpose of this opinion, we herewith quote verbatim the Civil Procedure Law, Rev. Code 1: 64.8, *Modification, Correction or Clarification or Award by Arbitrators, as* it relates to the filing of written objection, method and time limitation. The section provides as follows, to wit:

"Section 64.8 (1)(2) Modification, correction, or clarification of award by arbitrators.

I. Scope. On application of a party to the arbitrators or,, if an application to the court is pending under sections 64.10, 64.11, or 64.12, on submission to the arbitrators by the court under such

conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 64.12 or may amend the award for the purpose of clarifying it.

2. Applications. Method and time limitation. The application to the arbitrators by a party shall be made within five days after service of a signed copy of the award on the applicant. Written notice of the application shall be given by the arbitrators forthwith to the other parties to the arbitration. Objections to the application must be in writing and served on the arbitrators and the other parties to the arbitrator within five days after receipt of notice of the application."

It is our interpretation and construction that from the afore quoted provision of law it is mandatorily required by statute that the time limitation for filing a written objection after the service of a signed copy of the arbitrator's award on the applicant and other parties concerned shall be made within five days (5) and not 30 days as is contended and argued by appellant. We further note that the appellant did accept to and announce that he would take advantage of the statute by filing his written objections to the award within 30 days when he received his copy of the report or award, on November 30, 1994, but failed and neglected to file said written objection to the arbitrator's award within the statutory time up to and including the date of this opinion.

Wherefore and in view of the foregoing, the appellant having failed to comply with the law as above stated, with respect to the filing of written objections to the arbitrators' award, his contention is hereby dismissed and the appellee's contention that the written objection should have been filed within five days (5) is sustained.

Wherefore and in view of the foregoing, it is the holding of this Court that having reviewed the history of this case in its entirety, that is, the stipulation between the parties, the reports of both the 1" and 2n d arbitration boards, and the relevant law citations quoted hereinabove, to the mind of this Court, both reports having, provided the same results, coupled with the stipulations signed between the parties, including the deed of Peter Jleh, which predates that of Samuel Koon, and which deed is traceable to the Republic of Liberia, this Court is convinced that the Appellee Peter Jleh has superior title to that of Appellant Samuel Koon, and is therefore entitled to the possession of his one lot situated on Bushrod Island, Montserrado County, Monrovia, Liberia, as correctly ruled by His Honour Varney D. Cooper Sr., assigned circuit judge, presiding in the Civil Law Court, on the 5thday of December A. D. 1994.

Wherefore and in view of the foregoing, the appeal should be, is and same is hereby denied. The judgment of the lower court is affirmed and confirmed with costs against appellant. And it is hereby so ordered.

Judgment affirmed

Chebo v Caranda et al [1985] LRSC 45; 33 LLR 452 (1985) (18 December 1985)

SAMUEL CHEBO, Appellant, *v*. **DOUGBA KARMO CARANDA,** et al., Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard November 6, 1985 Decided December 18, 1985.

1. The failure by the defendants in an action to file an answer to the complaint or bill does not preclude them from making a motion or submission, or from participating in the trial.
2. The failure to seek a default judgment within the time allowed by law constitutes a ground for the dismissal of the complaint or bill in equity.
3. Where a plaintiff fails to move the court for the entry of a default judgment within one year after the default, vests in the court the authority to refuse entry of such judgment and to dismiss the complaint on the principle of abandonment.
4. A motion or application raising the issue of the court's jurisdiction to hear a case may be raised at any stage of the proceeding, even at the appellate level, regardless of the defendant's failure to file an answer.
5. When the issue of a court's jurisdiction is raised, it is proper for the court to first determine its own status from a jurisdictional standpoint, and to refuse to hear the case if it determines that the case doe not lie within its jurisdiction.
6. Where a party brings an action to have the court give him title to a parcel of **land** which was previously the subject of litigation between the same parties, and which resulted in a judgment for the opposing party, the action will be dismissed under the doctrine of res judicata.
7. The proper procedure for a title holder of real property to remove cloud from the title is to pray for the removal of the cloud by reformation or rescission of the instrument of title (i. e.

conveyances, mortgages and tax-levies). This presupposes that the person bringing the action has a deed or other instruments for the property in question, and where he holds no such deed of title, his action is subject to dismissal.

Appellant appealed from the dismissal by the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, of an action filed by him against the appellees, entitled "bill in equity to remove cloud and acquire title". The court had entertained a submission made by the appellees challenging the jurisdiction of the Court, even though they had failed to file an answer to the bill of information. In its appeal, the appellant raised two main points: (1) That the trial judge had erred in entertaining the submission, and (2) that the trial judge had erred in dismissing the action on the ground that there was no form of action entitled "bill in equity to remove cloud and acquire title".

The Supreme Court upheld the trial judge's dismissal of the appellant's action. The Court opined, as to appellant's first contention, that the failure by the appellees to file an answer to the bill in equity did not preclude them from making a motion or submission, or from participating in the trial, especially where the appellant, after a period of more than two years following appellees' failure to file an answer, had neglected to seek a default judgment against them. The neglect itself, the Court said, constituted a ground for the dismissal of the bill in equity. The Court observed in particular that as the submission had raised a jurisdictional issue regarding the parties, the subject matter and the principle of *res judicata*, the trial judge was duty bound to decide whether the court had the jurisdictional authority to hear the bill in equity, the subject matter of which had already previously been determined by the Supreme Court, the highest court in the **land**. Indeed, the Court said, the issue of the trial court's jurisdiction over the subject matter of the litigation could have been raised at any stage of the proceeding, even at the appellate level, and regardless of the failure of the appellees to file an answer.

With regards to the issue of the dismissal of the bill in equity, the Supreme Court held that the dismissal was proper, given that while the appellant had filed a bill in equity to remove cloud and acquire title, he had failed to point out the cloud on the title or to show the title upon which there was an alleged cloud. The Court noted that since in a case where there is alleged to be cloud on a title, the proper procedure for the title holder to follow is to pray for the removal of the cloud or reformation of the deed in a court of equity, such action presupposes the existence of a deed or other instrument of title. In the instant case, it said, the appellant had no title but sought instead to have the trial court give him title to a parcel of **land** which he claimed was public **land**, but which in fact the Supreme Court had already determined belonged to the appellees. The previous action, the Court observed, involved the same parties and the same subject of the dispute. As such, it said, the trial court acted properly in dismissing the bill in equity.

On the basis of the foregoing, the Court *affirmed* the trial judge's dismissal of the appellant's action.

E. Wade Appleton appeared for the appellant. *Toye C. Barnard* appeared for the appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal emanated from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, where the appellant filed a petition entitled "bill in equity to remove cloud and acquire title", which was dismissed on the issues of law. Appellant excepted to the ruling of the trial judge, and has brought this case up to the Supreme Court, contending in substance that the trial judge committed a reversible error when he allowed counsel for the appellees to spread a submission on the minutes of court when indeed appellees were not legally in court because of their failure to file an answer to the petition. The appellant also contended that the trial judge erroneously dismissed the bill on the ground that there was no such action in equity entitled "bill in equity to remove cloud and acquire title". These were the two basic contentions raised in the bill of exceptions, and which counsel for appellant strongly argued before this Bench. These formed the basis for appellant's prayer to the Court to reverse the ruling of the trial judge dismissing the bill.
For the benefit of this opinion, we deem it appropriate to quote the six counts and the prayer of appellant's petition, filed before the court below, sitting in its September 1979 Term. They read as follows:

"1. That he (appellant) has been living for the past 22 years on a piece of property identified by him to be in the public domain which he has improved and was eventually surveyed by government surveyor Alfred B. Lewis as will more fully appear from surveyor's certificate hereto attached as exhibit 'A' of petitioner's petition.

2. 2. That John Caranda, son of Dougba Karmo Caranda, has been molesting your humble petitioner by summary ejectment which ended in favor of John Caranda because of the illness of petitioner's counsel, the late J. Everett Bull, Sr.

3. 3. Your humble petitioner further submits that under the statute extant, petitioner could not have recovered against co-respondent, John Caranda, then plaintiff in the court below, without exhibiting a title in himself for that part of the property now occupied and improved by your humble petitioner.

4. 4. And also because petitioner further submits that the facts in the case were not introduced into evidence in the magisterial court before his rendition of judgment by default, because of the illness of petitioner's counsel. With the hope of giving your humble petitioner his day in court, he appealed the default judgment to the circuit court, but the circuit court blamed Counsellor J. Everett Bull, Jr. for failing to appear in defense of petitioner since he knew his father J. Everett Bull, Sr. was fatally ill and died afterwards. For these reasons, petitioner never had his day in court since his appeal could not be completed in the Supreme Court before the death of Counsellor J. Everett Bull, Sr.

5. And also because at the time petitioner entered the piece of property, subject of these proceedings, and commenced squatting thereon, respondents seeing petitioner constructing a concrete house now at roof level did not say anything to petitioner that the property was theirs and that the government of the Republic of Liberia having surveyed this area as can more fully be seen, said property is for the Republic of Liberia instead of the respondents.

6. And also because your humble petitioner submits that in an effort to amicably settle the problem between the respondents and himself, he wrote through his counsel the attached letter, marked exhibit 'A', to which peti-tioner gives notice that he will apply for writ of *duces tecum* for respondents have religiously avoided the conference for compromise.

WHEREFORE, and in view of the foregoing, peti-tioner prays that it will so please your Honour to appoint a board of arbitration for the area to be retraversed so as to enable your humble petitioner to complete title in himself for lot No. 92 which has already been declared public **land** by the civil authorities and surveyed on his behalf by government surveyor Alfred B. Lewis, with costs against respondents."

The records show that on the 22nd day of June, 1979, appellees were returned served with the writ of summons and the petition but no answer was filed by them. On the 30th day of June, 1981, when the case was called, counsel for appellees made the following record, followed by argument by counsel for both parties, and ruling was then reserved to be given upon notice of assignment:

"Counsel for respondents (appellees) says that this case was decided by the Supreme Court. A judgment without opinion was rendered on the 15th day of June, 1979, and counsel for respondents asks court to take judicial notice of that judgment. That the filing of a bill in equity to remove cloud is an attempt by counsel for petitioner to review or have this court review the final decision of the Honourable Court which is contrary to law. That Dougba Karmo Caranda who died April 3, 1981, was represented in court prior to his death by his son John Caranda who held a legal power of attorney from Dougba Karmo Caranda and therefore these proceedings should be dismissed since them have no legal basis.

Wherefore, in view of the foregoing, respondents respectfully pray to dismiss the action 'bill in equity to remove cloud' with costs against the petitioner."

Although counsel for appellant has contended that the trial judge committed reversible error by allowing counsel for appel-lees to spread a submission on the record when indeed appellees were out of court by their failure to file an answer, in our opinion the failure of the appellees to file an answer to the bill did not preclude them from making a motion or a submission, or from participating in the trial, especially so when about two years after the filing of the action appellant neglected to seek a default judgment, which failure in itself constituted ground for dismissal of the bill.

Under our statute, if the plaintiff fails to take proceeding for entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned upon its own motion or on application by the defendant or on plaintiff's application for entry of judgment unless sufficient cause is shown why the complaint should not be dismissed. For reliance: Civil Procedure Law, Rev. Code I: 42.4.

The submission made by counsel for appellees, in our opinion, was in effect a jurisdictional issue raised appraising the court that the matter was *res judicata* since indeed, according to appellant's own averments in his petition, the parties and the subject matter involved are the same in the summary proceedings case adjudicated by this Court. The trial judge was therefore not in error when he first decided to hear and determine whether the court below had authority to hear a matter that had been finally determined by the highest court of the **land**. In our opinion, an application raising the issue whether the court has jurisdiction to hear a particular case may be

raised at any stage of the proceeding, even at the appellate level, regardless of the defendant's failure to file an answer. When such an issue is raised, it is proper for the court to first determine its own status from a jurisdictional standpoint, and to refuse to hear the case if it determines that it does not have jurisdiction. For reliance, see *Barclay v. Thompson*, [1966] LRSC 35; 17 LLR 351 (1966) and *Richards v. Commercial Bank*, [1971] LRSC 43; 20 LLR 349 (1971). It is therefore our candid opinion that allowing the appellees to spread their submission on the record was no error on the part of the trial judge.
Appellant also contended that the trial judge committed a reversible error when he dismissed the petition. Because we are in full agreement with the conclusion of the trial judge, we quote hereunder the last five paragraphs of his ruling dismissing the petition:

"For title to be beclouded and disturbed, there must exist title to the property which is evidenced by a deed. The documents presented in this petition are: a letter requesting the sale of a property addressed by petitioner's counsel to the respondents, a surveyor's certificate signed by one Alfred B. Lewis, government surveyor with the corresponding diagram. There is no **land** commissioner's certificate, survey order, or public **land** surveyor's certifi-cate attached to the documents which, even if they were attached, would only evidence possessory right and not title in fee simple. There being no evidence of title, there can be no beclouding thereof nor disturbing, hence the action is unfounded in law.

Requirement of proof of specifically equitable right of relief would be a title to the property; title not yet acquired cannot become beclouded nor disturbed. Before equitable right can be exercised, there must be some specifically equitable right to relief . . .

The court is also of the opinion that it is incompetent to order the survey of public **land**, for same would be illegal and contrary to the law made and provided; in that, it is the duty of the **land** commissioner to give such orders.

If the facts were to establish title of the holder of real property, the court would decree in favor of the petitioner to remove the cloud and quiet the title, and the best evidence would be the title deed. This not having been proven by the petitioner, the relief sought cannot be granted.

In view of the foregoing, the petition is denied and dismissed; the petitioner not being able to defeat summary proceedings between the same parties, relating to the same property, the petition is also dismissed and denied and costs of these proceedings against the petitioner. AND IT IS HEREBY SO ORDERED."

Although appellant averred in his petition, quoted *supra*, that the summary ejectment action instituted against him by the appellees in the magisterial court ended up in the Supreme Court, with a judgment without opinion rendered against him, yet in his prayer for relief, appellant prayed the court, in his own words, "to appoint a board of arbitration for the area to be 'retraversed' (sic) so as to enable your humble petitioner to complete title in himself for lot No. 92 which has already been declared public **land** by the civil authorities and surveyed on his behalf by government surveyor Alfred B. Lewis, with costs against the respondents."
From the averments of the petition and the relief sought by appellant, it is hard to understand what relief appellant really intended to seek in the court below. He had filed the bill in equity to

remove cloud and acquire title, but he did not point out in his petition the cloud on the title; nor did he show the title on which there is cloud, the removal of which he sought. But what is clear from the records is that appellant is seeking to have the court give him title to a parcel of **land** which was the subject of litigation between the same parties (appellant and appellees) and which ended up in a judgment for appellees, and which now makes the case *res judicata*.
If there is cloud on title as a result of the indefinite description in the deed of the pertinent acreage; that is, for example, the use of the words "more or less" when indeed 25 acres can be found on the parcel of **land** while the deed for same is executed for 10 acres, the proper procedure for the title holder to follow is to pray for the removal of said cloud by reformation or rescission of the deed in a court of equity because there is a cloud as to whether or not the title holder is not entitled to the remaining 15 acres. For reliance, see *Republic v. Massaquoi*, reported in [1950] LRSC 9; 10 LLR 350 (1950). A conveyance, mortgage, judgment, tax-levy, etc. may all, in proper cases, constitute a cloud on title. It is an outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be invalid or inapplicable to the estate in question. For reliance, see BLACK'S LAW DICTIONARY 322 (4th ed.), "*Cloud on Title*".

In this case, although appellant had petitioned the court below, sitting in chancery, to remove cloud and acquire title, yet he did not show title in himself; nor did he point out any cloud he intended to be removed. Instead, the appellant is seeking title to the parcel of **land** from which he was ousted in a summary ejectment action decided by the court. If the civil authorities have declared the parcel of **land to be public land**, as contended in appellant's bill and argued by his counsel, then title in that **land** is in the Republic, and it is from the Republic alone, not the court, that title can be acquired. The court can only quiet title of a title holder of an estate provided there is a cloud on the title.
In view of all that we have narrated herein above, and the legal authorities cited, it is our candid opinion that the trial judge committed no error when he dismissed appellant's bill. The ruling of the trial judge dismissing the petition is therefore hereby confirmed and affirmed with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.

Carr v Bailey et al [1982] LRSC 98; 30 LLR 862 (1982) (5 October 1982)

DAVID B. CARR, Petitioner, *v.* **HIS HONOUR HARPER BAILEY,** Resident Circuit Judge, People's Seventh Judicial Circuit Court, Grand Gedeh County, and **DAVID TED**, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE PEOPLE'S SEVENTH JUDICIAL CIRCUIT, GRAND GEDEH COUNTY.

Decided: October 5, 1982.

1. The power and authority given to circuit courts to issue writs for summary proceedings is limited to the exercise of appellate jurisdiction over inferior courts.

2. Circuit courts cannot issue summary proceedings against an employee or official of government in the executive branch of government for an act committed in the line of his duty.

3. In all criminal cases triable by magistrate or justice of the peace, the circuit court can only exercise appellate jurisdiction.

4. The circuit court cannot exercise original jurisdiction over criminal cases triable by magistrates or justices of the peace.

5. Where the crime committed is above the trial jurisdiction of a magistrate or justice of the peace, the circuit court can only acquire jurisdiction by the issuance and service of a writ of arrest based upon an indictment by the grand jury.

Upon a letter of complaint of Co-respondent David Ted against the **Land** Commissioner, David B. Carr, for official misconduct, filed in the court of the co-respondent judge, the **Land** Commissioner was summoned for summary investigation. At the hearing on the disposition of the law issues, the co-respondent judge refused to have the petitioner's counsel represent him, contending that they did not have valid practicing licenses. The co-respondent judge also send orders to lower courts not to permit them to appear before such courts and dismissed the petitioner's answer until he was satisfied with the representation of the petitioner's legal counsel.. Thereafter, the co-respondent judge ordered the investigation proceeded with, and, in spite of the petitioner's repeated assertions that he could not proceed without representation, the case was proceeded with. Testimonies were take and the co-respondent judge and the respondent

judge ruled that the petitioner had fraudulently received from the complainant $200.00 and adjudged him guilty of official misconduct and ordered him committed to jail until he was indicted by the grand jury. He also forwarded a letter to the Head of State to suspend the petitioner until the final determination of the case which was to be commenced with the indictment by the grand jury.

From the several acts of the co-respondent judge, petitioner sought certiorari before the Justice in Chambers. The Justice ruled that the co-respondent judge had transcended the bounds of his jurisdiction, noting that he was neither the superintendent of the county nor the Minister of Internal Affairs. The Justice observed that the authority of the judge to order summary proceedings was limited to investigating inferior courts and their officers, and did not extend to officials in the Executive Branch of the Government for official misconduct. The Justice also opined that the co-respondent judge acted without the pale of the statute in preferring charges against the petitioner and in committing him to jail on the mere strength of a letter not supported by an affidavit and which was not only not justifiable but over which he had no original jurisdiction.

The Justice therefore declared the acts of the co-respondent judge to be illegal and arbitrary and accordingly granted the certiorari. The Justice also ordered the ruling of the co-respondent judge set aside, recognized the qualification of the counsel of the petitioner to practice law in Liberia, and directed that the co-respondent judge revoke his orders circulated to inferior courts not to permit the said counsel to practice before them, failing which he would be answerable in contempt of the Court.

David D. Gbala, Sr. appeared for petitioner. *Lewis K. Free, Sr.* appeared for respondents.

SMITH, J., presiding in chambers

His Honour Harper S. Bailey, Resident Circuit Judge of the People's Seventh Judicial Circuit Court, Grand Gedeh County, presiding in the chambers of his court, received a letter dated July 21, 1982, from one David Ted, co-respondent in these proceedings, which I hereunder, quote for the benefit of this ruling; it reads as follows:

"City of Zwedru

Grand Gedeh County

July 21, 1982

"His Honour Harper S. Bailey Resident Circuit Judge Grand Gedeh County, R.L.
Dear Sir:

I have the honor most respectfully to bring before you my grievance of the unbecoming attitude of **Land** Com-missioner David B. Carr and Surveyor Power Freeman.

In the year 1980, I bought two (2) town lots, and surveyed them and also paid into the Bureau the amount of $60.00 January 14, 1980, and obtained a public Certificate from the **Land** Commissioner Carr at which time he asked me to pay the amount of $200.00 two hundred for two town lots which surprised me. When I asked him for what this amount is $200.00, he told me that his daughter owns the place.

Your Honour, to my surprise when he Carr and Barbly came to me, he abused me to say that I am foolish Grebo man in the presence of my wife and few days later, Mrs. Barbly carried one officer with pistol and point the pistol at my chest and said that if I say anything he will shoot me and in Easter Mr. Barbly went in my yard and started planting corner stone.

Your Honour, I am therefore appealing to your Honourable Court to please call the **Land** Commissioner and Power Freeman to show you cause why they should molest me on public **land** which certificate and deed I have possession. (sic)

Your Honour, I am appealing to you for redress.
Very truly yours,
/s/ David Ted."

Upon the receipt of this letter, the co-respondent judge ordered the issuance of a writ of summons for summary proceeding, against the petitioner herein, requiring him to appear before the court below on the 28th day of July, 1982, at the hour of nine o'clock in the morning, that is to say, seven days from the date of the said letter, to answer the complaint of the complainant David Ted. The writ of summons also notified the petitioner that upon his failure to appear, judgment would be rendered against him by default. The writ also notified him to file formal appearance on the said 28th day of July, 1982.

The records do not show the issuance and service of any notice of assignment for the hearing of the summary proceedings, but on the 28th day of July, 1982, in compliance with the writ of summons, the petitioner appeared before the trial court as evident by the minutes of the 9th day's chamber session, Wednesday, July 28, 1982.
The case was then ordered called and the following records made:

"At the call of the case, plaintiff announced to court that he represents himself as provided by the statute, and submits."Defendant Carr says he represents himself in person and is also represented by Counsellors George G. Kaydee and David D. Gbala, Sr. of the Progressive Law Firm, respectively. They respectfully inform court that although there is no regular complaint filed against the defendant, they had an answer to the letter of the plaintiff. They request the court to take judicial notice of their answer to the letter of the plaintiff, and submit. The court: The court says the representation of defend-ant's legal counsels is hereby noted, and the clerk of court is hereby directed to read the said answer of the defendant for the hearing of the plaintiff and the court. And it is so ordered."

Apparently, in keeping with the orders of court, the defendant's answer was read in open court; however, the records do not show that any argument was entertained by the court, as in keeping with the practice and procedure in this jurisdiction. What follows next, as the minutes of the 28th day of July, 1982 show, was the following, record: "ruling on the law issues filed by the defendant's counsel."

In the ruling of the court on the law issues, the judge disqualified the two counselors from carrying the interest of the defendant, petitioner herein, on the ground that they had not paid $400.00 or $450.00 each as lawyer license and business registration fees for the year 1982, and that unless they could show receipts covering these amounts, they would not be permitted to practice in the county. With respect to the case, the co-respondent judge ruled that the answer of

the defendant, petitioner herein, was dismissed until the court was satisfied with the legal qualification of the legal counsel.

In the said ruling, the co-respondent judge observed that the case came before him by way of summary proceedings, and noted that according to the case *Pratt v. Republic* 2 LLR 289 (1918), in summary proceedings the formal procedure at trials are dispensed with. He therefore ordered that the trial thereby proceeded with and that Co-respondent David Ted be called to the stand to state his side of the case.It should be noted that in the co-respondent judge's ruling disqualifying the two counsellors from practicing and representing the legal interest of the petitioner, he mentioned that according to the docket presented to him by the clerk of court for the February Term, 1982, Counsellor George G. Kaydea had paid into the bureau of revenues the amount of $300.00 as his 1982 license fee on revenue flag receipt No. IR/2214060, but that he had not paid the business registration fee. He also noted that Counsellor Gbala had not acquired his license for the year 1982.

When co-respondent David Ted ended his statement in chief, opportunity was afforded the petitioner to cross-examine the witness, and the petitioner made record on the minutes of court that he was being represented by counsel, Counsellors George G. Kaydea and David D. Gbala, Sr, who were in possession of all of his documents, and that they having been disqualified by the court from representing him and had already left the courtroom, he could not cross-examine the witness. The Court therefore proceeded with the matter. When Co-respondent David Ted finally rested evidence, the petitioner, as defendant before the co-respondent judge, was asked to take the stand and defend himself. The minutes of court show that the petitioner asked permission of the court to allow him to go to his lawyers and get his documents and that he be permitted until the next day to take the stand. The co-respondent judge denied the application and demanded that petitioner take the stand and defend himself. Petitioner repeated his request for continuance of the matter until the following day to enable him to get his documents from his lawyers, but the co-respondent judge insisted on proceeding with the matter and entered a ruling to the effect that the petitioner, as **land** commissioner for Grand Gedeh County, had fraudulently and mischievously received from Co-defendant David Ted an amount of $200.00 and, therefore, he was adjudged guilty of “official misconduct," and was ordered committed at the National Palace of Correction, pending the opening of the August 1982 Term of court to be indicted by the grand jury. The clerk of court was therefore directed to send a letter to the Head of State for the suspension of the petitioner as **land** commissioner for Grand Gedeh County pending final determination of the case.

It is from the several rulings of the co-respondent judge that petitioner sought the Chambers of this Court for a writ of certiorari.

The petitioner made profert to his petition, a copy of the 1982 lawyer license issued in favor of the Progressive Law Firm dated February 10, 1982, with an official flag receipt for $300.00, and also a copy of the 1982 Lawyer License in favor of Counsellor David D. Gbala, Sr., dated March 26, 1982, with Official Flag Receipt, and contended that his said two lawyers of the Progressive Law Firm and Counsellor David D. Gbala, Sr. were, therefore, licensed to practice law for the year 1982, but they were arbitrarily disqualified by the co-respondent judge to deprive him of legal representation.

The alternative writ of certiorari was issued and served, and Co-respondent David Ted filed his returns, in which he alleged, among other things, that: (1) he did complain to the co-respondent judge against the corrupt practice of the petitioner, who was summoned for summary proceeding, and that the position taken by the co-respondent judge was in keeping with law; (2) that the court allowed the petitioner an opportunity to defend himself after it was discovered by court that the lawyers who announced representation on his behalf had not qualified themselves under the Revenue and Finance Law to practice law, and petitioner's failure to defend himself could not be attributed to the co-respondent judge; (3) that the evidence produced at the trial was sufficient for the court to have charged the petitioner with "malfeasance" and to have incarcerated him pending the opening of the

August Term of Court, when the indictment would be drawn up against him, the petitioner.

When these certiorari proceedings were called in Chambers for arguments, Counsellor David D. Gbala, Sr. appeared for the petitioner. Counsellor Lewis K. Free, Sr. appeared for the respondents, and noted in his argument that he did not support the irregularities committed in the trial by the co-respondent judge, but that he specifically appeared to represent the interest of Co-respondent David Ted, who, not being conversant with the law and procedure, had resorted to the court below for redress of his grievances because of the gross advantage taken of him by the **land** commissioner, petitioner herein, by receiving his money and subsequently re-selling the identical piece of **land** to another person. When asked by court whether Co-respondent David Ted who complained against the petitioner to the co-respondent judge could be exonerated from the act of the co-respondent judge in the trial of the summery proceeding because of his alleged ignorance, the learned counsel replied in the negative.

The questions which come to my mind from the records in this case are:

1. Whether or not a circuit judge has the authority and jurisdiction to issue writ for summary proceeding against any employee or official of government (as the **land** commissioner) in the Executive Branch of Government for any act allegedly committed in the line of his duty?

2. Whether or not a civil or criminal action could legally be prosecuted before the circuit court based upon a letter not supported by affidavit, as in the case of Co-respondent David Ted's letter of complaint of July 21, 1982?

3. Whether or not a criminal charge can be preferred by court or by the State? and

4. Whether or not the co-respondent judge could legally imprison anyone for allegedly committing a criminal act without a warrant, pending a formal charge by the State?

Before proceeding to discuss these questions, it appears to me from the records of the Court below certified to us, that the co-respondent judge is either ignorant of the law or is simply tyrannical. To see a judge who is required to have at least one third of the knowledge of the law and who must be patient, neutral, impartial, and fair, proceed and behave in the manner as the co-respondent judge did is very surprising and unbelievable.
As to the circuit judge's authority to issue writ for summary proceedings, here is what our statute says on the point:

"The circuit judge shall have the power, authority and jurisdiction exclusively to issue or order the issuance of writs of injunction and writs for summary proceedings in the nature of prohibition addressed to the inferior court, and their officers in exercise or aid of their appellate jurisdiction over them." Judiciary Law, Rev. Code 1: 3.3.

From the above quoted statute, it is quite clear that the power and authority given to circuit judges to issue writs for summary proceedings in the exercise and aid of their appellate jurisdiction over inferior courts, that is to say, courts not of record, does not include administrative officers of the other branches of government. A circuit judge is not a superintendent of a county or the Minister of Internal Affairs who, by operation of law, and in the performance of his administrative duties over the officials and/or people of the county, may convoke administrative councils and entertain complaints arising from the people of the county against administrative officials and employees, such as the **land** commissioner in this case,

involving their behavior in the performance of their respective duties in the county. If a **land** commissioner, or any other administrative official in a county allegedly misbehaved in the performance of his official duty, a complaint in that respect is cognizable before the county superintendent and not the co-respondent judge who, after administrative investigation, may send the official concerned to the county attorney for prosecution if his investigation proves that the official so concerned did commit a criminal offense. The county attorney will then apply to a magistrate or justice of the peace for the issuance of a warrant of arrest against the official concerned and the magistrate or justice of the peace will hear the case, if within his trial jurisdiction; but if not, the magistrate or justice of the peace shall hold the official in custody to appear before the circuit court at its ensuing term of court. If the crime is bailable, the said accused has the right to bail pending the opening of the ensuing term of the circuit court; if the crime is not bailable, the accused remains in jail until otherwise ordered.

If the circuit court is in session, that power is vested in the grand jury to examine the accused in absentia and not the judge. In all criminal cases triable by the magistrate or justice of the peace, the circuit court only exercises appellate jurisdiction. If the crime for which one is accused is beyond the trial jurisdiction, of a magistrate or justice of the peace, the circuit court cannot acquire jurisdiction until the grand jury finds indictment and presents the accused to court, and only then can the circuit court acquire jurisdiction by the issuance and service of the writ of arrest; otherwise, the circuit judge has no right to prefer charges and commit to jail any person as was done in this case by the co-respondent judge. Criminal Procedure Law, Rev. Code 2: 12.1, 12.2, 12.3, 14.1 and 14.2. The co-respondent judge was therefore without legal authority to entertain the letter of complaint from Co-respondent David Ted and issue writ for summary proceeding against **Land** Commissioner David Carr, petitioner herein, in a matter that is nonjusticiable and charged him with a crime, thereby taking on the role and a usurping the function of prosecution and, at the same time, acting as a judge by committing the **land** commissioner to jail for alleged official misconduct before trial.

In the circuit court, civil actions are commenced by the filing of written directions accompanied by a verified complaint or petition with the clerk of court and issuance of the appropriate writ on the defendant or respondent, who is entitled to ten days within which to file an answer. Civil Procedure Law, Rev. Code 1:3.31, 3.34; 1: 3.61 and 3.62. If the co-respondent judge, who is expected to have at least one third knowledge of the law, had considered the complaint of Co-respondent David Ted to be civil in nature, he should have advised him to take his case to the magistrate or justice of the peace since the amount involved is $200.00 and not above $500.00. On the other hand, if he had concluded that the matter was criminal in nature, he should have directed Co-respondent David Ted, who did not appear by counsel, to go to the county attorney. However, judging from the contents of Co-respondent David Ted's letter, the co-respondent judge should have advised him to go to the immediate chief of the **land** commissioner, being the county superintendent, for redress; instead, the correspondent judge elected to act as though he was presiding over an administrative council or as an administrative officer, and not a judicial officer. Courts do not go out to enforce the law, but they wait until cases are brought to

them in the manner provided by law. The correspondent judge, therefore, acted arbitrarily when he charged the petitioner criminally and committed him to jail without affording him the opportunity to defend himself either in person or by counsel, or both.

The co-respondent judge must have thought himself above the law, when he ignored the valid lawyer licenses of petitioner's lawyers, disqualified and prohibited them from representing or carrying the legal interest of the petitioner, which act of the judge, in our opinion, was intended to deprive petitioner of his liberty, and to disgrace, humiliate, and expose him to public ridicule.

In view of the foregoing and the law cited, I declare the act of the co-respondent judge as being illegal and arbitrary; the petition for a writ of certiorari should, therefore be, and the same is hereby granted. The peremptory writ of certiorari is ordered issued, commanding the court below to set aside the ruling of the co-respondent judge in a matter over which the law gives him no original jurisdiction.

The ruling disqualifying the two licensed lawyers is void *ab initio,* and the said Counsellors David D. Gbala, Sr. and George G. Kaydea are adjudged qualified to practice law within the Republic of Liberia by virtue of their licenses for the year 1982. The co-respondent judge is hereby ordered to immediately revoke his orders circulated to the inferior courts not to permit Counsellors Gbala and Kaydea to practice before them, and upon his failure to comply with this order, he shall be answerable in contempt of this Court. Costs of these proceedings are ruled against the respondents. And it is hereby so ordered.
Petition granted.

Williams et al v Smith et al [1983] LRSC 21; 30 LLR 633 (1983) (4 February 1983)

HARRY T. WILLIAMS, President, et al., Members of the Board of Trustees**, BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY,** Relators, and **THE MINISTER OF JUSTICE,** Petitioners, v. **FRED V. B. SMITH,** Purported President, et al., purported trustees of the **BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY,** Respondents.

QUO WARRANTO PROCEEDINGS

Heard: November 25-December 2, 1982. Decided: February 4, 1983.

1. Relators who institute a suit in quo warranto in the Supreme Court and respondents who file an answer therein, are chargeable in law with notice of knowledge of the fact that no jury trial can be afforded them there.

2. Only the Supreme Court can exercise jurisdiction over quo warranto proceedings.

3. The statute granting exclusive jurisdiction over quo warranto proceedings to the Supreme Court, notwithstanding the resultant denial of the right to a jury trial, is not unconstitutional.

4. Although the right to jury trial is a constitutional right vouchsafed to every party litigant, the right is not absolute; it may be demanded under statutory provision, and it may be expressly waived, or waived by conduct.

5. Filing of a petition for quo warranto in the Supreme Court does not preclude the respondent or any of the parties from filing a demand for jury trial, or requesting it in their pleadings.

6. Officers of a corporate entity, elected in violation of the constitution and bylaws of the corporate entity, cannot legally act on behalf of the corporation, and quo warranto can lie to restrain and prohibit them from usurping and intruding into the franchise, privileges, and rights of the corporate entity.

7. Courts cannot exercise jurisdiction not conferred on them by law.

8. No other court under our statute law has jurisdiction to hear quo warranto proceeding except the Supreme Court.

9. If the grounds for issuance of writ of quo warranto exist, as provided in Civil Procedure Law, Rev. Code, 1: 16.31, the procedure in keeping with that section is, by the Attorney General (Minister of Justice) filing with a Justice of the Supreme Court a petition requesting issuance of a writ of quo warranto. A final decision of the Supreme Court Justice in a proceeding in quo warranto may be appealable to the Supreme Court en banc.

10. In quo warranto proceedings, any party may demand a trial by jury of any issue triable of right by jury, by serving upon the other parties a demand therefor, in writing at any time after the commencement of the action, and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. The failure of a party to serve a demand for trial by jury of an issue and to file it as required by Civil Procedure Law, Rev. Code, 1:8.2, constitutes a waiver by him of trial by jury of such issues.

Relators in these quo warranto proceedings are members of the Board of Trustees of the Bassa Brotherhood Industrial and Benefit Society, a corporate entity created by an act of the Legislature of the Republic of Liberia in 1923. In 1960, con-fusion broke out in the society, which led to the excommunication from the church and the expulsion from the society of the respondents. Notwithstanding, their excommunication and expulsion, respondents organized an election, had themselves elected as officers of the society, and began to usurp the functions of the trustees of the society. These quo warranto proceedings were instituted against respondents by the relators contending, among other things, that the respondents are not the legitimate officers or trustees of the society and are impostors, usurpers and intruders into the franchise, privileges, and rights of the society.

The respondents contended that their excommunication and expulsion was illegal and hence were not in fact put out of the society; that a legitimate election was held at which they were elected; that the Supreme Court does not have jurisdiction to hear and decide quo warranto proceedings because such proceedings are triable as of right by a jury, which the Supreme Court does not have. Respondents also contended that the relators are guilty of waiver and lashes and are therefore estopped for bringing these proceedings belatedly. The Justice in Chambers forwarded the petition to the Full Bench, since an aspect of this matter had earlier been decided by the Full Bench.

The Supreme Court held that the respondents had the opportunity to demand a jury trial, which they did not do, and that such failure constitutes waiver. The Court, holding that it had

jurisdiction to hear and determine quo warranto proceedings, granted the petition, declared the election of the respondents illegal, and adjudged them guilty of usurpation and intrusion into the franchise privileges and rights of the society, and ordered them perpetually restrained and prohibited from unlawfully exercising the corporate powers, rights, and privileges of the society.

S. Raymond Horace and Lawrence A. Morgan appeared for petitioners/relators. J. Emmanuel R. Berry and M. Fahnbulleh Jones appeared for respondents.

MR. JUSTICE SMITH delivered the opinion of the Court.

On September 29, 1982, the following named persons, designated as Harry T. Williams, President, Rev. E.T. Lewis, Chairman, and Cantor Brown, Joseph Cooper, Tetee Glapoh, James Vambram, Jacob Benjamin, Kar Nanwhere, Nyonglea Zeon and Needle Gblayon, Members of the Board of Trustees of the Bassa Brotherhood Industrial and Benefit Society, relators in this proceeding, by and thru the Minister of Justice of the Republic of Liberia, petitioner, fled to the Chambers of this Court with a petition for a writ of quo warranto against the following persons so designated as Fred V. B. Smith, purported president, and Wilmot R. Diggs, Wilmot G. Gross, Joseph S. Logan, purported trustees of the Bassa Brotherhood Industrial and Benefit Society, respondents herein.

The petition alleges in substance, that the relators are the legitimate successors in office to the incorporators and/or founding members and officers of the society, and that the respondents are imposters and have no right to the property of the society nor do they have any authority to administer the said property or affairs of the society as they had sought to do; that the respondents' actions, all along, have been fraudulent and therefore ought to be nullified by this Honourable Court; and that said respondents be declared as usurpers of the offices of the society they purport to hold, and be ousted and unconditionally removed from functioning in said offices. It is also alleged in the petition that the Smith group, respondents herein, had been expelled from the society. The petitioners proferted to their petition several exhibits, including the joint resolution of the Legislature, the constitution and by-laws of the society, the lower court's record and other documents, some of which we shall quote herein for the benefit of this opinion.

The respondents on their part, filed returns admitting the correctness of the averments of counts 1-5 of the petition, but maintained that they are the legitimate officers and successors to the incorporators, founding members and officers of the society, by virtue of a regular election held

under the constitution and by-laws of the society, and, therefore, they are entitled to hold and administer the offices and property of the society. They raised the issue that the relators are guilty of waiver and lashes and are therefore estopped from bringing this proceeding at this time. Respondents further maintained that quo warranto is a proceeding triable by jury as of right, and the Supreme Court not having a jury, has no jurisdiction to hear the proceeding; and that the proceeding should have originated from the circuit court and only come on appeal for review by this Court. This, in substance, is the returns of the respondents. They denied the truthfulness of the other averments in the petition and prayed that the petition be denied.

The Justice in Chambers before whom the petition was filed was of the opinion that the pertinent issue sought to be resolved by the Court in order to bring to a definite finality to this long outstanding controversy was, which of the two contending factions are the legitimate officers in succession to the founding members and officers of the society in accordance with the provision of the constitution and by-laws of the society? The Chambers Justice was also of the opinion that although the opinion of this Court, as delivered during the October, A. D. 1981 Term, confirmed the position taken by the court below that the society was entitled to possession of the subject property, he nevertheless opined that the fact that the Court, in said opinion, ousted one faction and ordered the other faction put in possession of the subject property, while at the same time holding that neither the information proceeding nor the ejectment action out of which the information grew could decide the question as to who were the legitimate officers, suggested that quo warranto proceedings were the proper remedy. Any ruling by the Chambers Justice, adverse to this Court's opinion, would definitely be tantamount to overruling the majority opinion, which a Chambers Justice is without authority to do. Therefore, in order to resolve the controversy once and for all, the Justice in Chambers ordered the proceeding forwarded to the Full Bench for final determination.

As we have gathered from the records before us in this proceeding, on the south beach in the City of Monrovia, Montserrado County, there was a small Bassa town known and called Payzeo, of which one Payzeo was town Chief. Dr. D. R. Horton of sainted memory, who was a missionary of the Baptist denomination, discovered this town and by permission of the Town Chief and his people, Dr. Horton began to conduct religious services among the people of the town. It was from this point that the St. Simon Baptist Church was founded in Payzeo Town by Dr. Horton in 1923. Observing at the time the very low spiritual, moral, social and economic status of the Bassa people, and with a view to arresting the condition for betterment, on the 10th day of September, 1923, Dr. Horton established a Christian society known and called the Bassa Brotherhood Industrial and Benefit Society.

Following its organization in 1923 as aforesaid, the society in December 1924 adopted a constitution and by-laws for the governance of its operations and activities which, as a prerequisite to the passage of the joint resolution, was presented to the Legislature and the same

has also been made a part of the records in this proceeding. The following is the preamble of the constitution and bylaws and the object that led to the establishment of the society as stated therein:

"Seeing the very low status of our people, particularly known as the Bassa Tribe, socially, morally, economically and spiritually; therefore for the betterment of these conditions and as a missionary working with them also as pastor of their church, with the consent, support and help of the officers of the church, we have organized this 10th day of September, 1923, this Christian society to be known as the Bassa Brotherhood Industrial and Benefit Society.

The object of this society shall be for the unification and the development of the whole tribe and for the betterment of all its members economically, socially, morally and spiritually."

In order to legalize the society, the Legislature of the Republic of Liberia, upon application, passed a joint resolution incorporating the Bassa Brotherhood Industrial and Benefit Society on December 9, 1925. The joint resolution reads as follows:

"JOINT RESOLUTION INCORPORATING THE BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY OF MONROVIA, MONTSERRADO COUNTY.

"It is resolved by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

"Section 1. That from and after the passage of this joint resolution, D. R. Horton, C.V. Johnson, Jacob Mason, James George, James Vambram, Emma A. Tyler, Jacob Gibson, J. E. Manderson, and Joseph Banks be incorporated as the Bassa Brotherhood Industrial and Benefit Society, their successors in office and all those who are now or may hereafter be members, are hereby incorporated under same name and style and are declared from the date of the passage of this joint resolution a body politic capable in law to receive, hold and enjoy real and personal estate to the value of one hundred thousand ($100,000.00) dollars for the use and benefit of said society by grant, bequest, purchase or otherwise. Said society may sue and be sued, plead and be implead before any court of law or equity having competent jurisdiction and do all things usually done by such bodies corporate politic.

"Any law to the contrary notwithstanding.

Approved December 9, 1925."

By virtue of the above quoted joint resolution, the Bassa Brotherhood Industrial and Benefit Society was legally established in Monrovia, Liberia, as a body politic with such powers, rights and privileges granted under the joint resolution.

According to Section I of Article II of the 1924 constitution and by-laws which remained in full force and effect until revised in 1967, the following officers were provided for: (1) President, (2) Vice President, (3) Recording Secretary, (4) Secretary, (5) Assistant Secretary, (6) Treasurer, (7) Chaplain, (8) Auditor, and (9) the Board of Trustees. How these officers were to be elected is provided in Section I of Article VI of the organic document, which reads as follows:

"Section I. All elective officers of the society except the President and Trustees who are the founders shall be elected every two years, that is, the society shall have election of officers every two years, the first Friday of December. Each officer after being nominated shall be elected by ballot. The officers that are serving on July 1927 are founding members; they will keep their offices so long as they prove faithful."

The officers listed in the aforesaid constitution as founding members are as follows:

1. D. R. Horton
2. Willie K. Vambram
3. Jacob Mason
4. C.B. Johnson
5. James George
6. Jacob Gibson
7. James Vambram
8. J. E. Manderson
9. Joseph Banks

10. F. N. Williams
11. Mary Powell

We interpret Article VI as quoted supra to mean that all those persons named in the joint resolution of the Legislature, including all those listed in the 1924 constitution and by-laws as officers of the society, are founding members of the society and were to serve as officers for life; that any other officer subsequently elected would serve for two years period. By this provision of Article VI, it is evident that the tenure of office of elected officers who were not founding members of the society was two years, and that no legal election could be held during the life of the constitution and by-laws of 1924 for a President and the Members of the Board of Trustees of the society as long as the founding members were alive and they proved faithful and remained members of the society.

Article IX, Section III of this organic document also provides that:

"No member is allowed to take another member to court without first bringing the matter to the society for an adjustment, this being a Christian society. Then if the society cannot settle the matter, such member can take legal steps. Anyone who violates this will be dealt with and failing to give satisfaction, shall be dealt with according as the society sees fit."

The 1924 constitution and by-laws of the society remained in full force and effect, as aforesaid, until it was revised and a new one adopted on the 20th day of November, 1967.

In 1926, the society purchased from B. J. K. Anderson and his wife ten acres of **land** for the purpose of providing housing in Monrovia for its members and accommodation for visiting relatives and also for the society's members from distant places; the area is known today and called "Bassa Community". Other real property such as the 1,000 acres of **land** in Totota, Bong County, Liberia, was also purchased by the society. The Bassa Brotherhood Industrial and Benefit Society went on and operated very smoothly with immense progress under the leadership of Dr. D. R. Horton, founder and president of the society and pastor of the St. Simon Baptist Church.

The records in these proceedings disclose that it was in early 1960 that confusion broke out in the society, that is, charges and countercharges were levied against members of the society,

particularly against Dr. Horton, for mismanaging and the unauthorized leasing out of the society's **land** to Lebanese and other businessmen, as well as the selling of alcoholic beverage on the premises, contrary to the regulations of the society and against the objectives and purposes for which it acquired the **land**. The officers of the society, it is said, took measures to stop the illegal disposition of the society's **land** and to repossess those portions of the **land** that had been leased out, but their efforts seemed to have intensified to the extent that Fred V. B. Smith, Tom Bestman, James Ward, Wilmot Diggs and Wilmot Gross revolted against the leadership of the church and the society, accusing Dr. Horton, founder of the Bassa Brotherhood Industrial and Benefit Society, of the charges herein above referred to. The ministers of the Baptist denomination made efforts to resolve the controversy, but to no avail.

On the 13th day of March, 1961, the said Tom Bestman, Fred V. B. Smith, James Ward, Wilmot Diggs and Wilmot Gross addressed a letter to the Conference of the St. Simon Baptist Church and the Bassa Brotherhood Industrial and Benefit Society, accusing Dr. Horton of having bought for and on behalf of the society ten acres of **land** in Congo Town, Monrovia, but that he had in turn converted said piece of property to the use and benefit of his children. The said letter contained other expressions against Dr. Horton which created displeasure among the members of the church and the society. This letter also suggested a joint meeting of the church and the society in order to resolve the differences at the Liberian Native Missionary Conference, at which Rev. Lewis and Rev. Kennedy served as speaker and chairman, respectively, upon motion made, passed upon, and carried. Three of the men who wrote the letter and suggested the meeting were not present, but the other two, Fred V. B. Smith and Tom Bestman, were present and announced that they were representing themselves and the other three complainants who were absent. The subject letter, dated March 13, 1961, was then ordered read and was read for discussion. And after discussions pro et con, it was unanimously decided that the five men (complainants) should write a letter of apology to the society, the church and the Conference.

Displeasure was also expressed at the conference over the disrespectful attitude the said men assumed toward Dr. Horton and the false accusation they made against him was decried. Fred V. B. Smith held that they will not write any letter of apology because they felt they had done no wrong. After discussing the issue lengthily, it was moved by Stephen Harmon and seconded by Soma Page that Fred V. B. Smith and his party be excommunicated and put out of the society if they insisted and failed to write the letter of apology as required of them (see minutes of the joint meeting, dated March 20, 1961, recorded and signed by the Secretary of the Conference, H. Jeremiah James, which formed part of the records before us in this proceeding).

For the benefit of this opinion, we quote hereunder, the letter which the said Fred V. B. Smith and his party addressed to the officers and members of the St. Simon Baptist Church, requesting for a council to resolve the differences that had arisen among members of the St. Simon Baptist Church, as follows:

"Bassa Community
Monrovia, Liberia
May 27, 1961

"Officers & Members
The St. Simon Baptist Church
Bassa Community
Monrovia, Liberia

"Dear Brethren:
We your members whom you claimed have been put out of the church are asking that a mutual council be called to consider the case in point. We feel that the procedure taken by the brethren and sisters was not in keeping with Baptist principles and practice.

We all are Christians trying to serve Jesus Christ who gave Himself for us. Everything done must be done in the spirit of the Christ. We feel that we have not been treated right in expelling us from the church without preferring a charge against us to bring us before our conference of the church to answer said charge. So as Baptists we are asking you for a mutual council to advise us in the premises.

Wishing you to consider this matter in the spirit of Christ that everything may be settled according to the New Testament. Hoping that you will see with us for the calling of this mutual council.

We remain,
Yours in Christ,
/s/ Fred V. B. Smith
Tom Bestman
James Ward
Wilmot Diggs"

On May 29, 1961, the Secretary of the St. Simon Baptist Church addressed the below quoted letter in reply to the letter of Fred V. B. Smith et al. hereinabove quoted, to wit:

"Bassa Community
Monrovia, Liberia
May 29, 1961
Governor Tom Bestman et al.
Bassa Community
Monrovia, Liberia

Gentlemen:
Your letter of the 27th instant of this current month was received and read, and its contents well understood. I am directed by the St. Simon Church to call your attention to the decision of the joint conference held March 20, 1961.
During the Congo Town Conference, it was decided by the joint conference that unless you recant all false accusations such as, that the **land** opposite Hay-Wood Mission was deeded in Rev. D. R. Horton's name and not the Liberian Native Missionary Conference, by broadcasting and publishing other things that are diabolically incorrect.
Unless you all shall have fulfilled the following things mentioned above, the church and the society will not consider you as members.
Very truly yours,

/s/ Pearlie E. Mason
SECRETARY

ST. SIMON BAPTIST CHURCH."
The records in this case is silent as to whether Fred V. B. Smith and his group ever complied with the decision and the demand of the church and the society by writing the letter of apology; but on September 19, 1961, that is to say, four months after the exchange of the above quoted letters, the following letter was addressed to Dr. D. R. Horton; it reads as follows:

"Rev. Dr. D. R. Horton
Monrovia

Dear Sir:
I am directed by the officers and members elect to inform you that the election for officers and members for the Bassa Brotherhood and Benefit Society held Monday, September 18, 1961, at the hour of 7:45 p.m., has resulted in the following:
1. Brother Fred V. B. Smith, President
2. " James C. Ward, . Vice President
3. “ Joseph E. Logan, Secretary
4. Sister Wheama Teetee, Treasurer
5. Brother Tom N. Bestman, Chairman, Board of Trustees
6. " Wilmot Gross, . Chaplain
Thanking you for the cooperation.

Faithfully yours,
/s/ Joseph E. Logan
ACTING SECRETARY"

We would like to reiterate here that despite the provision of the 1924 constitution and by-laws of the society that, the founding members were elected for life, and despite the fact that the controversy had not been resolved, the respondents herein, had an election and elected the so-called officers listed in the letter just quoted supra while Dr. Horton, founder and president of the society, together with four other original officers, namely: James Vambram, Willie Vambram, Mary Powell and Jacob Mason were still alive. Growing out of the attempted usurpation of the leadership of the church and society by the respondents, as well as the naming of themselves as elected officers thereof, the officers of the society who were in office in 1961 issued the following declaration which forms part of the records in this proceeding; it reads as follows:

"We the undersigned, trustees of the Bassa Brotherhood Industrial and Benefit Society, do hereby declare that we were duly elected as trustees of the society, as provided for in the bylaws and constitution of the said society, which said society has been incorporated by an Act of the National Legislature during the year 1925, thus making the said society a body politic with the right to sue and be sued, and to own real and personal property. This right can only be exercised by the undersigned who are the constituted authority of the society and cannot be infringed upon by any person or group of persons. We also declare that the persons who have set themselves up as members of the society and have attempted to institute an action against Dr. Horton are unauthorized by law because:

1)They are not members of the Trustee Board of the society, and

2)They are expelled members from the society as per minutes of the society adopted in regular meeting on the 20th day of March, 1961.

We further declare that the allegations laid and contained in an action brought against Dr. Horton by these unauthorized persons are false, malicious and perfidious, designed to disrupt the society and to defame the good name and integrity of Dr. Horton in whom we have implicit confidence and our unreserved support.

Given under our hands this 1st day of No-vember, Montserrado County, Republic of Liberia
/s/James Vambram
“ Jacob Mason
" Willie Vambram
" Nayon Dennis
" Mary Powell
" Somah Pagon
" Robert Porte"

The records before us in this proceeding, further discloses that despite the many efforts of the church leaders aforesaid, to resolve this unpleasant situation in the organization, the members of the expelled group, namely: Fred V. B. Smith, Tom N. Bestman, Wilmot R. Diggs, James C. Ward, Thomas Pritchard and others resorted to court proceeding when on the 1st day of October, 1962, they, in the name of the society, instituted a "bill in equity for discovery of deeds in aid of contemplated action of ejectment" against Dr. D. R. Horton, founder and president of the society, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. During the March, A.D. 1964, Term of the Civil Law Court, presided over by His Honor John A. Dennis, the equity proceeding was called, heard and dismissed on the 6th day of April, 1964. The question of the legitimate officers of the society, as well as the expulsion from the society of the respondents in this proceeding, was brought out in the pleadings and argued. The learned judge, in dismissing the bill in equity, ruled as follows:

"Where there arises a dispute between any person who has been a member of a society, as the averments herein disclose that the petitioners are supposed suspended members, the said dispute should be referred to arbitration. Civil Procedure Law, Rev. Code 1: 17.0. Arbitration may be had with or without any order of court. Ibid, 1: 1280 - 1300, pp. 329-3311. In view of the foregoing, petitioners' bill is hereby dismissed, and the legal course herein might be followed as provided by statute, with costs against the petitioners. AND IT IS HEREBY SO ORDERED.”

The petitioners in the court below, respondents herein, did not appeal from the above-quoted ruling, but following the dismissal of the bill in equity, they, during the same year (1964), and this time styling themselves as trustees of the Bassa Brotherhood Industrial and Benefit Society, instituted an action of ejectment in the Civil Law Court against the self-same Dr. Horton for the recovery of the society's ten acres of **land** in Bassa Community, Monrovia, and the 1,000 acres of **land** in Totota, Bong County, acquired by the society under the leadership of the said Dr. Horton.

Dr. Horton, the defendant in the court below, pleaded and contended that the respondents were imposters and usurpers and not the legitimate officers or trustees of the society, they having been expelled from the society in 1961. The ejectment suit ended with a verdict finding for the society, and the court's judgment affirming the verdict ordered that the founders of the society, including Dr. Horton, the defendant, be put in possession of the subject property. The respondents again did not appeal; the defendant, Dr. Horton, appealed but later deemed it unnecessary and withdrew his appeal, realizing that the subject property was being put in possession of the society of which he was president.

Although the judgment in the ejectment suit was rendered on the 11th day of March, 1966, during the December 1965 term of the Civil Law Court and no appeal was announced therefrom by the plaintiffs, later in 1967, the same group (plaintiffs in the ejectment suit) petitioned the Supreme Court for a writ of error, contending that the judgment in the ejectment action was contrary to the verdict of the jury. The Supreme Court denied the petition, holding that plaintiffs in the ejectment suit should have excepted to the judgment and appealed therefrom; and not having done so, they had waived their right and, therefore, barred from raising the contention. The judgment was, there-fore, confirmed with the following modification: "That subsequent to the death of Reverend Horton, the deed in litigation is to be turned over to the trustees of the Bassa Brotherhood Industrial and Benefit Society, and is to include all those whose names now appear on the deed" Bestman v. Dunbar[1969] LRSC 14; , 19 LLR 207, 213 (1969) .

During the 1968 December Term of the Civil Law Court, presided over by His Honour John A. Dennis, for some reason not clear from the records, a mandate was sent to Judge Dennis from the Supreme Court to investigate as to who were members of the trustees of the society.

The investigation was conducted by Judge Dennis, and the two factions of the society were represented; each side established its right over the trusteeship of the society. The minutes of the said investigation form part of this proceeding. The presiding judge entered the following ruling:

"The clerk of this court is hereby ordered to communicate with the Bureau of Archives of the State Department quoting from the deeds annexed to the pleading of the ejectment case for certified copies of the original.

Upon receipt thereof, the court will then cite Rev. Africanus L. Mapleh, Oldman James Vambram, Robert Paul, Willie K. Vambram, Kindred S. Williams, Sister Mary Powell et al. to appear in keeping with the ruling of the Supreme Court."

To this ruling, the plaintiffs in the ejectment action excepted and announced an appeal. Subsequently, a petition for a writ of certiorari was filed, heard and denied by the Justice in Chambers, from which an appeal was announced to the Full Bench. The Supreme Court also denied the petition and held that certiorari will not substitute for an appeal and that certiorari could not decide the dispute over membership and the legitimate officers and trustees of the society.

It would seem that following the death of Dr. Horton and almost all of the incorporators and/or founding members of the society, the relators herein, on the one hand, were claiming to be the legitimate successors to the incorporators who, by the judgment of court, were to be put in possession of the subject property, and the respondents, on the other hand, were also claiming to be the legitimate successors to the incorporators of the society; hence, the enforcement of the court's final judgment, as confirmed and ordered by the Supreme Court, was frustrated.

Another controversial issue in this case was, whether Mr. A. Romeo Horton, elder son of the late Dr. Horton who by the consent of all the contending parties substituted for his father, defendant in the ejectment suit, was entitled to inherit the improvements made by his late father on the **land**. This situation led to the filing of a bill of information before the Supreme Court en banc by the respondents, plaintiffs in the ejectment suit, against the relators herein.

In the bill of information, the Court was sought to decide the issue as to which of the two factions was the legitimate successors to the incorporators and/or founding officers of the society to be put in possession of the subject property. This Court again confirmed its previous position taken in the error and certiorari proceedings as reported in 19 and 20 LLR, respectively, and suggested that quo warranto proceeding was the only remedy available to either party in order to decide the controversy over the legitimacy of the officers and/or successors in office of the

society (See The Bassa Brotherhood and Industrial Benefit Society v. Horton, [1982] LRSC 18; 29 LLR 554 (1982), Supreme Court opinion, October Term, 1981, delivered February 5, 1982).

During argument before us, counsel for respondents strongly argued that although respondents were said to have been put out of the church until they wrote a letter of apology, which they never did, they were illegally excommunicated, and not in fact put out of the society. Counsel for respondents also contended that a legitimate election of the officers of the society, presided over by the late Dr. Wm. R. Tolbert, President of the Liberia Baptist Missionary and Educational Convention, was held at which Fred V. B. Smith was elected president of the society, along with other officers by defeating his opponent, Dr. D. R. Horton, by 48 to 18 votes. Respondents supported their argument with the minutes taken during the election and a copy of the constitution and by-laws purported to be that of the society; that the said constitution and by-laws was "ratified and confirmed by the unanimous consent of the members of the Bassa Brotherhood Industrial and Benefit Society of Monrovia, Liberia, this fourth day of July, 1963." These documents, according to the records, were objected to by the petitioners/relators, for not having been proferted to respondents' returns, and the Court sustained the objection under the principle of notice.

From the contention and arguments of the parties, we deem it necessary to consider the following issues for the final determination of the controversy, and we shall list and discuss them one after the other, as follows: Whether the Supreme Court has no jurisdiction to hear and decide quo warranto proceeding, it being a special proceeding triable by jury as of right, as contended in count one of respondents' returns and strongly argued by counsel for respondents, relying on Civil Procedure Law, Rev. Code 1: 16.35, which states that: "A proceeding brought as prescribed by this sub-charter (meaning sub-chapter (c)--quo warranto) is triable of right by a jury?" On this issue, quo warranto being a common law writ, we shall quote some legal authority from common law writers on the point before coming to our own statute.

It has been held that "courts of last resort, in addition to the appellate jurisdiction that they exercise, are generally given original jurisdiction to issue certain remedial writs, and these usually include quo warranto. Such a grant in the state constitution has been held to confer original jurisdiction of the information in the nature of quo warranto and of the statutory civil action that is substituted for it."

"Original jurisdiction of supreme courts in quo warranto has been sustained notwithstanding the resultant denial of the right to a jury trial, and statutes conferring such jurisdiction have been upheld as constitutional. Relators who institute an original suit in quo warranto in the supreme court of the state, and respondents who file an answer therein, are chargeable in law with notice

or knowledge of the fact that no jury trial can be afforded them there . . . ." 65 AM. JUR. 2d, Quo Warranto, § 127.

From the records of the Civil Law Court as made profert to the pleadings in this proceeding, and from the error and certiorari proceedings, as well as the controversy between the two contending factions of the society as reported in the Bestman v. Findley, [1968] LRSC 43; 19 LLR 57 (1968) and Bassa Brotherhood and Benefit Society v. Dennis, [1971] LRSC 60; 20 LLR 443,458(1971), respectively, cited by counsel for the parties, and especially judging from the testimonies of the witnesses as recorded in the latter case[1971] LRSC 60; , 20 LLR 443, in the certiorari proceeding referred to herein above, we have not found the necessity for the adjudication of any other factual issues by jury in order for this Court to refuse jurisdiction.

Our own statute law confers original jurisdiction over quo warranto proceeding in the Supreme Court and to no other court. Courts cannot exercise jurisdiction not conferred upon them by law. No other court under our statute law has jurisdiction to hear quo warranto proceeding except the Supreme Court. If the grounds for issuance of writ of quo warranto exist, as provided in Civil Procedure Law, Rev. Code 1: 16.31, the procedure in keeping with that section is, by the Attorney General (Minister of Justice) filing with a Justice of the Supreme Court a petition requesting issuance of a writ of quo warranto. A final decision of the Supreme Court Justice in a proceeding in quo warranto may be appealable to the Supreme Court en banc. Ibid. 1:16.37. In view of this statutory provision, it is clear that in our jurisdiction the statute confers original jurisdiction on the Supreme Court to entertain quo warranto proceeding and to no other court; this statute as cited herein above is held as being constitutional.

With respect to quo warranto proceeding being friable by jury, the respondents did not avail themselves the opportunity of a jury trial, which is a matter of right. Whilst the right to jury trial is a constitutional right vouchsafed to every party-litigant, this right is not absolute; it may be demanded under statutory provision, and it may be expressly waived, or waived by conduct. Our statute law extant provides that the right to trial by jury shall be preserved inviolate. Constitution of Liberia (1847), Article I, Section VI. It provides further that any party may demand a trial by jury of any issue friable of right by jury (as in the case of quo warranto proceeding) by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. The failure of a party to serve a demand for trial by jury of an issue and to file it as required by Civil Procedure Law, Rev. Code 1:8.2, constitutes a waiver by him of trial by jury of such issues. Ibid.,1: 22.1(1)(2).

In this case, the respondents did not file a demand for jury trial, nor did they request for it in their pleading; instead, they have contested the jurisdiction of the Supreme Court to exercise original jurisdiction over the proceeding and, therefore, prayed the dismissal of the petition. Therefore and in view of the legal authority cited supra, it is our holding that this Court has original jurisdiction to hear and decide the proceeding, and, therefore, the jurisdictional issue as raised by the respondents is not sustained.

The next issue is the question of waiver and laches as raised in count five of the respondents' returns, that is, whether or not petitioners are guilty of waiver and lashes and barred from instituting this proceeding?

Waiver is the intentional or voluntary relinquishment of a known right or such conduct as warrants an inference of the relinquishment, while estoppel arises when one is to speak against his own act or deed. Laches require an element of estoppel or neglect which has operated to prejudice defendant. In this case, the question as to which of the contending factions of the society is entitled to possession of the society's property, and which of the factions are the legitimate officers in succession to the incorporators and/or founding members of the society, has been the subject of the series of litigations between the parties since 1961. In deciding the long outstanding bill of information which grew out of the ejectment action instituted in 1964, the Court, on February 5, 1982, suggested the best remedy to decide the question raised therein to be quo warranto. In view of this, it is our considered opinion that the doctrine of waiver or estoppel will not apply to either of the two contending factions, the question having long been raised in court. Count five of the returns and all the other counts in connection with waiver, estoppel and laches are not sustained.

The third question may be put as follows: Whether the Fred V. B. Smith group, respondents herein, were in fact expelled from the church and the society illegally and, therefore, are not imposters and usurpers entitled to be ousted from the offices of the society they are claiming to hold?

In the 1967 Revised Constitution and By-laws of the society, as adopted on November 20, 1967, the membership of the society is limited only to members of the St. Simon Baptist Church, or its allied churches organized under the franchise of the society (see Article IV of the said bylaws and constitution under "Membership", page 3). But the 1924 Constitution and Bylaws which was in force and effect until 1967 and under which the respondents were said to have been illegally expelled provides that:

"Any person of the Bassa Tribe who is well in body and good in moral or anyone of the members of the society through their membership committee or in general meeting, upon a majority vote and paying an entrance fee of two dollars, and as improvement fund of one shilling and six pence, shall become a lawful member of the society." And so, at the time of the alleged expulsion of the respondents, the relationship of the church and the society, as it relates to membership, was not expressly identified in the document which gives the impression that any person of the Bassa Tribe who had complied with the moral and financial requirements as provided was a member of the society notwithstanding his membership in other denomi-nation. But what holds true is the fact that Dr. R. Horton, a missionary of the Baptist denomination, discovered Payzeo Town on the South Beach, Monrovia, and thereat established the St. Simon Baptist Church in 1923. Following the establishment of the church, Dr. Horton also organized and established a Christian society on September 10, 1923, known as the Bassa Brotherhood Industrial and Benefit Society, with the help of the members of said church of which he was pastor; the objective of said society was to unify, uplift and develop the whole tribe and for the betterment of the members in general, spiritually, morally, socially anal economically. Under the circumstances, it can be said with some degree of certainty that the church and the society were inseparable at the time even though the constitution and by-laws did not expressly state so.

And so on the 20th day of March, 1961, a joint church meeting of the St. Simon Baptist Church and the Bassa Brotherhood Industrial and Benefit Society and the Liberia Native Missionary Conference was convened in Monrovia to resolve the unpleasant situation created in the organization by the respondents. At that convention, the Fred V. B. Smith group, respondents herein, after lengthy discussion and upon their failure to meet the demand of the conference, were expelled not only from the St. Simon Baptist Church but also from the Bassa Brotherhood Industrial and Benefit Society. For the benefit of this opinion, we quote hereunder a relevant portion of the minutes of the Conference, dated March 20, 1961, as follows

"It was moved by Stephen Harmon that Mr. Fred Smith and his party be put out of the church and society for time indefinite if whether they fail to write a letter of apology to the Conference, the church and the society. It was second-ed by Mr. Soma Page that said Smith party be put out of the church and society. Motion was carried."

Fred V. B. Smith and his group, respondents in this proceeding, not having written the letter of apology as demanded by the conference since March 20, 1961, up to the present, and this question not having been resolved by the church through a board of arbitration as suggested by Judge John A. Dennis in his ruling of April 6, 1961, quoted hereinabove, this Court is convinced that the respondents were not only legally expelled from the St. Simon Baptist Church, but also from the Bassa Brotherhood Industrial and Benefit Society both in law and in equity, and therefore, they have no right to the possession of any of the property of the church and of the society as well as the offices thereof.

The fourth question of equal importance may be put as follows: Whether the election of Fred V. B. Smith as president of the Bassa Brotherhood Industrial and Benefit Society along with other officers was a legal election to be recognized as such?

Article VII, Section II of the 1924 constitution and by-laws of the society was in full force and effect when Fred V. B. Smith and his officers were said to have been elected as president and trustees of the society respectively; the provision of this section states that the tenure of office of the president and trustees of the society shall be for life. Dr. D. R. Horton, the president, and some other founding members of the society, who were to serve during their lifetime, were still alive when Fred V. B. Smith and his group were allegedly elected without any amendment made to the 1924 by-laws and constitution of the society. How then could Fred V. B. Smith and his officers have been elected without violating the provision of the 1924 by-laws and constitution of the society. The election of Fred V. B. Smith and his officers on December 12, 1961, was, therefore, illegal and contrary to the aforesaid constitution and by-laws.

During argument, counsel for the respondents presented copy of a by-laws and constitution purported to be that of the society, together with minutes of an election said to have been presided over by the late Dr. W. R. Tolbert, President of the Liberia Baptist Missionary and Educational Convention. The said documents were objected to on the ground of notice, and the Court sustained the objections. Taking, however, for granted, that the aforesaid documents were part of the records legally before us, the minutes do not show who nominated Fred V. B. Smith for the presidency of the society nor does it show whether the votes were taken by ballot as provided by Article VI of the purported constitution and by-laws, which respondents have requested us to take cognizance of. Furthermore, we would like to observe that the minutes presented to us by the respondents and objected to by the relators state and we quote: "Rev. Horton had eighteen (18) persons while Brother Fred Smith had forty-eight (48) persons." No other person is shown by the minutes to have been elected as officer or trustee of the society. It is, therefore, clear that the election allegedly presided over by Dr. W. R. Tolbert was illegal and contrary to the constitution and by-laws of the society which was in full force and effect from 1924 to 1967, as well as the constitution and by-laws relied upon and submitted to us by the respondents. The by-laws and constitution purported to be that of the society and allegedly ratified and confirmed by the unanimous consent of the members of the Bassa Brotherhood Industrial and Benefit Society, and signed by the expelled members, namely: Wilmot G. Gross, Thomas Pritchard, Tom N. Bestman, James C. Ward and Joseph E. Logan, is a nullity and can form no part of the legitimate records of the Bassa Brotherhood Industrial and Benefit Society, it having been signed by the expelled members.

In view of all that we have narrated hereinabove, and the legal authority in support of our position, it is our considered opinion that the respondents are guilty of usurpation and intrusion into the franchise, privileges and rights of the Bassa Brotherhood Industrial and Benefit Society and that of the St. Simon Baptist Church of the City of Monrovia, Liberia, and are therefore hereby ordered ousted and excluded therefrom. They are perpetually restrained and prohibited from unlawfully exercising the corporate powers, rights and privileges of the society and the church and from occupying any of the improved property on any of the lands belonging to the society and the church in Monrovia and/or elsewhere.

It is also our further opinion and holding that portion, and only that portion, of the opinion of this Court delivered during the October, A. D. 1981, Term in the bill of information proceeding which grew out of the action of ejectment, with respect to evicting A. Romeo Horton, Harris F. Williams and Abraham Mayson from the ten and 1,000 acres of **land**, respectively, belonging to the Bassa Brotherhood Industrial and Benefit Society, be and the same is hereby overruled and the said property upon survey according to the metes and bounds of the Anderson deed is to revert to and be put in the possession of the relators for the society; the relators are hereby declared to be the legitimate officers and trustees of the Bassa Brotherhood Industrial and Benefit Society of the City of Monrovia, Liberia, in succession to the incorporators and founders of the society in keeping with the 1925 joint resolution of the National Legislature of Liberia.

The Clerk of this Court is hereby directed to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, commanding the judge therein presiding, to resume jurisdiction over the long outstanding ejectment case and enforce its judgment as confirmed by this Court in several of its opinions and mandates by evicting, ousting and ejecting the respondents in the quo warranto proceeding from the ten acres of **land**, if they are occupying the same, and such other lands belonging to the Bassa Brotherhood Industrial and Benefit Society located in Bassa Community, Monrovia, Liberia, and elsewhere, and to put the said society in possession of same by and through its Board of Trustees, the relators in this proceeding. The Clerk of this Court is further directed to insert a clause in the mandate, commanding the presiding circuit judge of the Civil Law Court to require the aid of the Ministry of Lands, Mines & Energy to place at the disposal of the sheriff of the court, a team of surveyors to locate the ten acres of the society's **land** in Bassa Community, Monrovia, in keeping with the exact metes and bounds of the deed in the possession of the relators as executed to the society by its grantor, B. J. K. Anderson and his wife in 1926, and to make out a map to form part of the records in this case. It is also the order of this Court, and the Clerk of Court will insert in the mandate to the court below, that the rental which accrued from the property of the Bassa Brotherhood Industrial and Benefit Society and ordered kept in escrow by the sheriff of Montserrado County until the **land** was located upon a survey and the metes and bounds finally determined, be immediately turned over to the relators by the sheriff without the least possible delay. The mandate shall also command the judge to have this mandate and judgment completely executed and enforced and make his returns on or before the opening day of the

March, A. D. 1983 Term of this Court. Costs against the respondents. And it is hereby so ordered.

Petition granted.

Thorgues Sie et al v RL [1954] LRSC 21; 12 LLR 59 (1954) (28 May 1954)

JACOB M. KAMARA and JAMES S. KAMARA, Appellants, v. HENRY V. LOGAN and SOMO GBEE, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 9, 11, 1954. Decided May 28, 1954.
1. A written receipt which satisfies
the requisites of a binding contract of sale

of real property may be specifically enforced by a court of equity. 2. The statutory
period of limitation barring an action for enforcement of a written contract is reckoned from the date when the contract became enforceable,
and not necessarily from the execution of the instrument.

Plaintiffs sued defendants for specific performance of a written contract of sale of real property. On appeal to this Court from a judgment of the court below that the statute of limitations barred suit,
and that the agreement in question was not a written contract, judgment reversed and case remanded for new trial.
K. S. Tamba and
Momolu S. Cooper for plaintiffs. R. F. D. Smallwood for defendants.

MR. JUSTICE HARRIS delivered the opinion of the Court. The appellants, plaintiffs below, paid to Henry V. Logan and Somo Gbee, defendants below and appellees herein, the sum of one hundred and twenty
dollars for eight acres of land in Bushrod Island, Montserrado County, for which the following receipt was given : "Received from
Messrs. Jacob M. Kamara and James S. Kamara of the City of Monrovia and of the Republic of Liberia, the sum of ($120.00) one hundred
and twenty dollars, being an amount paid for (8) eight acres of land in Bushrod Island, Mont-

serrado
County, of the Republic of Liberia, until said land is surveyed and proper deed is issued and signed by us. "Bushrod Island, Monrovia,
Liberia, February 24th, 1948. "[Sgd.] Henry V. Logan "[Sgd.] Somo Gbee (his cross) "[Sgd.] Moses Abel (witness)." Some time thereafter

the appellants applied to the appellees for a title deed to cover the eight acres of land described in the receipt. Defendants failed to give plaintiffs such a deed. Plaintiffs then instituted a suit for specific performance with a complaint containing the following counts : "1. On February 24, 1948, plaintiffs paid to defendants the sum of one hundred and twenty dollars for eight acres of land which the said defendants promised to sell to plaintiffs, as will more fully appear from a receipt executed for said sum of money, a copy whereof is annexed to form a part of this complaint. "2. Despite repeated application by plaintiffs for title deed to cover the eight acres of land duly paid for, defendants have neglected, failed and refused to issue said title deed." The defendants in their answer pleaded by way of confession and avoidance. That is to say, they confessed having received the one hundred and twenty dollars from plaintiffs for eight acres of land in Bushrod Island, but contended that a petition for specific performance must be instituted within three years after the cause of action accrues. The plaintiffs in their reply contended that, since this was an action for the specific performance of a written contract other than for the payment of money, the applicable limitation was seven years, not three years. Defendants, in their rejoinder, contended : "1. The enforcement of specific performance does not

depend upon a written contract; for specific performance can be based upon a verbal understanding between the parties. Such an action therefore cannot be brought after three years. "2. In this case there is no written contract upon which plaintiffs have brought this suit to enforce specific performance since all written contracts must be signed and sealed by the contracting parties. "3. The receipt for the payment of money filed with plaintiffs' complaint is only evidence of plaintiffs' claim, and not a written contract, since it is ex parte in its nature and not signed by any contracting party. Therefore it lacks the requisites of a written contract." In the surrejoinder the plaintiffs contended, in substance, that a document signed by defendants is, to all intents and purposes, a written contract of sale of real property by the said defendants to the plaintiffs, wherein the said defendants contracted to sell eight acres of land to plaintiffs in consideration of money paid them by plaintiffs. This the defendants denied in their rebutter, at which stage the pleadings rested. The legal issues were tried by the Circuit Court of the Sixth Judicial Circuit, Montserrado County, which sustained the defendants' contentions that this action should have been brought within three years because the receipt in question was not a written contract, and on that ground dismissed the complaint. It now becomes our duty to inquire into the soundness of this ruling dismissing plaintiffs' action and forever barring them from recovering by reason of the statute of limitations. Since this action was predicated upon the purchase of eight acres of land from the defendants for one hundred and twenty dollars, in return for which defendants gave a receipt pending the survey of said land and issuance of a deed by them, we shall see whether such a receipt can

be so written as to constitute a written contract. It is well settled that, when a contract which need
not be in writing is reduced to writing, it is not necessary that it should be expressed in a particular form. "A contract is an
agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do, or
omit, some act, in consideration that the other party shall give, or has given, some valuable thing, or shall do, or omit, or has
done, or omitted, some act. The consideration of a contract may be anything which is troublesome or prejudicial in any degree to
the party, who performs or suffers it, or beneficial in any degree to the other party, an agreement without such a consideration
is not a contract but only a promise." 1841 Digest, pt. II, tit. I, sec. I I ; 2 Hub. 1516. The receipt in question, supra, shows
there was an agreement entered into by the assent of two or more minds, and involving an exchange of consideration. It is therefore
the opinion of this Court that the receipt given by defendants to plaintiffs is so drawn that it constitutes a written contract.
Moreover, this Court is at a loss to know how the court below arrived at its conclusion that the plaintiffs are barred by a statute
of limitations. Such a statute could not, in any event, begin to run from the date of the receipt. It would begin to run only after
the failure of the defendants to sign and deliver a proper deed to plaintiffs to cover the said eight acres of land, and after the
survey of said land, **as stated in the receipt. There was nothing before the court to show that the land** had been surveyed and that
three years had elapsed from the time of the survey to the filing of the action. If A receives from B an amount of money for which
he executes a note stipulating to pay said sum of money upon the happening of a certain event, and that event does not happen until
ten years thereafter, the statute of limitations does not begin

to run until after the happening of that
event; it does not begin to run from the date of the execution of the note. On this issue of law the trial Judge also erred. Because
of what has been stated above, the judgment of the court below is therefore reversed; the case is remanded to be tried upon its merits;
the appellees are ruled to pay all costs; and it is hereby so ordered.
Reversed.

THORGUES SIE, SR., WLEH NIMLEY, BLAMAH DUKULY,
PHILIP DOE SHERMAN, ROBERT SLEWION KARPEH, KOFFA DARGBE, JOHN J. JERREH, GLEH KOON, EMANUEL K. WEEKS, DOE PANTI, BLAMU SAYMU, GBIDI
KUMME, KANTA TEAH, JLATEH MUNAH, NIMLEY PANTI, BORKAI KONEE, WION KANTIE, TI BOBOR and J. W. TIEPO, Appellants, v. REPUBLIC OF LIBERIA,
Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 4, 5, 6, 10, 11, 1954. Decided May 28, 1954. 1. Where absence of a material witness
is put forward as a ground for continuance, and the sheriff cannot locate the witness, but the moving party knows where the witness
is located, the moving party should apply to the court for compulsory process to compel the witness's attendance. If the moving party
has failed to do so, the Judge commits no error by proceeding with the case. 2. One who sends to a foreign government information
tending to invoke foreign intervention in the domestic affairs of this country, or who makes inflammatory statements to incite insurrection
or rebellion, is guilty of sedition.

On appeal to this court from conviction for sedition, judgment affirmed as to all appellants
except Nimley Panti and Emanuel K. Weeks who were acquitted.

P. D. Sherman, appellant, pro se. William A. Johns for other appellants.
The Solicitor General for appellee.
MR.
JUSTICE

DAVIS delivered the opinion of the Court.

According to the records certified to
us, a grand jury of Montserrado County, in the exercise of its inquisitorial powers conferred upon it by the laws of this coun-

try, charged appellants with the crime of sedition in the following indictment : "The grand jurors for
the County of NIontserrado, Republic of Liberia, upon their oath do present : That on the first day of April, 1951, and on divers
other days thereafter up to and including the thirtieth day of April, 1951, in the Commonwealth District of Monrovia, Bushrod Island,
County and Republic aforesaid, Didho Twe, Thorgues Sie, Sr., Wleh Nimley, Blamah Dukuly, Philip Doe Sherman, Robert Slewion Karpeh,
Koffa Dargbe, John J. Jerreh, Gleh Koon, Emanuel K. Weeks, Doe Panti, Blamu Saymu, Gbidi Kumme, Kanta Teah, Jlateh Munah, Nimley
Panti, Borkai Konee, Wion Kantie, Ti Bobor and J. W. Tiepo, defendants, and sundry other persons whose identities are at present
unknown to the grand jurors aforesaid, then and there being wilfully, unlawfully, maliciously, feloniously, falsely and seditiously,
did during certain secret meetings held on the first, sixth, thirteenth, nineteenth, twentieth, twenty-first, twentyseventh, and
thirtieth days of April, 1951, and on divers other days, incite and set on foot a certain movement with intent to stir up rebellion
and promote insurrection against the authority of the Government of the Republic of Liberia by employment of the following inflammatory
words and utterances, to wit: That a man can have what he is entitled to only through bloodshed; and if the Kru people or the party
wish to succeed they must take a stand ; and if the party fails, third persons will come in to intervene, which definitely will result

in justice in favor of the aborigines who, from time to time, have been under suppression; that if one tribe of the Krus can resist
the Government for a period of six years, then it is possible that the entire indigenous element definitely can affect the Government;
that Twe will be President and if he does not be President there will

be no President; that their tickets
will be printed and taken to the polls, that if they are not permitted to vote there will be no election ; that the United Nations
is back of Twe in his doings; that if they were not successful in getting the majority of the votes in May, they would rise up against
the authorities and fight a war ; as well as divers other inflammatory words, utterances and expressions too numerous to mention
herein, thereby seeking to create disaffection to the Government of the Republic of Liberia and overthrow constituted authority;
and thereby the crime of sedition did do and commit, contrary to the form, force and effect of the Statute Laws of the Republic of
Liberia in such cases made provided and against the peace and dignity of this Republic. "And the grand jurors aforesaid upon their
oaths aforesaid do further present: That on the fifth day of April, 1951, in the Commonwealth District of the City of Monrovia (Bushrod Island), County and Republic aforesaid,
Didho Twe, Thorgues Sie, Sr., Wleh Nimley, Blamah Dukuly, Philip Doe Sherman, Robert Slewion Karpeh, Koffa Dargbe, John J. Jerreh,
Gleh Koon, Emanuel K. Weeks, Doe Panti, Blamu Saymu, Gbidi Kumme, Kanta Teah, Jlateh Munah, Nimley Panti, Borkai Konee, Wion Kantie,
Ti Bobor, and J. W. Tiepo, defendants aforesaid and sundry other persons whose identities are at present unknown to the grand jurors
aforesaid, then and there being, wilfully, unlawfully, maliciously, falsely and seditiously, did write a letter to the President
of Liberia, which is word for word, as follows to wit:

LIBERIAN LAW REPORTS " 'P. 0. Box #9 MONROVIA, LIBERIA April 5, 1951.
" 'HIS EXCELLENCY W. V. S. TUBMAN, PRESIDENT OF LIBERIA AND STANDARD BEARER OF THE TRUE WHIG PARTY, EXECUTIVE MANSION, MONROVIA,
LIBERIA. " 'YOUR EXCELLENCY, " 'We, the undersigned, loyal and patriotic citizens most respectfully beg to submit the following for
your Excellency's immediate and impartial consideration. Liberia is supposed to be a democratic State and it has been accepted as
such among the sisterhood of the nations of the world, yet for 99 years since the founding of the Country, that is from 1847 to 1946,
control of the Government has been exclusively and continuously in the hands of one group of people and one political party known
as "True Whig". During the period of the entire 99 years the indigenous people, one and a half million or more, constituting 99%
of the population of the country were disfranchised as a whole. And it was not until 1946 when the Constitution was amended, that
an act entitled, 'An act to Regulate All Elections In the Republic of Liberia,' enfranchising the natives, was passed into law with
property limitations. This, no doubt was the result of the forces of the changed and still changing conditions of the world. The

passage of this act gave us the hope that the time had come for us to enjoy democratic participation in the administration of the affairs of the country of which we are the origginal owners. " 'Consequently we organized a political party known as the United People Party whose door is

open to all Liberians alike. Since the above mentioned act specified that all political parties should be formed and registered at least six months previous to any general election, . . . and that "all" nominations by organized political parties or of independent candidates shall be registered with the Election Commission not less than sixty days before day of election, in order to give us ample time to be within the law and enable us to participate in the general election of May, 1951, the articles of association of the United People Party were submitted in August, 1950, for probation to his Honor, J. Everett Bull, Acting Commissioner of Probate, Montserrado County. "But Mr. R. F. D. Smallwood, Member of the Liberian Senate, objected to the probation of the document. Senator Smallwood had no legal ground whatever; in fact he failed to show any sound reason why the paper should not be probated and registered in keeping with the election law. The fact of the matter is that Mr. Smallwood took this action purposely to debar us from participation in the 1951 presidential election because the Whig Party is scared to death that our candidate would defeat its candidate; hence Senator Smallwood's action to chain us down. " 'After this open suppression of our right and freedom, we amalgamated with the Reformation Party and formed a coalition party composed of both groups, natives and Americo-Liberians. In this way we thought we would be allowed to function without further suppression. But the first men we sent out on the Kru Coast under the auspices of this party to canvass for our candidates, were arrested at Grand Bassa by ex-Superintendent Dunn, acting Superintendent H. A. Caulcrick, Justice of the Peace, Andrew Montgomery and County

Attorney, Joseph T. Cisco and their house was searched in their absence for no other reason than that they had no right to canvass for anyone against the candidate of the True Whig Party. A portable typewriter and $70 in notes were taken and have never been returned. " 'This action of the government officials intimidated our people, paralyzed our effort, and rendered it impossible for us to proceed with the canvassing, since the men had to return to Monrovia to escape further arrest. " 'In view of these glaring irregularities and gross injustices committed by government officials, the government cannot justly debar us from participation in the general election on the grounds that we are late to register, because we are in no way responsible whatever for the so-called lateness. " 'We, the undersigned, therefore, write especially to make the

following request: " `r. That J. Everett Bull, Acting Commissioner of Probate, be instructed to admit into Probate the articles of association of the United People Party, nunc pro tunc, to give us the opportunity to participate in the general presidential election ensuing; or `2. That the Election Commission be instructed to receive and register the names of our candidates under the charter of the Reformation Party. `3. That since the delay has been caused by the actions of government officials, which facts are well known to you as President of Liberia, we therefore request that you suspend the date of the ensuing election to give us an ample time to enable us to enjoy the rights and suffrage granted us by the law of the **land** and the Universal Declaration of Hu-

man Rights of which Liberia is one of the original signatories. " 'Let it be fair play. Let the candidates of the two parties go before the electorate and let the election be decided by expression of the will of the people. " 'Herbert Vere Evatt says: "Democracy . . means the right to have more than one candidate on the ballot. Unless the right of nomination is safeguarded there is no real election and certainly no democratic system." That is to say one party election without opposition is no election at all.
" 'We hope you will give this matter your deepest consideration. "
'Respectfully,
" `[SGD] WODE--GYEDAK tc WLEH NIMLEY
CI It

[SGD]
H. JEPLE NELH
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cc
it It CI It

A. TWE WORTOR NENE PENYE KODI KOFFA NAH NYEPON NENE SAYOUH GRACE G. TOE SEKEH BROPEH TEBELLA NIMINE TUANPO FORTTIAH KNOWAH TARGBIE WYSEH DORMU KREH JOPOH NIMLEY DUE CHEA METE DAWU KIEH JOHN SOH BUFFORD JUA DOE GLEI YANSEE LASANA DARGU

DUE CHEA MATI NAH BLAMA TARLOH DEMBO PANTEE DOE DARQUEE DANDY BLAMOH SAYMU NMAGBE YEFLEH TANNEH
DOEPE NYGSON YEFLEH TANNEH DOEPE NYGSEN WREH DUE CHEA DUE KRON WLEH SIGBAE WESSEH BLOH WLEH WEAH KOFFAH KLA WREAGBE DOE SUGBE TEMBRO TOGBA TIE DOE

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LIBERIAN LAW REPORTS [SGD] MOMOLU SIEBEE
cc BORKAI KONEE cc SARLEHA SARYU JUA WESSEH if BLAMAH C. DOHLEH cc SAMPON PLU WREH it WION KANTIE ti DOE T. BOPLEH CI TI BOBOR cc
BLAMAH DUKULY JLU DENNIS cc WALKER JEGBO it DOE BLAMA It JUA WESSEH cc KO NABGE cc WREH CHIE it DOE NYEKON ft DOE TOE it BOIMA ZU
it SAYEH TIE [SCD] TOE GLANTL: zi WORRE NAH DONEY SUDUE JLKRON NAH it CHIE TOE if WROKPO TARGBE cc BOYE WOLOR it DUE MOMBO ft TIE
JLEY TOR LC TANNE DOEPOH tt PANNI BWATIE cc BWALI KUMMU tc EMANUEL K. WEEKS CC WLEYONE SIKI LC SEBES CHIE TOGBA ct J. W. TIEPO ic
THORGUES SIE, SR.'

"Defendants aforesaid then and there being at the time and place aforesaid did forward copies of the said letter
to the government of the United States of America and the United Kingdom of Great Britain; and as the contents of the aforesaid letter
is properly the subject of domestic inquiry and adjustment, being of a political nature, defendants did thereby invite foreign interference
in the domestic affairs of the Republic of Liberia, with intent in so doing to overturn, subvert, and affect the stability of the said Republic, and thereby the crime
of sedition did so and commit, contrary to the form, force and effect of the statute laws of the Republic of Liberia in such cases
made and provided and against the peace and dignity of this Republic. "And the grand jurors aforesaid, upon their oaths aforesaid,
do further present: That on April 16, 195i,

LIBERIAN LAW REPORTS

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in the Commonwealth District City of Monrovia (Bushrod Island),
County and Republic aforesaid, Didho Twe, one of the defendants aforesaid, then and there being wilfully, unlawfully, maliciously,
feloniously, falsely and seditiously, did write a letter to the President of Liberia which is word for word as follows: " 'P. 0.
Box #9 MONROVIA, LIBERIA

April 16,1651 " 'HIS EXCELLENCY W. V. S. TUBMAN,
PRESIDENT OF LIBERIA AND STANDARD BEARER OF THE TRUE WHIG
PARTY, EXECUTIVE MANSION, MONROVIA, LIBERIA. " 'Your Excellency, " 'On the 15th instant a petition requesting for the extension of

the time for the ensuing election to give the people a fair chance to canvass and select the proper men for their tickets was presented to your Excellency. The petition, signed by eightyodd persons, outlined in detail the irregularities and gross injustice committed against their interest by officials of the government which facts have made imperative the extension of the time of the election.
" 'In face of the petition which has remained unanswered I understand that the ballots are now being printed with your name as the only Presidential candidate notwithstanding the fact that I have been duly nominated as your opponent with the backing and support of more than 75% of the people of this Republic. The people are now anxiously watching and waiting to see if their petition will be ignored. Permit me to call your attention to the following incident. In 1929 I took a position in the National Legislature against slavery and forced labor and introduced a bill which would

have saved Liberia from international disgrace if it had passed into law. But the vision of my colleagues was very short and they could not see into the future as far as I could.
I was consequently branded with the unfounded charge of sedition and expelled from the Legislature. But in 1930 the inevitable happened and the whole of that administration was pronounced guilty of slave trading and forced labor. " `Nov history is about to repeat itself.
May I emphasize that my nomination to the Presidency at this time does not grow out of any selfish desire or effort on my part but is truly providential. I wish to repeat here, as I did in 1930, that presently I am in a better position to save Liberia than you are able to realize now, and if you know what I know and can see what I am seeing, you will without any hesitation give me full justice and fair play in the issue now at bar instead of refusing to extend the time of the election and excluding my name from the ballot on the pretext that I am late to register. " 'Respectfully yours, " 'D. TWE, Presidential Nominee.' "Defendant aforesaid then and there being at the time and place aforesaid did forward copies of the said letter to the governments of the United States of America and of the United Kingdom of Great Britain; and as the contents of the letter aforesaid is properly the subject of domestic inquiry and adjustment, being of a political nature, defendant aforesaid did thereby invite foreign interference in the domestic affairs of the Republic of Liberia with intent in so doing to overturn, subvert, and affect the stability of the said Republic ; and thereby the crime of sedition did do and commit, contrary to the form, force and effect of the statute laws of the said Republic in such

cases made and provided and against the peace and dignity of the said Republic. "And the grand jurors aforesaid upon their oaths aforesaid do further present: That on the seventeenth day of April, 1951, in the Commonwealth District City of Monrovia (Bushrod Island) County

and Republic aforesaid, Didho Twe, Thorgues Sie, Sr., Wleh Nimley, Blamah Dukuly, Philip Doe Sherman, Robert Slewion Karpeh, Koffa Dargbe, John J. Jerreh, Gleh Koon, Emanuel K. Weeks, Doe Panti, Blamu Saymu, Gbidi Kumme, Kanta Teah, Jlateh Munah, Nimley Panti, Borkai Konee, Wion Kantie, Ti Bobor, and Emanuel W. Weeks, defendants aforesaid and sundry other persons whose identities are at present unknown to the grand jurors aforesaid, then and there being wilfully, unlawfully, maliciously, feloniously, falsely and seditiously did write a letter to the Secretary General of the United Nations entitled, `An Appeal for Justice and Relief from Political Suppression in Liberia' which is word for word as follows " 'P. 0. Box #9 MONROVIA, LIBERIA April 17, 1951. THE DEBARRED UNITED PEOPLE " 'FROM: PARTY COMPOSED OF 75% OF THE INDIGENOUS POPULATION OF LIBERIA. THE SECRETARY GENERAL OF " 'TO: UNITED NATIONS, EAST 42ND STREET, NEW YORK CITY, U.S.A. " 'SUBJECT AN APPEAL FOR JUSTICE AND RELIEF FROM POLITICAL SUPPRESSION IN LIBERIA. " 'DEAR SIR: " 'Conditions in Liberia have passed the elastic limit and are now at the breaking point. In 1946

the Australian ballot was introduced into Liberia and for the first time an act enfranchising the natives was passed into law. The passage of this law gave us the hope to believe that the time had come when we would share in democratic participation in the administration of the affairs of our country. We therefore organized a political party of our own known as "The United People Party." In order to give us ample time to participate in the presidential election of May, 1951, the articles of association of the party were submitted to the Probate Court in August, 1950, for probation and registration. " 'Mr. R. F. D. Smallwood, member of the Liberian Senate, objected to the probation of the document. The True Whig Party fears that our presidential candidate will defeat theirs when we put up one, hence the suppression. For this and no other reason the Probate Court has refused to register our papers. This means open disfranchisement of our group. " 'We have appealed to the President and Standard Bearer of the True Whig Party to order the Commissioner of Probate to register the United People Party. But notwithstanding our appeal, copy of which is attached for your information, the Whigs are now printing the ballots to carry Mr. Tubman as the only Presidential candidate without any opposition to succeed himself to the exclusion of our candidate after having served for eight long years. " 'In view of the political suppression prevalent in Liberia we are compelled to appeal to the United Nations for justice and achievement of the following objectives. " `I. We want the articles of association of the debarred United People Party to be probated and registered, 111111C pro 111110.

We want the names of our candidates to be received by the government and printed on the ballots together with the names of the candidates of the True Whig Party. " '3. Since, in Liberia, after election in May, inauguration does not take place till January of the following year, we ask that the date of the election be extended to give us time to canvass for our candidates to enable us to participate in the election. " 'Since this matter is pressing and urgent please place it in the hands of the proper branch of the U.N.O. that will take it up speedily.
It

[SGD] MOHAMED DUKULY Li JOSEPHU LABANI ti ABRAHAM JABATEH CC MUSAH KANNEH it ABDULAI
DUKULY it BLAMA KANNEH CI SAMONH JABATEH CI GBIDI KUMME,

[SGD] M. PAE AERSEH
ti it it it

W. WLEH NIMLEY PANY LOFTY GLEH KOON WONYAN
JOHNSON,

[his x cross]
it

NMAGBAE TEFFLEDH,

[his x cross]
tt

KPAEN TEHN,

[his x cross]
it

[his x cross]
CI

WISSE TOGBA,

TEAH
TI TEAH,

[his x cross]
CI

[his x cross]
it

JOSEPH KERIBO,

KORKE,

[his x cross]
it

[his x cross]
ti

NMAIEN,

NIMLEY PANTI,

[his x cross]
it

[his x cross]
it

BOE CHIE,

SONPON
PHOR TI,

[his x cross]
it

[her x cross]
PLEH DOE,

BLAMU SAYMU,

[his x cross]
it

[his x cross]
KANTA TEAH,

DOE PANTI,

[his
x cross]

[his x cross]

[his x cross]
iC

[her x cross]
SAE DEE
JOR,

BODEO WREH,

[his x cross]
it

[her x cross]
JLAH KARPEH,

TANI DOPOH,

[his x cross]
TABLI WEAH,
If

[her x cross]
DROH TEAH,

[his x cross]
KIEH NABME,
'C

[his x cross]
NAH TEE TEAH,

[his x cross]
if

[his x cross]
SAI KOH JLOGBI,

JETO WISSEH,

if

[his
x cross] TITO, [his x cross]
GBI JUWREH,

[his x cross]
tc

JLATEH MUNAH,

[his x cross]
'C

JORH TEAH,

[his x cross]
CC

[his x
cross]
C'

DOE WLATI,

NIMLEY BOE,

[his x cross]
IC

[his x cross]
'C

GOFA TOGBE,

JAWRI PYNE,

[his x cross]
''

[his x cross]
it

KOFA TEAH,

YLOH YLOH DOE,

[his x cross]
DOE TWE NUMBO,

[his x cross]
YUNNOH NAH,

[her x cross]
Ci

[her x cross]
C'

TEAH
DOE,

TARBOH TEAH,

[his x cross]
CC

[her x cross]
'C

BLAMU TEAH,

WLEH BLOPEH,

[his x cross]
CC

[her x cross]
'C

NYANNOH JAPPA,

SAIKOH TI NAH,

[her x cross]
IC

[her x cross]
BEN DOE,

YARNKOON SUNDAE,

[her x cross]

[his x cross]'

"The defendants aforesaid
then and there being at the time and place aforesaid did forward copies of
the above letter to the governments of the United States
of America and of the United Kingdom of Great

Britain ; and, as the contents of the aforesaid letter
are properly the subject of domestic inquiry and adjustment, being of a
political nature, defendants aforesaid did thereby invite
foreign interference in the domestic affairs of the Republic of Liberia, with
intent in so doing to overturn, subvert and affect
the stability of the Republic ; and thereby the crime of sedition did do and
commit, contrary to the form, force and effect of the
statute laws of the Republic of Liberia in such cases made and provided
against the peace and dignity of this Republic. "And the
grand jurors aforesaid upon their oaths aforesaid do say: That Didho Twe,
Thorgues Sie, Sr., Wleh Nimley, Blamah Dukuly, Philip Doe
Sherman, Robert Slewion Karpeh, Koffa Dargbe, John J. Jerreh, Gleh Koon,
Emanuel K. Weeks, Doe Panti, Blamu Saymu, Gbidi Kumme, Kanta
Teah, Jlateh Munah, Nimley Panti, Borkai Konee, Wion Kantie, Ti Bobor and J.
W. Tiepo, defendants aforesaid the crime of sedition
did do and commit, contrary to the form, force and effect of the statute laws
of the Republic of Liberia in such cases made and provided
and against the peace and dignity of this Republic. "Republic of Liberia,
plaintiff "[Sgd.] J. DANIEL BEYSOLOW, County Attorney,
Montserrado County. "Witnesses: "BENJAMIN E. TURNER "MORRIS MASSAQUOI "S. B.
NAGBE "W. T. THOMPSON, Deputy Commissioner of Police,
Mo. Co. "REGINALD H. JACKSON "REUBEN H. JACKSON "Certified and True Copy of
the Original." Excepting D. Twe, who was out of the Republic
and
,

had not been arrested, and Blamah Dukuly and Robert S. Karpeh, for whom
severance was prayed by
the prosecution, the defendants, now appellants, were arraigned upon the
foregoing indictment on June 3, 1953. They pleaded not guilty.
A jury empanelled to try the issue thus joined returned a verdict of guilty
on June 9, 1953, upon which verdict the trial judge rendered
final judgment, sentencing each of the appellants to three years imprisonment
and confiscation of their real and personal property.
It is from this judgment that appellants have come before us for a hearing.
According to the above indictment, the appellants were

charged with having committed the crime of sedition by: 1. Convening certain secret meetings, and at said meetings making certain inflammatory utterances. 2. Writing a certain letter to the President of Liberia in which, besides heaping invectives upon the government of Liberia, they requested the President to order the Probate Court to register their articles of association, nunc pro tunc, and to postpone the general election, which, according to existing laws, was then due to be held on the first Tuesday in May of the same year. 3. Writing a certain letter to the Secretary General of of the United Nations Organization, copies of which they sent to United States and British governments, reporting what they termed the oppressive and illegal treatment of their party and the aborigines by the Government of Liberia, and craving the intervention of the United Nations and the two foreign governments named into the political or domestic affairs of this country. Although the records disclose that the appellants filed a bill of exceptions, their brief at this bar omitted many of the exceptions contained in said bill, most of which were exceptions to the lower court's ruling on objections

to questions. There are a few exceptions, however, which we deem it necessary to pass upon. The first is an exception taken to the lower court's denial of a motion for a continuance. The main points stressed by appellants in this motion are in substance as follows : 1. That Counsellor Brownell, who represented the appellants, had been suspended by the Supreme Court from the practice of law; and therefore they asked the court to continue the case in order that they might have an opportunity to secure the services of another lawyer to represent them. 2. That D. Twe was a very important and material witness, without whose testimony their defense would be incomplete. When the case was called for hearing on June 3, and announcements of representation were being made, appellants did not press the first above-stated point, but seemingly waived it. According to the minutes of the court, immediately after the prosecution had entered upon the record its announcement of representation, the defendants announced that they were represented by Counsellor T. Gyibli Collins, assisted by Counsellor W. A. Johns and Attorney P. D. Sherman, making no mention whatsoever of Counsellor Brownell. It would therefore appear that the appellants were satisfied with their representation. In our opinion the trial court waived that point and did not err in proceeding with the trial of the case. Absence of a material witness is unquestionably ground for the granting of a continuance; but it is also a wellestablished rule that the granting of a continuance lies in the sound discretion of the court. The following are prerequisites for granting a continuance of a cause on the ground of the absence of a material witness: I. The power of the court must first have been invoked to secure the attendance of the witness. 2. The moving party must state what the testimony of

the absent witness was to prove, thus affording his adversary an opportunity to concede
the facts which were to have been put into evidence by the said witness. In the case at bar, after a subpoena had been issued for
the attendance of witness Twe, the returns of the sheriff showed that the said witness could not be found. Counsel for appellants
contended that Twe was at his farm, within the sheriff's bailiwick, when the returns were made. We ask, then, why the appellants
failed to exercise their constitutional rights to compulsory process. In response to questions by this Court, appellants' counsel
answered that he considered it belittling for a lawyer to point out the whereabouts of his own witness to the sheriff. But Article
1, Section 7th of our Constitution contains the following mandatory provision: lt . . . and every person criminally charged, shall
have a right to be seasonably furnished with a copy of the charge, to be confronted with the witnesses against him,--to have compulsory
process for obtaining witnesses in his favor. . . ." Appellants were criminally charged, and, according to them, Twe was at his farm
and they knew his whereabouts. It was their right, therefore, if they felt that his testimony was indispensable to their defense to have applied for compulsory process to compel
his attendance. Their failure to do so left the judge with no alternative but to proceed with the trial of the case, and it is our
opinion that in so doing he committed no error. The next major issue presented in appellants' bill of exceptions concerns the contention
that the verdict of the jury was manifestly against the evidence and the controlling law. In order to assess the merits of this argument,
we must consider the statute upon which the prosecution was based, review the points of law relied upon by appellants, and thus reach
just and correct conclusions thereon. Toward the close of the year 1931, the legislators of

this country
envisioned the necessity of a change in our sedition laws. Accordingly, in 1932, the Criminal Code of 1914 was amended by the following
enactment: "It is hereby declared seditious for any citizen of Liberia or other person resident within the territory of the Republic
who shall stir-up rebellion or set on foot, incite or in any wise promote insurrection against the authority of the Government of
the Republic or " (a) Who shall communicate by speech or in writing to any tribe, Chief of a tribe, or other person any statement
imputing to the Government unfairness in the treatment of the Native population if untrue, or in any other class or section of the
community with the intent in so doing to cause discontent and political unrest among them; or "(b) Who shall write or inspire the
writing of any document to a foreign Government or any official thereof making representations on any matter properly the subject
of domestic enquiry and adjustment; or "(c) Who shall convene or promote the convening of any meeting, public or private, the object

of which shall be to defy, subvert or overthrow the constituted authority of the Government; or "(d) Who shall write or speak in a disrespectful or defamatory manner of the incumbent of the Presidential Office with intent in so doing to show disrespect to the Head of the State and degrade the Office and thereby bring disintegration into the organization of Government." L. 1932 (E.S.), ch. III, sec. 1. From the wording of the foregoing act, it can readily be seen that any person, whether citizen or alien residing within the Republic, who writes or publishes to any foreign government any information tending to invoke foreign intervention into the domestic affairs of the country,

or who makes inflammatory statements to incite insurrection or rebellion against the authority of the government, is guilty of sedition. Before examining the evidence in this case we deem it necessary to pass upon certain points of law raised by the appellants, who admitted having held meetings from time to time, but submitted that, in their exercise of the right of assembly as provided in our Constitution, their acts could not be characterized as sedition. Section 5th of Article r of our Constitution reads as follows: "The people have a right at all times, in an orderly and peaceable manner, to assemble and consult upon the common good ; to instruct their representatives, and to petition the government, or any public functionaries for the redress of grievances." Appellants contended that, under the above quoted section of our Constitution, it was their right to assemble in meetings for the purpose of consulting upon the common good ; and also that their letter addressed to the President of Liberia was a petition for the redress of grievances. It therefore becomes necessary to examine the record and see whether the evidence shows that the meetings held from time to time by appellants were orderly and peaceable as required by the Constitution, or were of a seditious character. According to the minutes of the trial court as certified to us in the records, witness Morris W. Massaquoi testified as follows: "Just in the time before we left I observed Counsellor Johns receiving some documents from Mr. Twe and putting [them] into his coat sidepocket. We left there that day. We returned there on the fourth of April because information had come that there was going to be another meeting held there, and in order not to make it look suspicious, Commissioner Thompson suggested that we go through Mr. Twe's place to McGill's Mission across the river. On our way passing through, we observed about two hundred yards

from Twe's home, on the side towards the Mission, that they had prepared a vast clean place with chairs and benches with a few persons sitting around. Mr. Twe made these remarks: That this country, when the pioneers came here, they did not get things

on flower bed of ease; they had to fight and struggle; and if a man is entitled to anything and he cannot get it, it is only through bloodshed that he can get the thing that is due him. And furthermore he can be President if all the Kru people were put together in unity, for the fact that one little bunch of Kru people kept the government for six years in confusion, how much more when they all are put together. He made a parable and said that, if two persons were fighting the third person, when they come in, he, D. Twe, is sure to succeed. A week or so later I met a man by name of Jackey Brown, who remarked to me in the presence of Commissioner Thompson that the election you are getting ready for, it is going to be Hell. If any man has his cutlass or his harpoon he will reach for it, even to the extent that they were going to tackle these legations and embassies near the city. When he made these remarks Commissioner Thompson told him that if he did not make a retraxit, he would have him put under arrest. This Brown that I have reference to was duly arrested and taken before the Attorney General at the Department of Justice. That is what I can remember right now." Added to the foregoing was the following testimony of witness R. H. Jackson: "One evening defendant Sie and I met and he said to me : 'I would like for you to accompany me somewhere; I am going to show you something.' I was quite busy at that time so I told him that I couldn't go at that particular moment; that I would go later. He assured me that I would not regret if I went then. After a few minutes of argument I went. He carried

me to his home, and there were a few of the defendants present. He said he had some documents from the United Nations that he would reveal to the rest of the defendants at a special meeting. Then he told me why he wanted me there. He told me he wanted me to become a member of the Reformation Party, and that party was going to reorganize the government and run it to the best interest of the poor people of the country. I became interested to find out what he wanted to reveal to the defendants. We went to Mr. Twe's farm. All the defendants in the dock were there and they wanted to go through their business in a way I wouldn't understand, by using their dialect. Defendant Sie said that he was going to give me a big position in the government. He said to me that the only thing that they were after was to overthrow Mr. Tubman's government, and that if they succeeded they would organize the government. He said that they had sufficient money to run their campaign; that the United Nations had given them some money, and some other persons had given them a lot of money; that they had a lot of money. He said that if the election was not fair they were going to make it fair ; that they were going to have a ship from the United Nations with soldiers and put Mr. Tubman out and put Mr. Twe in. And he asked the crowd : 'Isn't that so?' and they all applauded. The appointment of officers was made then by Mr. Sie, one of the defendants. He said they would prepare for a national convention when their national standard bearer, Mr. Twe, arrived. When Mr. Twe arrived, defendant Sie asked me to go there along with him. When I arrived there, Mr. Twe said : 'You are just the man I wanted to

see; I want to meet you in a conference with the group of my party leaders.' At that meeting he, Mr. Twe, outlined his government. He said : `Gentlemen, if the government attempts to break up

this party, what do you suggest to be done?' Defendant Sie said : 'Well, I tell you what we will do : we can start breaking up these foreign corporations from Firestone down to Monrovia.' Mr. Twe said : 'I don't think that will work ; we do not have sufficient arms; but let us see who all will stand by in the fight with us,' and all of them raised hands. The next morning defendant Sie came to me and said : 'I want to see you.' He said : 'Somebody said they met you coming from the Attorney General's house.' I said : 'What if I come from the Attorney General's house?' He then said : 'We will stop you from coming to our meeting until this matter is investigated.' He said that they were going to Mr. Koon's place on the Camp Johnson road at two o'clock. A little later defendant Sie met me and said that Mr. Koon said there would be no meeting at his house. He then said that they would have the meeting at defendant W. W. Nimley's place, the general secretary, who was then residing at Tom Freeman Howard's house. The next day was the convention. After the convention defendant Sie threatened me. He accused me of taking certain documents from Mr. Twe's file and taking it to the President, and for that reason he was seeking to take my life. That is what I know." The testimony of witnesses Massaquoi and Jackson, supra, links up with the following testimony of Police Commissioner Thompson on cross examination : "Not only what Jackie Brown told me, but Jacob Cummings, as well as some of the defendants in the dock, said a man is born to die, and we are of the opinion, whether life or death, Mr. Twe will be made President." Still another witness, one Turner, stated : "I visited the meeting twice before the convention. The defendants said that Twe was going to be President if guns and cutlasses would put him in the man-

Sion. At the second meeting they repeated the same words, so that the people might know that the Kru people had a part to play in the government. Then they all said, `Gbatee! Gbatee!' Mr. Twe said, 'I am expecting you all to support me, and what you all cannot do, the United Nations will do.' " Another link was added to this chain of evidence when Jacob Cummings testified : "They said, that is the defendants, that if the Sasstown people could disturb the Government for six years and they were not near the capital, we are nearer the capital and can do more harm, and if they do not allow us to vote for Twe on that day there will be bloodshed." Before deciding whether the testimony quoted above shows that the meetings in question were orderly and peaceable or disorderly and bellicose, let us review the case for the defense. P. Doe Sherman, the first defense witness, testified as follows : "Q. What is your name and where do you live? "A. P.

Doe Sherman, Lower Buchanan, Grand Bassa. "Q. Are you acquainted with the defendants in the dock? "A. I am. "Q. Defendants in the dock, together with yourself, have been charged with holding secret meetings at Twe's farm on divers days in April, 1951, and that said meetings were held with evil purposes. Please tell the court and jury all that you know touching the charge of sedition brought against the defendants. "A. I am the second cousin of Honorable D. Twe. When he was in America he wrote me to meet him at Robertsfield on the loth of February, 1951. Prior to this, in August, 1950, a fellow lawyer from Bassa by the name of James J. Johnson came from Monrovia and acquainted me

with the fact that a party under the leadership of Honorable Twe had appeared before a justice of the peace in his presence to take out an affidavit for the registration of said party. I was happy over the idea because I thought that one party in the country did not spell well for democracy. I did not hear anything more of it until I went to Robertsfield on the loth of February and met Honorable Twe and brought him to Monrovia. I went back that very day and remained on my farm at Owensgrove. There I was when I was informed that a group of men, a committee, had been sent to me together with Honorable E. Tyson Woods, that he wanted to be the vice president and I the county chairman. The committee went to Lower Buchanan; they carried $70, and they met up with a misfortune, for which reason I have asked Blamu Saymu, one of the defendants who went on that delegation, to explain that when he comes on the stand. The information reached me that it was a committee from the Reformation Party. I had not gotten any premonition that there had been a coalition of the Reformation Party and the United People Party. So I came to Monrovia, and it was here that I came to understand that they had a nice convention and Honorable D. Twe had been nominated. I was surprised the other day when Jacob Cummings got on the stand to say that he saw me in the meeting held at Bassa and I took part in it. When I came to Monrovia it was then that I was shown copies of a communication addressed to the President, the National Standard Bearer of the True Whig Party, by Honorable Twe, who was wondering why he had not received an answer; the people were about printting the tickets and his name was left out. He

came to the city from Bushrod Island to see the skipper and confer with him, but as to whether they met, I cannot say. I had to go back home, so he advised me that I would hear from him if we would be permitted to vote. I asked him how would it be possible without tickets. I do not know what he was thinking, but he said that they were printing tickets and he thought they would give him some, because under the new system all the candidates' names were printed on the same tickets. I left

and went home to Bassa. Just about a day before election I received information as county chairman that there was nothing doing, we were left out of the play, and therefore we should not appear at the polls. As to any plans to incite the Kru people or any other tribe in Liberia, I never heard of it. Neither did Mr. Twe tell me any such in all the communications between him and myself. As for the other defendants, since I came in town and my association with them, I have never heard of them making such plot. That is all. "Q. There is a petition set out in the indictment and marked 'A' by the court and also admitted in evidence. Can you say upon your oath if the defendants in the dock ever transmitted a copy of said document to the United States or British Legation? "A. Not to my knowledge. "Q. There is another document identified and marked 'B' by the court, same purported to be a letter of appeal from the debarred United People Party, etc., to the Secretary General of the United Nations. Can you swear if a copy of said document has ever been transmitted to the British or United States Government by defendants in the dock including yourself?

"A. Not to my knowledge. "Q. There is also a document marked 'C' by the court and admitted into evidence dated Monrovia, Liberia, April 16, 1951, purported to be addressed to His Excellency, as Standard Bearer of the True Whig Party. Do you know if a copy has been ever transmitted to the British or United States Government? "A. Not to my knowledge." The prosecution cross-examined the witness as follows : "Q. I suggest to you that your heart has never really been in Twe's movement, but that, because of tribal and family affiliation, you sympathize with same. "A. Certainly so, because if he were fortunate enough to get the position for which he was headed, I also would be considered, and he would not leave me out. "Q. You referred in your statement in chief to information you received about the organization of the United People Party and their appearance before a Justice of the Peace to take an affidavit for registration. Did your informant tell you how many persons appeared before the Justice of the Peace, and, if so, were the defendants among them? "A. My informant knew only Mr. Twe by name, but he said : 'With a group of people.' "Q. Please say whether or not you know, that after application had been made to the Probate Court for the registration of the party and objected to, it was unreservedly withdrawn. "A. I do not know that to be a fact, but I was informed that Honorable Holder of Crozierville came down and convened a meeting in which he put his party that he had already registered, that is the Reformation Party, and merged the United

People Party in it; but that it was automatically withdrawn I do not know. "Q. You also referred to your statement in chief to Honorable D. Twe's illness

in the United States and his return to Liberia. Please say whether or not you know that, prior to his going to the United States, proceedings had been instituted against him, and that it was only after an appeal by him to the President of Liberia that the President kindly intervened, and by that means he was able to go to the United States to seek treatment." The defense objected on the ground that the above question was irrelevant. The objection was sustained, and the prosecution excepted and continued : "Q. You said in your statement in chief that your cousin, Mr. Twe, wrote you from the United States to meet him at Robertsfield. Please tell about his letter to the President of Liberia in which he had said that, but for the President's intervention, he would have died in Liberia and that he was finished with Liberian politics, and to prove it he would not return to Liberia until after the election." The defense objected again on the ground that the above question was irrelevant. The court ruled that this question could be answered, and the defense excepted. "A. No, he did not write me that, but before he left here, every time when I visited Monrovia, both of us would visit the President at his bungalow, and he being a perfect teetotaler, I would do all of the drinking, and he would make fun of me. It happened so one night I came and slept in my boots. So far I know they were on the best of terms. "Q. You referred to one or more' visits you made to Monrovia in 1951 before you attended any meeting of the Twe group.

"A. I cannot remember attending any of the meetings because I got here after the convention. "Q. You said in answer to a question put to you on the direct that you had no knowledge of documents, rather copies of documents, marked by the court, `A,"B,' and 'C' being sent to the United States and British embassies near this capital. Will you please say whether or not you have any knowledge of their being written at all, and whether or not you and the other defendants were parties to the writing of them. "A. I did say that I did not have knowledge of copies of those documents being sent to any foreign legations, British and American not excepted, and that as to the writing of '13,' I met it already written and I signed it." Thorgues Sie, Sr., testified as follows : "Q. What is your name? Where do you live? "A. Thorgues Sie, Sr., Monrovia. "Q. The defendants in the dock have been charged with holding secret meetings at Twe's farm on divers days in April, 1951. If you know anything such as seditious acts, please tell the court and jury. "A. Well, all the meetings as have been held were not at Twe's farm previously except two meetings; that was on March 19, 1951, when Honorable Twe returned from the United States. We members of the Reformation Party went to welcome him. Afterwards I and the co-defendants made our plan for the convention. There never was any other meeting held there until the convention was over on April 1o, 1951. Our second meeting at Twe's place was over on April 19, and there we had a county convention to select our representative for our ticket, and at that county convention Mr. Jackson, who spoke here, was the

county chairman. Those are all the meetings I know of held at Twe's farm. On the first of April we did not hold any meeting at Twe's farm. "Q. Do you know, of your certain knowledge, if any threatened remarks were made during any of the meetings referred to by you, which said expressions had the tendency to incite insurrection among members of your party? Please say. "A. To my recollection, all our meetings we had was of a friendly nature. We never had any subversive activities or anything of the kind. "Q. There is a petition made profert in the indictment which is now admitted in evidence. Will you say upon your oath whether copies of said petition were ever sent by you or any of your codefendants to the United States or British embassies? "A. Not to my knowledge. "Q. Here is a letter in the nature of a petition dated April 16, 1951, purported to be written by D. Twe to His Excellency, William V. S. Tubman, National Standard Bearer of the True Whig Party. Do you say upon your oath that copies of said letter have never been transmitted to the British and American embassies?" The prosecution objected to the latter part of the above question as leading. The objection was sustained, and the defense excepted. "Q. Say whether or not copies of the document made profert in the indictment, purported to be written by D. Twe on April 16, 1951, to His Excllency, William V. S. Tubman, President of Liberia and Standard Bearer of the True -Whig Party, have ever been transmitted to the British and American legations. "A. As far as I know, I have never seen copies of the

petition or document sent to the President of the Republic, the Standard Bearer of the True Whig Party, of which copy has been sent to the British or to the American embassy. I have no knowledge of that. "Q. What about document marked 'B' by the court and admitted in evidence? Can you swear whether or not copies of said document were transmitted to any foreign government? "A. My position in my party was National Chairman of the Reformation Party. "Q. Please tell the court and jury whether or not any subversive activities took place during the alleged secret meetings, or whether you and your co-defendants obstructed or prevented members of the True Whig Party from the polls to cast their vote." The prosecution objected on the grounds it was not within the res gestae and, that counsel was cross examining his own witness. The objection was sustained on the second ground, and the defense excepted. "Q. Please tell the court and jury if, to your best recollection, all of these co-defendants were members of the Reformation Party, or whether you know some who are not members of same. "A. All the defendants are members except Emanuel Weeks and Nimley Panti. They are not members, and to my knowledge they have never attended any meetings." The defense rested with the testimony of this witness. It is strange that, apart from appellant Emanuel K. Weeks, who, as the record shows, proved his

abstention from any association or participation in the alleged seditious movement, and appellant Nimley Panti, who, by his own testimony as well as the testimony of other persons, has been proved to have been out of the Republic during the period within which the events in question occurred,

not one of the appellants elected to take the witness stand and deny the inculpatory statements made in their presence by the State's witnesses. The prosecution asked that a mark of identification be placed on a document entitled "List of Deckhands to Board the S.S. African Grove, Voyage No. i6 Out." The court ordered the said document marked "D." "Q. Please look at the document marked 'D' by the court and state whether the name of Nimley Panti appears thereon. "A. Yes, that name appears thereon, on the list." The defense cross-examined the witness as follows: "Q. You have just pointed out the name of Nimley Panti on the list of deckhands on the African Grove, Voyage 16. Do you thus give the court and jury to understand that Nimley Panti was out of the country between March i i and May 5? "A. That is correct." George W. Bessman testified as follows: "Q. What is your name? Where do you live? "A. George W. 'Bessman, Claratown, Bushrod Island, City of Monrovia. "Q. Please say if you have had any contact or are acquainted with the defendants in the dock. "A. Yes. "Q. During the period of your imprisonment, please say whether or not you had any conversation with any or all of the defendants and, if so, state same for the benefit of the court and jury. "A. I went to work on May 5, 1951, and I was arrested by Superintendent Thompson and Jacob Cummings. When they arrested me, I asked Jacob Cummings: 'Why was I arrested?' When they arrested me, they sent me to jail and I met the defendants. When they took me, Bo Nimley, J. T. Nelson and Doe T. Bopleh to jail,

Robert S. Karpeh asked : 'Why have they brought us to jail when we were not in the meeting?' After seven days, Jacob Cummings went to the prison compound and told the jailor that he wanted Bo Nimley, J. T. Nelson, Doe T. Bopleh and myself outside. When we got outside, he called me on the piazza and said to me: `You know why we brought you all here is because you all wrote letters and sent a copy to the British Legation and a copy to the American Legation.' All this he told me in person, and then afterwards he spoke to the other defendants, but what he told them I do not know. After I was sent back in the cell and I asked defendants, Doe Panti and Robert S. Karpeh and old man Teffleh, and I asked them: 'Oh, is this what's coming? You all wrote letters to the United Nations and sent copies to the American Legation and British Legation?' Then Robert S. Karpeh said: 'Yes, we did it'; and Doe Panti confirmed that. Also, the old man who died said: 'Yes we did it, but when we did it you all were not there.' I then asked defendant W. W. Nimley: `Do you know anything about this letter which they wrote?' He answered

and said, `Who knows? The person who knows it has already answered you. If I knew about it I would have answered you.' Afterwards I explained to the Attorney General what I know and have told you. "Q. Were the other defendants, besides the ones you named as having told you that copies of a letter to United Nations were sent to the British and American embassies, present when said defendants told you this, and, if so, what was their reaction?"

The defense objected on the ground that this was crossexamination of counsel's witness. The objection was overruled, and the defense excepted. "A. We were not all in the same room. Defendants Nimley Panti and Weeks did not say anything, but W. W. Nimley said he knew nothing about it." The defense cross-examined the witness: "Q. You said the defendants were placed in different rooms, not in one place. Do you give this court and jury to understand that the other defendants did not take part in this conversation in which Robert S. Karpeh and Doe Panti told you that they had written to the United Nations and sent copies to the British and American embassies? "A. Those who were present I have named them. "Q. So what Robert Karpeh told you concerning the sending of documents to United Nations is the only thing you know of this matter. Is that so? "A. Yes." Bo Nimley testified as follows: "Q. What is your name? Where do you live? "A. Bo Nimley; Monrovia. "Q. Please say if you have had any contact or acquaintance with defendants in the dock. "A. Yes, I know them. "Q. Please say whether or not you were ever arrested on a charge of sedition and imprisoned. "A. Yes. "Q. During the period of your imprisonment, please say whether or not you had any conversation with any or all of the defendants, and if so, state same for the benefit of the court and jury. "A. When I arrived at the jail, defendants asked me: `What they brought you here for?' and I replied that the government sent me there. Then they said: 'You don't know anything about this mat-

ter that brought us here.' One day when I went to take my bath, defendants Sie and Tiepo were in the bathroom and I was outside waiting for them to come out. When they came out I stopped them. I said to them: 'Old man, this thing that brought us here, what good will you all get out of it?' Defendant Tiepo said to me that the letter they wrote, copy of which they sent to the American embassy, they would get something good out of it, and the letter we wrote will cause Twe to become President. I told him that I was here suffering, and my old man is a member of the True Whig Party, and my allegiance is with the True Whig Party. After the conversation I went to take my bath. "Q. Please say what was defendant Sie's reaction to this conversation between you and defendant Tiepo, if he was present. "A. Defendant Sie was there, but he said nothing. "Q. Please say whether you and any of the

other defendants had a similar conversation. "A. No." The defense cross-examined the witness: "Q. You say that you were going to take your bath and these two defendants were coming out of the bathroom and you all met. The conversation you just mentioned, was it overheard by the other defendants? "A. They did not. "Q. You say that you told defendants that you are a member of the True Whig Party. This being true, will you please tell the court and jury why did Jacob Cummings arrest you?" The prosecution objected on the ground that the question was irrelevant and not the best evidence. The objections were sustained, and the defense excepted. The witness was discharged with thanks.

J. Tarpla Nelson testified as follows: "Q. What is your name? Where do you live? "A. J. Tarpla Nelson; Monrovia. "Q. Please say whether or not you have had any contact or are acquainted with defendants in the dock. Yes. "Q. Please say whether or not you were ever arrested and imprisoned on a charge of sedition. "A. Yes, I was. "Q. Please say whether or not you had any conversation with any or all of the defendants during the period of your imprisonment, and if so, state same for the benefit of the court and jury. "A. Yes, I met them in prison. The defendants asked me on what charge I was taken to jail, and I told them on the charge of having signed a certain letter you wrote. Defendants Robert Karpeh and W. W. Nimley, General Secretary of the Party, told me that the charge against me is false because all of the meetings they had I never attended any of them. `We are the main people. Even the letter we wrote to United Nations and the American embassy, you are innocent.' When they said that, I said: 'If that be the case, I shall ask to get a bond.' That is all. "Q. Please say whether or not or all of the other defendants were present at this conversation and, if so, what their reaction was. "A. None of the other defendants were present."

Having reviewed the evidence on both sides it now becomes our duty to say whether or not the meetings held by appellants were in the category contemplated by section 5th of Article I of our Constitution. If from the evidence it can be shown that the meetings were orderly and pointed toward peace and respect for constituted authority, then undoubtedly they fell within the constitutional

guaranty and in that case the appellants did not commit any wrong punishable by law. A careful study of the evidence reveals that, barring those who have already been shown herein as not having participated, appellants did utter and make use of inflammatory and threatening statements and expressions tending to incite rebellion and insurrection, to create disregard for, and overthrow of the Government of Liberia. The following is a pertinent example: "[T]his country, when the pioneers came here, they did not get things on a flower bed of ease; they had to fight and struggle; and if a man is entitled to anything and he cannot get it, it is only through bloodshed that he can get the thing

that is due him." In addition, the following threatening expression was proved to have been made by appellants, namely: "A man is born to die, and we are of the opinion, whether life or death, Mr. Twe will be made President." It is obvious that appellants' sole objective in making these inflammatory expressions was to incite the people to the extent of arousing a spirit of disregard for law and constituted authority, and by means of force and bloodshed to place their candidate at the head of the nation, even at the cost of human life. In one of the meetings in question appellant Thorgues Sie, Sr., stated that all he wanted was "to overthrow Mr. Tubman's government," meaning the Government of Liberia. More of these inflammatory expressions were made by appellant Thorgues Sie, Sr., and his co-appellants, to wit: "Well, I tell you what we will do: we can start breaking up these foreign corporations from Firestone down to Monrovia." There are many similar statements such as that, if one tribe of the Krus could resist the government for six years, the entire indigenous element could make much more trouble. Such expression could never be the product of an orderly and peaceable assembly such as is contemplated by our Constitution and cited by appellants in their de-

fense. On the contrary, it is crystal clear from the evidence that these meetings of appellants were designed to incite rebellion and insurrection, and were patently calculated to overthrow the Government of Liberia even at the price of foreign control. All the appellants except those already referred to herein as non-participants, were involved in the seditious movement. The record shows that, when Thorgues Sie, Sr., suggested the breaking down of all the foreign corporations, "from Firestone to Monrovia," and Mr. Twe said : "I don't think that will work; we do not have sufficient arms," and asked to see all who would stand in the fight with them, all the appellants raised their hands in assent, assurance, and applause. It is our opinion, therefore, that since the evidence convincingly shows that the meetings held by appellants tended neither to the promotion of peace and unity in the State, nor to the preservation of order as contemplated under section 5th of Article I of our Constitution, appellants cannot enjoy the protection of this constitutional provision. While it is true that the people have a right to assemble and consult about the public good, and that all citizens possessing the required legal qualifications have a right to organize political parties in the country in harmony with existing laws, and to canvass the names of their candidates, it was never intended by the Constitution that, in the exercise and enjoyment of these rights, men should be allowed an unbridled license to make utterances, or to commit acts capable of inciting the people, disturbing the public peace, and creating lack of unity and unrest in the country. In support of this view we quote the following: "Freedom of speech and liberty of the press do not mean an unbridled license to say and write or publish whatever evil-minded persons may feel inclined, any more than the equally constitutional right of free assembly authorizes and legalizes unlawful assemblies,

riots, routs, and the like. Liberty does not mean unrestrained license. There is a legal obligation on the part of all those who speak and write and publish to do so in such a manner as not to offend against public decency, public morals, public laws, and not to scurrilously and vituperatively attack public officers, the administration of justice, the laws of the land, or the government; and a failure in these particulars, and offending against any one or all of these things, renders a person subject to indictment and prosecution. And all such offenders, in the due and orderly administration of justice and the criminal laws of the land, should be promptly indicted, vigorously prosecuted, and adequately punished, notwithstanding, and in protection of, legitimate free speech and liberty of the press." 2 WHARTON, CRIMINAL PROCEDURE 128990 (loth ed. 1918). In England the law on the subject is stated as follows : "Sedition consists in acts, words, or writings intended or calculated, under the circumstances of the time, to disturb the tranquility of the State, by creating discontent, disaffection, hatred, or contempt towards the person of the King, or towards the Constitution or Parliament, or the Government, or the established institutions of the country, or by exciting between different classes of the King's subjects, or encouraging any class of them to endeavor to disobey, defy, or subvert the laws or resist their execution, or to create tumults or riots, or to do any act of violence or outrage or endangering the public peace. "When the offense is committed by means of writing, or print, or pictures, it is termed seditious libel. "The offense is a misdemeanor indictable at common law. · "In the case of a seditious libel it is doubtful whether at common law the offense is complete when the libel

is composed, or whether it must be shown that it was also published. Seditious publications are not justified or excused by proof of the truth of the statements made." RUSSELL, CRIMES AND MISDEMEANORS 301-302 (7th ed., 191o). It is our opinion, therefore, that many of the expressions uttered by appellants at their meetings were seditious. Defending themselves at this bar against the charge of writing letters to the President of Liberia and the United Nations, and sending copies to the American and British embassies, appellants admitted writing these letters but sought to avoid the consequences by contending that they regarded the United Nations as an organization whose office it was to establish peace, and so their letter was sent as an appeal to the United Nations to come in and make peace between their party and the True Whig Party. This argument is unmeritorious and untenable, as well as misleading and untrue. In the scurrilous and impertinent letter written to the President of Liberia, in addition to castigating the Probate Court, appellants requested the President to commit several unconstitutional acts, namely: to postpone the date of the general election contrary to existing

laws already fixing the time; to order and instruct the Elections Commission to place the names of their candidates on the ballot; and to order the Probate Court to admit to probate their articles of association nunc pro tunc, which articles of association, according to the records before us, had been withdrawn by their own lawyer who offered them for probate, as appears more fully from the paper quoted hereunder :
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"FORMAL NOTICE OF WITHDRAWAL. "Messrs. Jacob Mason, Blamah Dukuly, Kof a Jehbo Wroteh, et al. Chairman, Botee Blopleh, Secretary, and the members of said association, by and

thru Sam'! C. M. Watkins, Esquire, Counsellor at Law, profferor of said articles, for probate and registration, beg to give formal legal notice that he hereby withdraws said articles of association, without reservations whatsoever; and the clerk of the Probate Court is hereby authorized to take legal notice and enter upon the records of said court this notice of withdrawal. For so doing this shall constitute his sufficient authority." Although appellants well knew that their articles of association had been withdrawn by their lawyer, nevertheless, in their letter to the United Nations, they imputed guile to the Probate Court by charging it with having refused to admit their said articles of association to probate, and they implored the intervention of the United Nations. This is clear and convincing proof of making false representations against the Government of Liberia to foreign governments (for the United Nations is composed of several foreign governments) and soliciting their intervention in, and interference with, the domestic problems of the country. Appellants were bent on creating strife, mischief, and destruction; and their minds were sinister. They sent to the United Nations a copy of their letter written to the President of Liberia, which was manifestly pregnant with distortion, but failed to send to the United Nations a copy of the President's reply to their letter, which, if they desired fair play, they should have done in order to have afforded the United Nations an opportunity to have a complete picture and a hearing of both sides of the question. This is proof of a vile, wanton, and perfidious intention, one designed to overthrow the Government of Liberia. A growing evil of this age which needs to be curbed, and which results either from ignorance or misconception of section isth of Article I of our Constitution concerning free speech and freedom of the press, is the belief

that the protection of the press and of free speech guaranteed under the Constitution affords an unbridled license to speak, write, and publish whatever one desires to, whether or not true, whether or not said expressions or publications may ruin individuals

or cause the government to suffer disintegration and disruption. In our opinion the constitutional protection guaranteeing freedom of the press and free speech does not give an unbridled license to write letters of the nature written in this case to the President of Liberia and to the United Nations. On the subject of freedom of speech and of the press we quote the following: "The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals. "This doctrine was recently authoritatively stated by the Supreme Court of North Carolina as follows : `In its broadest sense, freedom of the press includes not only exemption from censorship, but security against laws enacted by the legislative department of the government, or measures resorted to by either of the other branches for the purpose of stifling just criticism or muzzling public opinion.' Cowan v. Fairbrother, 118 N.C. 406, 24 S.E. 212, 32 L.R.A. 829, 54 Am. St. Rep. 733. Such, also, is the opinion of the Supreme Court of Texas. Whatever more than freedom from previous license the constitutional guaranty may include, it is clear that it does not grant immunity for the publication of articles which imperil the public peace by advocating the murder of governmental officers and the destruction of organ-

ized society. Constitutional government may at least protect its own life, and Johann Most was properly convicted under a statute designed to secure the public peace, because of an article appearing in his newspaper, the Treiheit,' instigating revolution and murder, suggesting the persons to be murdered through the positions occupied and the duties performed by them, advising all persons to discharge their duty to the human race by murdering those who enforce law, denouncing those who would spare ministers of justice as guilty of a crime against humanity, and naming poison and dynamite as agencies to be employed in murder and destruction. People v. .4.71/Iost, 171 N.Y. 423, 58 L.R.A. 509, 64 N.E. 175. Constitutional government may also, under its police power, take reasonable steps to protect the morals of the people for whom and by whom it is instituted, and to this end may suppress the circulation of newspaper which, like the Kansas City Sunday Sun of infamous memory, are devoted largely to the publication of scandals, lechery, assignations, intrigues of men and women, and other immoral conduct. Re Banks, 56 Kan. 242, 42 Pac. 693 ; State v. Van Wye, 136 Mo. 227, 58 Am. St. Rep. 627, 37 S.W. 938; Strohm v. People, 16o Ill. 582, 43 N.E. 622. Likewise, newspapers may be suppressed which are made up principally of criminal news, police reports, and pictures and story of bloodshed, lust and crime. State v. McKee, 73 Conn. 18, 49 L.R.A. 542, 84 Am. St. Rep. 124, 46 Atl. 409. Newspapers like those just described display the licentiousness, and not the liberty, of the press. Here, as elsewhere in our political system, just rules and regulations are not badges of oppression, but are the necessary conditions of true liberty, and the constitutional

guaranty under discussion is not opposed to penal and remedial laws upon the subject of libel and the regulation of procedure in
the conduct of libel

cases." Coleman v. MacLennan, 78 Kans. 711, 71921 (1908), 98 Pac. 281, 284, 20 L.R.A. (N.S.) 361, 368 69. (See, also, State v. Pioneer Press Co., 100 Minn. 173 [1907]. IIo N.W. 867, L.R.A. [N.S.] 486, 117 Am. St. Rep. 684, 10 Ann. Cas. 351.) Appellant Philip Doe Sherman, who appeared before this bar representing himself, stated in his argument that he confirms his statement made in the record denying attending any of the meetings, but admitted that he signed a letter to the United Nations, and stressed
the same theory advanced by Counsellor Johns on behalf of the other appellants hereinbefore mentioned. The letter written to the
United Nations is seditious, according to the provision of our statutes and other authority cited in this opinion and judgment. In
view, therefore, of the evidence, the premises stated, and the law controlling, it is our considered opinion that the appellants
did commit the offense charged, and we hereby affirm the judgment of the lower court rendered against them, except for appellants
Nimley Panti and Emanuel K. Weeks, who, on the basis of the evidence in the case, are hereby acquitted; and it is hereby so ordered.
Afifirmed in part.
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Johnson-Duff v Harmon et al [1953] LRSC 6; 11 LLR 344 (1953) (29 May 1953)

JENEVA JOHNSON-DUFF, by her Husband, WILLIAM DUFF, Appellant, v. H. L. HARMON and THOMAS A. DONNELLY, of Farrell Lines, Inc., Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 10, 12, and 16, 1953. Decided May
29, 1953. Assent obtained by undue influence, misrepresentation, or abuse of a confidential relationship, may invalidate a conveyance
of real property.

On appeal from judgment dismissing plaintiff's action of ejectment, judgment reversed.
Nete Sie Brownell for appellant.
R. F. D. Smallwood

for appellee. MR. Court.
JUSTICE

BARCLAY delivered the opinion of the

Appellant, plaintiff below, asserted

title to **land for which appellee exhibited a deed. There is no question that appellant formerly had title to the land** ; but appellee contends that she sold this **land to him. Appellant, on her part, contended that the sale of the land** was procured, and the deed obtained, fraudulently and by misrepresentation. Documents exhibited in support of the title of appellant indicate that she became owner of the property in question by virtue of a quitclaim deed executed by the heirs of the late Elijah Johnson of historic fame, she herself being one of them. The property consists of about thirteen and one-half lots of one-quarter of an acre each, located at Sinkor, Monrovia. A quitclaim deed was executed in March, Dm, and probated in April, Pm. Appellant admitted selling appellee two and one-half

lots in the rear, but contended that she did not sell him the two front lots, the subject matter of this case, and that she told him she was reserving these two front lots for her own use. Appellee put in evidence the deed showing the sale of the two and one-half lots and a deed showing the sale of the two front lots ; but the latter deed is so worded as to be confusing. The uncontradicted testimony of the surveyor, Anderson, who did the survey for the two and one-half lots in the rear towards the sea, which evidence was not contradicted by either party, discloses that, after the survey and sale of the two and one-half lots in the rear, he discovered another piece of **land, of about one-half a lot, also in the rear near the beach, which piece of land** he considered of no material use to anyone but Mr. Harmon who had bought the two and one-half lots. He communicated this fact to both appellant and Mr. Harmon, and suggested that they make an agreement for the purchase of this piece by Harmon. Mr. Anderson then gave the certificate of survey to Mr. Harmon with the understanding that a deed would be made out for the additional piece of **land**. It is significant that, among the deeds presented and placed in evidence, there is no deed for this additional one-half lot. Instead, there is a deed for eighty-two one-hundredths of an acre of **land**, which, as established on the trial, was surveyed by one Walker, a civil engineer, at the request of Mr. Harmon, without appellant's knowledge or instructions. During the trial it was shown that this eighty-two one-hundredths of an acre included the two front lots which appellant definitely had told appellee that she would not sell. We ask why Mr. Walker was employed to do this special survey when appellee Harmon knew that surveyors Anderson and Adjavon were the surveyors doing the work for the Johnson heirs. The record discloses that the apparent deception was discovered when Mr. Duff, the husband of appellant, hearing that appellee Harmon had leased the two and one-half lots to Farrell Lines, also

approached them for a lease of the two front lots. The agent asked Mr. Duff whether he knew what he was talking about, since they had already leased the said lots from Mr. Harmon. Appellant repeatedly and emphatically testified that she did not sell the two front lots and did not knowingly sign the deed conveying them, although she admitted that the signature on the deed was hers, witnessed by her husband and two of Mr. Harmon's employees. Both husband and wife stated that, on the morning when they went to Mr. Harmon's law office to get the rent money due from Farrell Lines to the Johnson heirs, Mr. Harmon, as lawyer for the said company, came out in his dressing gown, and said that he was very busy, that they should sign the paper at once, and that there was no need to read it as it was the same paper they always signed when drawing the rent. They further testified that the document was folded, and that, after Mr. Harmon indicated where to sign, having confidence in him, they signed without reading, not for a moment thinking that they were signing away their property. This deed was signed February 1, 1949, and probated February 23, 1949. Another significant fact stated by Mr. Duff is that Mr. Harmon paid her no money for the land, although the deed shows on its face that $1,650.00 was paid to appellant for the two lots. Appellee Harmon testified that this money was paid from time to time in cash and by checks; but he was unable to produce a single receipt or cancelled check indicating payment of any installment. Mr. Harmon explained that appellant told him that she did not want anyone, by which he thought she meant her husband, to know what amount she was receiving. If this were true it seems very strange that the same Mrs. Duff, when going to receive money and sign the deed, would take her husband along with her. Another significant fact is that the survey by Mr. Walker was made on December 15, 1948. On December

3o, 1948, appellee Harmon leased the two and one-half lots to Farrell Lines. This lease did not include the two front lots, although appellee Harmon had informed Mr. Walker during the survey that he was acquiring them from Mr. Duff. Mr. Harmon himself testified that Mr. Duff came to his house more than twelve times to urge him to buy the two front lots. It follows that he must have been certain that he would get the lots in question and that he could include them in the first lease agreement, because the land was surveyed by Walker fifteen days before the lease with Farrell Lines was executed. Another lease agreement made in July, 1949, with Farrell Lines, a copy of which was put in evidence by appellee Harmon contained the following clause: "It is mutually stipulated and agreed that the lease indenture made and entered into between the parties aforesaid for a portion of the within tract of land dated the 3oth day of December, 1948, duly probated on the 3rd day of January, 1949, and registered in Vol. 62, pages 206-209 of the records of Montserrado County, be and the same is hereby cancelled and made null and void of no future effect." The description and boundaries set out in this lease agreement is for 1.123 acres of land **"more or less." This includes all of the land** of appellant on the sea side. Appellee

Harmon was careful to have surveyor Walker state the words "more or less" in the certificate. It is well settled that a transaction may be set aside on proof that assent thereto was obtained through deceit or misrepresentation. "In regard to contracts made by parties affecting their rights and interests, the general theory of the law is that there must be full and free consent in order to make it binding upon them. Hence it is said that if consent is obtained by meditated imposition or circumvention, it is to be treated as a delusion, and not as a deliberate and free act of the mind. For al-

though the law will not generally inquire into men's acts and contracts to determine whether they are wise and prudent, yet it will not suffer them to be entrapped by the fraudulent contrivances, or cunning, or deceitful management of those who purposely mislead them. Contracts are, however, presumed to be fair, and not unlawful or fraudulent, and the burden is on the party attacking them as fraudulent to prove the fraud by positive or circumstantial evidence." 6 R.C.L. 63031, Contracts, § 48. "Constructive fraud often exists where the parties to a contract have special confidential or fiduciary relation, which affords the power and means to one to take undue advantage of, or exercise undue influence over, the other. A transaction between persons so situated is watched with extreme jealousy and solicitude, and if there is found the slightest trace of undue influence or unfair advantage redress will be given to the injured party . . . and the transaction will be set aside even though it could not have been impeached had no such relation existed, whether the unconscionable advantage was obtained by misrepresentations, concealment or suppression of material facts, artifice or undue influence." 12 R.C.L. 232-34, Fraud and Deceit, § 5. William Duff testified, inter alia: "One morning my wife and myself went to the house of counsellor Harmon to receive a certain amount due to the Johnson heirs for rent, to be paid by Farrell Lines. The sum was $24o.00. We went into his office ; he was not there. In five minutes time he came out in his morning robe ; he said he was busy that morning and he would like to attend my wife in time that she could go. He took out a paper and gave it to my wife to sign before she could receive the amount of $240. My wife took the paper and wanted to read it. Counsellor Harmon told her he was so busy that morning, it was not necessary for her to read it, because it

was the same old thing she signed from time to time. I can plainly remember what my wife said to him: 'All right, Cousin Fayette, if you say it is not necessary for me to read it, I will sign it.' She signed the paper. After signing, counsellor Harmon passed over the paper to me and said : 'Now, Duff, you can just witness her signature.' He passed the pen over to me and I

witnessed her signature. The other witnesses, Morris and 'Willis, were not present when my wife signed." This evidence corroborates the evidence of Jeneva Duff and was not in any way contradicted by appellee. It further shows the confidence appellant had in Counsellor Harmon who was her cousin. She never for a moment thought that he would do her such a wrong. In view of the circumstances and the law cited, we reverse the judgment of the court below and award judgment in favor of plaintiff, now appellant, with costs against appellee; and it is hereby so ordered. Reversed.

Lartey et al v Kiazolu-Wahab et al [1988] LRSC 107; 35 LLR 737 (1988) (29 December 1988)

BOIMA LARTEY, **ALHAJI J. D. LASSANNA**, **BRIMA KAMARA et al.**, Petitioners, v. **HAWAH KIAZOLU-WAHAB**, **ALHAJI VARMUYAH CONNEH**, **et al.**, Respondents.
SUBMISSION FILED PURSUANT TO A BILL OF INFORMATION PENDING BEFORE THE SUPREME COURT.
Heard: November 16, 1988. Decided: December 30, 1988.

1. Under the constitution, the Supreme Court is the final arbiter of constitutional issues and exercises final appellate jurisdiction in all cases, except in those cases where it is granted original jurisdiction.

2. Under the constitution, the Legislature cannot make any law or create any exception to deprive the Supreme Court of any authority granted by the constitution.

3. An ancillary bill or suit is one that grows out of, or is an auxiliary to another action or suit, either at law or equity; it is one growing out of a prior suit in the same court, depending upon and instituted for the purpose either of impeaching or enforcing judgment or decree in a prior suit.

Petitioners, along with the Minister of Justice, filed a "submission" before the Supreme Court to demarcate **land** which was the subject of a decision of the Court, related to the cancellation of title deeds. In their submission, petitioners stated that the suit should have been filed before the civil law court, which the Supreme Court had earlier ordered to enforce its mandate, but because a pending bill of information related to the cancellation was before the Supreme Court, and it had ordered the civil law court to halt any action on the matter, they decided to file the submission directly to the Court. In passing on the appeal, the Supreme Court determined that

the action was not ancillary to any main suit pending before it, or even the pending bill of information. The Court concluded that to grant the submission is tantamount to assuming original jurisdiction over a cause in which it does not have original jurisdiction under the constitution. Submission denied.

James D. Gordon for petitioners. Joseph Williamson for respondents.

MR. JUSTICE BELLEH delivered the opinion of the Court.

During this October Term AD. 1988, the Minister of Justice of the Republic of Liberia, Honourable Jenkins K. Z.B. Scott, in association with counsellor Isaac Nyeplu, filed a "submission" before this Court entitled " Submission for Order to Demarcate the 25 acres Vai Town **land** under the 1906 deed in favor of Chief Murphy and the residents of Veytown (Vey John's people)" on behalf of Boima Lartey, Alhaji J. D. Lassana, et al., all claiming rights in the 25 acres of **land** in Vai Town, granted by the Government of the Republic of Liberia by an Aborigine Grant Deed in 1906.

The said submission concluded with a prayer that we grant this submission "by ordering the Ministry of Lands, Mines & Energy, through the civil law court, to re-survey and demarcate the 25 acres under the 1906 deed, and that we grant petitioners all such and further relief as we may see just."
In the said submission, it is substantially alleged that in March, 1986, the Republic of Liberia filed a petition before the civil law court for the Sixth Judicial Circuit, Montserrado County, praying for the cancellation of one of the two deeds involved in this matter, the 1931 deed, for fraud; that after regular trial, judgment was rendered by the said court ordering and canceling the said deed of 1931. Thereupon, an appeal was filed before us, and after regular hearings and arguments, *pro et con,* we affirmed and confirmed the judgment of the court below canceling said Aborigine Grant Deed of 1931. Thereafter, a mandate of this Court ordering the cancellation has long been executed and the matter closed. Petitioners say further that, notwithstanding the foregoing facts, "the metes and bounds of the twenty-five acres of the Vai Town **land** remain unknown to the surviving heirs of Chief Murphy and the residents of Vey Town (Vey John's people) as in keeping with the 1906 deed issued to Chief Murphy by the Republic of Liberia, the grantor of the said twenty-five acres of **land**."

Count four of the said submission goes on to say "that it is the binding duty of the Republic of Liberia, grantor of the twenty-five acres of **land** under the 1906 Aborigine Grant Deed, to

fully protect and defend the interest of its grantees, hence, the Republic of Liberia has filed this submission before your Honors praying for an order to the Ministry of Lands, Mines & Energy, through the civil law court, to demarcate and resurvey the twenty-five acres of **land** in keeping with the 1906 Aborigine Grant Deed so as to establish the metes and bounds."

However, in count six of the submission, petitioners maintained that although a submission for the demarcation of **land** such as this could have been filed in the civil law court, notwithstanding, since there is pending before this Honourable Court a bill of information which grew out of the cancellation proceedings that was heard and determined by this Court, and since the bill of information had restricted the civil law court from interfering with the twenty-five acres of the Vai Town **land** or any fragment thereof, co-petitioner, Republic of Liberia, invokes the judicial arm of this Honourable Court, where the information is pending, to grant this submission in order that the twenty-five acres can be demarcated."

Respondents, on the other hand, filed their returns in which they prayed that the Court will refuse jurisdiction over the submission since it is an original action and not one of such cases in which this Court exercises an original jurisdiction, nor does it grow out of some action already pending in the said court. And further "that the information filed by Hawah Kaizolu Wahab does not authorize the filing of a submission for a survey of the twenty-five acres of **land** under the 1906 Aborigine Grant Deed. Petitioners' return made to the information does not carry any indication for a survey of the **land** granted under the 1906 Aborigine Grant Deed. Hence the allegations contained in count three of the amended submission are immaterial and irrelevant to the determination of the legality of the amended submission. Therefor count three should be dismissed with costs against petitioners."

These constitute the basic facts of this submission, and from arguments of counsels of both parties and the record of this matter, we conclude that there is only one issue to be decided by this Court:
"Whether or not this submission belongs to the class of cases over which the Supreme Court has an original jurisdiction."

We say not at all. In fact, as narrated, *supra*, petitioners themselves concede in count six of their submission the fact that their submission is not of the class of cases over which the Supreme Court exercises an original jurisdiction, and that the submission for an order to demarcate should have been filed in the civil law court instead. Notwithstanding, petitioners gave as justification for the filing of their submission the fact that a bill of information is pending before us over the said twenty-five acres of **land** in Vai Town, and since this Court has earlier ordered the lower court to halt all further proceedings involving said **land**, the only reasonable course

left open to petitioners was a submission of this nature. We believe that those reasons were inadequate to justify the submission for an order to demarcate before the Supreme Court, especially when the action was not ancillary to any main suit pending before us.

The powers of this Court as spelled out in Article 66 of the Constitution of Liberia provides that: "the Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of records, courts not of records, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a country is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law or create any exceptions as would deprive the Supreme Court of any of the powers granted herein." Liberian Constitution, Article 7, Article 66.

Obviously, from the foregoing constitutional provision, the submission for demarcation is not an original action for determination by the Supreme Court. The Supreme Court is the final and highest Court of appeal in all cases, except those in which the constitution gives it original jurisdiction, and the submission does not belong to the class above enumerated at all.

In the normal course of cases, a "submission" or "information" before this Court is an ancillary action. An ancillary bill or suit is defined as a bill or suit "growing out of, or an auxiliary to another action or suit, either at law or equity, such as a bill of discovery, or a proceeding for the enforcement of a judgment, or to set aside fraudulent transfer of property. One growing out of a prior suit in the same court, dependent upon and instituted for the purpose either of impeaching or enforcing the judgment or decree in a prior suit." *Caspers v. Watson,* 132 F. 2d. 614-615, as cited in BLACK'S LAW DICTIONARY 79 (5 th ed.).

Unfortunately, this submission for demarcation before us is not an ancillary suit, as it is not a natural consequence of another action already before us. The submission for demarcation is wholly unrelated to the information pending before us, even though both may concern the same plot of **land**.

In view of the laws cited and the circumstances in this case as we have narrated, it is our considered opinion that the submission be, and the same is hereby dismissed. And it is so ordered.

Submission denied.

Quelo v Providence Concrete Works [1981] LRSC 29; 29 LLR 298 (1981) (30 July 1981)

PRESENTTE QUELO, Widow of the later WILSON QUELO, for herself and her minor son, WILSON QUELO, Jr. et. al., Appellants, v. **PROVIDENCE CONCRETE WORKS**, by and thru its President, CHRISTIAN MAXWELL, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: June 22, 1981. Decided: July 30, 1981.

1. No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the **land**.

2. Remedy by due course of law, means the reparation for injury ordered by a tribunal having jurisdiction in due course of procedure, after a fair hearing.

3. Any violation of the civil right of a person is a tort, and any person injured, shall have a remedy thereof, commensurate with the injury sustained, by due course of law.

4. The right to sue for injuries is a general and a constitutional right, which can be fully and effectively exercised without legislative enactment.

5. Injury is any detriment, deprivation or grievance to which a person may be subjected without the law.

6. The only causes of action that were reserved by law and that were conferred on the legislature were suits against the Republic of Liberia, as evidenced by the constitutional provisions that "suits may be brought against the Republic of Liberia in such manner and in such cases as the legislature may by law direct.

7. It is the supreme duty and right of the judiciary alone, to determine, declare, interpret, and construe what the "law of the **land**" or any law is. Only when and where it fails its due responsibility bestowed upon it by law, both inherent and written, may such law be enacted by the Legislature.

8. It is not the province of the legislators to say what the law of the **land** is, and when rights under it should accrue at all times.

9. To declare what rights are, and to protect rights guaranteed by the organic law, is the business of the judiciary. The right to sue for injuries is a general and a constitutional right. It can be fully and effectively exercised with or without legislative enactment.

10. Suits may be brought against the Republic in such manner and in such cases as the Legislature may by law direct.

11. The right of action for wrongful death is conferred on a dependent, by both statutory and the general common law of the **land**. Under our law, every person is entitled to freedom from deprivation of life, liberty or property and when any of these rights is invaded, he is entitled to full legal redress for the injury suffered by him.

12. As a general rule, the theory upon which the law allows damages for the violation of a civil injury has been based upon the doctrine that where a civil injury has been sustained, the law provides a remedy that should be commensurate to the injury sustained.

13. "Personal representative" means a curator or the person who has received letters to administer the estate of a decedent. "Dependent" of a decedent means (I) the decedent's spouse, and (II) any child (including an adopted or illegitimate child), a parent or ward, and (III) any other relative wholly or partly dependent on the decedent for support.

14. The personal representative of a decedent who is survived by any dependent shall have a right of action as trustee for the dependents against the person who by wrongful act, neglect or default has caused the death of the decedent.

15. Only property owned by a person at the time of his death can be part of the estate to be administered by his personal representatives. There can be no curator or administrator of a property of a living soul.

16. The survival of actions statute and the wrongful death law are separate and distinct in their purposes and applications. The survival of action statute protects rights already owned or claimed by a party before his death. Such right is his legal property and on his death it vests in his estate for proper supervision by a curator or his personal representative.

17. Claim for compensation for the wrongful death of a person is in the nature of a class action. It is the natural and lawful right of a dependent to sue for compensation for the wrong without reliance on the wrongful death statute.

18. The intent and theory of the wrongful death statute is to compensate primarily the dependents for the loss of the economic and social rights they had in the deceased prior to his death. Under the wrongful death statute either the dependents or the personal representative may sue for the compensation. If the dependents neglect to sue, the personal representative may, as trustee of the dependents, sue the tortfeasor.

19. Under the law, a party may join in numbered counts, as many claims or defenses as he may desire and the legal failure of one count in a pleading does not render all of the other separate and independent counts dismissible.

20. Allegations of factual matters in any pleading are issues for the jury. A judge is without authority to determine actual issue under the circumstances without reference to the jury who are triers of the fact. A trial court in ruling on the law issues may dismiss a case only where the legal issues sustained by him may render the complaint compulsorily dismissible.

An action of damages for wrong was instituted against appellee by the widow and the minor child of Wilson Quelo, a soldier of the Liberian National Guard, who was killed instantly, while a passenger in a vehicle owned by appellee. Appellee moved to dismiss the action on the grounds that appellant lacked the capacity to sue, and that the averments of special damages for the dependents is contrary to the private wrongs law. From a ruling granting the motion, and dismissing the action, appellant appealed to the Supreme Court.

The Supreme Court held that under the wrongful death statue, either the dependents or the personal representative may sue for compensation, and that it was error to deny their right to sue by dismissing the action. The Supreme Court also held that it is not within the province of a trial judge in a jury trial to decide the factual issues and that the ruling denying and dismissing the complaint on factual issues was improper. Accordingly, the Supreme Court *reversed* the ruling of the trial court, and mandated it to hear the case anew commencing with the disposition of law issues.

J D. Gordon appeared for appellant. *Christian D. Maxwell* appeared for appellee.

MR. JUSTICE MABANDE delivered the opinion of the Court.

Wilson Quelo, a soldier of the Liberian National Guard, was a passenger on a truck owned and operated by appellee. The vehicle was involved in an accident resulting in the instant death of Wilson Quelo. The deceased left a widow, a one year old son named Wilson Quelo Jr., a father, a mother and a brother, all of whom depended upon him for maintenance, support and other economic benefits. His dependents sued appellant, owner of the truck, for damages arising out of his wrongful death.

The main allegations in appellant's complaint are: the accidental death of Wilson Quelo, the survival of appellants/dependents, a claim of general damages for the widow, a claim of general damage for a child, *ventre sa mere,* a claim of special damages in the amount of $30,084.12 supported by an affidavit.

In its answer, the defendants, now appellee, raised the issues of lack of capacity of the dependents to sue in their own names, that only administrators can sue, that under the law special damages do not apply to such a suit, and that the exhibit is unsupported by invoices and receipts. The trial court ruled that only the personal representatives with letters of administration may sue, and that the averment of special damages for the dependents is contrary to the Private Wrongs Law. The complaint was therefore dismissed, whereupon plaintiffs appealed to this Court.

The important issues presented are: (1) whether dependents of a deceased have legal capacity to sue for the wrongful death of their relative; (2) whether an averment in a complaint demanding payment of a sum certain under the wrongful death law, renders the entire complaint dismissible; and (3) whether a financial statement of burial expenses of a person wrongfully killed is legally qualified as an exhibit to the complaint?

Counsel for appellants argued that under the law, both statutory and general, dependents of a person wrongfully killed may sue in their own right without prior qualification as administrators. Appellee contended that under the wrongful death law, the dependents have no legal capacity to sue but that only a curator or an administrator may sue. Appellee further contended that no such remedy existed in England before the Fatal Accident Law (Lord Campbell's Act of 1846) and in the U.S.A. its legislation of 1847 and, consequently, no such right could hive accrued to any person in this country before the 1977 Private Wrongs Law.

Where early common law refused to recognize a right, it did not exist because the worth of civilization is respect for the supremacy of the court in judicial affairs. The finality of judicial determination must be maintained. Only the lawmakers could thereafter grant such rights. Many reasons may have influenced the early courts not to have recognized the right to sue for the wrongful death of a person. Death caused by another was viewed strictly as a criminal offense for which only the State was the offended party.

As Great Britain became antagonistic to the slave trade according to the principles of the King's Bench in 1772, the courts may have considered compensation for wrongful death as setting price for a human being. Law is a dynamic and progressive science. Commercial institutions like those of today did not exist during the 16th and 17th centuries; hence, the courts could not have conceived of the pertinency of the economic problems which the wrongful death of a relative presents today.

In applying a foreign concept of law, we should weigh all of the benefits and choose the blessings.

The independence of our country insures freedom not to accept and incorporate into our laws and society things which we know are hindrances to our own people and country. To accept and enforce an already known pain and hardship on one's own people, mainly because others in other lands had suffered the same, even though a true and safe method is plainly available for the choice, is an utter disregard for one's own self, and a rejection of the benefits of freedom.

Our judiciary already knows that people of early Britain and America for many years suffered the want of remedy for grievances caused by the wrongful death of a relative because of the negative approach of their courts to the issue until the enactment of laws relieved them. Their bitter experiences were corrected long before 1847. To deny any measure of such a right to our people at this age is to admit that the formation of our ordered government was intended to bring no relief from injustice to our people but to maintain the dreadful pre 1846 conditions for us. Our chief concern should now be our own common law for the good of our country.

This cause of action arose before the constitution was suspended, therefore it applies to the rights protected by it. According to the Constitution of Liberia (1847), Art. 1, § 6, "every person injured shall have remedy therefor by due course of law." The Constitution further provides, at section 8, that "no person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the **land**". Our Constitution being similar in most of its provisions to the constitutions of the several states of America and that of the federal constitution, a reference to American common law is pertinent in seeking aid to interpret some of our constitutional provisions. The cognate constitutional provision guaranteeing every person a remedy by due course of law for injury done to his person or property (and usually also for injury done to his reputation) is found in the constitutions of many of the states. It means that for such *wrongs as are recognized by the law of the **land**, the courts shall be open to afford a remedy,* or that laws shall be enacted giving a certain remedy for all injuries or wrongs. *"Remedy by due course of law, so used, means the reparation for injury ordered by a tribunal having jurisdiction in due course of procedure, after a fair hearing.*"(emphasis supplied) 11 AM. JUR., *Constitutional Law,* §326. This American legal concept protects the judiciary in its exclusive jurisdictional endeavor over all controversies properly brought before it in order to determine remedies for all injuries in the true light of the law. It guarantees the duty of the judiciary to grant remedy for such wrongs as are conscientiously recognized by the law of the **land**. Any violation of the civil right of a person is a tort. It is the supreme duty and right of the judiciary alone to determine, declare, interpret, and construe what the "law of the **land**" or any law is. Only when and where it fails its due responsibility bestowed upon it by law both inherent and written, may such law be enacted by the legislators. It is not, however, the province of the Legislature to say what the law of the **land** is and when rights under it should accrue at all times. Law may still be enacted giving or ensuring rights where remedies already exist.

It has never been and it is not the modern and progressive idea of the law in both England and America, for the judiciary to be derelict in its duties so that another department of government may have to command it to act. To declare what rights are and to protect rights guaranteed by the organic law is the business of the judiciary. The right to sue for injuries is a general and a constitutional right. It can be fully and effectively exercised with or without legislative enactment. The dissenting opinion maintains that the right to sue for the wrongful death of a person is a tort but it cannot be exercised without legislation; to so hold is to ignore all of the rights under the organic law.

Our people were legally insured against deprivation of any claim of right without judicial hearing long before 1977. Injury according to our organic law means any detriment, deprivation or grievance to which a person may be subjected without the law. Any vested right is property of a person. The right to sue for the breach or violation of any right or privilege is and has over a century been guaranteed by the laws of our **land**.

With the same mental faculties generated by the love of justice with which the early common law judges were endowed in establishing judicial precedents for the peace and tranquility of their countries and peoples, we are equally blessed by the same Divine Being. The only causes of action that were reserved by law to and conferred on the Legislature were suits against the Republic. "Suits may be brought against the Republic in such manner and in such cases as the Legislature may by law direct". Constitution of Liberia (1847), Art. 1, §17.

The right of action for wrongful death is conferred on a dependent by both statutory and the general common law of the land. Under our law, every person is entitled to freedom from deprivation of life, liberty or property and when any of these rights is invaded, he is entitled to full legal redress for the injury suffered by him. "As a general rule, the theory upon which the law allows damages for the violation of a civil injury has been based upon the doctrine that where a civil injury has been sustained, the law provides a remedy that should be commensurate with the injury sustained". 13 CYC 13.

Any injury to or violation of a civil right is a tortuous act, the right to the remedy of which the law recognizes. The right to live, to enjoy the love, comfort and support of another is a civil right.

The statute in confirming the already existing right of the appellants to sue, also conferred the same right on the personal representative of the deceased. The statutory right to sue under the Private Wrongs Law, provides: "Personal representative" means a curator or the person who has received letters to administer the estate of a decedent. "Dependent" of a decedent means (i) the decedent's spouse, and (ii) any child (including an adopted or illegitimate child), a parent or ward, and (iii) any other relative wholly or partly dependent on the decedent for support. Private Wrongs Law, Rev. Code 28:3.1. The personal representative of a decedent who is survived by any dependent shall have a right of action as trustee for the dependents against the person who by wrongful act, neglect or default has caused the death of the decedent". Ibid., 28: 3.2

We hold that section 3.2 of the Private Wrongs Law does not deprive the dependents of their fundamental right to sue since to hold the contrary as the dissenting opinion maintains, would negate the organic law, civil rights and the Decedents Estate Law. This would be an imputing of absurdity to the legislature.

Only property owned by a person at the time of his death can be part of the estate to be administered by his personal representatives. There can be no curator or administrator of a property of a living soul.

The wrongful death statute should not be misconstrued as an advanced survival of action code. Legislation sometimes, as in this case, gives right to sue for the wrongful death to both the dependents and the curators and administrators of the deceased in order to protect rights that may accrue after the death of a person. To every killing, no matter how instantaneous, the body may have suffered some pains. The survival of action statute and the wrongful death law are separate and distinct in their purposes and applications. The survival of action statute protects rights already owned or claimed by a party before his death. Such right is his legal property and on his death it vests in his estate for proper supervision by a curator or his personal representative.

Claim for compensation for the wrongful death of a person is in the nature of a class action. It is the natural and lawful right of a dependent to sue for compensation for the wrong without reliance on the wrongful death statute.

The intent and theory of the wrongful death statute is to compensate primarily the dependents for the loss of the economic and social rights they had in the deceased prior to his death. Under the

wrongful death statute either the dependents or the personal representative may sue for the compensation. If the dependents neglect to sue, the personal representative may as trustee of the dependents sue the tortfeasor. We therefore hold that the trial court erred in denying the dependents their right to sue.

Appellant's counsel argued that their complaint did plead general damages and not entirely special damages as ruled by the court. Appellee, however, only contended that the measure of damages under the wrongful death statute is general damages to be determined by the jury. Count 4 (c) of the complaint reads "The widow and relatives of the deceased be awarded a sum of money as general damages for the support, training, guidance, and *ventre sa mere"*.

This allegation, as contained in the complaint is expressly a claim of general damages to be determined by the jury. The other averments claiming for specific sum of money lost by appellants for funeral expenses, did not render the whole factual claims of the complaint a plea of special damages. Under the law, a party may join in numbered counts as many claims or defenses as he may desire and the legal failure of one count in a pleading does not render all of the other separate and independent counts dismissible. The trial judge therefore improperly ruled on the factual issues which were rightly for the jury. Civil Procedure Law, Rev. Code 1:9.6; and *Walker v. Morris,* [1963] LRSC 42; 15 LLR 424 (1963)

Allegations of factual matters in any pleading are issues for the jury. A judge is without authority to determine actual issue under the circumstances without reference to the jury who are triers of the fact. A trial court in ruling on the law issues, may dismiss a case only where the legal issues sustained by him may render the complaint compulsorily dismissible. Civil Procedure Law, Rev. Code, 1:23.1.

An exhibit may be any writing, photograph or object to which a party may desire to call the attention of the court and his opponent at the trial. Proof of the truthfulness of such exhibit is the responsibility of the party who pleads it. Only the triers of facts under the supervision of the court may, when an exhibit is admitted into evidence, determine what weight should be given to it. It is not within the province of a trial judge in a jury trial to decide the factual issues. We are therefore of the opinion that the trial judge improperly ruled in denying and dismissing the complaint on these factual issues. *Beyslow v. Coleman,* [1946] LRSC 4; 9 LLR 156 (1946); and Civil Procedure Law, Rev. Code, 1:9.3 (4).

In view of these erroneous rulings by the trial judge, his ruling and judgment are hereby reversed. The Clerk of this Court is instructed to send a mandate to the trial court to resume jurisdiction over this case and hear anew commencing with the disposition of the law issues consistent with this opinion. And it is hereby so ordered.

Judgment reversed; case remanded.

MR. CHIEF JUSTICE GBALAZEH *dissents.*

I have been unable to agree with my colleagues in their decision allowing a dependent of a decedent to sue a tortfeasor without being a personal representative. This is the same reason that led me to vote against the judgment in the *American Life Insurance*

v. Holder, [1981] LRSC 14; 29 LLR 143 (1981). In that case I dissented because my learned friends concluded that a widow is automatically a beneficiary and personal representative without "letters of administration" and may sue independent of the insured.

The issue involved in these two cases is whether or not a dependent of a decedent has legal standing to sue for insurance benefits or damages for wrongful death of a decedent without being designated beneficiary or personal representative?

Both the common law and the statute define a personal representative as a "person who has received letters of administration to administer the estate of a decedent." Decedents Estates And Trusts Law, Rev. Code 8:3(j) defines a dependent as "one who looks to another for support and maintenance. One who is sustained by, or who relies for support upon the aid of another." Before 1977, there was no such cause of action in the Liberian society known as "damages for wrongful death." It was in 1976 that the legislature passed an Act entitled "The Private Wrongs Law" which spells out what constitutes such cause of action; who has a right to sue, how and when. This means that everything that pertains to that cause of action was statutorily introduced and is governed by statutory laws as opposed to the common law.

The cause of action for wrongful death, being a statutory creature, it would be a practical joke were we to set aside the statutory laws laid down by the Legislature in maintaining such action. The supreme duty of the judiciary is to determine, declare, interpret and construe what the law of the **land** is. Right of action for wrongful death is conferred by statute on a legal personal representative but not by judicial precedent as my learned colleagues have propounded in the majority opinion.

One other important factor that must be declared here is that unless otherwise expressed the courts will adhere to the dictations of the statutes. In other words, in interpreting a statute, the courts will have to follow the law spelt out in the statute as guideline for the prosecution of the case unless, of course, the provisions of such statutes are repugnant to the existing laws or public policy. As a corollary to this general principle, it must also be mentioned here that unless the validity of a statute is under challenge before the court, the court shall not question, rationalize, or review its merits.

Now going specifically back to the merits of the cases at bar, namely: action for wrongful death, we have in this jurisdiction two statutes governing such action to wit: The "Decedents Estates And Trusts Law" passed in 1972 and "Private Wrongs Law" passed in 1976. In Chapter III, sections 111.1 to 111.8 of the Decedents Estates And Trusts Law, it is duly provided, *inter alia*, that letters of administration must be granted to the persons who are distributees of an intestate and who are eligible and qualify. The section also provides that the probate court has discretionary power to appoint, as administrator, anybody within the prescribed degrees or a curator where no person is eligible. What we learn from this chapter is simply that no distributee of an intestate is entitled to letters of administration automatically. A formal application must be

made to the probate court and a formal grant of the letters by the probate court must similarly be made to the applicant.

The Private Wrongs Law, Rev. Code 28: 3.1 to 3.7, provides that only the personal representative of a decedent who has qualified as such within the meaning of Section 3.1 to 3.8 of the Decedents Estates And Trusts Law shall have the right of action for wrongful death as trustee for the dependents of the decedent against the person who by wrongful act, neglect or default has caused the death of the decedent.

As it can be clearly seen, the relevant sections of both acts are too clear and specific for anybody to have a second thought over them. Similarly, the surviving spouse, in this case the wife, cannot automatically qualify for the right of action for wrongful death as trustee of decedent's dependents unless she has been so appointed by the probate court as laid down in the Private Wrongs Law, Rev. Code, 28:3.1 to 3.7.

Any deviation by the Court from the legislative intent is tantamount to annulling and making by this court of new laws, which act is in direct contravention of the statutory laws in force.

It is my considered opinion that any money collected from a tortfeasor as a result of wrongful death, is part of the decedent's estate under Liberian law, because the Private Wrongs Law of Liberia, which controls this type of action, clearly spells out who is to sue on behalf of the dependents. Hence, a personal representative of the decedent must subject the money collected from a tortfeasor to the estate of the decedent for distribution.

In addition to the above, I hold the view that it would be an invitation to multiplicity of suits, were we to permit any dependent of a decedent, without qualification, to institute an action of damages for wrongful death. To do so would open a gate to endless litigation because, according to that system, every dependent, whether a spouse, a son, mother, cousin or adopted child, could sue without restriction.

In the circumstances, I therefore find myself unable to agree that to adhere to the strict rules of statutes governing such causes of action is applying a foreign concept of law as held by my colleagues.

What a dramatic irony! One does not need to read all our statutory laws to grasp the simple idea, that the law administered in our jurisdiction has its roots and foundation in the common law and statutes of England as imported into and introduced to this **land** by the immigrants, unless of course, such laws are repugnant to existing laws or public policy. A suggestion that we should throw overboard everything foreign is an indirect appeal to this Court to overturn the entire legal system of this Republic, the consequences of which are not hard to imagine. If the Supreme Court (Tribunal) is now being asked to repeal summarily the statutes and precedents of this jurisdiction, what role would be left for the law makers to play? Hence, I have withheld my signature from the judgment.

Caulcrick v Lewis et al [1973] LRSC 32; 22 LLR 37 (1973) (26 April 1973)

HASTINGS A. CAULCRICK, Appellant, v. SANDY LEWIS, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued April 9, 10, 1973. Decided April 26, 1973. 1. An answer which both denies and avoids by an affirmative defense is deemed to be inconsistent and the defendant will be ruled to a general denial upon dismissal of such answer. 2. When such defendant has been placed on a general denial, he is precluded from propounding questions tending to elicit affirmative matter in confession and avoidance. 3. When owners of reality provide for division of their property between them, the instrument containing such provision is not a deed, for it is not a conveyance involving grantor and grantee. 4. A copy of the document upon which title is based should be filed with the complaint when a plaintiff claims title to real property. 5. A sale of real property can be made by an administrator of an estate only by authority of the probate court ; if not so authorized the transaction is void. 6. Though an administrator of an estate cannot, of course, convey to himself as a purchaser of the real property of an estate, he may buy such property from an innocent purchaser to whom the administrator has conveyed on behalf of the estate.

In July, 1936, the administrators of the estate of Thomas N. Lewis conveyed the thirty acres of land at issue to James G. Smith and his wife. Twenty days thereafter Smith and his wife conveyed the property to appellant, who was one of the administrators of the estate. The appellees, heirs of Thomas N. Lewis, allegedly learned of the transaction some thirty years later and instituted an action for cancellation of the administrators' deed to the Smiths and the warranty deed from the Smiths to the appellant. The lower court decreed cancellation and an appeal was taken therefrom. The Supreme Court in its opinion commented on the inconclusive nature of the evidence presented and for that reason remanded the case to the lower court after the judg37

ment was reversed, ordering that the parties be permitted to replead.
Joseph Findley and Philip J. L. Brumskine for appellant. N. Fahnbulleh Jones for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court. Several years ago Doctors James A. Dingwall and Thomas N. Lewis, since deceased, allegedly acquired jointly sixty acres of land bearing the numbers 47, 48, 49, 65, 66, and 67, in Central Buchanan, Grand Bassa County. Thereafter, in the year 1933, they apportioned this property between them, each receiving thirty acres. Dr. Lewis died intestate in 1935, and the Probate

Court of the county appointed administrators of Dr. Lewis' estate, among them Dr. Hasting A. Caulcrick, the appellant. On July 7, 1936, the administrators sold the thirty-acre tract of land belonging to Dr. Lewis to James S. Smith and his wife at a public auction. On July 27, 1936, the appellant bought the same property from the Smiths. The appellees, who are heirs of Dr. Lewis, allegedly did not know of these transactions until some time between 1967 and 1969, when only one of the administrators, the appellant, was alive. They then instituted this action in equity to cancel the administrators' deed to James B. Smith and his wife, and the warranty deed from the Smiths to the appellant, on the ground that the administrators acted fraudulently by selling the property without any authority from the Probate Court and, therefore, the appellant was illegally in possession of this tract of land. We might add here that the estate is not yet closed, and that new administrators had been appointed prior to the death of the appellant. This action has come here on appeal from the Second Judicial Circuit Court of Grand

Bassa County which decreed that the deeds be cancelled. The first issue raised is whether the trial judge erred in dismissing the appellant's answer for being inconsistent and evasive in that it denied the truthfulness of the complaint, and yet raised the pleas of statute of limitations, fraud, estoppel, and illegitimacy of the appellees. These are all affirmative defenses constituting an avoidance which are required to be specially pleaded under the Civil Procedure Law. 2. Denials. A party shall deny those averments of an adverse party which are known or believed by him to be untrue. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this shall have the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he shall make his denials as specific denials of designated averments or paragraphs, or he shall generally deny all the averments except such designated averments or paragraphs as he expressly admits ; but, if he does so intend to controvert all its averments, he may do so by a general denial. "5. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by a fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense." Rev. Code i :9.8(2), (4) ·

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The statute of limitations being an affirmative plea, which, when specially pleaded and proved bars an action, the defendant must admit that the allegations sought to be avoided are true, and then state other facts sufficient, if true, to defeat the action. Bryant v. Harmon, [1954] LRSC 18; 12 LLR 33o (1956). An answer which in its several counts both denies and avoids cannot be taken to be sufficiently distinct or intelligible to constitute a proper answer to specific allegations of fact contained in a complaint, since the two positions are contradictory and inconsistent. Such an answer is subject to dismissal, whereupon the defendant will be ruled to a general denial of the allegations set forth in the complaint. Shaheen v. Compagnie Francaise de l'Afrique Occidentale (C.F.A.O.), 13 LLR 278 (1958) ; Butchers' Association of Monrovia v. Turay, 13 LLR 365 (1959).

In view of the law cited herein regarding denial and pleas in confession and avoidance, we find that the judge did not err in dismissing appellant's answer and placing him on a bare denial. With the answer dismissed and the appellant ruled to trial on a general denial, the next issue is whether affirmative issues such as those contained in the answer can be raised or introduced by witnesses. It is settled that in a trial where the defendant has been placed on bare denial of the facts stated in the complaint, he is precluded from propounding questions tending to elicit affirmative matter in confession and avoidance. Butchers' Association v. Turay, supra; Saleeby v. Haikal, [1961] LRSC 35; 14 LLR 537 (1961). To hold otherwise would be circumvention of the rule and statutory requirement that affirmative matter must be specially pleaded in order to give the opposing party notice of what is intended to be proved and time in which to respond. The most important issue in this case is appellant's contention that the appellees have no title to the thirty acres of land and, hence, no right to question his owner-

 ship. The appellees base their claim to the property on a document obtained from the State Department. "KNOW ALL MEN BY THESE PRESENTS that we Thomas N. Lewis and James A. Dingwall of Lower Buchanan, Grand Bassa County, Republic of Liberia, are co-equal owners, purchasers of sixty (60) acres of land, bearing on the authentic plot of Central Buchanan the numbers 47, 48, 49, 65, 66, 67. Commencing at the North West angle of lot No. 47 and running South along McClain Street to a Street dividing lots 65 and 82, thence along said Street to lot 68 ; thence North along lots 68 and so to dividing lots 49 and 31; thence West along said Street to place of commencement and containing 6o acres of land intersected by two Streets. For ourselves, our heirs, executors, administrators and assigns we agree to divide, and do hereby mutually divide the said 6o acres of land as follows : To Thomas N. Lewis all that portion of the above described land lying East of a line commencing at the middle point of the Northern side of lot 48, and running through the middle of lots 48 and 66 to the middle point of the Southern side of lot 66, 3o acres of

land. To James A. Dingwall all the portion of the 6o acres described lying West of the middle line above mentioned and containing 3o acres of land." The instrument was signed in the presence of witnesses on November 7, 1933, and set forth the volume in which it was registered on March 7, 1934, as authorized for probate. Exhibit A, annexed to the instrument, certified it to be a true copy.
Upon careful inspection of the document referred to, we find that it does not have the requisites of a deed. In the ordinary acceptance of the word, a deed is an instrument which conveys real property. It must indicate who is granting the property, to whom it is granted, and what the property is, and it is usual for the conveyance to set forth what the deed is intended to express in some formal

manner. 16 AM. JUR., Deeds, § 47. The usual and essential parts of a deed are set forth in section 48 following.
"(a) The premises, including the names of the parties and their places of residence, a recital of the considerations and acknowledgment of its receipt, words of grant or other words expressive of an intent to convey and transfer the property, the description of the land conveyed by the instrument, by metes and bounds ; "(b) Immediately after the premises follows the habendum clause, 'to have and to hold,' etc., the purpose of which is to define the estate which the grantee is to take and hold, the reddendum or reservation if any, the warranty and other covenants of title and the covenants relating to the use and enjoyment of the land, the testimonium, the date of the deed, the attestation clause and the signature and seal of the grantor." The document which exhibit A refers to is clearly not a deed, but rather appears to be an instrument partitioning the property between the alleged owners. A transaction involving the transfer of title to real estate presupposes the participation of two or more parties, a grantor and a grantee, and in order that an instrument may operate as a deed conveying land there must be a grantor and a grantee. r6 AM. JUR., Deeds, § 66. This document does not meet even this basic requirement. It is our opinion that in order for the appellees to have maintained this action, they should have shown first the title under which they claim ownership to the property by putting into evidence the source from which their alleged title or that of their late father under which they claim originated. And they should have done this by filing with their petition a copy of the warranty deed to which the certificate referred. Pelham v. Pelham, [1934] LRSC 6; 4 LLR 54 (1934). Of equal importance is the issue in which each party

contends that the other party fraudulently acquired the real estate which is the subject of this action. Briefly, the appellees allege that the appellant and his coadministrators sold the property without a court order to James S. Smith and his wife; that this sale was illegal, hence, fraudulent, and that since

the Smiths' acquisition was fraudulent the subsequent purchase twenty days later from the Smiths by appellant, who was one of those who sold the property illegally, was also fraudulent. The appellant countered this contention by alleging that the- absence of a deed shows that appellees' father never legally acquired title to the property and, hence, their claim is also based on fraud. Since we have dealt with the question of the absence of a deed, we shall address ourselves to the appellees' contention. In the administration of a decedent's estate, a sale of real property can only be legally made by virtue of an express order of the Probate Court when it has been shown to the satisfaction of the court that the personal property of the estate is insufficient to discharge the lawful debts against the estate. If it cannot be shown that the sale of the land in question was duly authorized by the Probate Court, then the sale by the administrators is void. Brown v. Allen, 2 LLR 115 (1913) ; Tee v. Chea, [1955] LRSC 1; 12 LLR 205 (1955) ; Tetteh v. Stubblefield, is LLR 3 (1962). It was also encumbent upon the grantees to examine the administrators' right to convey. Tetteh v. Stubblefield, supra.

With respect to the purchase by appellant of the land which he and the other administrators had sold to James S. Smith and his wife, we must admit that this fact, as well as the short span of time, twenty days, between the sale to the Smiths and the purchase from them by appellant, does tend to arouse suspicion. Be that as it may, while the administrator of an estate cannot purchase for himself property forming part of the estate, as

is he who must execute the administrator's deed, yet there is authority that he may purchase from a third party. Ross v. Roberts, [1931] LRSC 8; 3 LLR 266, 270 (1931). According to text writers, "the rule against executors and administrators purchasing at their own sales cannot be avoided by the mere interposition of a third person, who either becomes a purchaser for the benefit of the executor or administrator or, after such purchase, reconveys to him. . . . However this rule does not apply where a third person has in good faith purchased for himself but, after his purchase has been completed, entered into a contract of sale with the executor or administrator." 21 AM. JUR., Executors & Administrators, § 622, 623. Executors and administrators must not promote their personal interests as against those of an heir at law; they are obliged to exercise good faith and conduct the affairs of the estate with the same measure of care and diligence which an ordinary prudent man would exercise under like circumstances in his own affairs; and any fraud upon their part, which tends to defeat the end of the trust reposed in them, will justify the court in declaring their acts void, wherever this can be done without prejudice to the rights of innocent third persons. Sharpe v. Urey, I LLR 251 (1952) ; 21 AM. JUR., Executors & Administrators, §§ 224, 250, 251.

Since the estate is not yet closed, we wonder why the alleged irregularities were never brought to the attention
of the court. In any event, where fraud is alleged in cancellation proceedings it must be proven by positive or circumstantial evidence, bearing in mind, of course, that he who comes into equity must come with clean hands, and he who seeks equity must do equity. While
we would like to put an end to this matter now, we are prevented from doing so because, as we have indicated herein, there are some
important issues on the question of fraud which need to be looked into further by the lower court. Under the circumstances, the decree
of the

Cassel v Karmie [1983] LRSC 81; 31 LLR 311 (1983) (8 July 1983)

JOEL CASSELL, Appellant, v. **FEIBOY KARMIE,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: June 8, 1983. Decided: July 8, 1983.

1. Where settlements have mutual boundaries, and where property in dispute is located near or on the boundary, the name of the settlement is not paramount in determining the proper ownership of the disputed property.

2. Where property subject of a dispute is located on or near a boundary between two settlements and where the grantor of both parties is the same, the paramount issue is not a matter of determining in which subdivision the property lies, but rather, the paramount issue in such a **land** dispute is whether the property may be properly and legally located and established by the legitimate corners, and metes and bounds of the title deed covering the property.

3. In an action of ejectment, the plaintiff shall recover upon the strength of his own title and not upon the weakness of the defendant's title.

Appellee instituted an action of ejectment against Mrs. Isabella Hayes Cassell of the Settlement of Brewerville for the recovery of four acres of **land** situated in the settlement of Virginia. Defendant's answer was dismissed and she was ruled to a bare denial of the complaint, and the case ruled to trial. Prior to trial, Isabella Hayes died and she was substituted by her son Joel Cassell, appellant herein. The lower court rendered final judgment in favor of plaintiff from which an appeal was announced to the Supreme Court. Appellant contended in his bill of exceptions that his **land** is situated in the Settlement of Brewerville .whilst plaintiff/appellee' s **land** is situated in the Settlement of Virginia. The Supreme Court held that where the settlements have mutual boundaries and where the property in dispute is located near the boundary, the name of the settlement is not paramount in determining the proper

ownership of the disputed property. What is paramount, the Supreme Court opined, is whether the property can be legally located and established by the legitimate corners, and metes and bounds.

Accordingly, the Supreme Court affirmed the judgment of the trial court and ordered that surveyors should assist the sheriff in serving the writ of possession, in accordance with the metes and bounds of the plaintiff's deed.

J. D. Gordon appeared for the appellant. J. Emmanuel R. Berry appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

On the 9th day of November, A. D. 1966, Feiboy Karmie of the Settlement of Virginia, Montserrado County, instituted an action of ejectment against Mrs. Isabella Hayes-Cassell of the Settlement of Brewerville of the said County for the recovery of a four-acre plot of **land** situated in the said Settlement of Virginia which he claimed descended to him from his late father Momo Karmie.

In his complaint, Feiboy Karmie averred that the appellant illegally entered upon and dispossessed him of his parcel of **land**. Appellant filed her answer late contending that she was not on appellee's **land** At the disposition of the law issues by His Honour Dessaline T. Harris, appellant's answer having been filed late, was thus dismissed by the court and she was ruled to bare denial of the facts contained in the complaint. The case was accordingly ruled to trial on the complaint and the reply. Prior to the trial, Appellant Isabella Hayes-Cassell died and was substituted by her surviving son, Joel Cassell, as the new appellant.

During the March Term, A. D. 1982 of the Civil Law Court, the case was tried by his Honor Frederick K. Tulay which resulted into a verdict in favour of the appellee, awarding him not only the piece of real property in question but also an amount of Ten Thousand Dollars ($10,000.00) as damages. Appellant filed a motion for new trial which was promptly resisted and denied by the court, and on the 8th day of June, A, D. 1982, final judgment was entered against appellant to which he excepted and appealed to this Court.

The crux of appellant's contention in his fourteen-count bill of exceptions and also in his brief is that his **land** is situated and located in the Settlement of Brewerville whilst the appellee's **land** is situated in the Settlement of Virginia. Consequently, appellant could not have been on appellee's **land** as alleged.

This being the case, then the issue here is whether or not a parcel of **land** situated in Virginia should be governed by different laws for its disposition and distribution from that situated in Brewerville.

Counsel for appellant has undoubtedly argued this issue with a degree of vigor regarding the status of the parcel of **land** giving cause to all this strife. He seems to believe that for the fact that one parcel of **land** is situated in the Settlement of Brewerville and the other situated in the Settlement of Virginia, different realty laws should govern their disposition and

distribution. Yet counsel for appellant argued vehemently on this premise without citing a single authority to substantiate his ardent position. We do not only differ with his line of argument but we also think his audacious contention is a classic example of what the law describes as brutumfulmen. Dollert v. PrattHewitt Oil Corp., 179 S. W. 2d 346.

We believe that where settlements have mutual boundaries, and where the property in dispute is located near or on the boundary, the name of the settlement is not paramount in determining the proper ownership of the disputed property. This conviction comes into full play when the grantees of the property in dispute have a common grantor (Republic of Liberia), and where the property may be propetly and legally located and established by the legitimate corners, and metes and bounds of the title deed covering the property. Reeves v. Hyder, 1 LLR 271 (1895); Railey v. Clarke, [1950] LRSC 8; 10 LLR 330 (1950). Therefore, whether the area where the disputed property is located falls within the geographical distribution of Virginia or Brewerville, does not destroy ownership so long as evidence of title is properly and duly established as in the instant case.

It has been held that in an action of ejectment the plaintiff shall recover upon the strength of his own title and not upon the weakness of the defendant's title. Savaja v. Dennis, 1 LLR 51 (1871). In the instant case, the appellee having proved his title by documentary as well as oral evidence based upon which the jury brought the verdict as affirmed by the trial judge in his final judgment, same should not be disturbed.

In view of the foregoing, it is the opinion of this Court that the judgment of the lower court be affirmed and that surveyors should assist the sheriff of this county in serving the writ of possession in accordance with the metes and bounds of the appellee's deed, with costs against the appellant. The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge therein presiding to resume jurisdiction over this cause and to give effect to the judgment of this Court.

Judgment affirmed.

Dennis et al v Holder et al [1951] LRSC 12; 11 LLR 14 (1951) (11 May 1951)

JOSEPH C. DENNIS and WILLIE A. DENNIS, Appellants, v. CATHERINE HOLDER by her Husband, S. A. HOLDER, ROBERT D. UREY, FRANCES UREY
by her Husband, WILLIAM F. U.REY, ROSE JEAN UREY-KENNEDY by her Husband, WILLIAM H. KENNEDY, RACHAEL UREY-JOHNSON by her Husband,
GRAY G. JOHNSON, EMMA UREY, MARY UREY, AREMITA WALKER by her Husband, GEORGE A. WALKER, for their Minor Children, JAMES D. UREY and
AREMITA UREY, NANCY A. WORDSWORTH by her Husband, WILLIAM E. WORDSWORTH, WILLIAM A. FREEMAN, JOHN R. FREEMAN, DANIEL E. FREEMAN,

JULIA PHELPS by her Husband, MONROE PHELPS, and BENJAMIN G. FREEMAN, Heirs and Legatees of the Late DANIEL W. U.REY, Appellees.
APPEAL
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 18, 19, 23, 25, 26, 30, 31, 1950. Decided May 11, 1951. 1. Objections to the probate of a deed should be made at the time the instrument is offered for probate when the objector has knowledge of the transaction. 2. A party will be estopped from denying his own deed as unlawful.

Plaintiffs-appellees brought an action in ejectment against defendants-appellants for detaining certain lands. On appeal from judgment for appellees, appellees moved to dismiss the appeal on the ground that the appeal bond was defective. The Supreme Court denied the motion. Dennis v. Holder, to L.L.R. 301 (1950). On appeal to this Court, judgment reversed. T. Gyibli Collins for appellants. R. F. D. Smallwood for appellees. D. B. Cooper and

delivered the opinion of

the Court. This case is before us on an appeal from the ruling and final judgment of the Circuit Court of the Sixth Judicial Circuit, Montserrado County. In 1896, Daniel W. Urey, Sr., one of the oldest settlers of Careysburg, died and left a will. He bequeathed and devised to his widow, Mary E. Urey, one-third of his real and personal property. The remaining two-thirds he bequeathed and devised in equal parts to his six children, William, Mary, Daniel, Jr., Pernecy, Buchanan, and David; and directed that the property never be divided, but descend from heir to heir as a whole. In 1919, after most of the children had reached their majority, they approached the widow, Mary E. Urey, to give them their share of the estate. She petitioned the Monthly and Probate Court of Careysburg for assistance ; and it appointed the late W. T. Hagans and the said Mary E. Urey to apportion the estate. Their report reads as follows : "We beg to submit our report of the apportionment of the estate of the late D. W. Urey, Sr., of Careysburg among the heirs. Upon examination of the deeds of the estate we found three thousand one hundred and fifty acres of **land**. One thousand and fifty acres, being one-third of the whole estate, was assigned to the widow as her third or dower; the other two-thirds, or two thousand one hundred acres, we divided into five equal parts, of four hundred and twenty acres each, among five heirs, as follows : (r) to William F. Urey heirs, the two hundred-acre block on which the house stands and two hundred and twenty acres of the thousand-acre block, making their share four hundred and twenty acres; (z) to M. E. Freeman, farm lot number eleven fronting the motor road and containing thirty acres, and also three hundred and ninety acres

of the seven hundred and eighty-acre block, making his share four hundred and twenty acres ; (3) to D. Webster Urey, four hundred and twenty acres of the thousand-acre block running Southeast from lands of the William F. Urey heirs ; (4) to P. A. Deputie, farm lot number seven fronting the motor road and containing thirty acres of, and also the remaining three hundred and sixty acres of the thousand-acre block, and also thirty acres of the seven hundred and eighty-acre block making her share four hundred and twenty acres. (5) to Daniel A. Urey, seven thirty-acre tracts, and two hundred and ten acres of the seven hundred and eighty-acre block, totalling four hundred and twenty acres." In 1928, Mary E. Urey, the widow of Daniel W. Urey, Sr., died, and, immediately thereafter, a scramble for her property began. Daniel W. Urey, Jr., and David A. Urey disposed of certain portions of the property left by the widow, among them lots number 3, 5, 7, and 9, which were sold to appellants. Other portions of the lands were also sold to parties including the late James W. Dennis, Sr., and N. T. Dennis. Following in her uncles' wake, Ellen Urey sold to appellants lot number 11. Lots number 6 and 8 were bought by appellants from the estate of the late James W. Dennis, Sr. These events naturally caused dissatisfaction. Pernecy Urey-Deputie petitioned the Monthly and Probate Court of Careysburg to partition the widow's dower among the heirs. The court thereupon appointed Charles A. Burke and J. E. Sims as apportioners. The report of the apportioners reads as follows : "There were found 140 acres of land to be apportioned between D. W. Urey, Jr., and P. A. Deputie as follows : For D. W. Urey, Jr., 70 acres of land from block number 8. For P. A. Deputie, to acres of land from block number 8 ; 3o acres from block number 6 3o acres from block number 14.

;

"There were 54o acres of land remaining as widow dower in lieu of blocks numbered i, 3, 5 and 9, of 120 acres of land, being part of the said widow dower sold to J. C. and W. A. Dennis by D. A. and D. W. Urey, Jr.; and also 6o acres of block number 3 sold to N. T. Dennis by P. A. Deputie, all being of the widow dower. We apportion to the heirs of F. W. Urey and M. E. Freeman, the following tracts of land : "To F. W. Urey heirs, lots numbers 4 and 6, of 30 acres each ; in all, 6o acres. To M. E. Freeman heirs, lots numbers io and 12, of 3o acres each ; in all, 6o acres. The remaining 430 acres have been apportioned as follows : "To F. W. Urey heirs, farm lot number 8, containing 3o acres ; one half farm lot number 20, containing 15 acres; farm lot number 8, containing 6o acres; in all, io5 acres. "To M. E. Freeman heirs farm lot number 3, containing los acres. "To D. W. Urey, Sr., farm lot number 3, containing 74 acres, farm lot number 2, containing 3o acres; in all, Jos acres. "To P. A. Deputie, farm lots numbers i, 9, i8, 19, and one half lot number zo; in all, los acres ; of which lot number 19 was given F. W. Urey

heirs." In distributing the property, the apportioners assigned to the heirs who had made previous sales the identical parcels which they had sold, the other heirs receiving equal portions. There appeared to be no dissatisfaction regarding this partitioning; and all was quiet until about eleven years thereafter, when the present action was instituted. At that time, the appellees, as plaintiffs in the court below, complained that the defendants, now appellants, were wrongfully detaining lots numbers 2, 3, 4, 5, 6, 7, 8, 9, and II, and adduced, as proof of title, a copy of a deed from Benjamin G. Freeman and M. E. Freeman to

Francis W. Urey and M. E. Urey, executor and executrix of the estate of Daniel W. Urey, for lots numbers 1, 3, 5, 6, 7, 8, 9, to, I I, 12, 13, 15, 17, and 19, comprising four hundred and fifty acres, which were to be held "in trust for the heirs of the said estate to their use and behalf forever." The appellees, in their argument before this Court, centered their position on the decision of the late Judge Summerville that the Probate Court was without equity jurisdiction and hence could not legally apportion said property in view of the limitations couched in the will of Daniel W. Urey, Sr. Appellees also contended that those heirs who had sold the lands in question which originally formed a part of the estate of Daniel W. Urey, Sr., had done so illegally, hence the titles they sought to convey were nullifies. The appellants contended that, inasmuch as said lands were bought "in trust for the heirs of said estate to their use and behalf forever," it was their right to have same apportioned when they reached their majority, and to dispose of same as they saw fit; and that the construction which appellees were seeking to apply to that clause of the will of the late Daniel W. Urey, Sr., that no portion of the estate should ever be sold but should descend from heir to heir, tended to create perpetuities which the law looks upon with disfavor. Appellants also adduced a copy of a list from the Bureau of Revenues showing that the several parties had been paying their taxes separately on the pieces of land assigned them in the report of the apportioners. The appellants contended further that the appellees were estopped from contesting title to said property since : (I) B. G. Freeman, one of the heirs, and an appellee in this case, witnessed the deed of sale for lot number 2, and also offered for probate said deed in the Monthly and Probate Court at Careysburg; (2) R. D. Urey, also one of the heirs, and an appellee herein, witnessed the deed of sale for lot number it, sold by his sister, Ellen D. Urey-

Walker, one of the heirs and an appellee in this case ; (3) Nancy Freeman Wordsworth, one of the heirs, and an appellee in this case, witnessed the deed of sale for lot number I 1 ; and (4) William E. Wordsworth, who

is a party to this suit as one of the appellees, representing his wife Nancy Freeman Wordsworth, one of the heirs, witnessed the deed of sale to appellants for lots numbers 6 and 8. These affirmative acts, the appellants contended, were suff icient to bar appellees' recovery, on the principle that a party cannot take advantage of his own illegal acts. In Reeves v. Hyder, i L.L.R. 271 (1895), the Court held that, by statute, the probate of a deed makes it legal evidence. If there are objections to probate, where the party has knowledge of the transaction, the objections should be made at the time the instrument is offered for probate. In the sale of lot number 2, Benjamin G. Freeman, a lawyer, not only witnessed the deed, but also offered same for probate before the Monthly and Probate Court of Careysburg. Such an act on the part of an attorney is, in our opinion, an affirmative one, and, where he had a personal interest, is construed as agreement with what was done. Thus, having had due notice, he could not later attempt to nullify the validity of the deed by denying the legality of his acts. The case of Ellen D. Urey-Walker is even more to the point. She, in her own right, alienated to appellants lot number i t, transfer of title to which was witnessed by her brother, R. D. Urey, who, along with his sister, is one of the appellees in this case. It is difficult to understand how this appellee, knowing that she had sold a portion of the properties in question, could come before a court of law and seek to have the court make null and void the sale of lot number I1 for which she had freely received a valuable consideration. In East African Company v. Dunbar, i L.L.R., 279 (1895), involving ejectment, this Court held that the plea of estoppel, if founded

in truth, will prevent a party from denying his own acts or deeds. Neither law nor equity will permit a party or his privies to impeach his own acts. Furthermore, in West v. Dunbar, 1 L.L.R. 313 (1897), involving ejectment, which reaffirmed East African Company v. Dunbar, supra, it was held that, under the doctrine of estoppel, a party who makes an illegal contract will not be allowed to take advantage of his own wrongs by showing its illegality; nor can he seek relief at law or in equity, either to enforce or annul his illegal act; estoppel will not permit it. Thus, in West v. Dunbar, supra, a lease of lands to a foreigner for fifty years, although repugnant to the Constitution, was not set aside. Application of the principles enunciated in the above rulings shows clearly that the appellees endeavored to take advantage of their own illegal acts, and to annul the titles of appellants upon the ground that the appellees had assigned such titles illegally. This Court has ever and anon frowned upon such deceptive practices. They tend only to stir up strife and ill will. The instance of Ellen Urey-Walker is particularly reprehensible. She, of her own free will, and for a valuable consideration, transferred lot number i 1 to appellants. She made no allegation of duress, or of any kind of compulsion in the assignment of the property. Yet she has come before a court of justice to nullify her own act, and to deprive the appellants of the lands she freely transferred to them, as well as of the fruits

of the labor they expended thereon. Such a deed is unrighteous and unjust. This Court will frown upon and discourage all such acts.
Lastly, we will consider Count "2" of the appellants' bill of exceptions which states that, although defendants raised the plea of estoppel against plaintiffs' disaffirmance of the division of the widow's dower, as approved by the Provisional Monthly and Probate Court of Careysburg, and as conceded by the letter of Benjamin G. Freeman,

one of the plaintiffs, said court dwelt only on its lack of jurisdiction to order division of said estate. We find further in East African Company v. Dunbar, supra (at I L.L.R. 28o) : "The plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds, and when founded in truth must meet the sanction of the courts of law. Nothing would work greater injustice than for a man to execute a note or deed in favor of another, and then attempt to prove its unlawfulness. In law he would be estopped, or hindered from doing it, and if such acts committed by any party, no matter in what capacity acting, becomes a question of lawfulness, neither the party himself, nor anyone representing him, should be allowed to impeach his own deed, note or acts. In this the court below greatly erred. The court should have sustained the plea and abated the suit in its very commencement, . . ." Viewing this case from all angles, we are of the opinion that the court below erred when it refused to give consideration to appellants' contention that appellees were estopped from bringing this suit to deprive appellants of property, using as grounds their own illegal acts. This Court is of the opinion that the plaintiffs, now appellees, ought not to recover; and that they are estopped from bringing this suit, because they were directly or indirectly concerned in the perpetration of the acts complained of, either as lawyers, as witnesses, or as alienators; and, more especially so, when they themselves appealed to the Monthly and Probate Court of Careysburg for partitioning of the property.
For the above reasons, we are of the opinion that the judgment of the court below should be reversed with costs against the appellees.
Reversed.

Johnson v Richards [1954] LRSC 13; 12 LLR 8 (1954) (28 May 1954)

ROSETTA WATTS-JOHNSON, Appellant, v. J. W. A. RICHARDS, Appellee.
APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued March 22, 1954. Decided May 28, 1954. 1. The Commissioner of the Monthly and Probate Court has power to punish for contempt.
2. Contempt of court is a disregard of, or disobedience to a court by conduct or language, in or out of the presence of the court,

which tends to disturb the administration of justice, or tends to impair the respect due the court.

Appellant was found guilty of
contempt by the court below. On appeal to this Court, judgment reversed.
Rosetta Watts-Johnson, appellant, pro se. J. W. 4. Richards,
appellee, pro se.
MR. JUSTICE DAVIS delivered the opinion of the Court.

In or about 193o, one Jacob James of Kakata bargained with
appellant foi the purchase of a piece of land, namely one half a town
lot, for which he paid her sixty dollars. She executed a deed
to him. Subsequently he informed her that he did not like the location of the
land and asked to have his money refunded. Appellant,
who apparently was not in a position to refund the money at the time--
possibly having spent it--suggested another piece of land which
Mr. James rejected, describing it as "back street land." He retained the
deed executed by appellant, but failed to have it registered
or probated. The records further disclose that he subsequently lost the deed
prior to his death. In 19o5, when the estate of Mr.
James was under intestate administration, the appellant was called upon to
testify as to the location of the land described in the
lost deed. Appellant narrated the facts and 'circumstances surrounding the
transaction, and of-

fered
to refund the consideration paid for the property. The Curator of Intestate
Estates reported the matter to the Commissioner of the
Monthly and Probate Court of Montserrado County, who issued a summons for the
appearance of appellant before the said court where,
on June 20, 195o, the following record was transcribed : "The widow of Jacob
James, the intestate decedent, testified that a certain
piece of property purchased from Mrs. Rosetta Johnson formed a part of her
husband's estate; but that no deed for said property was
found among the personal effects of the decedent, and that she has knowledge
from reliable sources that the said deed, although executed
by the grantor, Mrs. Rosetta Watts-Johnson, was never probated or registered
by the grantee. Whereupon the court ordered the clerk
to summon Mrs. Watts-Johnson to testify in order that the estate of the late
Jacob James might be properly administered. Mrs. Watts-Johnson
appeared and deposed as follows: " 'Mrs. Rosetta Watts-Johnson says that Mr.
Jacob James of the Township of Kakata did pay for a
piece of property from her, and, afterward he said that he did not like the
spot. I told him that I did not have any more land, but
that my husband had a piece, and if he liked it I would show it to him for
the necessary exchange. My husband and myself carried
him to the place. When he saw it he did not like it and said it was too far
back. I then said to him that I had no other place, but
would have to return his money back to him, and he agreed for me to return
his money as he did not like that place. I told him he
would have to wait. But I insisted on him to take the place. That very
morning I placed the deed with him. Later in the day he came

back to me and said that inadvertently he had dropped the deed from his coat pocket and could not find it. Then I told him that I had given him the required deed and I had no more

deed. He bought that piece of land from me through Reverend Mends-Cole. Reverend Mends-Cole came to me and said that Mr. James told him that he had lost the deed I gave him. I said to Reverend MendsCole : "What can I do, as I have no more deed, but to give him back his money since he told me that he did not like the place?" I was willing to give him back his money. These are my words to Reverend Mends-Cole. I met him afterward at Momolu Doleh's place, and he told me that he was corning for his money since he still did not like the place. The last time I saw him at Kakata, at Mr. Sammy Smith's shop, he told me that he would be down to Monrovia soon. When I heard from him again, Reverend Mends-Cole told me that he, Mr. James, was very sick, and that Mr. James had sent him to me to see about his money, as he was in need of his money, as he was sick, and he would like to bring the matter to a close. Reverend Mends-Cole told me that he would come back to see about the money, but he was rather busy, and he never came back to me. Afterward this woman came to me and said that she was the wife of the late Mr. Jacob James, and I told her that she would have to bring Reverend Mends-Cole with her as he was the middle person. She said that she couldn't catch up with him, as he was kept busy. Not long ago she came to my place and said to me that her husband was dead. I then advised her to try and see Reverend Mends-Cole for us to meet in some way or other so as to arrange for the money to be turned over to her. Yesterday she came back to me. I told her to wait until my son came, as my husband was out of town at the time. When my son got in and I told him of the transaction, he said that he was perfectly willing to return the money that Jacob James had paid for the piece of property. He further said that, although Jacob James paid only the sum of $6o for the

11 piece of land, yet he was willing to let her have $8o and she promised to go and come back for the answer from us. I asked her what time of the morning they would be there; for in the morning my son has to go to work, and they said that they would return that very day at twelve o'clock. I waited on them and they did not turn up. About two o'clock I was subpoenaed by the sheriff of this court to be at court, which has brought me to court. " 'Q. Can you give me an approximate date when you sold the land to Mr. Jacob James? " 'A. No. I cannot remember right now ; but I can faintly recall that it was in the '30's. " 'Q. And did you say that you issued a deed in his favor? " 'A. Yes, I did. " 'Q. And since then the property has not been rebought by you? " 'A. No. He promised to come down to get his money, but did not come up to his death.' "Following the explanation given by Mrs. Rosetta Watts-Johnson the Monthly and Probate Court of Montserrado County held that, since the transaction between her and the late Mr. Jacob James during his lifetime had reached a conclusion; and since the real property in question was found to be his in fee; and since he never conveyed the lot to any person up to his death, therefore

the said lot belongs to his estate and shall be administered accordingly. She is therefore authorized to treat with the Curator of Intestate Estates and give him such facts as will enable him to speedily administer the estate. And it is so ordered. Matter suspended."

Pursuant to the above-quoted order, a new deed was submitted to appellant for execution in favor of Jacob James who had then been dead for over twenty years. Appellant refused to sign this deed, and again offered to refund

the amount paid to her by the late Mr. James, for the stated reasons that: (1) although the deed previously signed by her and given to Mr. James before his death was only for half a lot, the deed presented to her covered a whole lot; (2) said deed was issued in the name of Jacob James who had been dead for a period of over twenty years; and (3) upon locating the records and papers of her late husband she had discovered that the property in question was that of her children, and upon consultation with her lawyer she had been advised by him that she could not sell the said piece of property and therefore was offering to refund Mr. James' money. Apparently the Curator of Intestate Estates was infuriated by appellant's position. In a comprehensive report to the Commissioner of Probate, the Curator of Intestate Estates charged that appellant had disobeyed the orders of the Monthly and Probate Court of Montserrado County. Thereupon a summons was issued requiring appellant to appear and show cause why she should not be held to answer for contempt of court. Appellant appeared and made the same explanation as above, which evidently did not meet the approbation of the Commissioner of Probate, who ruled as follows: "Under the circumstances we have no alternative but to conclude a clear act of disobedience to this court's order. We therefore rule that the defendant shall immediately comply with the said order and pay the entire cost of these proceedings; and it is so ordered." It is from this ruling of the Commissioner of Probate that appellant has fled to this Court for review. We are thus called upon to determine whether the court below is vested with authority to punish for contempt of court, and whether the facts and circumstances in the record justify the ruling adjudging appellant guilty of such contempt. Contempt of court, in a general sense, may be defined

as disregard of or disobedience to a court or a judge acting in a judicial capacity by conduct or language which tends to disturb the administration of justice or to impair the respect due such court or judge. The Monthly and Probate Court does have authority to punish for contempt. (Rev. Stat. sec. 1269.) Now we must determine whether the facts and circumstances in the case

justified the use of this authority. The records show that the first reason why appellant refused to sign the deed handed to her was that it was drawn for a whole lot instead of the half lot conveyed by the lost deed. No sane person could interpret her refusal on this ground as disrespect. She acted wisely and correctly in seeing that no deception or fraud was practiced upon her. Since she had not bargained with Mr. James to sell him a whole lot, but rather a half lot, there was no justice in trying to compel her to sign a deed for a whole lot. Her second reason for refusing to execute the deed handed to her was that it was in the name of Jacob James who had been dead for more than twenty years. It is strange that the Commissioner of Probate failed to perceive the cogency of appellant's contention in this respect, but rather considered it disrespectful. Her third and last reason was that the land in question was the property of her children, and not her own; that her lawyer had advised her that she could not sell it; and that consequently she was again offering to return the consideration paid her by the late Mr. James for the land. In our opinion the least that the Commissioner of Probate could have done after hearing the appellant's reasons for refusing to sign the deed presented by the Curator of Intestate Estates was to have honorably discharged her from further answering the contempt proceedings. We do not hesitate to pronounce the actions of the Commissioner of Probate erroneous and unwarranted. The judgment appealed from is therefore reversed, and the ap-

pellant is duly discharged from further answering the contempt proceedings; costs disallowed; and it is hereby so ordered. Reversed.

McGill v Monrovia City Corp. et al [1979] LRSC 32; 28 LLR 174 (1979) (20 December 1979)

ELIAS D. McGILL et al., Informants, *v.* THE MAGISTERIAL COURT, **Monrovia City Corporation**, and ALFRED YEAGON, Respondents.

INFORMATION PROCEEDINGS.

Heard: October 10, 1979. Decided: December 20, 1979.

1. Unlike that of the justice of the peace, the territorial jurisdiction of a stipendiary magistrate court is delimited in narrower confines outside which he cannot legally function.
2. A magistrate has no jurisdiction over property outside of his magisterial area, but where there is no magistrate the in location where the property is situated, the case shall be tried by the magistrate nearest the location of the property.
3. Two persons acting alone, independent of the many other owners, cannot legally transfer title in any portion of the **land** owned by them as tenants in common.
4. A writ of summons is required to state, among other things, the names of the parties to the suit and their addresses and to state the time within which the defendant is required to appear. Failing these, the parties have not been properly summoned and a default judgment based on such defective writ of summons is void.
5. **Land** grant from the Republic of Liberia to the tribal chief and elders and their heirs forever is owned by all the members of the tribe so described as tenants in common and cannot be alienated through sale without the consent of the Government.
6. Summary proceedings to recover real property in cancellation proceedings are not ordinarily cognate action; but when both actions cover the same property and have the same parties, a final judgment in one may determine the other. So when one of such actions is pending before the Supreme Court on notice to all parties, he who proceeds with the disposition of the other case in a trial court is guilty of contempt.
7. A party who procures the writ for the enforcement of a void judgment is liable for damages sustained as a consequence of the enforcement of such void judgment.
8. A party injured by the enforcement of a void judgment in ejectment has the responsibility to mitigate damages by securing those properties, which under the circumstances, could be secured.

The Magisterial Court at the Temple of Justice, Monrovia, issued a writ of summons in an action of summary ejectment, which was served on co-informant Elias D. McGill to have him and other tenants ousted and evicted from property situated in Gewron Town, Mount Barclay, the Settlement of Johnsonville, the same being a portion of 200 acres of **land** granted to the late Chief Darwori for the inhabitants of the said Gewron Town as tenants-in-common forever pursuant to a 1905 Aborigine Grant Deed executed by the Republic of Liberia. The plaintiff in the lower court claimed that he had purchased five (5) acres of the 200 acres from some members of the tribe. The writ neither named an hour for the appearance of the defendant nor was any subsequent notice of assignment served on him; however, judgment by default was entered for plaintiff. To remedy this irregularity, informant filed a petition in summary proceeding against the trial magistrate in the Sixth Judicial Circuit for Montserrado County during its March Term, A. D. 1979. In the petition for summary proceedings, notice was given to both the trial court and respondents of the pendency of a cancellation suit in that court between the same parties to the summary ejectment case, and relating to the same subject matter. Yet, a ruling dismissing the summary proceedings was rendered by the trial judge. The petitioner filed a bill of information before the Supreme Court and while this information was pending, the magistrate proceeded to enforce his judgment, based on the insistence of the plaintiff. The judgment of the magistrate, which was affirmed by the circuit court, was reversed and co-respondent/plaintiff was adjudged *guilty* of contempt.

McDonald J. Krakue appeared for informants. *Stephen B. Dunbar, Sr.* appeared for respondents.

MR. JUSTICE TULAY delivered the opinion of the Court.

On the 19th of February, 1979, a writ of summons was issued by the Magistrate Court of Monrovia and served on Elias D. McGill, informant herein, and others to appear before the issuing court on the 20th of the same month and answer in an action of summary ejectment. What appears peculiar about this writ is that it did not give the place of residence of the parties and, although the informant and others were ordered by the writ to appear before court on the 20th of February, the writ named no hour at which to appear.

We have no records of the trial, the court being a court of no record, but it is clear that the principal informant herein, as defendant before the magisterial court, was denied judgment as evidenced by his petition in the summary proceedings filed against the trial magistrate before His Honour Jesse Banks, Jr., then presiding over the Sixth Judicial Circuit Court for Montserrado County for the March Term 1979. The filing date of the petition is March 21, 1979. As this petition plays a pertinent role in the determination of this case we incorporate it hereunder - leaving the caption out, as follows:

"PETITIONER'S PETITION:

AND NOW COMES BEFORE THIS Honourable Court E. D. McGill of Mount Barclay, Johnsonville, Montserrado County, Liberia, Petitioner, in the above entitled cause and most respectfully showeth unto Your Honour the following legal and factual reasons, to wit:

1. That on the 19th day of February, A.D. 1979, the respondent magistrate issued out of his court a writ of summons against petitioner in summary ejectment to appear before him on the 20th day of February, A. D. 1979, without stating therein at what hour of the day petitioner should appear. Petitioner requests this Honourable Court to take judicial notice of photocopy of the writ of summons proffered herein and marked exhibit 'I' to form a cogent part of this petition.

2. That notwithstanding this fact, petitioner neither received any written assignment, nor did he know or hear any thing about the hearing of the case until, to petitioner's greatest surprise and disgust, petitioner received a writ of execution, which was executed and he was forcibly ousted from his premises on the 28th day of February, A. D. 1979. Petitioner's premises were locked up by court officers sent to menace petitioner upon orders of the respondent magistrate, contrary to law.

3. Petitioner further complaining of and against the respondent magistrate says that prior to the illegal judg-ment by default entered against him, petitioner had already filed before this Honourable Court on the 2nd day of March, A. D. 1979, as one of tenants-in-common to the subject property, as well as one of surviving heirs of the late Chief Dawori of Gesoon Town of

the Settlement of Johnsonville, cancellation proceedings against one Alfred Yeagon, the plaintiff before the magistrate court. The information about the filing of these cancellation proceedings was intimated to Magistrate Tecquah by one of the counsels for petitioner, but the respondent magistrate paid no heed. Petitioner hereby gives notice to this Honourable Court that at the trial he will produce evidence to substantiate this fact, and better still, requests this Honourable Court to take judicial notice of its own records.

WHEREFORE and in view of the foregoing, petitioner requests Your Honour to send a stay order to the respondent magistrate and that he be made to file returns on a day to be named by this Honourable Court to show cause, if any, why petitioner's petition should not be granted for committing reversible errors and irregularities to be corrected and to grant unto petitioner such further and other relief as the ends of justice demands.
Respectfully submitted
E. D. McGill of Mount Barclay
Johnsonville, Montserrado County,
Liberia, Petitioner, by and through
his counsel:"
Respondents, Yeagon and the magistrate court of Monrovia, must have filed their returns, but it formed no part of the records certified to this court, and nothing developed up to and including September 3, 1979. On September 4, His Honour Johnnie N. Lewis, then holding and presiding over the Sixth Judicial Circuit Court for the June 1979 Term, called the case for the court's ruling in the absence of petitioner. We have no showing that a notice of assignment was served on the petitioner and returns made thereto.
Despite the facts portrayed in the petition hereinabove, the learned judge ruled as given below:

"THE CASE: E. D. McGILL, PETITIONER, VERSUS G. C. N. TECQUAH, RESPONDENT, SUMMARY PROCEEDINGS, GROWING OUT OF THE CASE ALFRED YEAGEON, ET AL., PLAINTIFFS, VERSUS E. D. McGILL, DEFENDANT: ACTION OF SUMMARY EJECTMENT, CALLED FOR COURT'S RULING.

REPRESENTATION: The respondents are represented by Counsellor Stephen B. Dunbar, Sr.

THE COURT: Having gone over the petition and the returns as filed, the court finds that the procedure adopted by the respondent magistrate was in keeping with the law applicable. The court, therefore, hereby dismisses the peti-tion, and orders the clerk of this court to inform the respondent magistrate to resume jurisdiction and to enforce his judgment out of which these proceedings grew. So ordered. Counsellor S. Edward Carlor will take the ruling for the petitioner. SO ORDERED.
Given under my hand and Seal in
Court, this 4th day of September,
A. D. 1979.
Johnnie N. Lewis
JUDGE PRESIDING."
It is the execution of the orders by this ruling sent to the trial magistrate which led to the filing of the information now under review.

"THE INFORMATION

AND NOW COMES before this Honourable Court Elias D. McGill, informant, in the above entitled cause and most respectfully showeth unto Your Honour, as follows, to wit:

1. That as far back as the year 1905, Aborigine Grant Deed was executed by the Republic of Liberia to the late Chief Darwori of the town of Gewron for its inhabitants of Johnsonville, Montserrado County, Republic of Liberia, comprising of 200 acres of **land** around each town for agricultural purposes and for the exclusive benefit of their heirs, as tenants-in-common forever, as will more fully appear from photo copy of said deed, herein made profert, marked exhibit 'A' to form cogent part of this information. Informant is one of the surviving heirs and elders.

2. That as trustees for the tribe they are prohibited from passing title in fee to any person or persons except with approval and consent of the Government of Liberia, but that notwithstanding this fact, quite recently it came to their knowledge that co-respondent Alfred Yeagon had clandes-tinely procured and surreptitiously carved out five (5) acres of the said 200 acres of communal holdings entrusted to their care and formulated a purported warranty deed in his favour through deceit and fraud by forging the names of Money Sweet, Jo-Where and one John Madison to this instrument, which these Elders knew nothing about. These facts were brought to light when co-respondent Yeagon instituted summary ejectment against informant on the 19th day of February, A. D. 1979. The writ for the summary ejectment, as well as the warranty deed are herein proferted and marked exhibits "B" and "C". Informant in turn imme-diately instituted cancellation proceedings in the Civil Law Court for the Sixth Judicial Circuit Court, Montserrado County, against co-respondent Yeagon, which case is now pending on appeal to the Honourable Supreme Court of Liberia at its October Term ensuing, as per photocopy of the attached notice of the completion of the appeal herein made profert and marked exhibit 'D.'

3. That because of an illegal judgment by default rendered against informant on the 19th day of February, A. D. 1979, he fled to the chambers of Judge Banks, presiding over the March Term, A. D. 1979, of the Civil Law Court, filed summary proceedings against Stipendiary Magistrate G. C. N. Tecquah and this took the case out of the jurisdiction of Magistrate Tecquah's Court. Quite surprisingly, the magis-terial court assumed jurisdiction over the same subject matter and person and ordered the issuance of a writ of execution and a writ of possession against informants, which illegal acts of the respondent has caused much damage to innocent parties, one of which is one LNG Officer Captain Amos J. Swee whose personal effects were ruthlessly thrown into the open weather during the night of Friday the 21st instant under heavy rains. The loss sus-tained is in the amount of $7,576.77 as per attached photo- copy of itemized list of personal effects attached to this information and marked exhibit 'E' to form part thereof.

4. Informant says further that the respondents acted beyond the limits of the territorial jurisdiction of the Magisterial Court, Commonwealth District of Monrovia. That is to say, informant and Co-respondent Alfred Yeagon live in the Settlement of Johnsonville, and so either the magisterial court of Careysburg or that of Paynesward would have been proper to have instituted such an action against a party, as territorial jurisdiction is given by law and cannot be conferred by consent of the parties. Hence, the writ of execution and the writ of possession

issued out of the magistrate court, City Corporation of Monrovia, on the 20th day of September, A. D. 1979, is illegal as said issuing court had no jurisdiction over the subject matter and person of informants. Informant asks this Honourable Court to take judicial notice of the writs of execution and possession, photocopies of which are hereto attached and marked exhibits 'F' & 'G,' respectively, to form part of this information.

WHEREFORE, informant prays that the respondents be cited to appear before this Honourable Court to show cause, if indeed they can, why they should not be attached in contempt of court for interfering with a case the subject-matter of which is now pending before the Honourable Supreme Court on appeal, especially where the magisterial court at which summary ejectment was instituted lacked territorial jurisdiction over the subject matter and person of the informant. Informant also prays that Your Honour will grant unto informant such other and further relief as unto Your Honour seems just.

Respectfully submitted

Elias D. McGill of Mount Barclay,

Johnsonville, Montserrado County,

By and thru his Counsels:

THE COLE & KRAKUE LAW FIRM:"
To this information respondents tendered a nine-count returns, which we group as follows:

(a) In counts one, two, three and four respondents sought to extricate themselves from liability in information for contempt before this Court as they had not disobeyed any order of this Court touching the summary ejectment suit below;

(b) In count six, respondents claimed that the execution of the title deed, on the strength of which the summary ejectment suit was instituted, was not tainted with frauds;

(c) In counts seven and eight, respondents submitted that in the execution of the court's order and the enforcement of its judgment the co-respondent magistrate acted within the scope of his authority as he had jurisdiction over the tract of **land** in Johnsonville, the subject of the summary ejectment suit;

(d) In count five, respondents contended that cancellation proceeding and summary ejectment were not cognate actions. Therefore, the notice given the trial magistrate of the pendency of the cancellation proceeding on appeal before this Court could not, and did not serve as a stay order in the summary ejectment suit;

(e) In count nine, respondents contended that informant cannot recover the value of his damaged or destroyed property since he was physically present when his personal effects and household goods were put out. It was his duty to secure them.

Alfred Yeagon's title deed was executed on the 3rd day of July, A. D. 1978, by one Money Sweet and another whose signature on said deed could not be deciphered. His grantors were some of the heirs of Chief Darwori of Gewdo and his people to whom the Republic of Liberia had granted two hundred acres of **land** to be held in common by them and their heirs with the saving clause, "the above tract of **land** cannot be sold, transferred or alienated without consent of the Government of Liberia." Mr. Alfred Yeagon does not deny that his grantors were some of the heirs of Chief Dawori of Gewdo and his people, nor did he deny that the five acres of **land** sold him in March 1978 was portion of the two hundred acres granted Chief Dawori of Gewdo and his people on the 27th of June, A. D. 1935. If Mr. Money Sweet and the other grantor of Alfred Yeagon's title deed were some of the heirs of Chief Dawori of Gewdo and co-tenants in common of the two hundred acres and if the five acres of **land** sold to Alfred Yeagon was part and parcel of that two hundred acres granted Chief Darwori of Gewron and his people, and these facts have not been refuted, then and in that case his title does not stand the test. The heirs of Chief Darwori of Gewron and his people cannot, without the consent of the Republic of Liberia, alienate any portion of the two hundred acres.

Even if Alfred Yeagon's grantors were vested with authority to part with, by sale, any part of the two hundred acres, the disability still exists in that his grantors were only two of the many heirs and joint owners of the two hundred acres. They alone, independent of the many other heirs and joint owners of the two hundred acres, could not legally transfer title in any portion of the **land** jointly owned by them.

The law requires the writ of summons to state, among other things, the names of the parties to the suit and their addresses and to state the time within which the defendant is required to appear. Civil Procedure Law, Rev. Code 1:3.33. In the summary ejectment case, out of which this information grew, the writ of summons did not show the addresses of the parties to the suit or state the time within which the defendants were required to appear. Because co-defendant McGill, not having received suffi-cient notice, failed to appear, judgment by default was entered against him. In the absence of sufficient notice, a judgment by default is void.

Additionally, under our Civil Procedure Law, as it relates to actions involving real property, every action to recover an estate must be tried in the county in which the property lies. Civil Procedure Law, Rev. Code 1:4.2. We quote in part another provision of the law:

"'The President is empowered, whenever in his discretion he shall deem it necessary and expedient, to designate magis-terial areas, the number and extent of which shall be such as he may decide. . .' Judiciary Law, 1956 Code18:90. It is also provided in the law, that: 'Justices of the peace shall have jurisdiction within the county for which they were appointed.' *Ibid.*, 18:556."

Unlike that of the justice of the peace, the territorial jurisdiction of a stipendiary magistrate court is delimited in narrower confines outside which he cannot legally function. His authority is limited to his designated magisterial area. A magistrate of Monrovia City Court acts without authority when he entertains cases outside his magisterial area as he did in the summary ejectment case below, Johnsonville being outside his domain.

It was argued that co-respondent Alfred Yeagon could not have carried his case to Careysburg or Paynesward because the property is in Johnsonville. This argument does not support his position. If he did not carry the case to Careysburg or Paynes-ward, which places are adjacent to Johnsonville, should be allowed to carry it to Monrovia which has the City of Paynes-ward lying between it and Johnsonville Settlement? We emphatically say no.

It was irregular for Alfred Yeagon to have brought his summary ejectment suit from Johnsonville to Monrovia because justices of the peace have jurisdiction to try summary proceedings to obtain possession of real property without the aid of jury, if the damages claimed do not exceed three hundred dollars. Judiciary Law, Rev. Code 18:556(c). In Yeagon's complaint he asked for no damages. Why did he go outside his own Settlement, except that he was bent on creating mischief?

The writ of summons in the summary ejectment case named no hour at which to appear nor was any subsequent notice of assignment served on informant, and yet judgment by default was entered for Co-respondent Yeagon. To remedy this irregularity, informant filed a petition in summary proceeding against the trial magistrate. The petition was before His Honour Alfred Flomo who presided over the Sixth Judicial Circuit for Montserrado County for March Term, A. D. 1979. In the petition for summary proceedings, notice was given both the trial court and respondents of the pendency of the cancellation suit between the same parties to the summary ejectment case and about the same subject matter. Yet a ruling, released upon no record, dismissing the summary proceedings, was given by His Honour Johnnie N. Lewis, who presided over the same court for June 1979 Term.
Respondents' counsel argued that respondents cannot be made to answer in contempt proceedings before this Court as they had not disobeyed any order of this Court or done any act which tended to belittle this Court.

Respondents' counsel argued that even though they knew of the pendency of the cancellation proceedings on appeal before this Court, the insistence on the summary ejectment suit did not constitute contempt because summary ejectment is not cognate to cancellation proceedings for even though the parties and subject matter in the two cases are the same yet the actions are not the same. This argument, at first glance, would seem to convince any one hearing it but let us look at the converse. In the summary ejectment case, plaintiff, now co-respondent herein, sought to evict informant herein from a portion of a five acre plot of **land** lying and situated at Mount Barclay within the Johnson-ville Settlement or Township. After the institution of the summary ejectment suit, informant learned that the five acres of **land** claimed by co-respondent was part and parcel of the two hundred acres of **land** inherited by him and others from their ancestors to whom the Republic of Liberia had granted the same for their communal use but any fraction of which they could not, without consent of this Republic, sell to a third party but which five acre plot of **land** had been unauthorizedly sold to Co-respondent Yeagon by a few of the co-heirs to the two hundred acres. He, therefore, moved in cancellation proceeding against co-respondent's deed. Trial in that proceeding was had and from the trial court's decree to cancel co-respondent's deed he appealed bringing the case before this Court. The cancellation proceeding was filed, tried, decided and moved on appeal to this Court as the informant's petition in the lower court for summary investigation showed, before that trial court dismissed the petition in Septem-ber last. During the argument before us, the Bench asked counsel for respondents what would happen to the summary ejectment suit if the decree entered against his client in the cancellation proceeding was affirmed by this Court. He answered that in that case the summary ejectment suit will crumble. His answer was truly correct but little did he realize that the answer he gave was the crux of this information for contempt.
The parties to the two suits and the subject matter involved are the same. It is true that ordinarily cancellation and summary ejectment are two different actions, but, in the instant cases, the

cancellation proceedings were instituted because of the summary ejectment action, which was still pending when the cancellation proceedings were heard, determined and brought before this Court by appeal. Notice of the pendency of an appeal before this Court was given in informants' petition to the lower court. Both parties knew that a confirmation of the decree in the cancellation proceedings by this Court would destroy the summary ejectment suit. For respondents to have pressed for the enforcement of a void judgment in the summary ejectment suit was an attempt to interfere with the appeal before this Court so that its future decision, if adverse to respondents' interest, could be thwarted. *In re R. F. D. Smallwood,* 8 LLR3 (1942); *In re C. Abayomi Cassell,* 14 LLR 392 (1961). The fact that respondents' action is veiled under the term "the two actions are not the same" and that the act was done without the presence of this Court is no defense for contempt. *Gibson v. Wilson et al.[1943] LRSC 10;* , 8 LLR 165 (1943); *In re R. F. D. Smallwood,* 8 LLR (1942); *In re Gabriel Dennis[1947] LRSC 17;* , 9 LLR 389 (1947); *In Re C. Abayomi Cassell,* 14 LLR 392 (1961).

Co-respondent Alfred Yeagon is therefore liable in this in-formation for contempt of this court. Having passed upon co-respondent Yeagon's guilt for contempt, we now take up his contention that he is not responsible for the damaged personal effects and household goods of informant and the other occupants of the house from which they were evicted. His argument here is of two-fold: the first argument is that the things were put out, not by his order, but by order of the trial magistrates. A good argument, indeed, except that without his pressurizing the court the magistrate would not have acted.

The entry of the void judgment in the summary ejectment suit, the irregular and unwarranted dismissal of petitioner's petition in the summary investigation, mandating the magisterial court to enforce its void judgment, the issuance and service of the writ of possession, the eviction of the informant from his house and the damage to his properties are all consequences which followed without sufficient intervening cause. Co-respondent Alfred Yeagon's wrong act, the institution of the summary ejectment action, claimed no damages before the muni-cipal court of Monrovia which had no territorial jurisdiction over both the parties to the suit and the subject matter. That action, each in itself, and all in themselves, are the proximate cause of the telling damages inflicted on informant herein, and Alfred Yeagon being the original wrongdoer cannot, therefore, escape liability. *Yes Taxi Company v. Pratt,* [1978] LRSC 23; 27 LLR 45 (1978).

Co-respondent Yeagon's second argument, in support of his disclaimer of liability for damages, is that informant was physi-cally present at the time and place when his things were put out of the house, and that he should have secured them instead of leaving them exposed to the inclement weather. There seemed to be some reasoning in this argument but we cannot wholly be convinced by it. Much that we hold informant liable for contributory negligence, for he and his people should have secured those articles which could have been secured under the circumstances; yet they could not have been expected to secure the articles since the things were put out, on purpose, late in the evening and in torrential rains. Informant and the other occupants not having anywhere else to carry their goods, in the darkness and in the rains, were physically unable to save them. Truly, the enforcement of the writ of possession inflicted telling damage on informant and the occupants of his house.

We therefore hold that co-respondent Alfred Yeagon is guilty of contempt of this court and he is hereby fined in the sum of $200.00 and ruled to pay the value of all damaged goods of informant and the other occupants in the amount of $4,894.63 as shown below:

1. One king size formica bed with imported mattress and spring value.....$750.00/but damaged by rain.
2. One formica double bed with no imported mattress value,.....$350.00/but damaged by rain.
3. One zinc bed with imported mattress and spring or/iron bed valued.....$300.00/but damaged by rain.
4. One spring mattress/small/cost.....$75.00/but damaged by rain.
5. One radio with tape/Navico/value.....$290.00/but damaged by rain.
6. Three formica tables valued.....$125.00/but damaged by rain.
7. One new oversea cap value, ...$6.00/but cant' be seen.
8. One new camouflage hat valued, ...$12.98 (can't be seen) ...

9. One silver belt with (sword).....$75.00

10. 5 Higher Heights suits/valued .....$45.00 each total.....$225.00

11. 110 pair trousers valued .....$210.00/but some can't be seen.
12. Underclothes for gent/6 singlet at.....$1.50 each total valued..... $9.00/but all can't be seen.

13. 15 shorts value $3.00 each, total.....$45.00/but all can't be seen.

14. Three pairs of dressing shoes..... 2/$45.00

each one $35.00, total.....$125.00/but can't be seen.

15. One leather slipper, valued $9.00/but

damaged by rain.

16. One wrist watch valued.....$130.00/but can't be found.

17. 4 sports leather belts at $8.50 each, total ...$34.00/but all can't be found.

18. 9 lady suits/both mother and daughter/daughter 3, $259.00/but some can't be located.

19. 5 blouses for mother/3 blouses for daughter.....$48.00

20. Designed suit valued.....$48.00/ but

damaged by rain.

21. Two bags valued.....$19.00/but

damaged by rain.

22. Three dressing sandals, $24.00 for 1 two for, $18.00, total valued.....$60.00/but damaged by rain and all can't be seen).

23. Two daily slippers at $2.50 each, total.....$5.00/but

one can't be found.

24. 7 pillows at $5.00 each, total..... $35.00/but

damaged by rain.

25. Two blankets at $9.50 each, total..... $19.00/but

damaged by rain.

26. 6 pieces children blouses valued at $3.50 each and (6) six pieces, total .....$21.00/but some damaged by rain.

27. 3 pair sneakers at $7.50 each..... $22.00 total

28. 4 pair children shoes valued..... $56.00

29. Items for babies/37 miscellaneous $275.00

30. 1 set of first grade books.....$18.00

31. Some miscellaneous (can't remember value)
....$450.00

32. 4 suitcases/2 zinc kind/two values all

met open/contents value.....$200.00

33. 13 albums/6 African at $72.00 & European albums

at $6.60 each.....$117.00

34. 25 small records valued at $2.00 each.....$50.00

35. Various reading books/cost.....$150.00

36. 1 dictionary.....$15.00

37. Bibles 5 in number/different kinds.....$9.00

38. Foodstuff damaged.....$45.00

39. Cash $76.15.....$76.15

40. 6 yards of floor mat.....$45.00

41. 1 black bag for traveling valued.....$ 9.50
Grand Total:.....$4,894.63
Those articles for which we consider values cannot easily be established are excluded. The said amount, mentioned herein-above, is to be paid through the Sixth Judicial Circuit Court of Montserrado County.

Having declared the judgment entered in the summary ejectment suit void, the writ of possession issued and served in its execution, evicting informant out of his house, is also void. He must therefore be made to reenter his house.
Since the co-respondent magistrate issued no writ of posses-sion on his void judgment until he was ordered by the circuit judge to enforce said void judgment, we have refrained from punishing him, at least, for this time.
The judge of the lower court shall see that the orders herein are executed forthwith and shall make returns to the Justice in Chambers within thirty days from the date of the judgment in the case.
The Clerk of this Court is ordered to send a mandate to the judge of the Sixth Judicial Circuit commanding him to resume jurisdiction over this cause and to enforce this judgment. And it is hereby so ordered.

Information granted; judgment reversed; co-respondent held in contempt.

Karneh v Morris et al [1982] LRSC 71; 30 LLR 388 (1982) (8 July 1982)

MUSA KARNEH, Informant, *v.* **HIS HONOUR BOIMA K. MORRIS**, Assigned Circuit Judge presiding over the Eighth Judicial Circuit, Nimba County, November Term, A. D. 1979, and MAMADEE KABA et al., Respondents.

INFORMATION PROCEEDINGS FROM THE CIRCUIT COURT FOR THE EIGHT JUDICIAL CIRCUIT, NIMBA COUNTY.

Heard: June 23, 1982. Decided: July 8, 1982.

1. No single Justice of the Supreme Court can legally issue any restraining writ to adversely affect any decision of the Supreme Court *en banc*.

2. Where a matter is pending before the Supreme Court or where an issue or a case has been disposed of partly, or entirely by this Court, an act of a single Justice which interferes with that function of the Full Bench, is violative of the limited function of a single Justice.

During the August Term of the Eight Judicial Circuit Court, Nimba County, His Honour Daniel Draper, presiding by assignment, ruled in a summary investigation in favor of Musa Kanneh, informant in these proceedings. In his ruling, Judge Draper held that Informant should have priority to the disputed property and accordingly his two (2) town lots for which his tribal certificate called, should first be surveyed and thereafter the balance be surveyed for the other contending parties. No exceptions were taken from this ruling and no appeal was announced by any of the parties. The ruling of Judge Draper was subsequently revoked by Judge Roderick Lewis and the survey stopped. Although exceptions were noted and an appeal announced, the case could not be heard on its merits as the appeal was dismissed on grounds of a defective appeal bond. Hence, the Eight Judicial Circuit Court was mandated to resume jurisdiction over the case and to enforce its judgment.

Attempts at the execution of this mandate set the stage for a series of bills of information culminating into the instant one, all of which present the singular issue as to which of the rulings of the Eight Judicial Circuit Court should be enforced: the ruling of Judge Draper to which no exceptions were taken and no appeal announced, or the ruling of Judge Roderick Lewis, the appeal from which was dismissed by the Supreme Court.

The Supreme Court held that the ruling of Judge Roderick Lewis revoking the ruling of Judge Draper with whom he held concurrent jurisdiction was *void ab initio* because he could not legally do so, and accordingly, mandated the Eight Judicial Circuit Court to resume jurisdiction and enforce the mandate of Judge Draper.

The execution of the mandate of the Supreme Court was stopped, however, by the ruling of Justice Henries, then Justice in Chambers, on a bill of information filed subsequent to the mandate of the Supreme Court. In his ruling, Justice Henries held that the amount ordered by Judge Draper to be paid by Informant Musa Karneh had not been paid; hence, Musa Karneh was

not entitled to benefit from Judge Draper's ruling. It is from this ruling of Justice Henries that the present information grew.

The Supreme Court, upon review of the records, discovered that the amounts ordered by Judge Draper had been paid in full. Holding that no single Justice of the Supreme Court can legally issue any restraining writ to adversely affect any decision of the court *en banc*, vacated the orders of Justice Henries and mandated the Eight Judicial Circuit Court to resume jurisdiction over the case and place Musa Karneh in effective possession of the property as ruled by Judge Draper.

M. Fahnbulleh Jones appeared for informant, while *P. Amos George* appeared for respondents.

MR. AD HOC JUSTICE KOROMA delivered the opinion of the Court

This bill of information grows out of a fifteen-year old **land** dispute between and among members of what seems to be one family in Sanniquellie, Nimba County. Because of the circumstances and causes attending this case, which have prevented the final settlement of the controversy since 1967, when the ruling terminating it was given and upheld by this Court in December, 1975, in a bill of information proceedings, it becomes judicially necessary to give the chronology of this case for the benefit of this opinion. We set the pace for this task by reiterating the statutes and PRC Decree #3 which specifies that the decision of the Supreme Court is absolute and final; that a party against whom a final judgment is rendered, and who fails to announce the taking of an appeal at the time of the rendition of the judgment and to take the necessary steps to complete the appeal during the time allowed by statute, cannot thereafter seek a review of the matter by the appellate court; and that the appellate court cannot legally adjudicate any such matter not brought to it on appeal. PRC Decree #3 ,establishing the People's Supreme Tribunal, now the People's Supreme Court; and Civil Procedure Law, Rev. Code 1: 51.2.

Samuka Karneh and Varfeh Karneh were two brothers who lived in Sanniquellie, Nimba County, and who died intestate leaving their widows, children and one brother, Mamadee Kaba, one of the informants in several bills of information proceedings decided by this Court. Mamadee Kaba also died thereafter. The two dead brothers are said to have possessed two parcels of **land** under the strength of a tribal certificate and on which parcels of **land** they are said to have built two mud houses. Musa Karneh, the informant in these proceedings, claimed ownership to the said parcel of **land** on the strength of a tribal certificate.

This dispute over the parcel of **land** found its way to the courts at the genesis of what seems to have mushroomed into an endless litigation, when, in 1967, Musa Karneh petitioned the probate division of the Eight Judicial Circuit Court.

The Court observed that there were three contending parties claiming ownership to the parcel of **land**, namely: Musa Karneh, the petitioner; Mamadee Kaba, the surviving brother of the two deceased brothers and the two widows, Madame Massalam Kromah; and Mankro Fofana. The presiding judge organized a Committee to investigate into how long the claimants had squatted on the parcel of **land** and as to when their respective certificates under which they claimed were issued. The Committee, in its report, observed that Musa Karneh, the petitioner, was in possession of the oldest certificate issued as far back as 1950. One of the respondents, Mamadee Kaba, was in possession of a certificate issued in 1963 and that he had erected a house on the disputed **land**. The Committee also observed that the widows of the two deceased brothers, Madame Massalam Kromah and Mankro Fofana, were occupying two houses built and left by their deceased husbands on the disputed **land**, but there was no certificate available to establish their documentary title. Based upon the report of the committee, Judge Draper ruled that petitioner Musa Karneh, being holder of the older certificate for the disputed **land**, should have priority. In this regard, he ordered that the two town lots for which his certificate called, should first be surveyed and thereafter one lot for each of the other contending parties should be surveyed from any unoccupied **land** in the area. Judge Draper also ordered, that the said petitioner, Musa Karneh, should pay to the two widows of the deceased brothers through the office of the sheriff of Nimba County the amount of $1,600.00 within 30 days. Of this amount, $900.00 was to be paid to Madam Massalam Kromah, widow of Samulka Karneh and $700.00 to Madam Mankro Fofana, widow of Varfeh Karneh for the two mud houses erected on the disputed parcel of **land** by their late husbands.

His Honour Judge Draper went further to rule that surveyor Dagadu, who was ordered to survey the **land** for the petitioner and the other two parties, should make his returns to the chambers of the Eight Judicial Circuit Court upon the execution of the court's order. He concluded his ruling by saying that if Musa Karneh, the petitioner failed to pay the $900.00 and $700.00 to Madame Kromah and Fofana, respectively, then in that case the two widows should retain the spot, and have same surveyed fractionally to cover the two lots of Informant Musa Karneh. To this ruling of Judge Draper, no exceptions were taken or an appeal announced therefrom by any of the parties. Under the doctrine of r*es judicata*, it is held that a "ruling which puts finality to a controversy is a final judgment of the court and, if not appealed from, is conclusive against the parties and the doctrine of r*es judicata* will apply where any of the parties attempts to resurrect the issue. A final judgment or decree on the merits by a court of competent jurisdiction is conclusive of rights of the parties and/or their respective privies in all later suits on points and matters determined in former suit." BLACK LAW DICTIONARY (4th ed).

Appeal is a matter of right in our jurisdiction and every person against whom any final judgment is rendered shall have the right to appeal from the judgment except that of the Supreme Court. The decision of the Supreme Court shall be absolute and final; Civil Procedure Law, Rev. Code 1: 51.2. Unless an appeal is announced by a party and perfected in keeping with the appeal statute, the appellate court is without jurisdiction to review any such matter. It would be an untold trouble and endless confusion in a constituted government for any appellate court or any agency of government not clothed with judicial function to attempt to review or caused to be reviewed, a litigated case from which no appeal was taken to the proper judicial forum and determine the judgement not appealed from.

Judge Draper's ruling on the estate matter as given on the 21st day of September 1967, from which no appeal was taken, was conclusive against the parties and puts finality to the issues of ownership of the subject property for all intents and purposes no matter how erroneous it might have been. Any attempt by this Court of final resort to review the final judgment of the trial court from which no appeal was announced and taken by any of the contending parties will open a floodgate for confusion into the judicial system of the country. Thus, the estate matter ought to have ended then.

This case, however, found its way back into the court room, when the survey ordered by Judge Draper's ruling was being conducted by Surveyor C. K. Dagadu. Musa Karneh, the successful party in the estate matter ruled upon by Judge Draper, not being satisfied with the manner in which the survey was being conducted, instituted a bill of information proceeding against the Surveyor Dagadu and Deputy Sheriff Sammy Gio. His Honour Roderick Lewis, presiding over the August 1968 Term of the Eighth Judicial Circuit Court, heard and disposed of this bill of information confirming the ruling of Judge Draper. We quote the relevant portions of this ruling for the benefit of this opinion.

"... From an inspection of the copy of a receipt, this court observes that on the 20th day of October, 1967 petitioner Musa Karneh paid to the Sheriff John Sawyer of Nimba County the sum of $500.00 as part payment in connection with the judgment, referred to *supra.*

On yesterday the 18th instant, Petitioner Musa Karneh exhibited to court a check bearing number 0490 drawn on the Bank of Liberia for an amount of $1,100.00 which he had deposited to complete payment in full. Said Check was ordered turned over to the Administrator Abdulai Karneh of the intestate estate. The court would like to remark that in keeping with Judge Draper's former ruling, payment of $1,100.00 was to be made to the sheriff of Nimba County but

this ruling was amended subsequently to direct payment to the Administrator Abdulai Karneh and this is what Petitioner Musa Karneh did with the said amount. Certified copy of the receipt of the $500.00 is hereto annexed.

In view of the foregoing legal and factual reasons and ruling in the matter, it is hereby decreed that Mr. Dagadu, public **land** surveyor for Nimba County, be and is hereby ordered to survey in favor of petitioner Musa Karneh the said two lots and thereafter he shall prepare the relevant deed supported by a surveyor's certificate to be probated and registered. During the interim, the Clerk of this Court may issue unto Petitioner Musa Karneh a writ of possession directed to the sheriff to put said Musa Karneh in possession of said parcel of **land**, that is to say the two lots....."

Here again, there was no appeal announced from this ruling on the bill of information, thereby putting finality to the controversy which had warranted the filing of the bill of information. It should be noted here that although the Informant Musa Karneh did not join Mamadee Kaba, the surviving brother of the late Samuka Karneh and Varfeh Karneh, and the two widows, Massalam Kromah and Mankro Fofana, the losing parties in the estate matter as ruled upon by Judge Draper and confirmed by Judge Lewis, did not move the court to intervene or to be joined. We assume, however, that Informant Musa Karneh could not have joined them as party-respondents, they having accepted Judge Draper's ruling and playing no part in the survey ordered by said ruling. We assume also that the said Mamadee Kaba, Massalam Kromah and Mankro Fofana could not have moved to intervene or be joined as party-respondents, they having accepted Judge Draper's ruling.

Quite strangely, one Abdulai Karneh said to be another surviving brother of decedents Samuka Karneh and Varfeh Karneh, and who on his own application had been appointed by Judge Tulay as administrator of the intestate estate during the November 1967 Term of the court, filed a letter of protest against the ruling of Judge Lewis hereinafter quoted despite the fact that he never moved the court to intervene or be joined in the bill of information proceedings filed by Musa Karneh and passed upon by Judge Lewis. In passing upon this protest on December 10, 1968, Judge Lewis against whose ruling of December 2 the protest had been filed, revoked not only his own ruling of December 2, 1968, but also that of Judge Draper in August 1967. As this subsequent ruling of Judge Lewis set into motion a chain of actions leading this case to finding its way on three different occasions to this Forum, we find it necessary to quote a relevant portion for the benefit of this opinion:

".....with reference to the survey, we have received letter of protest against the same, particularly so, when the said mothers of decedents' children came to court and made us to

understand that they do not wish to sell the property or any portion thereof and it would be illegal for a decree to be made to that effect except where the property was being taken by government and for just compensation. It is therefore adjudged that the decree handed down by Judge Draper, that upon the payment of one thousand six hundred ($1,600.00) to the Administrator Abdulai Karneh, the surveyor should survey two lots and turn same over to appellant, is hereby revoked to all intents and purposes until Mr. Musa Karneh and all persons concerned can establish a bona fide possession..”

This ruling of the learned judge started a conglomeration of confusion in this case up to this point. Musa Karneh excepted to this ruling of Judge Lewis and announced an appeal to the Supreme Court but because his appeal bond was defective, the case was not heard on its merits as the appeal was dismissed upon motion, *Kaba et al. v. Karneh et al.[1975] LRSC 55; ,* 24 LLR 436 (1975).

From this juncture, the contention over the piece of property had become the subject of heated legal battle. Musa Karneh and his counsel, Counsellor Stephen Dunbar, were insisting on the enforcement of Judge Draper’s ruling from which no appeal was taken, while Mamadee Kaba, Massalam Kromah and Mankro Fofana and their Counsel, the late John W. Stewart on their part, were insisting upon the enforcement of Judge Lewis’ subsequent ruling revoking Judge Draper’s ruling since the Honourable Supreme Court had dismissed the appeal taken therefrom and ordered the trial court to resume jurisdiction and enforce its judgment. Accordingly, on October 16, 1969, Musa Karneh addressed a letter to the then Chief Justice, the late A. Dash Wilson, requesting him to send a mandate to the judge of the Eighth Judicial Circuit Court to enforce the ruling of Judge Draper. Previous to this, the said Musa Karneh had complained to Mr. Justice Wardsworth then presiding in Chambers of the irregularities attending the case. Predicated upon the complaint, Justice Wardsworth in February, 1968, instructed Judge Alfred Raynes to investigate said complaint and, if found correct, to enforce the ruling of Judge Draper. Unfortunately Judge Raynes resigned before he could carry out the instructions of the Chambers Justice. Chief Justice Wilson, who, apparently believing that the Supreme Court had decided the summary investigation in favor of Musa Karneh, sent a mandate to Judge Jeremiah Reeves who was then presiding over the November Term of the Eight Judicial Circuit, 1970, commanding him to enforce the ruling of Judge Draper. Judge Reeves, not having found any records in the case, did not proceed any further and so the matter remained in abeyance.

On January 15, 1971, Chief Justice Wilson again addressed a letter to Judge Alfred Malobe ordering him to enforce the mandate in the case “Musa Karneh v. Mamadee Kaba”. In the enforcement proceeding, Judge Malobe ruled that Musa Karneh was entitled to the property and ordered the issuance of a writ of possession in his favor. As recorded in the opinion of this Court in the case *Kaba et al. v. Karneh[1975] LRSC 55; ,* 24 LLR 436 (1975), writs of possession and execution were ordered issued in favor of Musa Karneh on the 4th day of March 1971. For some

reason not disclosed to the court, another set of writs of possession and execution were issued, this time, by the probate division of the Eighth Judicial Circuit Court in favor of Musa Karneh on the 26th day of April 1972. We assume for one reason or another, that these writs were never served to bring the matter to a close and so the confusion in the case intensified.

Mamadee Kaba, surviving brother of the two deceased brothers and their widows, Massalam Kromah and Mankro Fofana by and through their counsel, the late John W. Stewart, filed a bill of information before the Full Bench of this Court on the 5th day of April 1972, praying the Court to hold Musa Karneh and his counsel Stephen Dunbar in contempt for insisting on the enforcement of Judge Draper's ruling which had been revoked by Judge Lewis, and which said ruling of revocation had been confirmed by the Supreme Court. Informants contended that respondents' insistence upon the enforcement of Judge Draper's ruling instead of that of Judge Lewis was contemptuous since it was the latter ruling that was confirmed by this Court upon the dismissal of Musa Karneh's appeal. Before the Full Bench could hear this bill of information, the informants filed another bill of information on May 9, 1972, to the effect that while the matter was pending before the Full Bench undetermined, they had been evicted from the premises in question. Mr. Justice Henries then presiding in Chambers, instructed the Judge presiding over the May 1972 Term of court to stay any further proceedings until the matter had been heard by the Full Bench.

On the 12th day of July 1973, the respondents filed their returns and the bill of information was heard and decided by the Full Bench on December 31, 1975. *See* [1975] LRSC 55; 24 LLR 436 (1975). Mr. Justice Horace, speaking for this Court, said and we quote: "The confusion in this matter has been brought almost entirely by judges of the lower courts and even the former Chief Justice who at one point instructed the judges to enforce the mandate of the Supreme Court. What mandate he had reference to is difficult to understand because certainly the mandate that was sent down after the dismissal of Co-respondent Karneh's appeal because of defective appeal bond could not make the erroneous ruling of Judge Lewis valid. The learned Justice went on to say: "We hold that Judge Lewis' ruling revoking the ruling of his two colleagues of concurrent jurisdiction was void *ab initio* because he could not legally do so. This Court has held that a court has no power to interfere with a judgment of another court of concurrent jurisdiction. *Republic v. Aggrey*, 13 LLR 469 (1960); *Kanawaty et al. v. King[1960] LRSC 66; ,* 14 LLR 241 (1960)."

Justice Horace concluded by saying:

"It is our considered opinion, therefore, that respondents are not guilty of contempting this or any Court in the process of these proceedings and therefore the information is dismissed and the

prayer to hold them in contempt is denied. We also hold that the only ruling in this case is that of Judge Draper as confirmed by Judge Tulay which was not excepted to nor an appeal announced therefrom. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction and enforce the ruling of Judge Draper which was entered at the August 1967 Term of Court and confirmed by Judge Tulay. Costs ruled against Informants. And it is hereby so ordered.

It is interesting to note here at this point, and we shall say more on it later, that except Mr. Justice Wardsworth who handled the matter in Chambers and therefore did not sit, all the other Justices, including Mr. Justice Henries, signed the judgment of the Court. In accordance with the judicial system of this country, the aforesaid judgment of this Court had put a finality to the controversy and any attempt made thereafter to disturb this final determination, can only be reviewed as intending to undermine the dignity and integrity of this Court and the independence of the judiciary of the country.

This mandate as ordered by the Court in the opinion just quoted above, was far from bringing the controversy to an end. Hence, the legal battle and confusion referred to by Justice Horace seemed to have just begun.

His Honor Galimah D. Baysah, then presiding over the February 1976 Term of the Eighth Judicial Circuit Court, received the mandate from this Honourable Court for enforcement. On March 3, 1976 immediately following the reading of the Mandate in the presence of the parties, Judge Baysah received a bill of information from the Chambers of Mr. Justice Henries. Feeling that there was no prohibition proceeding against the enforcement, Judge Baysah proceeded to enter orders to enforce the Mandate. Thereupon, another bill of information was filed against him, Musa Karneh and Counselor Stephen Dunbar as respondents. The informants were Bankala Karneh, Abdulai Karneh, Morayman Karneh, Manegbah Karneh and Fanta Karneh, said to be the heirs of the two deceased brothers Samulka Karneh and Varfeh Karneh and unconnected with the bill of information proceedings already decided by the Supreme Court ordering the enforcement of Judge Draper's ruling. Because of the allegations laid in this last bill of information against Judge Baysah, he could not proceed further with the enforcement of the Mandate.

Mr. Justice Wardsworth, while speaking for this Court at the disposition of the bill of information said the followings:

"The mandate of this Court dated December 31, 1975, was issued under the seal and over the signature of the Clerk of the Supreme Court of Liberia to enforce the judgment of His Honour Judge Draper. In attempting to enforce the judgement as commanded by the Supreme Court in its Mandate hereinabove referred to, informants obstructed the enforcement thereof and filed the information now under consideration. With respect to the alleged failure of the respondent to make payment in settlement of the property which was ordered to be turned over by His Honour Judge Draper to Respondent Musa Karneh in pursuant to records in this case, it is discovered that the amount was paid in full to the informants in keeping with the judgment referred to *supra.* Therefore, the contention of informants that the amount had not been paid for the property was misleading and untrue...."

This bill of information like the one before, was dismissed with cost against the informants and a $50.00 fine imposed on informants' counsel. Except for Chief Justice Pierre who was absent and did not sit, Justice Henries sat and signed the judgment with the other Justices.

Up to this point, the Supreme Court had not changed its position and continued to hold that Judge Draper's ruling, from which no appeal was announced and taken, was the only legal ruling to be enforced. However, the legal battle and confusion in this case did not relent but rather continued unabated.

During the February 1977 Term of the Eighth Judicial Circuit Court, Judge James L. Brathwaite received, read and ordered the enforcement of the mandate from this Court but said orders were never carried out. During the May 1977 Term of said court, Judge A. Benjamin Wardsworth was informed by Musa Karneh of the negligent attitude of certain officers of court toward the enforcement of this mandate. Following an investigation, Judge Wardsworth entered a ruling on June 7, 1977, in which he fined the probate clerk $25.00, and ordered the enforcement of Judge Draper's ruling in obedience to this Court's mandate. This enforcement was not possible as bills upon bills of information continued to be filed against said enforcement. This case indeed can be rightly styled "The information case."

When Judge Thorpe, presiding over the February 1979 Term of the court in Nimba, attempted to enforce the mandate, he received a bill of information from the Chambers of Mr. Justice Henries in which Mamadee Kaba, Massalam Kromah and Mankro Fofana were informants, alleging that the amount of $1,600.00 ruled by Judge Draper for Musa Karneh to pay to Kromah and Fofana had not been paid within 30 days and, therefore, Musa Karneh was not entitled to benefit from Judge Draper's ruling. At this point, another milestone was added to the confusion when Justice Henries, who was one of the signatories to the two judgments of the Full Bench upholding the ruling of Judge Draper and declaring that the amount of $1,600.00 had been paid in full by Musa

Karneh and that any information to the contrary was misleading and untrue, handed down the below judgment in his Chambers, the relevant portion of which we shall quote for the benefit of this opinion:

"According to the ruling, the amount was to have been paid within 30 days from September 21, 1967 that is to say by October 21, 1967. It is now 12 years later and the amount still remains unpaid, and one of the persons who was to have received $700.00 of this amount is now dead. That ruling also stated that if the petitioner Musa Karneh does not pay the amount of $1,600.00... then in that case the parties are to retain the spots and have it surveyed as a portion of the two lots independent of any lot or public **land** unoccupied which surveyor may in harmony with their certificates thereafter survey for them.

This, in our opinion, substantiates Madame Kromah's contention that she and her children as well as the heirs of the late Mankro Fofana cannot be evicted from their premises since payment of the $1,600.00 was not made within 30 days after Judge Draper's ruling as ordered in the ruling. Musa Karneh was not therefore entitled to benefit from said ruling, having failed to pay the $1,600.00 to the informants within 30 days as ordered by Judge Draper."

One wonders if Justice Henries at the time of passing on this information, was not mindful of these obvious point of facts and law:

1.1. That he was one of the signatories to two judgments of the Full Bench of the Supreme Court of Liberia upholding the ruling of Judge Draper in favor of Musa Karneh and against the identical informants.

1.2. Whether he was properly clothed with any legal or judicial authority as Justice presiding in Chambers, to review or reverse any judgment of the Supreme Court *en banc*?

We shall answer these questions later in this opinion by quoting the proper legal authorities on the issue. However, we want to conclude the history in this case by reverting to the final episode which paved the way of this case to this Bench for settlement and final determination.

When His Honor Boima K. Morris, presiding over the November 1979 Term of the Eighth Judicial Circuit Court attempted to enforce the mandate based upon the ruling quoted above, Musa Karneh filed this information before the Bench *en banc*. In his returns, Judge Morris informed this Court that although he had ordered the enforcement of the mandate herein above referred to, yet prior to the execution of said orders by the clerk and the sheriff of court, he rescinded his orders thirty minutes later when he received a radiogram from the Clerk of the Supreme Court to stay execution and/or enforcement of the mandate. In his returns and argument before this forum, counsel for respondents, Massalam Kromah et. al., strongly contended that Judge Draper's ruling for the payment of $1,600.00 within 30 days had not been complied with and therefore Respondents and their children should retain the premises. This point of contention being the essence of the ruling of Justice Henries, this Court has since 1975 and 1976 respectively settled the issue of complete payment of this amount in favor of Musa Karneh. *Kaba v. Karneh,* [1975] LRSC 55; 24 LLR 436 (1975); and [1976] LRSC 66; 25 LLR 300 (1976). Consequently, any mandate under the order of any single Justice to adversely affect the decisions of the court *en banc* referred to above is *void ab initio*. To quote the legal authorities to this effect, we cite the case *Wolo v. Wolo,* [1944] LRSC 31; 8 LLR 453(1944) in which Mr. Chief Justice Grimes speaking for the court said:

"No single Justice of the Supreme Court can legally issue any restraining writ to adversely affect any decision of the court *en banc*.

In the case *Liberian Bank For Development and Investment v. Holder,* [1981] LRSC 30; 29 LLR 310 (1981), decided July 30, 1981, this Court held that "where a matter is pending before this Court or where an issue or a case has been disposed of partly or entirely by this Court, an act of a single justice which interferes with that function of the Full Bench, is violative of the limited functions of a single Justice. It encroaches upon the functions of the Full Bench. The Full Bench cannot also legally exercise the functions of a single Justice. Only the Full Bench can exercise all of its legal functions."

In view of all of the circumstances, facts and laws herein cited which the exigency of this case had mandatorily demanded of us, it is our candid and considered opinion that the information be and same is hereby granted. The Clerk of this Court is hereby ordered to send a mandate to the presiding judge of the Eighth Judicial Circuit Court commanding him to resume jurisdiction over the case and to (1) place Musa Karneh in effective possession of the two lots as ruled by Judge Draper with the aid of a surveyor; (2) to treat as the law demands, any obstruction in the execution of this mandate that will adversely affect this judgment; (3) to file his returns as to the effective execution of this mandate not later than August 3, 1982. The respondents are ruled to all costs. And it is hereby so ordered.

Information denied.

Dennis v Refell [1947] LRSC 10; 9 LLR 311 (1947) (9 May 1947)

JOSEPH F. DENNIS, Petitioner, v. HELEN REFFELL by her Husband J. A. REFFELL, His Honor EMMANUEL W. 'WILLIAMS, Resident Circuit Judge of the Sixth Judicial Circuit, Montserrado County, and URIAS N. DIXON, Sheriff of Montserrado County, Respondents.
CERTIORARI TO
THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 8-10, 1947. Decided May 9, 1947. 1. Where land that is to be offered for sale on the foreclosure of a mortgage consists of several distinct lots or tracts, the land should usually be offered for sale in parcels and not en masse. If the land consists of a single tract or body, and is susceptible of division without injury, and the sale of the whole is not necessary to satisfy the debt, it should be divided, and only so much of if offered at one time as may be necessary to satisfy the judgment, interest, and costs. 2. The law does not favor compound interest or interest on interest; and the general rule is that in the absence of contract therefor, express or implied, or of statute authorizing it, compound interest is not allowed to be computed on a debt. 3. Where there was an occasion to make an additional bill of costs, said bill should not be approved by the trial judge until it had been taxed.

Helen Reffell, co-respondent herein, brought a bill in equity against Joseph F. Dennis, petitioner herein, for foreclosure of a mortgage. A decree was entered against the then defendant, but on appeal to this Court the case was dismissed with permission to the then plaintiff to refile her suit. Dennis v. Reff ell[1942] LRSC 1; , 7 L.L.R. 332 (1942). A suit for foreclosure of a mortgage was again commenced by Helen Reffell against Joseph F. Dennis. A decree was obtained against Joseph F. Dennis, and on appeal to this Court the judgment was affirmed. Dennis v. Reffell, [1945] LRSC 3; 9 L.L.R. 26 (194s). During the process of enforcing the 1945 decree in the circuit court, petitioner herein excepted to rulings and actions of the judge and peti-

tioned for a writ of certiorari, which was granted by the Justice in Chambers without prejudice to the sale of a house and one lot. On certiorari in this Court, issuance of writ sustained and rulings reversed.
Joseph F. Dennis for himself. self. Helen Reffell for her-

MR. JUSTICE RUSSELL delivered the opinion of the Court.* Growing out of proceedings in a suit for foreclosure of a mortgage against Joseph F. Dennis, mortgagor and petitioner in these proceedings, which suit was decided against him on an appeal to this Court (Dennis v. Reffell[1945] LRSC 3; , 9 L.L.R. 26 (1945)), a mandate was sent down to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for the enforcement of the decree in connection therewith. During the process of this enforcement by His Honor judge Williams petitioner took exceptions to certain actions and rulings of the judge and prayed for a writ of certiorari, which was granted by our Justice then presiding in Chambers. The records having been sent up, we entered upon a hearing of the matter, and we are so much in accord with the opinion of the Justice presiding in Chambers who heard the matter that we have decided to incorporate said opinion in this opinion. "Petitioner in these proceedings filed a petition for the granting and issuance of a writ of certiorari because of sundry causes laid down in said petition. His Honour Judge Williams of the sixth judicial circuit (Civil Law Court), Sheriff Urias Dixon for Montserrado County, and Helen Reffell were made respondents, and upon order of this Court for said

· ED. NOTE: Since Mr. Chief Justice Grimes was ill and Mr. Justice Reeves, having signed petitioner's certificate of counsel before his elevation to the Bench, recused himself, they took no part in this case.

respondents to show cause why said writ as applied for should not be granted and issued, the first and third named respondents did not file any Returns; but the second named--Sheriff Dixon--did so. In his Returns he seemed not to have strenuously questioned the right of the petitioner in the issues submitted but rather pleaded that all of his acts in the matter were ministerial and were all based upon orders of His Honour Judge Williams under whom he served. "He, however, questioned the propriety of Samuel D. George, a mere Attorney-at-law, signing the required certificate which was attached to the petition when, in truth and in fact, there were sundry counsellors-at-law available at the place of the making of said petition. Petitioner, obviously conceding the tenability of this contention, amended his petition to correct this defect (see amended petition). "Upon call of the matter before us for disposition, arguments were disallowed but the parties were required to file briefs of their respective contentions, said briefs to touch on the following points: "i) whether from the petition filed it is clear that the legality of the sale by public auction of the lot and house on Broad Street was not questioned by petitioner; "2) whether or not the assessment of compound interest on the mortgage sum is legally justified ; and "3) whether or not the assessment of additional items of cost by the lower court against the petitioner about which he complains is also justified. "Only the petitioner filed a brief as required by Court. Out of fairness, it should be here observed that Helen Reffell appeared before this Court and gave information that she

was unable to defend her interest and rights in that she was without funds to do

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so, being still obligated
to her lawyers in the original suit. "As to the first point, we here desire to confirm our opinion given to the Clerk of this Court
. . . for the issuance of an order to the respondents to show cause why said petition should not be granted, which order was dated
on the 8th of August, 1945, and which we quote :-- " 'As a matter of conclusion from his [meaning petitioner's] petition or application
for a writ of certiorari presently before us, there is no alternative inference but that he accepts the legality of the sale of the
house and lot on which it is situated, leaving only the question of the legal propriety of the sale by auction of the two lots since,
as the said petition avers, the proceedings from the sale of said house were sufficient to cover the mortgage sum together with interest
accrued, court's cost and the expense of the sale.' (Emphasis added.) ·

"There is no hesitancy, therefore, in saying that the sale
of the house and lot, not having been questioned. is legal and ought not to be disturbed. However, if, as the petition of petitioner avers, the sum realized
from the sale of said house was sufficient to cover all of the legal demands against the petitioner arising out of the suit in foreclosure
of mortgage, then there is doubt that the subsequent sale of the other two lots was legally proper and in order. (Vide : 19 R.C.L.
under Mortgages, p. 575, sec. 388; 41 C.j. under Mortgage p. 973, sec. 1421.)
"From Ruling Case Law just cited, we have the following:--
"'Where **land that is to be offered for sale on the foreclosure of a mortgage consists of several distinct lots or tracts, the land** should usually be offered for sale in parcels and not en masse, and it has been said that if the **land** consists of a single tract
or body, and

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is susceptible of division without injury, and the sale of the whole is not necessary to
satisfy the debt, it should be divided, and only so much of it offered at one time as may be necessary to satisfy the judgment, interest,
and costs. . . "From the above it can be safely said that since the mortgage deed covered three separate and distinct tracts of **land**,
the principle of law in connection therewith should have been applied, and the claim that the lower court considered itself inextricably
bound to the literal enforcement of the Supreme Court's Decree is flimsy.
"Because of the sole Returns of the Sheriff which did not
forcefully and legally answer the other submissions of the petitioner to the effect that the assessment and collection of compound
interest on the mortgage sum by the lower court was improper and that there were other irregular, inconsistent and improper assessments
of additional costs, this Court instructed the Clerk to require His Honour Judge Williams to file Returns principally answering the

charge of the illegal assessing and collecting of compound interest and costs as was submitted in the petition; and the said Judge made the following Returns on said point:-- " 'The Judge says on referring to his allowing compound interest in the case that he thought it but just and legal under the law of computation in computing interest, especially where neither the interest nor the principal has been paid ; and the principal and interest be combined, and is combined and was continued to a longer time, the interest to be paid at the consummation of the time is not only on the principal, but it is on the principal plus the interest, which we call interest upon interest, or compound interest. Viewing the case before me in the above stated light. I thought my action legal.'

"On this legal proposition we are partially, but not wholly, in accord with the learned Judge. Generally, the courts 'have been opposed to the allowance of compound interest, subject to certain limitations and exceptions, and the enforcement of its payment has often been refused on the grounds of public policy . . R.C.L.-- Interest p. 36, sec. 33 ; 47 C.J.S. 191, § 3 (b), at ts--Compound Interest-- in general), so that there is nothing to justify the lower court in this respect according to our opinion. "Quoting from Corpus Juris, just cited, we have: " 'The law does not favor compound interest or interest on interest; and the general rule is that in the absence of contract therefor, express or implied, or of statute authorizing it, compound interest is not allowed to be computed on a debt. . . "It does not appear, from the mortgage deed and other instruments relating thereto, that there ever was an agreement for the assessment of compound interest on the mortgage sum, barring the instrument issued by petitioner, as mortgagor, to Helen Reffell, one of the respondents, as mortgagee, subsequent to the execution of the mortgage contract wherein because of his desire at the time to obtain an extension of time for the discharge of the mortgage, he then added the then accrued interest to the principal sum of the mortgage and made another obligation for interest on the aggregate sum. This, of course, cannot be construed as an implied contract or agreement that compound interest be later computed. "We are of the concrete opinion that where there was an occasion to make an additional bill of cost against the petitioner in the mortgage matter, said bill should never have been approved by the Judge of the lower court until it had been taxed by the petitioner or his refusal to do so indicated and reported. This privilege is always extended to parties litigant simply

to avoid the assessment against them of little illegal and unwarranted items of costs, and it does not appear from any of the Returns before us that this privilege was accorded the petitioner. "Whilst it is true that we personally deprecate the amount of inconvenience and undue labour this one mortgage transaction

has entailed and caused, we are of the opinion that the writ applied for should be granted, without prejudice to the sale of the house and lot on Broad Street which has not been contested, and the Clerk of this Court is hereby ordered to send a mandate to the court below to effect this Ruling and Judgment requiring it to send a full and complete transcript of the records of the proceedings in connection with this matter from the point where the said court had resumed jurisdiction upon mandate of the Supreme Court for the enforcement of this court's judgment in foreclosure of the mortgage, under the certificate of the Clerk of said Court and the Seal of said Court, within sixty days from the receipt of the mandate, in order that same might be reviewed by this Court in bunco for the correction of all errors and irregularities if there be any found to exist in said proceedings; AND IT IS HEREBY SO ORDERED."

To our minds this opinion is sound, logical, and legal and should be sustained and affirmed since it is in harmony with the records before us as well as with the controlling law. Our colleague who dissents from us is not doing so on the grounds that our conclusions that the judge erred in several of the actions taken and rulings entered against the petitioner are incorrect. The Honorable Justice Barclay is simply insisting that under the circumstances presented an ordinary appeal should have been taken and petitioner should not have proceeded by writ of certiorari, and that because of this the proceeding should be dismissed with costs against the petitioner, leaving the

flagrant violations of law and the undue impositions upor the petitioner, which our dissenting colleague concedes, unattended and unreviewed. We cannot agree with this contention, especially in face of the fact that such an issue never was raised by any of the respondents in these proceedings. The cases apparently strongly relied upon by our colleague when he claims that this Court took a position similar to his in passing upon the legality of the procedure in certiorari and thus denied the writs, even though no issue had been raised by any of the respondents in said cases, are it v. Amine, 4 L.L.R. iss, rearg. denied, .4. L.L.R. 199 (1934), and Wodawodey v. Kartiehn, 4 L.L.R. 102, 1 New Ann. Ser. io5 (1934). We do not agree with our learned colleague when he contends that these cases were decided independent of any issue raised by the respondents, for in the case Markwei v. Amine, supra, when petitioner applied for the writ of certiorari, His Honor Mr. Chief Justice Grimes who was in Chambers gave an order for the appearance of the respondents on a given day to show cause why the writ should not issue, and Counsellor Dukuly, appearing for Amine, made said respondent's returns wherein he contended that the writ could not legally issue, relying upon section 1388 (1) of volume a of the Revised Statutes of Liberia and upon rule IV, subsection 4 of the Revised Rules of the Supreme Court of 1915, 2 L.L.R. 663. It is upon the consideration of the returns of respondent Amine that His Honor the Chief Justice denied the writ, despite the contention of our learned colleague who dissents and

who was then a counsellor-at-law representing petitioner Markwei in Markwei v. Amine, [1934] LRSC 22; 4 L.L.R. 155 (1 934). Of course, upon application on the part of the petitioner in that case for a reargument of the order of Mr. Chief Justice
Grimes in Chambers denying the writ of certiorari, this Court en bane sustained and confirmed said order. The fact, however, is that the decision or order was based

upon an issue duly presented. In the case Wodal..-., odey it was upon a motion filed by Coun- v.Kartiehn,sup sellor Wolo for defendant-in-error containing eight counts that the writ of error applied for and granted by Mr. Justice Beysolow was quashed, not denied, after it had been granted by the Justice in Chambers. In this case, as has already been observed, the question of the legal propriety of the procedure by certiorari was not raised and so it would be improper to allow it to enter into the decision of the proceedings at this stage since to do so would be deciding the case on issues not submitted. In view of the above, it is our opinion that the judge of the lower court erred : (t) In the assessment of compound interest when there is no agreement or court decree to that effect; (2) In the confirmation of the sale of the other two parcels of land when the house and lot yielded over and above the principal sum of the mortgage together with the accrued interest, court expenses, and expenses of sale; (3) In the assessment against petitioner of illegal items of costs without giving him an opportunity to tax same; and (1) In ordering payment of taxes claimed against said property without first having said claims established. It is therefore ordered : (I) That the assessment of compound interest on the mortgage sum be canceled and instead simple interest he computed and assessed and the difference refunded the petitioner; (z) That the illegal sale of the two parcels of land situated on Benson Street be hereby canceled, same to revert to petitioner and the purchase money to be refunded to the purchaser; (3) That since the amounts given the sheriff in two instances for collection are illegal, he is ordered to

receive only one collection fee on the sum of four thousand dollars, the price at which the house and lot on Broad Street was sold, the other to be paid petitioner ; and (4) That the assessment of fees for an auctioneer is unwarranted and the amount is ordered refunded petitioner since it does not appear that an auctioneer was used but rather the sheriff himself did the auctioneering; and (s) That unless it is satisfactorily shown to the judge of the civil law court that the item entitled "petitioner's costs" relates to costs other than those in the former suit of Helen Reffell against Joseph F. Dennis dismissed by this Court, same should also be canceled and the amount paid to the petitioner in these proceedings. With respect to the amount paid on account of taxes due the Government, though

the manner of payment is deprecated and declared illegal, nevertheless since the petitioner does not seem to contest the genuineness of the claim, we refrain from giving an order for its refund but direct that the receipt given in this connection be handed him.
To ensure the correct enforcement of the judgment in this matter, it is ordered that the court below revise its bill of costs in the matter in conformity with the rulings herein given and refer it to the parties concerned for their taxation, a copy of which bill is to be filed before this Court when the returns to the execution of the judgment in the matter are made; and it is hereby so ordered. Rulings reversed. MR. JUSTICE BARCLAY, dissenting. I differ from my learned colleagues on two points, and since I consider them of great importance I decided to prepare and file this dissenting opinion. In the original petition and the amended petition of

petitioner-in-certiorari appears the following count: "That the actions of the Judge are grossly ultra wires, illegal and an overt travesty of justice and equity, and that the ordinary method of appeal to the Honourable Supreme Court of Liberia would not prove adequate and as expeditious as the nature and exigency of the case required since indeed the sale of lots 89 and 90 deprived him of valuable money . .. without any justifiable cause because sufficient money had already been realized to meet all demands with a surplus to the mortgagor." This count in petitioner's petition gives me a strong impression that petitioner was fully conversant with the procedure heretofore laid down by this Court, which he should have followed by coming by regular appeal ; but he endeavored to justify his petition for a writ of certiorari by stating therein "that the ordinary method of appeal to the Honourable Supreme Court of Liberia would not prove adequate and as expeditious as the nature and exigency of the case, required." But neither in his brief nor in any part of his argument did he show, or endeavor to show, as the law requires, why or in what way following the regular procedure of appeal would not prove adequate or expeditious, although he had given notice of appeal from the rulings of the court with respect to the sale of the three lots and the computation of compound interest. (See records and minutes of the court below.) Corning up here by certiorari surely did not stop the sale of the two lots, for they had already been sold before petitioner in the court below filed any motion protesting the sale of the two lots or asking for the cancelation of the sale of lots Number 89 and 90. The purpose of proceeding by certiorari was not to compel the trial judge to immediately revoke his order for the computation of compound interest, since that is being done today in the opinion and judgment just read. Where then lies the absolute necessity for pentioner to nroceed by writ of

certiorari instead of by regular appeal? It appears to me therefore that the regular appeal would have been as
adequate and expeditious as the nature and exigency of the case required, and petitioner should have come by that method and no other.
In the case Daniel v. Compania Trasmediterranea, [1934] LRSC 10; 4 L.L.R. 97, 1 New Ann. Ser. 99 (1934), on an application for the reargument of an order ordering the issuance of a writ of prohibition, Mr.
Justice Grigsby speaking for the Court said : "A remedial writ is an extraordinary remedy, usually applied for in order to prevent
an injury to a party that may be irreparable, or at all events may not give an adequae remedy if the ordinary methods of bringing
up a case for review are pursued. It follows, then, that an application for such a writ should be heard and disposed of as expeditiously
as possible, without awaiting the time for the convening of a regular term." Id. at 99. In the case at bar nothing was prevented
by the application for a writ of certiorari, for the injury complained of had already been done and completed by the court, according
to the allegations in the petition. Moreover, the petition was granted on October 24, 1945 by the Justice presiding in Chambers and
the case was forwarded to the full Bench for its action. Hence to my mind it appears that the reason given by petitioner for not
proceeding by regular appeal is weak and untenable and should not be accepted as sufficient. "The trend of the recent decisions of
this Court has been to construe very strictly all applications for extraordinary writs, as they are in derogation of our statute
of appeals," declared Chief Justice Grimes in the case Markwei v. Amine, [1934] LRSC 22; 4 L.L.R. 155, i6o, rearg. denied[1934] LRSC 30; , 4 L.L.R. 199 (1934)· I have taken this position in opposition to the opinion of my distinguished colleagues and my position is based

on the case Jantzen v. Williams, [1934] LRSC 35; 4 L.L.R. 231, reed. and remanded on the merits, 4 L.L.R. 28o, judgment corrected[1935] LRSC 26; , 4 L.L.R. 396 (1935), and other cases in which this Court unreservedly held that matters of procedure should be settled by it. In the case Itlarkwei
v. Amine, [1934] LRSC 30; 4 L.L.R. 199, 2 New Ann. Ser. 28, decided by this Court on December 21, 1934, Mr. justice Russell speaking for the Court reiterated the rule already
enunciated when he said: "Although it does appear that there are many irregularities committed by both the justice of the peace and
the Judge of the Circuit Court during the trial of this case, which are in direct violation of the statute laws of this country,
as well as the Code compiled and legalised for the guidance of all justices of the peace throughout this jurisdiction, yet we have
to observe that the course adopted by the petitioner in seeking redress is contrary to the statute laws of this country, in that
he assigns no good reason for not having taken a regular appeal after the rendition of the final judgment against him, which alone

would have entitled him io the benefits of one of the remedial writs; and for that reason this Court is without any legal authority to assume jurisdiction in reviewing and correcting even what appear to us to be glaring errors committed by both the Judge of the Circuit Court and George W. Stubblefield, justice of the peace for Montserrado County. "But the questions that now claim our serious attention in these certiorari proceedings are: 1) Is the procedure taken by the petitioner in certiorari in keeping with the statute law providing for same? 2) Is the failure of the petitioner to take a regular appeal due to his own laches? "Mr. Chief Justice Grimes, in delivering the opinion of this Court in the case Wodawodey v. Kartiehn

and George, 4 L.L.R. 102, I Lib. New Ann. Ser. los (1934), enunciated this principle which all litigants seeking the great benefits secured to them by the Constitution and the subsequent statutes of the Legislature should strictly follow, saying substantially that: "The right to appeal from a court of record to the Supreme Court of this Republic is given in general terms by the Constitution of the Republic; and several statutes subsequently passed, the most recent of which is that of 1893-94, have set out the method of procedure to be followed. The passage of said statute providing the steps to be taken in removing a cause to the Supreme Court is jurisdictional and must be strictly complied with ; and at the determination of any case the failure to take a regular appeal should not be due to the laches of the party applying for any of the remedial writs." Id. at 201. As can be seen from the opinion of the Court today read, the majority of my learned colleagues before whom this case was heard are of the opinion that since the method of procedure was not attacked by the respondents, although jurisdictional, we should ignore it, especially, they say, since the Court itself should not raise issues. My opinion is that whether raised or not by respondents this Court has the right to do so, and has the right to insist on a uniform method of procedure, since the question is jurisdictional as held in the case just cited. "The fundamental question of jurisdiction, first of the appellate court, and then of the court from which the record comes, presents itself on every writ of error and appeal and must be answered by the court whether propounded by counsel or not." 2 Bouvier, Law Dictionary 1761 (Rawle's 3d rev. 1914). The right of this Court to raise the issue is based also on the case Jantzen v. Williams, supra, in which this Court said on page 233: "[O]urs is

the privilege of settling the procedure of all subordinate courts. . . ." Yancy v. Republic, [1933] LRSC 14; 4 L.L.R. 3, 1 New Ann. Ser. 3 (1933), takes the same position. According to the records sent up from the court below, there is no doubt that

after the judge gave his ruling petitioner-in-certiorari did give notice of appeal to the Supreme Court of Liberia, for the record reads, "To which the appellant excepts and gives notice of appeal from said ruling of His Honour the Judge to the Honourable the Supreme Court. Matter suspended." Petitioner, having prayed an appeal from the rulings of the court below and having failed to complete said appeal, should have stated clearly and certainly the cause of said failure, showing that it was due to no negligence on his part, but that same was due to circumstances beyond his control. This he did not do. Hence in my opinion the writ should now be quashed for this reason, and even more particularly for the reason hereunder stated. There is another issue with reference to which I feel it my duty to strongly express my disagreement and dissent as a matter of record, and that grows out of count 5 of the amended petition, which reads as follows: 5. "That a Bill of Costs compiled by the Clerk of Court of the Civil Law Court aforesaid and paid by the said Sheriff contains several illegal items of charges and should not have been paid without having first been taxed by the legal representatives of the parties to the cause. Your Petitioner never knew of the said Bill of Costs or payment thereof until payment had been made and a balance of $729.45 seven hundred and twenty-nine dollars and forty-five cents offered him as a surplus in his favour. The items particularly referred to are those entered under the headings of Sheriff's collection $271.82; Sheriff's collection $329.50; Petitioner's costs $158.83 (amount paid by Petitioner

1942) ; Supreme Court costs June 29, 1945 $16.94;

$19.06; extension total of sundry charges totalling $36.00; making of statement in four copies at so cts., $2.00; amount of taxes $153.90 when there was no checking as to its correctness by the owner of the premises ; making of Sheriff's Certificate of Sale $2.00. These charges making a total of $934.99 of which Petitioner has been illegally deprived aside from the irregular computation of interest complained of." The original petition for the writ of certiorari was filed on July 11, 1945. The returns of the sheriff were filed on July 23, 1945 and those of the judge on September zo, 1945. Subsequently, on September 21, 1945, petitioner filed an amended petition in which he elaborated on the counts already set out in the original petition, inserting the additional count numbered 5, supra. It does not appear anywhere in the records that respondent Helen Reffell filed any returns or that a copy of the amended petition was served on any of the respondents; hence there are no amended returns as to that particularly important issue. Since at the hearing the judge and sheriff who were only nominal parties were not required to be present, and Helen Reffell who appeared in person gave as her reason for not being represented by counsel that she had no funds and was still in debt to her counsel who represented her in the main case, the legal requisite of furnishing the opposite party with copies of all pleadings unfortunately and presumably passed unnoticed and unquestioned. In my opinion, count 5 contained grave charges against the judge and officers of

the court. What is worse, however, and where I differ with my learned colleagues, is the fact that the attention of the judge in the court below was never called to the allegedly erroneous charges in the said bill of costs in accordance with the principles of law, except to that of the computation of compound interest and the sale of the two lots num-

bered 89 and 90. Nevertheless, they have proceeded to review and correct the errors complained of. Petitioner in the aforementioned count 5 stated that he never knew of the said bill of costs or the payment thereof until payments had been made and a balance of $729.45 was offered him as surplus. But even if that were true, in my opinion petitioner still had the right to demand an inspection of the said bill of costs, to tax same, and to call the judge's attention to any illegal items therein appearing, requesting that same be eliminated and the bill of costs be corrected accordingly. However, petitioner neglected to do so and nowhere in the record sent up does it appear that he made any request or demand for an inspection or taxation of the bill of costs and had been refused by the clerk, the sheriff, or the judge. It does not appear in his said amended petition or anywhere in the records certified to us from the court below that the attention of the judge was in any way called to the several items charged by petitioner as irregular and illegal. How, then, can or should this Court review and correct alleged irregularities and 'illegal charges set out in said count 5 to which the attention of the court below had not been called, a ruling made thereon, and exceptions recorded; and which apparently slipped before the appellate court presumably without a copy of said amended petition being served on the respondents in accordance with the law? The judge and sheriff would hardly have neglected to file returns to such grave charges if copies had been served on them. Then, and only then, if brought to the notice of the court in the proper way and a ruling made thereon, should it be reviewed and an expression made thereon by the appellate court, sustaining or overruling the position taken by the judge in the court below. To do otherwise is unfair to the judge and contrary to the statutes and the principles of law generally. I have based this part of my dissent upon the following citations of law:

"The court to which the appeal may be taken shall examine the matter in dispute, upon the record only, they shall receive no additional evidence, and they shall reverse no judgment for any default of form, or for any matter to which the attention of the court below shall not appear to have been called, either by some bill of exceptions, or other part of the record." Stat. of Liberia (Old Blue Book), ch. XX, § 1o, at 78, 2 Hub. 1579. (Emphasis added.) In Ansbro V. U.S., [1895] USSC 240; 159 U.S. 695, 40 L. Ed. 310 (1895) the

Court held : "An assignment of errors cannot be availed of to import questions into a cause which the record does not show were raised in the court below and rulings asked thereon, so as to give jurisdiction to this court under the fifth section of the act of March 3, 1891." Id. at 698. The Court dismissed the writ of error. "The general rule is that an appellate court will consider only such questions as were raised in the lower court. This rule is so well settled as to be almost unquestionable, and the only practical difficulty which may arise in a particular case is with reference to its application, for there are some limitations on, and exceptions to, the rule which will presently be discussed. An all-sufficient reason for the existence of this rule is that if the question had been raised in the lower court this objection might have been remedied, and otherwise if an objection not raised below could be raised in the appellate court there would be no assurance of any end to the litigation, as new objections could continuously be raised on successive appeals. . . ." 2 R.C.L. Lippeal and Error, § 52, at 69 (1 9 1 4). "The rule applicable to appellate procedure generally, that objections not raised in the lower court cannot be relied on in the appellate court; as an-

nounced in the title Appeal and Error § 228 et seq, governs the review on certiorari ; and, as a general rule, questions not raised or ruled on below, or alleged erroneous action as to which no objection was made, cannot be presented to, or considered by, the reviewing court. . . ." 14. C.J.S. Certiorari, § 149, at 286 (1 939). It is my opinion that questions of the nature of the subject matter of these proceedings not raised in the court below should not be permitted to be raised in this appellate court, and if raised should be ignored, and the writ quashed. In view of the above, I have withheld my signature from the judgment in this case.

Nyumah et al v Kontoe et als [2000] LRSC 2; 40 LLR 14 (2000) (12 May 2000)

AUGUSTINE NYUMAH and ALFRED FREEMAN, Informants, v. HIS HONOUR J. BOIMA KONTOE, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, Sitting in its December Term, A. D. 1999, and JESSIE PAYNE, Respondents.

INFORMATION PROCEEDINGS.

Heard: March 30, 2000. Decided: May 12, 2000.

1. Information is the proper remedy where the mandate of the Supreme Court is being executed in an improper manner.

2. Admissions by respondents in their returns to a bill of information are admissible and binding on them and are deemed supportive of the informants' averments on the matter.

3. All admissions by a party or his agent acting within the scope of his authority are admissible.

4. A verdict must show what was awarded and must not be uncertain, such that a writ of possession cannot be issued upon it.

5. **Land** should be described and designated with certainty, sufficient to enable a writ of possession to be executed.

6. In the determination of what constitutes legal and valid execution of a writ, the officer to whom the writ is entrusted must place the plaintiff in full, actual, and peaceable possession of the premises recovered.

7. In order to satisfy a judgment, the execution of a writ must be thorough, complete, and effectual, and not merely formal.

8. A bill of information cannot be used as a substitute for a regular appeal.

The informants, against whom default judgment had been entered in an action of ejectment instituted in the trial court, sought prohibition against the trial court. On motion filed in the Supreme Court in response to the petition for a writ of prohibition, the Supreme Court dismissed the proceedings on the ground that the petition was not accompanied by an affidavit as required by law. The Supreme Court therefore mandated the trial court to enforce its judgment. The present information grows out of the trial court's enforcement of that mandate. In their challenge to the attempted enforcement, the informants contended that the property involved was not designated with any degree of certainty in the trial court's judgment. The Supreme Court agreed with the informants, noting that the respondents had admitted in their returns that the judgment had failed to describe the property in question with certainty, that the admissions were admissible against the respondents, and that the admissions rendered the averments in the information as true.

The Court rejected the respondents request to dismiss the information, holding that information was the proper course since it grew out of the enforcement of the Court's mandate. The Court opined that in order for the trial court to properly enforce its mandate, the property must have been sufficiently described in the writ of possession to enable the ministerial officer to execute

the writ. The Court observed that the records failed to show that the trial court had made any effort to have a surveyor designate or describe the plaintiff's 48 acres of **land**. In such circumstances, the Court said, the ministerial officer could not place the plaintiff in full, actual, complete and peaceable possession of the property. The Court therefore granted the information and ordered the trial court to describe or designate the property with the required certainty to enable the sheriff to effectively execute the writ of possession.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This Court, on December 16, 1999, during its October Term, A. D. 1999, mandated the trial court to resume juris-diction and enforce its judgment in an action of ejectment. It is from the enforcement of the mandate of this Court that the defendants, against whom final judgment was rendered, fled to this Court upon a five-count bill of information.

We shall digress for a moment to give a synopsis of the facts of the case before delving into the merits of the informa-tion proceedings before us. The records show that one Jessie Payne instituted an action of ejectment against Augustine Nyumah and Alfred Freeman, informants herein, to oust and evict them from the premises occupied by them and to place Plaintiff Jessie Payne, co-respondent herein, in possession thereof, alleging that the occupied premises were part of 48 acres of **land** owned by plaintiff. The records further show that the trial judge, His Honour George B. S. Tulay, rendered a default judgment against the informants on the 17th day of February, A. D. 1989. The clerk of the trial court accordingly issued a writ of possession on the 20th day of February, A. D. 1989 directing the sheriff to oust the informants and place the plaintiff in possession of the premises containing 48 acres of **land** and no more. Whereupon, the informants fled to this Court on a writ of prohibition. In response thereto, Co-respon-dent Payne filed a two-count motion to dismiss the prohibition proceedings stating, as ground therefor, that the informants had failed to verify the affidavit that accompanied their petition.

The then presiding Chambers Justice, Mr. Justice Junius, heard the motion to dismiss and granted the same on the 19th day of February, A. D. 1990, dismissing the prohibition pro-ceedings. From the dismissal of their petition, the informants appealed to this Court en banc. This Court, during its October Term, A. D. 1999, affirmed the ruling of Mr. Justice Junius granting the motion to dismiss the prohibition proceedings. The case is again before us, this time upon a bill of information emanating from the execution of this Court's mandate.

This Court deems only count 4 of the bill of information to be worthy of consideration for the final determination of this case. We hereunder quote the said count for the benefit of this opinion.

"4. Informants say and contend that where the claim to title of plaintiff in an ejectment action is based upon a judgment awarding title to the disputed property, the property must be designated with certainty in the judg-ment. In the instant case, the writ of possession issued against the informants called for 48 acres of **land** and there is no showing that the informants lot is situated within the plaintiff's 48 acres of **land** and same half lot has not been designated with certainty. The judgment is therefore uncertain and the writ of possession cannot be served on informants without clearly showing that informants are occupying plaintiff's 48 acres of **land** sued for, especially so when informants bought their half lot from Charles Johnson in fee simple who is not any agent to any person or persons."

In response to the bill of information, the respondents filed a four-count returns, count two of which this Court considers relevant, and therefore hereunder quotes for the benefit of this opinion.

"2. And also because respondents say that from the returns to the writ the informants should have moved the circuit court, presided over by Judge J. Boima Kontoe, requesting him to grant their information so that the property sued for can be made certain in keeping with the said judgment, so that the informants' property cannot be taken away from them as a result of the erroneous and uncertain judgment made by the court below, and grant unto informants any and all further relief as justice requires. Instead of making it this way, the informants have come by information, removing the sheriff's returns from the trial court to this Honourable Court, an exercise which is contemptuous. Whereupon respondents pray Your Honours to have the information dismissed."

The facts and circumstances stated hereinabove present two salient issues for the final determination of this case. They are:

1. Whether or not the property involved in a summary proceedings to recover possession of real property must be designated and described with a certain degree of certainty in order for a writ of possession to be issued upon it?

2. Whether or not information will lie under the facts and circumstances in this case?

The informants contended in count 4 of their information that the judgment awarding the plaintiff 48 acres of **land** was uncertain in that the plaintiff's property was not designated with certainty in the judgment. Informants also argued that there is no showing that their one-half lot, lawfully acquired from one Charles Johnson, was situated within the plaintiff's 48 acres of **land**. The informants further contended in their brief and argued before this Court that they had purchased one-half and one-forth lots respectively from Charles Johnson, and that the property of the plaintiff was not designated with certainty in the judgment so as to indicate that their lawful properties were within the 48 acres of **land** claimed by and awarded to the plaintiff.

In count two of their returns, the respondents conceded the uncertainty and erroneousness of the judgment, but contended that the informants should have filed their information before the trial court so as to make said judgment certain and thereby prevent the trial court from taking informants' property away from them. The respondents did not deny in their returns that the judgment of the trial court was uncertain; instead, they only challenged the jurisdiction of this Court over the information proceedings.

We disagree with the contention of the respondents that the information proceedings are cognizable before the trial court. We hold that the proceedings before us emanate from the execution of this Court's mandate, and that information is the proper remedy where a mandate of this Court is being executed in an improper manner. Thus, these information proceedings are cognizable before this Court and not the trial court, as contended by the respondents in count two of their returns.

The averment of respondents in count 2 of their returns that the judgment awarding the plaintiff 48 acres of **land** is erroneous and uncertain is an admission of the informants' averments in their information. In other words, the respon-dents' admission is admissible and binding on them, and is deemed by this Court to be supportive of informants' assertion that the judgment is uncertain, especially since the property awarded to the plaintiff is not described with any certainty. The Civil Procedure Law, at section 25.8, provides that "all admissions by a party himself or his agent acting within the scope of his authority are admissible." Civil Procedure Law, Rev. Code 1:25.8.

As to the issue of the judgment being uncertain, this Court held in the case Duncan v. Perry, 13 LLR 510 (1960), Syl. 8, text at 516, that "a verdict must show what was awarded and must not be so uncertain that a writ of possession cannot be issued upon it." This Court also held in that case, at page 516, that "the **land** should be described or designated with certainty sufficient to enable a writ of possession to be executed."

In the instant case, there is no showing that the trial court made any effort to have a surveyor designate or describe the 48 acres of **land** awarded plaintiff in the judgment before placing him in possession of the said property. The property awarded the plaintiff should have been described or designated with certainty so as to enable the ministerial officer of the trial court to execute the writ of possession properly in enforcement of this Court's mandate. Thus, we uphold our holding in the Duncan case, cited supra.

It is a universal principle of law that "in the determination of what constitutes a legal and valid execution of the writ, it may be stated in general terms that the officer to whom such writ is entrusted must place the plaintiff in the full, actual, and peaceable possession of the premises recovered. The execution of the writ, in order to satisfy the judgment, must be thorough, complete, and effectual, and not merely formal." 25 AM JUR 2d, Ejectment, § 136, pages 628-629 (1966).

We observe from the above quoted principle of law that the execution of a writ of possession is legal and valid where the ministerial officer or sheriff places the plaintiff in full, actual, and peaceable possession of the property awarded him in a judgment. The execution of a writ of possession must also be thorough, complete, and effectual in satisfying the judgment. We hold that the plaintiff can only be placed in full, actual, and peaceable possession of the 48 acres of **land** awarded him in the judgment when such property is described and designated with certainty sufficient to enable the sheriff to execute proper-ly the writ of possession issued by the trial court. It therefore follows that the trial court should have instructed a surveyor to designate and describe plaintiff's 48 acres of **land** with certain-ty, so as to place him in full, actual, and peaceful possession of the property claimed by him. In that way, the writ of execution would have been thorough, complete, effectual, and in full satisfaction of the judgment.

In their prayer, the informants requested this Honourable Court to reverse the judgment of the lower court and remand the case for a regular trial. This Court holds that the case is not before it on a regular appeal from the final judgment of the trial court, but on a bill of information predicated upon the execution of the mandate of this Honourable Court. This Court has consistently held that a bill of information is the proper remedy available to a party litigant to seek the aid of this Court where its mandate is being improperly enforced by a trial court. Raymond International v. Dennis, [1976] LRSC 35; 25 LLR 131, Syl. 6 (1976); Massaquoi-Fahnbulleh v. Urey, [1977] LRSC 5; 25 LLR 432, Syl. 1 (1977); Barbour-Tarpeh v. Dennis, [1977] LRSC 11; 25 LLR 468, Syl. 1 (1977); National Port Authority v. The Executive Committee on the Six Consolidated Group of Retirees and Compulsory Employees of the National Port Authority, 39 LLR 244 (1999). A bill of information therefore cannot be used as a substitute for a regular appeal as prayed for by the informants. The prayer of the informants is accordingly hereby denied in so far as it requests this Court to reverse the judgment of the trial court and remand this case for a regular trial. This Court is only concerned with the uncertainty of the judgment, as contended by the informants.

Wherefore, and in view of the foregoing, it is the consi-dered opinion of this Court that the bill of information should be, and the same is hereby granted in so far as it relates to the uncertainty of the judgment. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and enforce its judgment to the extent that the 48 acres awarded the plaintiff should be described or designated with certainty to enable the sheriff to execute the writ of possession in satisfying the judgment. Costs of these proceedings are disallowed.

Information granted.

Tarr v Dennis et al [1978] LRSC 43; 27 LLR 243 (1978) (29 June 1978)

DANIEL TARR, Informant, v. JOHN A. DENNIS, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and GEORGE KAI KOROH, et al., Respondents.

JUDGMENT WITHOUT OPINION.

Decided June 29, 1978.*

When this case was called, Counsellor *J. Emmanuel Berry* appeared for informant, and Counsellor *Lewis K. Free* appeared for the respondents. In the two-count bill of information which is the subject of these proceedings before us, it is stated that

"when this Court rendered judgment without opinion and ordered the trial court to resume jurisdiction and enforce its judgment and the trial court issued a writ of possession and ordered the sheriff to put plaintiff in possession of the property sued for, the said sheriff without the aid of surveyors proceeded to Johnsonville and without surveying plaintiff's 90 acres of **land** and putting them in possession of same, merely pointed to a certain parcel of **land** and told the plaintiffs to take possession; which act of the sheriff is illegal, as it did deprive informant not only of his 90 acres of **land** that were awarded plaintiffs, but did in addition deprive informant of his remaining 10 acres of **land**, as his title deed calls for 100 acres and co-respondents' deed calls for 90 acres."
The return filed to this information did not deny that the sheriff put plaintiffs in possession of more **land** than was sued for contrary to the judgment of the trial court, which judgment the Supreme Court had upheld and ordered enforced.

In the service of writs of possession in ejectment, the sheriff must be guided by the metes and bounds contained in the deed of the successful party, made profert with the pleadings, and may not put such successful party in possession of more **land** than was sued for. The writ of possession must describe the property, Rev. Code 1:62.23, and the sheriff is authorized to remove intruders only from that quantity of **land** sued for and which was the subject of the judgment. In *Duncan v. Perry*, 13 LLR co, 515 (196o), the Court said that "in all cases of ejectment the plaintiff's right of possession must not depend upon the insufficiency or inadequacy of his adversary's claim; he must be entitled to possession of the property upon a legal foundation so firm as to admit of no doubt of his ownership of the particular tract of **land** in dispute."
Land sued for in this case was only 90 acres according to the deed made profert with the complaint, and in keeping with the metes and bounds describing the **land** in the said deed ; the sheriff was therefore without legal authority to have put plaintiffs in possession of 100 acres, more property than was sued for. It is therefore adjudged that the Clerk of this Court will send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the cause, and order the sheriff to proceed with the parties to the property in dispute, and on the spot have a surveyor designate the 90 acres sued for in keeping with the deed of the plaintiffs, which he should also take with him, and there put the plaintiffs in possession of the property, the subject of the ejectment suit. Costs are disallowed. And it is so ordered.

Mrs. Justice Brooks-Randolph did not participate in this decision

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Kamara et al v Logan [1954] LRSC 17; 12 LLR 28 (1954) (28 May 1954)

JACOB M. KAMARA and JAMES S. KAMARA, Appellants, v. HENRY V. LOGAN and S01\40 GBEE, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 9, 11, 1954. Decided May 28, 1954. 1. A written receipt which satisfies
the requisites of a binding contract of sale of real property may be specifically enforced by a court of equity. 2. The statutory
period of limitation barring an action for enforcement of a written contract is reckoned from the date when the contract became enforceable,
and not necessarily from the execution of the instrument.

Plaintiffs sued defendants for specific performance of a written contract of sale of real property. On appeal to this Court from a judgment of the court below that the statute of limitations barred suit,
and that the agreement in question was not a written contract, judgment reversed and case remanded for new trial. K. S. Tamba and
Momolu S. Cooper for plaintiffs. R. F. D. Small-wood for defendants. MR. JUSTICE HARRIS delivered the opinion of the Court. The appellants,
plaintiffs below, paid to Henry V. Logan and Somo Gbee, defendants below and appellees herein, the sum of one hundred and twenty
dollars for eight acres of land in Bushrod Island, Montserrado County,
for which the following receipt was given : "Received from
Messrs. Jacob M. Kamara and James S. Kamara of the City of Monrovia and of the Republic of Liberia, the sum of ($120.00) one hundred
and twenty dollars, being an amount paid for (8) eight acres of land in Bushrod Island, Mont-

serrado
County, of the Republic of Liberia, until said land is surveyed and proper deed is issued and signed by us. "Bushrod Island, Monrovia, Liberia, February 24th, 1948. "[Sgd.] Henry V. Logan "[Sgd.] Somo Gbee (his cross) "[Sgd.] Moses Abel (witness)." Some time thereafter
the appellants applied to the appellees for a title deed to cover the eight acres of land described in the receipt. Defendants failed
to give plaintiffs such a deed. Plaintiffs then instituted a suit for specific performance with a complaint containing the following
counts : "r. On February 24, 1948, plaintiffs paid to defendants the sum of one hundred and twenty dollars for eight acres of land
which the said defendants promised to sell to plaintiffs, as will more fully appear from a receipt executed for said sum of money,

a copy whereof is annexed to form a part of this complaint. "2. Despite repeated application by plaintiffs for title deed to cover the eight acres of land duly paid for, defendants have neglected, failed and refused to issue said title deed." The defendants in their answer pleaded by way of confession and avoidance. That is to say, they confessed having received the one hundred and twenty dollars from plaintiffs for eight acres of land in Bushrod Island, but contended that a petition for specific performance must be instituted within three years after the cause of action accrues. The plaintiffs in their reply contended that, since this was an action for the specific performance of a written contract other than for the payment of money, the applicable limitation was seven years, not three years. Defendants, in their rejoinder, contended : "r. The enforcement of specific performance does not

depend upon a written contract; for specific performance can be based upon a verbal understanding between the parties.
Such an action therefore cannot be brought after three years. "2. In this case there is no written contract upon which plaintiffs have brought this suit to enforce specific performance since all written contracts must be signed and sealed by the contracting parties.
"3. The receipt for the payment of money filed with plaintiffs' complaint is only evidence of plaintiffs' claim, and not a written contract, since it is ex parte in its nature and not signed by any contracting party. Therefore it lacks the requisites of a written contract." In the surrejoinder the plaintiffs contended, in substance, that a document signed by defendants is, to all intents and purposes, a written contract of sale of real property by the said defendants to the plaintiffs, wherein the said defendants contracted to sell eight acres of land to plaintiffs in consideration of money paid them by plaintiffs. This the defendants denied in their rebutter, at which stage the pleadings rested. The legal issues were tried by the Circuit Court of the Sixth Judicial Circuit, Montserrado County, which sustained the defendants' contentions that this action should have been brought within three years because the receipt in question was not a written contract, and on that ground dismissed the complaint. It now becomes our duty to inquire into the soundness of this ruling dismissing plaintiffs' action and forever barring them from recovering by reason of the statute of limitations. Since this action was predicated upon the purchase of eight acres of land from the defendants for one hundred and twenty dollars, in return for which defendants gave a receipt pending the survey of said land and issuance of a deed by them, we shall see whether such a receipt can

be so written as to constitute a written contract. It is well settled that, when a contract which need

not be in writing is reduced to writing, it is not necessary that it should be expressed in a particular form. "A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do, or omit, some act, in consideration that the other party shall give, or has given, some valuable thing, or shall do, or omit, or has done, or omitted, some act. The consideration of a contract may be anything which is troublesome or prejudicial in any degree to the party, who performs or suffers it, or beneficial in any degree to the other party, an agreement without such a consideration is not a contract but only a promise." 1841 Digest, pt. II, tit. I, sec. I I ; 2 Hub. 1516. The receipt in question, supra, shows there was an agreement entered into by the assent of two or more minds, and involving an exchange of consideration. It is therefore the opinion of this Court that the receipt given by defendants to plaintiffs is so drawn that it constitutes a written contract.
Moreover, this Court is at a loss to know how the court below arrived at its conclusion that the plaintiffs are barred by a statute of limitations. Such a statute could not, in any event, begin to run from the date of the receipt. It would begin to run only after the failure of the defendants to sign and deliver a proper deed to plaintiffs to cover the said eight acres of land, and after the survey of said land, **as stated in the receipt. There was nothing before the court to show that the land** had been surveyed and that three years had elapsed from the time of the survey to the filing of the action. If A receives from B an amount of money for which he executes a note stipulating to pay said sum of money upon the happening of a certain event, and that event does not happen until ten years thereafter, the statute of limitations does not begin

to run until after the happening of that event; it does not begin to run from the date of the execution of the note. On this issue of law the trial Judge also erred. Because of what has been stated above, the judgment of the court below is therefore reversed; the case is remanded to be tried upon its merits; the appellees are ruled to'pay all costs; and it is hereby so ordered. Reversed.

Wallace v Green [1958] LRSC 19; 13 LRSC 269 (1958) (19 December 1958)

MACHEAL WALLACE, Appellant, v. MARY GREEN, for her Minor Son, DIRK BUITENDYK, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 20, 24, 1958. Decided December 19, 1958. Real property which belongs to an

infant cannot be conveyed by a deed executed by a parent of the infant unless the parent is specially authorized in writing to execute the deed.

On appeal from a judgment in an action of ejectment, judgment affirmed. James H. Smythe for appellant. Momolu S. Cooper

for appellee. MR. Court.
JUSTICE

MITCHELL delivered the opinion of the

This is a case in which one Mary Green, for her minor son, Dirk Buitendyk, plaintiff, sued out of an action of ejectment against one Macheal Wallace, defendant, for unlawfully entering upon, trespassing and illegally detaining and withholding a portion of her minor son's land to his damage and inconvenience. The warranty deed on which the plaintiff based her complaint reads as follows : "Know all men by these presents that we, Jacob Fay, Somo Gbee, Jessie Capehart, Henry V. Logan, Tarlow Kai and Jarsah Budu, of the Bushrod Island of Monrovia, in the County of Montserrado and Republic of Liberia, in consideration of the sum of forty-five ($45) dollars paid to us by Dirk Buitendyk, of the City of Monrovia in the County of Montserrado and Republic of Liberia (the receipt whereof is hereby

acknowledged), do hereby give, grant, bargain, sell and convey unto the said Dirk Buitendyk, his heirs and assigns, a certain lot or parcel of land, with the buildings thereon and all privileges and appurtenances to the same belonging, situated in the Bushrod Island of Monrovia, County of Montserrado and Republic of Liberia, and bearing in the authentic records of the said Bushrod Island the block number one (1) and bounded and described as follows: `Commencing at the South West corner of Alfred Blomo Maxim's adjoining Northern Block and running parallel with it, South fifty-two (52) degrees, East eight (8) chains, thence running South eightythree (83) degrees, West sixty-two (62) feet; thence running North fifty-two (52) degrees, East sixty-two (62) feet to the place of beginning and contains three (3) town lots or three-fourths of an acre and no more.' "To have and to hold the above-granted premises to the said Dirk Buitendyk, his heirs and assigns, to him and their use and behoof forever. "And we the said Jacob Fay, Jessie Capehart, Tarlow Kai, Jarsah Budu, Somo Gbee and Henry V. Logan, for us and our executors, administrators and assigns do covenant with the said Dirk Buitendyk, his heirs and assigns that at, and until the ensealing of these presents, we were lawfully seized in fee simple of the aforesaid granted premises, that they are free from all encumbrances and that we have good right to sell and convey the same to the said Dirk Buitendyk, his heirs and assigns forever, as aforesaid and that we will, and our heirs, executors, administrators and assigns, will warrant and defend the same to the said Dirk Buitendyk, his heirs and assigns forever against the lawful claim and demand of all persons.

"In witness whereof we, Jacob Fay, Somo Gbee, Jessie Capehart, H. V. Logan, Tarlow Kai and Jarsah Budu, have here-

unto set our hands and seals this 5th day of June in the year of our Lord one thousand nine hundred and fifty (A.D.
195o). [Sgd.] JACOB FAY, [his X] [" SOMO GBEE, [his X] ["] JESSIE CAPEHART, [his X] TARLOW KAI, [his X]] JARSAH BUDU, [her X]
["] HENRY V. LOGAN "Signed, sealed and delivered in the presence of :
[Sgd.] MOSES B. AMHARD [Signature illegible] ["] CEPHAS
J. KNIGHT" The foregoing warranty deed, under which the plaintiff below, now appellee, claims title to be vested in her minor son,
Dirk Buitendyk, underwent the usual court preliminaries, and was probated on June 7, 195o. The defendant below, now appellant, appeared,
and pleadings progressed as far as the surrebutter. At the filing of defendant's answer, he also made profert of the deed under which he claims title to the tract of land in litigation
; and we quote this also, hereunder, for the benefit of this opinion : "Know all men by these presents that I Mary Green, of the
City of Monrovia, in the County of Montserrado and Republic of Liberia, for and in consideration of the sum of sixty ($6o) dollars,
paid to me by Macheal Wallace, of the City of Monrovia, in the County of Montserrado, Republic of Liberia (receipt whereof is acknowledged)
do hereby give, grant, bargain, sell and convey unto the said Macheal Wallace, his heirs and assigns, a certain lot or parcel of
land, with the building thereon and all privileges and appurtenances to the same belonging, situated in the Settlement of Bushrod
Island, County of Montserrado and Republic of Liberia and bearing in the authentic
[["]

records of
said Bushrod Island, a portion of number One ( ) and bounded and described as follows : " 'Commencing at the North East corner of
Mary Green's adjoining Western Lot, marked by a concrete monument and running South fifty-two (52) degrees, East 126 feet, thence
running South twenty eight (28) degrees West, 62 feet, thence running North fifty-two (52) degrees, West 126 feet, thence running
North thirty eight (38) degrees, East 62 feet, to the place of beginning and contain one town lot and no more ... and containing
... acres of land and no more.' "To have and to hold and above granted premises to the said Macheal Wallace, his heirs and assigns,
to them and their use and behoof forever. "And I, the said Mary Green, for myself and my heir, executor, administrators and assigns,
do covenant with the said Macheal Wallace, his heirs and assigns that at and until the ensealing of these presents, I was lawfully
seized in fee simple of the aforesaid granted premises, that they are free from all encumbrances ; that I have good right to sell

and convey the same to the said Macheal Wallace, his heirs and assigns forever as aforesaid ; and that I will, and my heirs, executors, and administrators and assigns shall warrant and defend the same to the said Macheal Wallace, his heirs and assigns forever against the lawful claims and demands of all persons. "In witness whereof I, Mary Green, have hereunto set my hand and seal this 9th day of January in the year of our Lord one thousand nine hundred and fifty five, A. D. 1955. [Sgd.] MARY GREEN [DIRK BUITENDYK "Signed, sealed and delivered in the presence of :

[Sgd.] EDWIN N. HODGE Jos. F. DUNBAR, JR." Reference to the records in the case shows that plaintiff's main issue raised is that of fraud, as she claimed never to have subscribed her signature to this purported deed. His Honor, John A. Dennis, presiding over the December, 1956, term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, reviewed the pleadings and ruled the case to jury trial upon the merits of the facts involved and we consider it of importance to mention that Counsellor Joseph F. Dennis represented the defendant from the initial stage of the case, and that, during the pendency of this appeal, censure was imposed upon him by this Court which rendered him unable to appear at the call and hearing of the case before us. The jury trial ensued during the September, 1957, term of the Circuit Court, and the jury returned a verdict in favor of the plaintiff. A motion for new trial was filed, heard, and denied.; and judgment was rendered affirming the said verdict of the petty jury. Defendant excepted to all of these prerequisites to an appeal, and has brought his appeal on a bill of exceptions containing nine counts. But we regard it of interest, before treating on the counts laid in the said bill of exceptions, to refer to some of the statements of witnesses who testified. In answer to a question, the plaintiff testified as follows : "Mr. Macheal Wallace and myself were living together. We built a house in 1955 on my place. The whole of 1955, we lived together. December 1955, he said that he did not want me ; so I asked him to please leave my place and he said to me : 'What kind of place?; you sold it to me.' I said to him: 'Sold it to you?' I did not say anything again, but took the matter to the Department of Justice before the County Attorney, who is Alfred J. Raynes. I told him to please ask Mr. Macheal Wallace off my place. He called him ["

at his office and asked him : 'What kind of palava between Mary Green and yourself because she has asked you to leave her place?' He said to the County Attorney that I sold the place to him. Mr. Raynes asked : 'Who was present when she sold the place to you?' He said : 'There was no witness. The two of us were in the room when I I signed the deed. Afterwards he carried the deed outside to persons to witness

it.' Mr. Raynes asked him how much he paid for the place. He said $6o. Mr. Raynes asked me if I signed any deed. I told him that I did not sign any deed. Mr. Raynes advised him to leave the place because the parcel of land was bought in my son's name. He said he was not going to leave the place, so I sued him. "Q. Miss Witness, do you not recall that the defendant paid you sixty dollars for purchase of the **land in question prior to the dissolution of relationship and you agreed to sell the land** to him?

"A. No, he did not give me any money and I could not sell the land to him for it is in my son's name." Witness Alfred Raynes for the plaintiff in testifying, said, inter alia, that Mary Green did take the matter before him, and Macheal Wallace did show him a deed which he claimed to have been signed by the plaintiff, and which she categorically denied having signed, and said that the signature appearing on the deed had been forged because she knew nothing about issuing a deed to the defendant for the land. Dirk Buitendyk, the owner of the property in question, when on the stand, testified also that he knew nothing of the selling of any land to Macheal Wallace, nor did he authorize the same as the rightful owner. Witness Joseph Dunbar, who, besides surveying the land, signed the deed as an attesting witness, testified as follows :

"At the time I presented the deed to Mr. Wallace, he requested me to sign as a witness. There was no signature on it as grantor. In fact, the plaintiff could not have signed the deed when the deed was still in my possession up to the time I witnessed it and handed it to the defendant upon his request." When asked further if he had been requested by the plaintiff to sign the deed as a witness, he answered in the negative. Witness Edwin Hodge, who also took the stand for the defendant, and who signed the deed in question also, said that he did so upon the request of the defendant, Macheal Wallace and that he did it in the absence of the plaintiff, Mary Green. Defendant, when on the stand, was asked and answered the following questions : "Q. Was any one present on the scene and witnessed the plaintiff, when as you say, she signed your deed? "A. No one was present; and as I have said, she apparently signed this deed in such anxiety that no one was able to witness it. "Q. Since you have said that the plaintiff signed your deed in a secretive manner, did you at any time thereafter make such a conduct on her part known to a third person? "A. No." We have taken the time to review that portion of the record in the case which embraces the testimony of the plaintiff, now appellee, and her witnesses as well as that of the defendant, now appellant, and his witnesses, so that we could make clear the act of the defendant below in his effort to have the property in question transferred. And now we shall endeavor to ascertain what aid the law lends in the premises. Referring to common law authorities, we have the following: "While a statute providing that a deed shall be proved by attesting witnesses imports that they must

sign at the request of the grantor, an attestation may be sufficient where persons, although not expressly requested by the grantor, write their names as witnesses in the presence and with the knowledge of both grantor and grantee and the deed is delivered to and accepted by the latter. A person has no right, however, to make himself a subscribing witness in the absence of any request or knowledge on the part of the grantor and after he has refused to acknowledge the deed. . . . "Proof of execution, however, is insufficient where it does not appear that the grantor either signed or acknowledged the deed in the presence of the witnesses." 26 C.J.S. 666-67 Deeds § 35. In this case, the records before us show that neither Joseph Dunbar nor Edwin Hodge, whose names appear on the deed as witnesses, subscribed their signatures in the presence of the grantor; nor does it appear that the grantor acknowledged her signature in their presence. On the contrary, both Joseph Dunbar and Edwin

Hodge testified to the fact that they signed the purported deed in the absence of the supposed grantor and even before her signature had been subscribed thereto. This act of the defendant below, now appellant, of having persons sign the deed in question in the absence of the grantor, without acknowledging her signature thereto, and thus transferring title in property to him, cannot escape the close eye of suspicion. As we have said before in this opinion, this case has come before us on a bill of exceptions containing nine counts. Counts "1" to "6" thereof refer to objections made on the questions propounded to witnesses whilst on the stand, which objections were not sustained by the trial Judge. A review of these counts shows that they carry no substantial background to warrant reviewing them, seriatim, because, to our minds, they were all pertinent to the issue involved ; and the court, in refusing to entertain such objections, did not err.

Counts "7" and "8" refer to exceptions taken on the verdict of the petty jury and the ruling of the trial Judge on defendant now appellant's motion for new trial. In our opinion the verdict of the petty jury was based upon the sound and unambiguous testimony of the witnesses who testified in the case in the court below. It is well settled that when the evidence is clear and the trial regular, a verdict will not be disturbed. These two counts, therefore, are without legal merit. Arriving at the salient point in the case, we cannot understand how, and in what manner, Macheal Wallace, the appellant, can claim legal title to property under a deed transferring title to himself from a grantor who does not hold title to the particular piece of property sought to be transferred. According to the deed cited, supra, original title to the property is vested in Dirk Buitendyk, the minor son of Mary Green, the plaintiff in the court below and appellee herein. There has been no profert made of any record of a court of competent jurisdiction, authorizing

the plaintiff to dispose of the land, or any portion thereof, to any person for and on behalf of her minor son, Dirk Buitendyk, who holds genuine title to the said property. Nor was any document which made profert which authorized the sale thereof. Yet defendant below, now appellant, made profert of a deed under the purported signature of one Mary Green as the grantor, which makes it convincing that the act is illegal ab initio. "There should be some title of interest, in law or in equity, in the grantor to enable him to convey, and a deed from a person not in possession, or not shown to be the owner, establishes no title." 26 C.J.S. Got Deeds§ 14.
Under the circumstances, therefore, this Court feels it legal, right, and just to affirm the judgment of the court below with costs against the appellant. And it is hereby so ordered. ilffirm ed.

Salami Bros.v Kiazolu [1962] LRSC 6; 15 LLR 32 (1962) (1 June 1962)

SALAMI BROTHERS, Lebanese Merchants Transacting Business in Liberia, by M. SALAMI, General Manager, Appellants, v. HAWAH KIAZOLU WAHAAB, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 3, 4, 1962. Decided June 1, 1962. 1. Dismissal of a defendant's pleadings, restricting the defendant to a bare denial of the facts alleged by the plaintiff, does not deprive the defendant of the right to cross-examine as to proof, and does not shift the burden of proof. 2. A plaintiff in an ejectment action must sustain the burden of proof of title. 3. The law requires that, as far as is humanly possible, a resurvey of land should start at the same point and follow the same course as the original survey, particularly where there is no difficulty in following the original lines of the previous survey. 4. Recognition of, and acquiescence in, a line designated in a survey as a boundary line, if not induced by mistake, and if continued through a considerable period of time, constitutes strong evidence that the line so recognized is the authentic line.

On appeal from a judgment in an action of ejectment, judgment reversed.

J. C. N.
Howard for appellants.
appellee.

M. M. Perry for

MR. JUSTICE PIERRE delivered the opinion of the Court. Mme. Hawah Kiazolu Wahaab brought an action of ejectment against Salami Brothers, a Lebanese firm, to eject them from a lot of land which forms part of the property on which the said firm had constructed a gasoline distribution station on Bushrod Island in Monrovia. Her case was filed

in June, 196o, and the firm through its General Manager, M. Salami, filed answer joining issue. The pleadings progressed as far as the surrejoinder. Be32

cause of alleged defects, the answer and all subsequent pleadings of the defendants were dismissed, and they were placed on a bare denial of the facts alleged in the complaint. That was the condition in which the case came on for trial in the September, 1961, term of the Circuit Court of the Sixth Judicial Circuit, Montseriado County, before Judge John A. Dennis, presiding by assignment. A jury was empanelled, heard evidence, and returned a verdict supporting the claim of the plaintiff. Upon this verdict, judgment was rendered ; and from this judgment the instant appeal has been taken. The piece of property in dispute was one of two town lots sold to the late B. G. Freeman by one S. B. Nagby in June, 194.9. In July of the same year, Freeman leased these lots to Salami Brothers, the appellants herein. The property at the time was unimproved ; and it remained unimproved until some time after the year 1953, when Salami Brothers built the distribution station. However, in 195o, the year after Freeman had leased to Salami Brothers, Hawah Wahaab, the plaintiff, leased five and one-half lots of land in the same neighborhood from the people of Via Town who held an aboriginal grant deed for a 25-acre block. Said deed had been executed to them by President Edwin Barclay 19 years before. Some contention arose which necessitated a resurvey of the Nagby land, including the two lots sold to Freeman who, unfortunately, had died before the dispute. The results of the resurvey necessitated a readjustment in 1953 of the boundaries of property in the area; and so one of the lots sold to Freeman, and which he had, in turn, leased to Salami Brothers, fell to the people of Via Town whose 25-acre block was adjoining. This is important in the light of subsequent happenings, and was to play an important part in this case. The lot which had originally been owned by Freeman, and which he had lost to the people of Via Town in the aforesaid readjustment, was taken possession of by Wil-

Liam R. Tolbert under a lease agreement entered into between himself and the people of Via Town; and this lot he again leased to Salami Brothers, who were already occupying it under the Freeman agreement, thus giving Salami Brothers back the two lots they had leased from Freeman, one of which they had lost in the readjustment. The lease agreement between Mr. Tolbert and Salami Brothers was signed on May 15, 1953. It was probated and registered without objection then, and without any attempts to cancel since. We, therefore, have to assume that this agreement is regarded as valid by all concerned. However, five

days after the Tolbert agreement with Salami Brothers had been signed, that is to say, on May zo, 1953, the plaintiff-in-ejectment, appellee herein, also entered a lease agreement with the same Salami Brothers, for one-half lot out of her five and one-half leased from the people of Via Town. From the wording of her agreement with Salami Brothers, it is shown that this half lot was adjoining the lot which Mr. Tolbert had leased to the same firm five days before her agreement. The relevant portion of the description of the half lot, as found in her agreement, made profert with the pleadings is in the record before us and reads as follows: "The lessor hereby leases unto the lessee one-half a lot in Via Town, Bushrod Island, bounded and described as follows: One-half a town lot 42 feet by 132 feet immediately adjoining the lot leased by Via Chiefs to Honorable W. R. Tolbert which is adjoining the lot leased to Salami Brothers by B. G. Freeman on the road leading to the Port of Monrovia." It is of significance to note that, in 1953, the plaintiff admitted Mr. Tolbert's rightful and legal tenancy of the lot in dispute, and seven years later, after the property had been improved, has brought action to evict Mr. Tolbert's subtenants, even though none of the circumstances relating to the several agreements controlling property in the area have changed; nor has there been

any readjustment since her recognition of the Tolbert leasehold rights to the property; nor has there been any physical alterations to lands in that area. Our law makes it binding upon all parties to respect admissions which they voluntarily make, if and when it can be shown that there was no evidence of coercion, intimidation or force which occasioned the admission. "All admissions made by a party himself or by his agent acting within the scope of his authority are competent evidence." 1956 Code, tit. 6, § 691. "An admission, whether of law or of fact, which has been acted upon by another is conclusive against the party making it in all cases between him and the person whose conduct he has thus influenced. It is immaterial whether the thing admitted was true or false." Smith v. Barbour, [1944] LRSC 5; 8 L.L.R. 229 (1 944)7 Syllabus 4. Accord : Dennis v. Dennis, [1928] LRSC 12; 3 L.L.R. 45 (1928) ; Richards v. Coleman, [1938] LRSC 15; 6 L.L.R. 285 (1938). The appellee's recognition in 1953 of Mr. Tolbert's leasehold rights to the lot in dispute bound her to that position for all future time during the pendency of the life of the Tolbert agreement with Salami Brothers, and of her agreement which gave Salami Brothers the half lot which she admitted adjoins the one they had leased from Mr. Tolbert. When Hawah Wahaab leased the five and one-half lots in 195o, the lease agreement which was signed between herself and the people of Via Town carried a complete description of the quantity of the land showing the metes and bounds of the survey; and the agreement shows those metes and bounds to have been as follows : "Commencing at the southwest corner of said block marked by a concrete monument on the western side of the new road, and running North 53 degrees West 134 feet, thence running North 37 degrees East 450 feet, thence running South 53 degrees East 134 feet, thence running South 37 degrees West 45o feet parallel

with the new Bushrod Island Motor Road to
the place of beginning and containing 5Y2 lots." For ten years she held the property covered by this description under leasehold.
There is no evidence of another deed for any additional property leased or sold to her in the area during this period ; yet in 196o,
when she decided to bring this action against Salami Brothers, claiming the lot which they had taken by lease from Mr. Tolbert to
be part of her five and one-half lots, her property had increased by more than one lot. It would appear that, because of the contentions
which arose at the time, the people of Via Town, as lessors to her, as well as to Mr. Tolbert, had her five and one-half lots resurveyed.
When this was done, it was discovered that, although she had leased only five and one-half lots from them in 195o, she was now laying
claim to six and 64/1oo lots in 196o. In other words, her property had increased in ten years by a little more than one town lot.
How this could have been possible was never explained, even though we made every effort during the arguments to have her counsel
give us some light on this problem. Moreover, in 195o, when she surveyed the five and onehalf lots for the purpose of concluding
the contract of lease with her lessors, the survey of her property had commenced at one starting point, as can be seen from the metes
and bounds quoted above; whereas, when this action was filed ten years later in 196o, she elected to commence the survey at another
starting point, different from that used for the first survey. This was another point which we could not get her counsel to explain
during the arguments. The appellants have not only questioned the regularity of this procedure, but have alleged that, had the 196o
survey commenced at the same starting point she had used in 195o, the one extra lot she now laid claim to, and which she had previously
recognized as Mr. Tolbert's, could not have fallen within the boundaries of her leased property. They contend that proof of this
is

shown in the fact that, whereas, in 1950, she had concluded a lease agreement which gave her only
five and one-half lots, her lessors have discovered by resurvey that she now claims more than one lot over and above what she is
entitled to under the terms of the contract. Considering the question of the change in starting point of the 196o survey of the appellee's
five and one-half lots, we have held that it was irregular for her to have begun at a different point from the original starting
point unless she could have shown that point to have been lost. She has not made this contention, but has argued that she could have
started at any point so long as she took in the quantity of land in the area covered by her lease agreement. This contention crumbles
when we consider that the resurvey reveals that she now claims more land than was leased to her. The law requires that, as far as

is humanly possible, a resurvey of land should start at the same point and follow the same course as the original survey; that is to say, where there is no difficulty
in following the original lines of the previous survey. "Where the lines of a survey have been run, and can be found, they constitute
the true boundaries which must not be departed from or made to yield to any less certain and definite matter of description or identity."
5 CYC. 914 Boundaries. "Recognition of, and acquiescence in, a line as the true boundary line of one's land, not induced by mistake,
and continued through a considerable period of time, affords strong, if not conclusive, evidence that the line so recognized is in
fact the true line, but a mere license or passive acquiescence on the part of a landowner in an encroachment by his adjoiner will
not conclude him; and where a line is recognized and acquiesced in though a mutual mistake the parties will not be estopped to assert
the true division line." 5
CYC. 940-941 Boundaries.

"The courts are divided in their opinions as to the

necessity of continued acquiescence of both parties following the execution of the agreement, some with apparent logic, denying
the necessity, but the majority directly or impliedly requiring such acquiescence. . . . Just how long a period of acquiescence is
necessary to conclude the parties when the statutory period is not required is a question which cannot be answered with exactness.
Possession for the statutory period is, of course, sufficient, whatever this may be, and periods of eighteen to twenty years, fifteen
years, ten years, and even six months have been held sufficient to establish a boundary by acquiescence. On the other hand, it has
been held that acquiescence for only four or five years is insufficient for such purpose." 8 Am. JUR.
799-800 Boundaries § 75.

In this case, not only is there acquiescence, but there is also a written agreement recognizing the Tolbert boundary
line. And if, by mere acquiescence, seven years were not sufficient to establish the appellants' rights under the Tolbert agreement,
then certainly the appellee's written recognition must be admitted as being superior to any mere implied acquiescence. On argument
before us, it was contended that most of issues raised in the appellants' brief should have been considered under the pleadings which
had been dismissed by the judge who passed upon the points of law. We would like to remark that, although the dismissal of a defendant's
pleadings places him on a bare denial of the facts alleged in the complaint, it does not deprive him of the right to cross-examine
as to allegations contained in his adversary's pleadings, or as to documents filed with those pleadings ; nor does it give the plaintiff
exemption from proving all the essential allegations set forth in the complaint. The defendant's restriction to a bare denial does
not necessarily decide a civil case in favor of the plaintiff. In this case, the documents which were put in evidence, and which
have shown the difference in the metes and

30 bounds of the two surveys of the appellee's five and onehalf lots, as well as showing
the increase within ten years of appellee's leased property, and which acknowledged Mr. Tolbert's right and recognized his one lot
leased to the appellants, were all brought into the case by the appellee herself. We are, therefore, of the opinion that the appellants,
though on bare denial, had every right to cross-examine as to those documents, and to refer to testimony elicited in said cross-examination
on the hearing. We would hold this view even if the documents had been brought into the record over the appellants' objections; but
such was not the case. In ejectment, the plaintiff must prove his ownership or right of possession so conclusively as to leave no
doubt of the superiority of his rights over his adversary's. In Yamma v. Street, [1956] LRSC 20; 12 L.L.R. 356, 359 (1956), Mr. Justice Shannon,
speaking for this Court, said : "It is a principle in trials for ejectment, which has been often
enunciated by this Court, that plaintiff must recover upon the strength of his own title and not on the weakness of his adversary.
. . ." Not only has it been established that the plaintiff recognized and acknowledged Mr. Tolbert's leasehold right to the lot of
land in dispute by concluding an agreement with Tolbert's lessees which referred to the Tolbert boundary line as the beginning of
the half lot which she also leased to the same lessees, but she has not been able to explain how her five and one-half lots which
adjoined Mr. Tolbert's one lot in 1953 had, in 196o, increased and taken in the one lot which she had previously recognized as Mr.
Tolbert's. She made no effort to explain the absence of any deed which might have given her more land in the area during the period
the increase was taking place. In view of these strange and unexplained circumstances, we are unable to say that appellee has, by
any stretch of the imagination, proved her right to the lot in dispute; and also, according to the evidence we have in
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this case, she has failed to show an older or better right to the lot in dispute. Unless she
is able to recover on the strength of her legitimate ownership or right of possession, an action of ejectment cannot afford her relief.
It is, therefore, our considered opinion that the appellants' leasehold rights, supported by the agreement of lease concluded between
themselves and Mr. Tolbert in 1953, should not be disturbed, and that the judgment of the court below should therefore be reversed
; and the same is so ordered.
Reversed.

Phillips v Nelson et al [1949] LRSC 12; 10 LLR 134 (1949) (22 April 1949)

MONAH IDA PHILLIPS, Appellant, v. MARTHA NELSON and SARAH T. FREEMAN, Appellees.
APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued March 24, 1949. Decided April 12, 1949. 1. Illness of counsel is good ground for which a court should grant a continuance.
2. Where a judge acts without jurisdiction his judgments are a nullity and cannot be enforced.

On appeal from a judgment dismissing appellant's objections to the probate by appellees of a warranty deed, judgment reversed and remanded.
William A. Johns for appellant.
for appellee. Momolu S. Cooper

MR. JUSTICE DAVIS delivered the opinion of the Court. The records certified to this Court from the court of origin in this case succinctly disclose the following: in the year 1943 the Government of Liberia sold to Martha Nelson and to Sarah T. Freeman, the above named appellees, one-quarter of an acre of land situated on Benson Street in the Commonwealth District of Monrovia, which land the Government as well as appellees considered a portion of the public domain of the State at the time of the sale. A public land sale deed, having been duly executed in favor of appellees and signed by the President of Liberia, then Edwin Barclay, was during the December term of the Monthly and Probate Court offered by appellees for probate. Appellant entered and filed formal objections to said deed being admitted to probate, claiming: 1. That the land in question was her bona fide prop-

erty by virtue of having purchased same from the late Maria Williams, 2. That the deed executed by the Government in favor of appellees was fraudulent and deceptive in that, the amount named therein, namely one dollar and fifty cents as the purchase price paid by appellees into the treasury for a quarter of an acre of land was too meagre and therefore was not sufficient in keeping with the provision of law which declares thirty dollars as the purchase price for a town or City lot, 3. That the deed was not signed by T. Gyibli Collins, the then land commissioner, and was therefore fraudulent, because in the body of said deed is written the name of T. G. Collins, land commissioner, but in the signatory clause appears the name of Reuben Logan as registrar for Montserrado County; and 4. That the deed was not registered and probated within four months after its execution, for although executed in 1943 it was not offered for probate until December 1946, which, according to appellant's contention, rendered said deed voidable.

Countering these points raised in appellant's objections, appellees submitted the following in their answer : 1. That the land in question was, up to the time of the sale of same by the Government, a portion of the public domain of the State. 2. That appellant who claimed ownership in, and title to, said land as a result of a purchase from Maria Williams, as she alleged, should have made profert of her title deed, and her failure to do so rendered her objections liable to dismissal. 3. That the question of insufficiency of monetary consideration was not one within the purview of appellant as a private citizen to question or raise, as it could never operate in her favor; but that same concerned the revenue of the country and was therefore

properly the duty of the proper law officers of the State. 4. That it is not the duty of the land commissioner to sign a public sale deed, but that said duty is that of the registrar; and 5. That the failure to have had said deed offered and admitted to probate within four months after its execution merely rendered said deed voidable and void only as against one holding a superior title to the same property. These were the issues presented in the pleadings of the parties. A further perusal of the records also discloses that the Commissioner of Probate, His Honor James Auzzell Gittens, had, prior to his elevation to the bench as Judge of the Monthly and Probate Court, served as counsel for appellant. Consequently he found himself legally incapacitated to try and dispose of the said cause. Having disqualified himself, he, as the records reveal, instructed the clerk of the Probate Court, J. Everett Bull, Esquire, to cite Nathaniel V. Massaquoi, Stipendiary Magistrate for the Firestone Plantations Magisterial Area --Bondiway, to preside over and determine the said case, asserting and relying upon for his authority section 127o of the second volume of our Revised Statutes. Accordingly Stipendiary Magistrate Massaquoi came and, upon notice of the assignment of the cause for hearing being duly issued and served upon the parties, appellant's counsel D. Carmo Caranda, Esquire, gave notice of his illness and consequent inability to attend the trial. At the call of the case for trial on December 28, 1948, which meeting of the court the minutes of said date denominates as "a special sitting of the, Monthly and Probate Court to decide the issues in the [case] Monah alias Ida Phillips, Objector vs. Martha Nelson and Sarah T. Freeman, Respondendents," neithe'r appellant nor her counsel being present, the assigned magistrate sent some-

one to call appellant, who, according to the records, upon appearing in court, acknowledged service upon her of the notice of assignment, and informed the court that she had accordingly duly communicated said notice to her counsel in person. However, said counsel said he was ill and

could not be present, and therefore she was not ready for her case to be heard. Appellee's counsel strenuously contested appellant's right to enjoy the benefit of a postponement of .the matter, setting forth as reasons that the representation made by appellant's counsel respecting his engagement in the Circuit Court of the Sixth Judicial Circuit was untrue, and that he contested the veracity of the counsel's statement regarding his illness and contended that said statement should have been buttressed by a medical certificate. · Passing upon the submission of appellant Monah alias Ida Phillips as she stood before the bar of justice pleading for an opportunity to enjoy the benefits of a constitutional trial, Stipendiary Magistrate Massaquoi made the following ruling, which we deem necessary to quote verbatim. "The court says that there being no motion for continuance filed by Counsellor Caranda with a Medical Certificate attached to prove his illness, it is bound to proceed with the hearing of the law issues of the case, since indeed the matter is one of long standing, since December 1946--quite over two calendar years. The court will now proceed to pass upon the written pleadings in view of the aforesaid, and it is hereby so ordered." Having thus disregarded appellant's stated inability to go to trial and consequent request for postponement of the hearing of the cause, the magistrate after hearing the argument made by appellees' counsel entered a final ruling dismissing the objections of appellant and admitting the deed to probate, with costs of the proceedings ruled

against appellant. It is from said final ruling of the aforesaid magistrate that appellant has fled hither for review and relief. Coming now to the bill of exceptions filed by appellant in this case, we find submitted therein the following points, to wit: That Stipendiary Magistrate Massaquoi was without legal authority to try and determine the cause; because, (a) although the statute provides that the Magistrate holding the oldest commission shall preside over and hear any matter in the Probate Court in which the judge of said court shall be intrusted and disqualified because of such interest, yet Massaquoi being a stipendiary magistrate for the Firestone Plantations magisterial area only,--which area embraces only the Firestone Plantations, and not Monrovia, he had no jurisdiction over said matter; and (b) nor did he hold the oldest commission as such type of magistrate contemplated by the statute in question. 2. That the appellant was indeed denied her constitutional right, in that, her lawyer having notified the court of his illness, and she having confirmed said notice in person when sent for by the court, and stated upon record her unreadiness for trial, it was error, and a violation of the constitution for the trial magistrate to have proceeded with the hearing and disposition of the case in the absence of her lawyer, especially so since she was illiterate and unlettered." We shall consider the points raised in the bill of exceptions in reverse order, taking first the one which attacks the judgment on the ground that appellant did not have her day in court. In an effort to convince this Court that appellant was afforded a fair and impartial trial in the court below, counsel for appellees argued with great vigor and im"

mense energy that the notice or information of the illness of counsel for appellant should have been supported by a medical certificate, as he, appellees' counsel, believed that the reported illness of appellant's counsel was untrue and was only designed to delay the trial of the cause, for there was, as he contended at this Bar, no legal merit in appellant's cause in the court below. This contention, in our opinion, would have appeared plausible if the trial magistrate had made the slightest effort to ascertain the whereabouts of appellant's counsel or the truthfulness or falsity of the information regarding his reported illness, especially since appellees' counsel had endeavored to impress upon the said magistrate that the information respecting appellant's counsel was untrue. The record, however, is wanting in this respect. As soon as appellant expressed her unpreparedness for trial because of the illness of her counsel the trial magistrate, without suspending the matter for any inquiry into the veracity of appellant's statement with which appellees' counsel had joined issue, proceeded to make a ruling. We are of the opinion that whether or not the issues embodied in appellant's pleadings appeared to the trial magistrate to have been meritorious he should have afforded the appellant the opportunity to be represented by her counsel on account of whose illness she had placed upon record her inability to go on trial. . His Honor Mr. Justice Russell speaking for this Court in a case presenting circumstances similar if not identical with those surrounding the present case, said : "The counsel for the defense having given notice to the court that he was sick and therefore prayed for the continuance of the trial until the following day; under these uncontrollable circumstances, being the act of God, it is our opinion that the trial judge, in view of the law and of the fraternal feelings which should always exist between the bench and bar, should have granted the application and continued said case."

Burney V. Jantzen, [1935] LRSC 14; 4 L.L.R. 322, 326, 2 New Ann. Ser. 162 (1935). The trial magistrate therefore erred in disregarding appellant's expressed inability to go to trial because of the absence of her counsel, and in proceeding to hear and determine said cause under such circumstances. . Coming now to the issue submitted in count one of appellant's bill of exceptions which attacks the jurisdiction of the stipendiary magistrate over said cause, we deem it proper to first refer to and cite the statute upon which the Commissioner of Probate based his authority 'in citing the Stipendiary Magistrate of the Firestone Plantations Magisterial Area--Bondiway, to preside over and try said clause, which statute appellees' counsel repeatedly cited at this bar during his argument. We hereunder quote the statute : "When any judge shall be interested in any matter docketed in his court, the clerk thereof shall summon the nearest magistrate having the oldest commission to preside over and try said matter. He shall be sworn in open court, and all his acts shall be valid and binding. He

shall receive for his services the sum of two dollars per day and ten cents as mileage to and from his home." 2 Rev. Stat. § 1270.
The questions then, in our opinion, which evolved from a study of the foregoing statute are : ( ) Is the Stipendiary Magistrate of the Firestone PlantationsBondiway Area such magistrate as is contemplated by the said statute, taking into consideration his creation and his jurisdictional orbit specifically outlined in the Act of 1938, ch. XI, and other subsequent acts of the Legislature? (z)
If he is regarded as such magistrate contemplated by the said act, was he the nearest magistrate and the holder of the oldest commission?
(3) Was he duly sworn in open court to hear and determine the said case? In the year 1938 the Legislature of Liberia by legislative enactment [Ch. XI] authorized the President to

divide each of the counties of the Republic into magisterial areas, and to appoint over each magisterial area an official styled stipendiary magistrate who would replace a justice of the peace, and who, acting under the laws governing justices of the peace, would discharge all duties and functions which up to that time were discharged and performed by justices of the peace. Upon the authority of this enactment, the Firestone Plantations Magisterial Area was created and a magistrate duly appointed and commissioned as "Stipendiary Magistrate of the Firestone Plantations Magisterial Area" with jurisdiction over said area only and over such causes only as were cognizable before a Justice of the Peace. Later on amendatory statutes were enacted extending the jurisdiction of said magistrate. We quote the text of the amendatory statute of 1940:
"That from and immediately after the passage of this Act, Stipendiary Magistrates shall, in addition to exercising the powers heretofore conferred on Justices of the peace, have special jurisdiction within the limits of the Magisterial areas, in the following causes : "All actions of debt and damages where the sum involved does not exceed three hundred ($3oo.00) dollars; "Infraction of the peace where the fine does not exceed twenty-five ($25.00) dollars. "That Stipendiary Magistrates shall have power to try Matrimonial Causes, arising under the Native Customary Law, in the Firestone Plantations Magisterial areas." L. 1940, ch. VI, §§ 1, 2. It can be clearly seen that from neither the original statute of 1938, supra, nor the amendatory statute of 1940 quoted above, can be found the slightest authority for a stipendiary magistrate to function or to exercise jurisdiction over any matter beyond or outside the limits of the area over which he is appointed. In both instances the

statutes conferring jurisdiction upon said officer definitely state that said jurisdiction shall be exercised within the limits of the magisterial area over which the magistrate is appointed. This being true and Stipendiary Magistrate Massaquoi having been appointed and commissioned to function within the Firestone Plantations Magisterial

Area, and not the Commonwealth District of Monrovia or Montserrado County, we fail to see the legal propriety and fitness of having him cited to try the said case, especially when there were other magistrates within the Commonwealth District of Monrovia whose qualifications answered the requirements of section 1270 of the Revised Statutes (upon which the Commissioner of Probate based his order for Magistrate Massaquoi to be cited) in a more favorable measure than Magistrate Massaquoi. For example, H. Wilmot Dennis and J. Abayomi Thomas were both older in point of commission than Magistrate Massaquoi. Moreover they were both under the Commissioner of Probate and nearer the seat of the Probate Court than the Bondiway Magistrate. As such, one of them should have been cited by the Clerk of the Probate Court, and this of course without designation by the Commissioner of Probate who because of interest was disqualified, since the law gives him power to designate the magistrate. Moreover, after being cited, and upon his appearance, the magistrate should have been sworn in open court in keeping with the statute cited. According to the records certified to this Court this was not done. Appellees' counsel in arguing the case before this Court and in an effort to justify the action of the Commissioner of Probate in citing Magistrate Massaquoi instead of either Magistrate Dennis or Magistrate Thomas, each of whom he admitted held an older commission and was nearer the seat of the Probate Court than the Bondiway Magistrate, contended that these two officials, Dennis and Thomas, were merely associate stipendiary magis-

trates proper, and that since the Revised Statutes in pointing out who shall preside over the Probate Court in case the judge is disqualified mention a magistrate and not an associate magistrate, Messrs. Dennis and Thomas could not have been cited since they were merely associate magistrates. This argument would seem plausible if it could be shown that at the time of the passage of section 1270 Revised Statute the office of stipendiary magistrate had been created in our jurisdiction; but since the facts point to the converse such an argument collapses. It is obvious that the terms employed in said statute, "nearest magistrate holding the oldest commission," refer to, and are intended to mean, the nearest justice of the peace who is oldest in terms of his commission. Both Dennis and Thomas were justices of the peace, were nearer the seat of the Probate Court than Massaquoi, and held commissions of an older date than that of Massaquoi. One of them, therefore, should have been cited by the clerk of the Probate Court, and before entering upon the trial of said cause, in harmony with the provision of the Revised Statutes, he should have been sworn in open court to try the said case, for in our opinion this is one of the steps which gives him authority over a case of this nature, since ordinarily he would not be able to try same. In the light of the foregoing, we are of the opinion that Stipendiary Magistrate Massaquoi was without jurisdiction to try the said cause. While it is true that the records do not show that this question of jurisdiction was raised by appellant and made an issue in the court below, nevertheless it is a

settled principle of law that where there is want of jurisdiction any judgment rendered under such circumstances is a nullity. "Individual citizens require protection against judicial action as well as against legislative; and perhaps the question, what constitutes due process of law, arises as often when judicial action is in question as in any other cases. But it is not so difficult here to ar-

rive at satisfactory conclusions, since the bounds of judicial authority are much better defined than those of the legislative, and each case can generally be brought to the test of definite and well-settled rules of law. "The proceedings in any court are void if it wants jurisdiction of the case in which it has assumed to act. Jurisdiction is, first, of the subject-matter; and, second, of the persons whose rights are to be passed upon. "A court has jurisdiction of any subject-matter, if, by the law of its organization, it has authority to take cognizance of, try, and determine cases of that description. If it assumes to act in a case over which the law does not give it authority, the proceeding and judgment will be altogether void, and rights of property cannot be divested by means of them. "It is a maxim in the law that consent can never confer jurisdiction : by which is meant that the consent of parties cannot empower a court to act upon subjects which are not submitted to its determination and judgment by the law. The law creates courts, and upon considerations of general public policy defines and limits their jurisdiction ; and this can neither be enlarged nor restricted by the act of the parties. "Accordingly, where a court by law has no jurisdiction of the subject-matter of a controversy, a party whose rights are sought to be affected by it is at liberty to repudiate its proceedings and refuse to be bound by them, notwithstanding he may once have consented to its action, either by voluntarily commencing the proceedings as plaintiff, or as defendant by appearing and pleading to the merits, or by any other formal or informal action. This right he may avail himself of at any stage of the case; and the maxim that requires one to move promptly who would take advantage of an irregularity does not apply here, since this is not mere irregular action, but a total want of power to

act at all. Consent is sometimes implied from failure to object; but there can be no waiver of rights by laches in a case where consent would be altogether nugatory. "In regard to private controversies, the law always encourages voluntary arrangements; and the settlements which the parties may make for themselves, it allows to be made for them by arbitrators mutually chosen. But the courts of a country cannot have those controversies referred to them by the parties which the lawmaking power has seen fit to exclude from their cognizance. If the judges should sit to hear such controversies, they would not sit as a court; at the most they would be arbitrators only, and their action could not be sustained

on that theory, unless it appeared that the parties had designed to make the judges their arbitrators, instead of expecting from them valid judicial action as an organized court. Even then the decision could not be binding as a judgment, but only as an award ; and a mere neglect by either party to object to the want of jurisdiction could not make the decision binding upon him either as a judgment or as an award. Still less could consent in a criminal case bind the defendant; since criminal charges are not the subject of arbitration, and any infliction of criminal punishment upon an individual, except in pursuance of the law of the land, is a wrong done to the State, whether the individual assented or not. . . ." 2 Cooley, Constitutional Limitations 845 (8th ed. 1927) . In view of the foregoing facts, citations of law, and conclusions, we are left with no alternative but to reverse the judgment of the court below, and to remand the case to said court with the following instructions : That inasmuch as it has been clearly shown that the Commissioner of Probate J. Auzzell Gittens is disqualified to hear and determine said case since he served as counsel for one of the parties before his elevation to the bench, B. T. Collins, Esquire, who has been commissioned by the President

as Acting Commissioner of Probate, will immediately take jurisdiction and proceed to hear, pass upon, and decide the objections and other pleadings of the parties filed in this case, giving due notice to the parties and their counsel of such hearing and trial. And that the said case shall have preference to and priority over any other case pending in the said Probate Court as far as the hearing or trial of same is concerned, the reason for this being that this Court desires said case to be disposed of before the Commissioner of Probate J. Auzzell Gittens, who is disqualified to try said case, resumes duty. Costs of these proceedings to abide final determination of the matter. And it is hereby so ordered. Reversed.

Kromah v Badio et al [1986] LRSC 11; 34 LLR 85 (1986) (31 July 1986)

ALHAJI BANKOLLIE KROMAH, Informant, v. **HIS HONOUR HALL W. BADIO**, Resident Circuit Judge, Sixth Judicial Circuit, Civil Law Court, Montserrado County, and **MARTHA M. HILL**, Respondents.

INFORMATION PROCEEDINGS.

Heard: June 17, 1986. Decided: July 31, 1986.

1. The purpose of a bill of information is to review and correct any irregularity in the execution of a mandate from the Supreme Court to a lower court.
2. Courts will only decide issues that are specifically set forth in the pleadings before them. That is, defenses not set up in the answer will not be allowed.
3. A party should provide notice in its pleadings of all matters of fact or law relied upon in prosecuting an action.
4. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Whereas, averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.
5. Substitution of parties is permissible upon application of a party or the court may *sua sponte* order such substitution.
6. That which is not legally done is not done at all.
7. When the statutes provide a mode of procedure the same should be strictly conformed to. It is the responsibility of the sheriff of court, to whom the writ of possession is directed, to place a successful party in possession of real property. In so doing, the sheriff may, if necessary, secure the services of qualified surveyors and make the appropriate returns to the court. But the court should not appoint surveyors except in the case of arbitration.

Judgment was rendered against the informant in an ejectment action before the trial court. Although the informant did not appeal the judgment to the Supreme Court, the matter nevertheless ended up in the Supreme Court after an injunction, and later prohibition, to prevent the trial judge from enforcing his judgment evicting the informant. The Supreme Court, on review of the prohibition proceeding, upheld the ruling of the trial judge evicting the informant. When the trial court attempted to execute the mandate of the Supreme Court, the informant filed this bill of information, bringing to the attention of the Court that it was legally impossible to execute its mandate because the informant's building, the subject of the ejectment proceeding, was only partly situated on co-respondent's **land**.

The Supreme Court denied the bill of information but with modification of its mandate.

Emmanuel Berry appeared for the informant. *The Johnson and Barnes Law Firm* appeared for the respondents.

MR. JUSTICE DENNIS delivered the opinion of the Court.

This is a peculiar and special proceeding because it is not listed among the causes of actions in our statute as a relief for litigants, or party litigants who are brought under the jurisdiction of the court by a writ of summons, based upon written directions. This information proceeding is an

outgrowth of an action of ejectment between the late Martha M. Hill of the City of Lower Buchanan, Grand Bassa County, plaintiff versus Alhaji Bankollie Kromah of the City of Monrovia, Liberia, defendant. This bill of information was preceded by a writ of prohibition filed by informant to stop the lower court judge from evicting him from real property owned by the co-respondent, which was heard and denied by former Mr. Justice Boima Morris, and appealed therefrom to this Court *en banc.*

This information proceeding as aforesaid is peculiar in that it is allowed only by the full Bench either when a matter decided by it is pending or if the mandate to the trial court was irregularly and incorrectly executed, as in the instant case. Vide: *Nimley et. al. v. Yancy, et. al.*, 30 LLR (1982).

The legal scope and purpose of allowing information proceeding is to review and correct any irregularity in the execution of a mandate from this appellate Court to the lower court in this, or any other, case finally decided by this Court *en banc* and/or is pending.

The contents of this bill of information, consisting of nine counts and a prayer, substantially aver the following:

a) That on the 19th day of February A. D. 1969, the afore-named informant acquired by honorable purchase from the late Edward L. Dunn a certain parcel of **land** lying and being in the City of Monrovia, more detailed in informant's title deed annexed to the bill of information as exhibit "A"

b) Informant further alleges that he developed the subject property by the construction or erection thereon of a three storey concrete building.

c) That after the expiration of eight consecutive years and the completion of the said building, the above named late co-respondent, Martha M. Hill, instituted an action of ejectment against informant in order to evict him therefrom alleging that she is the bona fide owner of the **land** on which informant had erected his three storey building.

d) And also because informant alleges that he engaged the services of the P. Amos George Law Firm to defend his legal interest in the ejectment suit. The result of the trial was a verdict against informant on the 4th day of November, 1980 which was excepted to and appealed therefrom, but for some unexplained reason since the appeal was not couched in the records, it was not perfected.

e) Furthermore, informant submits that the late co-respondent, Martha M. Hill, did not notify him during the three-year period his three storey building was under construction that she was the alleged owner of the **land** and that he was encroaching thereon. Not until after the completion thereof did she commence a suit at law, an action of ejectment, in the Civil Law Court, Montserrado County, to recover the said disputed real property and to evict him therefrom

f) Informant also alleges that the said three storey building only occupies a very small portion of the late corespondent Martha M. Hill's half lot of **land** which is impracticable to partition with said building thereon. Informant therefore prays the court to enter an equitable ruling whereupon informant may have the privilege and opportunity to compensate the heirs of the late corespondent Martha M. Hill for the negligible tract of said disputed realty "being 34-41.35" feet of **land** which informant three storey building is occupying, the fault not being attributable to informant.

g) The above named informant also submits that in an effort to enforce the mandate of this Court, growing out of a prohibition proceeding filed in this Court, the corespondent Judge Badio requested the Ministry of Lands and Mines to designate surveyors to survey the disputed property so as to place the late co-respondent Martha M. Hill's heirs in possession of her alleged property.

h) The survey which was conducted by the Ministry of Lands and Mines observed a total overlapping of 110.13 lot or 34-41.25 feet or 10.15 sq. feet."

i) Informant prays for relief because it is impracticable in keeping with the engineers' report to place the late corespondent Martha M. Hill's heirs in possession thereof in keeping with the metes and bounds of said deed, the report of the surveyors, and the layout of the three (3) storey building.

In response to the bill of information, respondents filed and submitted for the consideration of this Court the below returns, resisting and refuting the bill of information below to wit:

1. That the aforenamed parties in interest being the late Martha M. Hill did acquire by purchase said realty from the late Edward L. Dunn, lying and being on Clay Street, Monrovia, Liberia in the year 1969 and annexed her title deed in support thereof.
2. That the informant has constructed a three-storey building thereon. Prior to the commencement of the construction, informant's attention was called thereto.
3. And also because respondents aver that upon the insistence of informant to continue the construction of the said building, the late co-respondent Martha M. Hill instituted the action of ejectment and injunction so as to prohibit the aforesaid informant from the continuation of the said construction of the three (3) storey building.
4. And also because respondents deny the expiration of a period of eight years prior to the filing of her action of ejectment but rather, through her counsel, addressed a letter to the informant through his counsel, the P. Amos George Law Firm.
5. And also because co-respondent Martha M. Hill further submits that she obtained final judgment in the ejectment suit filed by her long before her demised on the 4th day of November A. D. 1980.
6. Further resisting the said bill of information, respondents contend that the ruling was rendered in the injunction proceeding in favor of petitioner now the late co-respondent Martha M. Hill from which ruling informant announced an appeal to this appellate Court, which was not perfected, and in support thereof proferted a photocopy of said ruling of the injunction proceeding.
7. Further refuting and resisting the narrative of the bill of information, the late co-respondent Martha M. Hill's executrixes applied to the lower court for the enforcement of the final judgment rendered in favor of the testatrix, Martha M. Hill, plaintiff in the ejectment suit filed against informant, Alhaji Bankollie Kromah, which was heard and denied on the basis of the absence of an application for the substitution of parties as well as the absence of a pending suit.
8. In further resistance to the information, the subject matter of this opinion, respondents maintain that a petition for prohibition was filed in the Chambers of the former Justice Morris in March 1984 when the ruling was rendered in favor of the late co-respondent Martha M. Hill's executrixes from which an appeal was announced to the bench *en banc.* The effect of said ruling being an order to the court below to enforce its judgment.
9. Still, in further resisting the said bill of information, respondents submit that the action of ejectment and injunction having been finally adjudicated in the lower court between the aforenamed parties could not be revived or reopened; but rather to dismiss the information with cost against the informants.

Having detailed both the bill of information and resistance with a view to ascertaining and resolving the controversial issues we hereby do so by examining and applying the relevant statutes that we have come to consider the mode of procedure and practice in such matters. In the case *Clark v. Barbour*, 2 LLR 15

(1909), we note the following:

"(1) Courts will only decide upon issues joined between the parties specifically set forth in their pleadings. (2) Matters of defense not set up in defendant's plea shall not be allowed. (3) Notice should be given by one party to the other of all matters of fact or law relied upon in prosecuting an action."

In the seven-count bill of information and prayer, together with the seven-count returns, history, and the brief in this case, we conclude that the most salient issues to be decided are:

1. What is the legal scope and function of a bill of information as well as whether or not it would lie from the allegations contained therein?
2. Whether or not the correct legal procedure was adopted in placing the Executrices of the late Martha M. Hill in possession of the disputed realty on which it is alleged a three storey building is constructed?
3. And whether or not the late co-respondent Martha M. Hill's heirs have been placed in possession of the subject property and if not why not?

As earlier stated in this opinion, entertaining a bill of information, which is now becoming very prevalent, in this Court requires that the action should either have been decided by this appellate Court or its mandate is pending or has been irregularly and incorrectly executed. The current matter was decided by this Court, having been withdrawn according to the records and is pending enforcement of this Court's mandate in the execution of the writ of possession. It is clearly stated in count seven of the bill of information and the respondents do not deny, that the disputed property is indivisible and to divide it is almost impracticable.

Informant prays an equitable adjudication thereof. Count seven and the prayer are quoted below to wit:

"And informant further submits that it is impracticable for the Civil Law Court to enforce its final judgment from an inspection of Exhibit "B" hereto annexed, in that informant's three storey building only occupies a portion of Martha M. Hill's half (1/2) lot and it not being practical to partition a three storey building informant prays that this Honorable Court will enter an equitable ruling 'whereupon informant may have the opportunity to compensate Martha Hill's heirs for the 34' by 41.25' feet of **land** which informant's three storey concrete building is occupying due to no fault of informant."

"WHEREFORE, informant prays that it being impracticable in keeping with the survey engineer's report to put Martha M. Hill's heirs in possession of the **land** covered by Martha M. Hill's deed due to the overlap caused by the surveyor who surveyed the adjoining parcels of **land** owned by informant and co-respondent Martha M. Hill, respectively, and also because of the condition which informant's three storey concrete building is situated on the **land**, that is to say, both the disputed portion, as well as the other portion owned by informant, which is not in dispute, Your Honours will order an equitable settlement and grant unto informant such other relief as justice and right demand."

The records before us revealed that the trial court in obedience to this Court's mandate endeavored to enforce its judgment against informant, defendant in the court below, by requesting the Ministry of Lands, Mines and Survey to dispatch a team of surveyors to aid the sheriff in putting the plaintiff co-respondent Martha M. Hill's heirs in possession of her property in keeping with the metes and bounds of her deed. A survey-of the disputed property was accordingly conducted, and the surveyors reported to the court that the informants three storey concrete building occupies only a portion of the said disputed property, thereby rendering it impracticable to put the plaintiff in physical possession of that portion of her property for which judgment was entered in her favor.

Against the foregoing background, it is our considered opinion that in order that transparent justice may be equally meted to both parties and the matter concluded, the informant/ defendant should be required, and he is hereby ordered, to adequately compensate plaintiff/co-respondent Martha M. Hill's heirs for that portion of her property on which a portion of the informant's building is located.

This holding is predicated upon the legal premises that courts of justice do not delight in doing or adjudicating matters by halves or incomplete. More so, when it is averred in count seven

(7) and the prayer of the information, not specifically denied by respondents in their returns, that the tract of **land** in dispute does not admit of partitioning.

Failure to deny any allegation of a pleading is deemed admitted. For reliance: Civil Procedure Law, Rev. Code 1: 9.8.

(3) "Effect of failure to deny. "Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

In passing, suffice it to say that substitution of parties is permissible upon application of a party or the court may *sua sponte* do so. Vide: Civil Procedure Law, Rev. Code 1: 5.36 (2).

With reference to the incorrect procedure employed in an effort to put the late co-respondent Martha M. Hill's heirs in possession of the said subject property, this Court holds very steadfastly and firmly to the maxim: "that which is not legally done is not done at all." When the statutes provide a mode of procedure the same should be strictly conformed to. It is the sole and absolute responsibility of the sheriff of court to whom the writ of possession is directed to place a successful party in possession of real property. He may do so by calling to his aid competent or qualified surveyors to effectuate the execution thereof, and make his returns to the court and indicate if he is in need of the court's assistance or cooperation. But the court should not appoint surveyors unless the case progresses to where it requires the setting up of a board of arbitration, which was not the case here.

Reverting to the last or third issue of whether or not the corespondent Martha M. Hill's heirs have been put in possession of the subject property, and if not, why not? The answer is in the negative because it is alleged in count (7) seven of the returns and the prayer of the respondents that placing the respondents in possession will be impracticable.

In view of the facts and the law controlling, and limiting ourselves to issues raised in the written pleadings, the bill of information is denied with modification mainly to have the corespondent Martha M. Hill's heirs justly and adequately compensated since it is not denied that the co-respondent, Hill's heirs, cannot be put in possession thereof. Vide: *Pennoh v. Brown,* [1963] LRSC 8; 15 LLR 237 (1963).

There being precedence for the Court to both deny or dismiss and modify a ruling or judgment, it is the holding of this Court, that the bill of information is denied with the modification that informant is ordered forthwith to compensate co-respondent Martha Hill's heirs for that portion of the **land**, being indivisible, whereon is a part of informant's three (3) storey building for

an amount not to exceed the present marketable value. Vide: *Helou Brothers v. Kiazolu Wahab and Hunter*, [1966] LRSC 60; 17 LLR 520 (1966). And it is hereby so ordered.

Information denied.

Juah v Konneh et al [2004] LRSC 16; 42 LLR 187 (2004) (16 August 2004)

PETER JUAH, Appellant, *v.* **MOHAMMED KONNEH et al.**, Appellees.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 28, 2004. Decided: August 16, 2004.

1. Waiver is defined as the voluntary and intentional relinquishment of a known right...which except for such waiver the party would have enjoyed.
2. A waiver operates to preclude a subsequent assertion of a right waived or any claim based thereon.
3. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof.
4. An action of ejectment may be brought when the title to real property as well as the right to possession thereof is disputed.
5. An action of summary proceedings to recover possession of real property is only applicable where title is not in issue.
6. A trial judge acts properly in confirming a ruling of a magisterial court dismissing summary proceedings to recover possession of real property where title is in dispute.

This is an appeal from the ruling of the judge of the Sixth Judicial Circuit Court, Montserrado County, upholding the ruling of the New Kru Town Magisterial Court dismissing the action of summary proceedings to recover real property instituted by the appellant. The appellant, previously a member of the Liberia Marketing Federation (LMF), had requested the magistrate to eject the defendants from the said property which he said he held title to based on a purchase of 1.7 lots of a 361 acres plot of **land**. 1.5 acres of the said 361 acres had also been leased by the LMF from the administrators and administratrix of the Estate containing said **land**. The magistrate had dismissed the case based on a motion put on the minutes of the court by the

defendants that title was in issue. On appeal to the circuit court, the judgment was reversed and the magistrate ordered to proceed with the hearing of the case *de novo.*
The appellants/defendant excepted to the ruling and thereafter filed a petition before the Justice in Chambers praying the issuance of a writ of prohibition.
Following a series of legal actions, including the filing of a petition before the Justice in Chambers, the granting of same, the constitution of a Board of Arbitration by the trial court upon resumption of the case, and a determination by the Board that a portion of the parcel of **land** leased by the LMF being on the **land** purchased by the appellant, the court needed to consider the date of execution of the lease agreement. The report of the Board of Arbitration having been read in open court in the presence of the parties, the trial judge subsequently affirmed the report and accordingly dismissed the appeal taken by the appellant from the dismissal of the summary proceedings to recover real property entered by the magisterial court. From this decision of the trial court, the appellant appealed to the Supreme Court.
The Supreme Court affirmed the judgment of the trial court, rejecting the contentions raised by the appellant. The Court noted, as to the contention that the trial court had entered judgment with prejudice as to the appeal from the summary proceedings to recover real property, that the trial judge had not dismissed the appellant's appeal with prejudice.
The Court also rejected the appellant's contention that he was not given the opportunity to file a motion to vacate the board of arbitration's report, referring to the minutes of the trial court which showed that not only had the report of the arbitrators been read in open court, with the appellant being present, but also that the matter was assigned to another day for the trial court's ruling on the report. The Court opined that the appellant had the opportunity to file an application after the reading of the report and/or after the ruling of the trial court thereon, and that his failure to use those opportunities constituted a waiver.
On the issue of the trial court's affirmance of the ruling of the magisterial court dismissing the summary proceedings action, the court held that the trial judge had acted properly since under the law the magisterial court lacked jurisdiction over the matter, both parties having asserted claims to title to the property.

Joseph N. Blidi and *Richard D. F1omo* appeared for the appellant. *Roger K Martin, Sr.* of Martin Law Office represented the appellee.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

This case is before us on appeal from the ruling of the presiding judge, His Honour Varnie D. Cooper, of the Sixth Judicial Circuit Court, Montserrado County, Liberia, during the September Term, A. D. 2000, dismissing the appeal of the appellant in an action of summary proceedings to recover possession of real property filed against the appellees in the New Kru Town Magisterial Court.
Our review of the records in this case reveals that the Liberia Marketing Federation (L. M. F.)

leased 1.5 acres of **land** out of 361 acres owned by the Intestate Estate of the late J. N. Lewis, by and thru its administrators and administratrix E. Kofa Benson, Joseph N. Lewis and Deborah B. Tequah, in the year 1993, for a period of twenty (20) years. The lease agreement was probated and registered according to law.

In 1998, Peter Juah, plaintiff/appellant in this case, purchased 1.7 lots out of the same 361 acres of **land** owned by the Intestate Estate of the late J. N. Lewis, by and thru the curator of Montserrado County, Mr. Jackson K. Ziah. The deed was probated and registered according to law.

Prior to and during the signing of the lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis, as lessor, and L. M. F., as lessee, on December 1, 1993, and the subsequent purchase of the 1.7 lots by the appellant from the Intestate Estate of the late J. N. Lewis in 1998, the appellant, Peter Juah, was a member of the L. M. F. However, after the purchase of the 1.7 lots from the Intestate Estate of the late J. N. Lewis, appellant withdrew his membership from L. M. F. for reasons best known to himself and thereafter filed in the New Kru Town Magisterial Court an action of summary proceedings to recover possession of real property against Mohammed Konneh, et al. who are members of L.M.F., on the ground that the defendants/appellees had intruded upon his 1.7 lots by operating a market thereon without his approval. He therefore prayed court to have them ousted and evicted from the subject premises. The writ of summons was issued, served and returned served.

When the case was called for hearing, the counsel for defendants/appellees made a motion on the minutes of the court for the dismissal of the action on ground that title was in issue, in that defendants/appellees were members of L. M. F. and that said L. M. F. had a lease agreement for 1.5 acres of **land** with the Intestate Estate of the late J. N. Lewis, which lease agreement had not expired and that defendants/appellees were operating a market on the said 1.5 acres of **land**.

Upon the presentation of a copy of the lease agreement, the magistrate dismissed the action. To this ruling, plaintiff/ appellant excepted and announced an appeal to the Sixth Judicial Circuit Court, Montserrado County, Liberia.

The Sixth Judicial Circuit Court, presided over by Judge Yussif Kaba, reversed the judgment rendered by the New Kru Town Magisterial Court and mandated the said court to resume jurisdiction over the case and proceed with the hearing of the case *de novo* on the ground that title was not in issue since the lease agreement between L. M. F. and the Intestate Estate of the late J. N. Lewis made no reference to the property other than the one in dispute.

Defendants/appellants excepted to the ruling and thereafter filed before the Justice in Chambers a petition for a writ of prohibition. Justice John N. Morris, presiding in Chambers, issued a stay order, and after holding a conference, ordered that the presiding judge resume jurisdiction over the case and proceed with the case in keeping with law.

When the trial court resumed jurisdiction over the case, counsel for defendants/appellees made an application to the court for the constitution of a board of arbitration consisting of qualified licensed surveyors, one to be appointed by each party and the chairman to be appointed by the court, so that the board, as constituted, will proceed on the disputed premises to conduct a survey/investigation relative to the property rights of the parties. To this submission, counsel for plaintiff/appellant conceded and Judge Kontoe therefore granted the application and thereafter set up a board of arbitration consisting of Kenpson Morris as chairman, and Edward Kollie and J. Amos Kollie as members.

In the report of the board of arbitration, submitted to the court on July 6, 2000, it was indicated

that a portion of the **land** leased by the Liberia Marketing Federation from the Intestate Estate of the Late J. N. Lewis extended into portion of the 1.7 lots owned by the plaintiff/appellant. Hence, the board concluded that the court should seriously take into consideration the issuance dates of the lease agreement and the deed in resolving the matter. After the reading of the board of arbitration's report on the 18th day of October, A. D. 2000, an assignment was issued which was served on both parties' counsels and returned served for the ruling on the board of arbitration's report scheduled for the 15th day of November, A. D. 2000 at the hour of 2:30 P.M. The case records show that ruling was made on the 16th of November, A. D. 2000, by Judge Varnie D. Cooper, who affirmed and confirmed the report of the board of arbitration and denied the appeal taken by the plaintiff/ appellant from the New Kru Town Magisterial Court in the action of summary proceedings to recover possession of real property instituted against the defendants/appellees. To this ruling, plaintiff/appellant excepted and announced an appeal to the Supreme Court.
The bill of exceptions filed by plaintiff/appellant consists of three (3) counts, but we deem counts one (1) and two (2) to be relevant to the disposition of this matter; and they are:

"1. That your Honour committed reversible error when you held in your final judgment that the plaintiffs/appellants' case was dismissed with prejudice against him, when in fact under our law controlling, where title is an issue in a cause of summary proceedings to recover possession of real property, the action is dismissed not on its merits and demerits, but without prejudice to either party".

2. That your Honour also committed reversible error when you ruled on the surveyors' report without first affording plaintiff/appellant the opportunity to be served a copy of said surveyors' report so as to enable plaintiff/appellant to file a motion to vacate the report since plaintiff/ appellant was dissatisfied with certain counts of the report".

Considering the facts and circumstances, as well as the bill of exceptions mentioned above, there are only three issues that are worthy of our determination in the matter, and they are:

1. Whether the judge below dismissed the appeal with prejudice?
2. Whether or not the judge below erred when he ruled on the surveyors' report without a copy of said report being served on the plaintiff/appellant?

3. Whether or not title is in issue?
In discussing the issues mentioned above, we shall discuss them in chronological order.
In count one of appellant's bill of exceptions, he alleged that the presiding judge entered final judgment dismissing the appeal that grew out of an action of summary proceedings to recover possession of real property with prejudice against the appellant. A careful review of the records sent up to this Honourable Court reveals that Judge Varnie D. Cooper's ruling, made on the 51st day's jury sitting, September Term, A. D. 2000, Thursday, November 16, 2000, fell short of said allegation. A potion of the final judgment entered on November 16, 2000 states: 'WHEREFORE AND IN VIEW OF THE FOREGOING, the surveyors having submitted a unanimous report, same is hereby affirmed and confirmed. Consequently, the appeal announced by the petitioner, Peter Juah in the New Kru Town Magisterial Court, is hereby denied and the action of summary proceedings to recover possession of real property against the Liberian Marketing Federation is hereby dismissed with cost against the petitioner. AND IT IS HEREBY

SO ORDERED".
We therefore hold that the trial judge did not dismiss plaintiffs'/appellants' appeal with prejudice and therefore did not commit a reversible error.
This brings us to the next issue, which is, whether or not the judge below erred when he ruled on the surveyors' report without a copy of said report being served on the plaintiff/ appellant? The records in the case file also show that the board of arbitration set up by the court below was based on the application made on the minutes of the court by appellees' counsel without objection from appellant's counsel. In short, both parties agreed for the setting up of a board of arbitration to proceed on the disputed premises and conduct an investigation. (See Sheets Five and Six of the 30th Day's Jury Sitting, December Term, A. D. 1999, Wednesday, January 26, 2000). Moreover, each party named a surveyor to serve on the board of arbitration with the chairman being appointed by the court.
The records further reveal that after the submission of the board of arbitration's report, the court below issued a notice of assignment dated October 10, 2000 for the reading of the board of arbitration's report on the 18th day of October 2000, at the hour of 2:00 P. M. According to the sheriff's returns, said notice of assignment was served on Counsellor Richard K. Flomo, counsel for appellant, and Counsellor Roger K. Martin, counsel for appellees, and also on Stephen K. Kollie, for and on behalf of the members of the board of arbitration.
We also found in the records of this case that on the 26th day's jury sitting, September Term, A. D. 2000, Wednesday, October 18, 2000, the report of the board of arbitration was read in open court with counsels for both parties being present. Thereafter a notice of assignment was ordered issued on November 14, 2000, for ruling on the board of arbitration's report on November 15, 2000, at 2:30 p.m. This notice of assignment was served and signed for by a representative of each of the parties' counsels and each member of the board of arbitration.
In view of the facts and the records before us, this Court disagrees with the contention of appellant that he was not given the opportunity to file a motion to vacate the board of arbitration's report. Appellant had not only knowledge of the report, but was present during the submission, reading and ruling on the report. He therefore had the opportunity to have filed whatever application he wanted to have made against the board of arbitration's report between September 18, 2000, the day the report was read and November 15, 2000, the day the ruling was made on the report. His failure to do so is tanta-mount to waiver. "Waiver is defined in substantially similar language as the voluntary and intentional relinquishment of a known right ... which, except for such waiver, the party would have enjoyed". See *Kobina et al. v. Abraham*[1964] LRSC 2; , 15 LLR 502 (1964), text at 507-508. This Court, speaking in the case *Ezzedine v. Saif*, [1985] LRSC 12; 33 LLR 21 (1985), Syl. 2, text at p. 26, said that a "waiver operates to preclude a subsequent assertion of a right waived or any claim based thereon". Count two (2) of appellant's bill of exception is therefore overruled.
This bring us to the last issue, i.e., whether or not title is at issue?
Appellant Peter Juah was a member of the L. M. F. prior to and during the signing of the lease agreement entered into by and between the Intestate Estate of the Late J. N. Lewis and U M. F. in 1993. Appellant also knew the **land** covered by the 1.5 acres of **land** within the 361 acres of **land** owned by the Estate of J. N. Lewis. Moreover, appellant had knowledge and had seen members of the L. M. F. doing marketing business on the said 1.5 acres of **land** leased prior to the purchase of the 1.7 lots from the same source in 1998. He therefore knew or ought to have known that a portion of his 1.7 lots would form part of the 1.5 acres of **land** leased by the L. M. F., as confirmed in the board of arbitration's report submitted to the court

below.
Our statute provides that “any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to real property as well as the right to possession thereof is disputed”. See Civil Procedure Law, Rev. Code 1: 62.1.
An action of summary proceedings to recover possession of real property is only applicable where title is not in issue. In the instant case, both appellant and appellees (by and thru Liberia Marketing Federation) are claiming title to the disputed property. Hence, the judge below acted legally by confirming the ruling of the New Kru Town Magisterial Court dismissing the action of summary proceedings to recover possession of real property.
Wherefore, and in view of all the facts and circumstances, as well as the laws herein cited, it is the opinion of this Court that the judgment appealed from be and the same is hereby confirmed and affirmed without prejudice. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court, Sixth Judicial Circuit, ordering the judge presiding therein to resume jurisdiction over the case and give effect to this ruling. Costs are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed.

Clark et al v Lewis [1929] LRSC 5; 3 LLR 95 (1929) (8 May 1929)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

APRIL TERM, 1929.

NANCY J. CLARK, AARON A. CLARK, JAS. A. R.
CLARK and MARGARETTE CLARK, Plaintiffsin-Error, v. THOMAS H. LEWIS,
Defendant-inError.
WRIT OF ERROR TO THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Decided May 8, 1929. 1. Ejectment supports the idea of adverse possession in the defendant.
2. The plea of estoppel is a good plea, and will prevent a party from denying his own acts, if well founded ; neither law nor equity
will permit a party to disclaim his acts. The same rule applies to privies.
3. When a man stands by and allows another to act without
objecting, when, from the usage of trade or otherwise, there is a duty to speak, his silence would preclude him as much as if he
proposed the act himself. 4. Acquiescence, or standing by, where there is a duty on the part of the person acquiescing to speak or

assert a right, amounts to a representation by him. 5. Negligence may, under certain circumstances, amount to a representation. 6. An estoppel might be raised in the pleadings, either by means of a special plea, or by general demurrer ; but now by the new rules demurrers are abolished, and any party shall be entitled to raise by his pleading any point of law. The defendant or plaintiff, as the case may be, must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in the point of law. 7. Whatever hath been made a derelict by the owner will become the property of the first occupant.

In an action of ejectment, judgment was given for defendant in the Circuit Court.
On the writ of error from this Court, reversed.
R. Emmons Dixon for plaintiffs-in-error. ette Harmon for defendant-in-error.
H. Lafay-

MR. JUSTICE KARNGA delivered the opinion of the Court. This case was brought by the heirs of John N. Clark, a resident in Central Buchanan, Grand Bassa County, against Thomas Lewis, who is also a resident in the same County, in the Circuit Court of the Second Judicial Circuit, in the May term, 1927. From the records in the case, it appears that in the year 1896, John N. Clark, the father of the plaintiffs-in-error, began operations on a certain parcel of land situated in Central Buchanan. In 1896 he built a house and made other improvements on the said land. From this time he and his family lived uninterruptedly on the said premises until his death. After his death, in the year 1918, Addie J. A. Beck, the wife of L. A. Beck, an heir of Jas. S. Smith, came across an old deed in favor of the said Jas. S. Smith for a certain block of land, No. 38, containing thirty acres. Thomas H. Lewis, the defendant-in-error, in locating the land thus purchased from Addie J. A. Beck, the heir of Jas. S. Smith, took the premises of John H. Clark, the subject of this suit. The action of ejectment was subsequently brought by the heirs of John Clark against Thomas H. Lewis. Judgment was given in favor of the defendant in the court below; the plaintiffs took exceptions thereto and upon a writ of error the case is now before this Court for review. From the records in the case it was conclusively proven in the court below, by the plaintiffs-in-error, that their

father, John H. Clark, occupied the land, the subject of this suit, over thirty years, uninterrupted by the privies of the defendant-in-error. Witness Thomas Moore, government surveyor, on the stand testified as follows: Ques. "What is your name and where do you live? Ans. "Thomas Medly Moore; I live in Edina, Grand Bassa County. Ques. "Are you one of the licensed

government surveyors of this County? Ans. "I am a commissioned government surveyor of this County. Ques. "Mr. Witness, will you kindly inspect this document and say whether or not you recognize having seen the same and as government surveyor made a certain survey of a portion of- said land? Ans. "Yes; according to my signature on this document I have seen it. Ques. "Mr. Witness, kindly inspect this document marked by the Court No. 5-A-28 and say whether or not that was a certificate for a survey by you issued upon the order of the Superintendent which you have just identified, that it is your signature? Ans. "Yes, it is." Upon cross-examination, the same witness was asked: Ques. "To the best of your knowledge, can you say whether the 1 1/5 acres of land you surveyed according to the certificate is included in the 3o acre block of land owned by Thomas H. Lewis according to the plot of Lower Buchanan? Ans. "Yes; I surveyed that lot for the Clarks, then it was supposed to be government land occupied by the Clarks. I told them that according to my plot it was government land." **Peter Minor, one of plaintiff's witnesses on the land**, testified as follows:

Ques. "What is your name and where do you live? Ans. "Peter Minor. I live in Central Buchanan, Bassa County. Ques. "Are you acquainted with Nancy J. Clark, et al., heirs of the late John H. Clark, plaintiffs in this suit? Ans. "Yes. Ques. "Can you say to the best of your knowledge where the said John H. Clark possessed and lived with his family? Ans. "Yes ; in Central Buchanan, at a place across the creek where he made a farm at first. Ques. "Were you acquainted with the late John H. Clark? Ans. "Yes. Ques. "Can you say how long he lived with his family on said place before his death? Ans. "To the best of my knowledge he built on the place in 1896. Ques. "As far as your information goes, can you say whether or not this is the same place that is now the subject of this action? Ans. "Yes." From the evidence quoted above, the father of plaintiffsin-error occupied and made improvements on the land in question, the subject of this suit, in the year 1896 and lived on the said premises without any objections by the privies of the defendant-in-error. It is a settled principle in law that where a man stands by and allows another to act without objecting, when, from the usage of trade or otherwise, there is a duty to speak, his silence precludes him as much as if he proposed the act himself. Acquiescence, or standing by, where there is a duty on the part of a person acquiescing, to speak or assert a right, amounts to a representation by him. Negligence may, under certain circumstances, amount to a representation also. Everest, Law of Estoppel (1884), ch. X.

The privies of Thomas H. Lewis, defendant-in-error, having failed or neglected to assert their rights to the property occupied

by John H. Clark, the father of the plaintiffs-in-error, during his lifetime, without any disability on their part, they are presumed in law to represent to the plaintiffs-in-error that they had no claim to the land occupied by their father. Having voluntarily made such representation, the defendant-in-error is thereby estopped from further asserting any claim to the said premises. It was contended by the counsel for the defendant-inerror in his argument, that the plea of estoppel can be made only by a defendant and not by a plaintiff. On this point this Court differs with the position taken by the defense. Lancelot Everest in his Law of Estoppel declares : "An estoppel might be raised on the pleadings, either by means of a special plea, or by special or general demurrer. . . . But now by the new rules demurrers are abolished, and any party shall be entitled to raise by his pleading any point of law. And the defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, statute of limitations, release, payment, performance, facts showing illegality either by statute or common law, or statute of frauds." Everest, Law of Estoppel (1884) , ch. XI, p. 391. It has been held by this Court, in the case Gibson v. Jones, [1929] LRSC 3; 3 L.L.R. 78 (1929) that: "In an action of ejectment mere paper title to land without proof of occupancy is insufficient to dispossess an industrious and productive occupant."

The fact that John H. Clark, the father of the plaintiffsin-error, had occupied the land between Central and Lower Buchanan, the subject of this suit, uninterruptedly for over a period of thirty years, and made tangible improvements thereon, is prima facie evidence of the highest estate in the property, that is to say, a seizin in fee, and by the statute of limitation defendant-in-error is forever barred from asserting his rights to the said property. Justinian, the learned Roman jurist, states as a principle of law : "It also sometimes happens that the property of a thing is transferred by the master of it to an uncertain person. Thus, for instance, when the praetors and consuls cast their Missillia or any liberalities, among the people, he knows not what any particular man will receive. And yet because it is their will and desire that what every man then receives shall be his own, it therefore instantly becomes his property. By a parity of reasoning it appears true, that a thing which hath been made derelict by the owner will become the property of the first occupant." The Institutes of Justinian, Book II, §§ 45-46. It is therefore the opinion of this Court that the judgment of the court below be reversed, and that by the force of the doctrine of the law governing this case, the said plaintiffs-in-error have acquired and do now hold a seizin in fee in, and to, the said estate. The defendant-in-error is therefore ruled to pay all costs in this action, and it is hereby so ordered.

Reversed.

Royal Pharmacy v Sylla & Co. Bakery [1996] LRSC 7; 38 LLR 206 (1996) (26 January 1996)

ROYAL PHARMACY, by and thru JOSEPH DIXON, Movant, *v.* **SYLLA & COMPANY BAKERY**, by and thru its Attorney-In-Fact KAFUMBA KONNEH, Respondent

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 23, 1995. Decided: January 26, 1996.

1.The failure to state in the affidavit of sureties the metes and bounds of the property offered for security on a bond is not a ground for the dismissal of the appeal where the property offered has been demarcated, mapped and recorded, and where the affidavit states the lot number, location, quantity of **land**, its assessed value and owner.

2.The property pledged as security to an appeal bond, within the contemplation of Section 63.2(3)(b) of the Civil Procedure Law, Revised Code 1, must be described in a manner that would make it easy to locate when necessary.

Growing out of an appeal announced to the Supreme Court from the final judgment in an action of summary proceedings to recover possession of real property, appellee filed a motion to dismiss the appeal on the grounds that the appeal bond failed to sufficiently describe in the affidavit of sureties the property securing the bond. In support of his contention, movant cited the Court to *West African Trading Corporation v. Alraine,* [1975] LRSC 16; 24 LLR 224 (1975) and *Kerpai v. Kpene,* [1977] LRSC 4; 25 LLR 422 (1977), in which the Supreme Court, in its interpretation of § 63.2(3)(b) of the Civil Procedure Law, held that the description of property offered as security in a bond must be made only in the affidavit of sureties.

The Supreme Court *denied* the motion to dismiss, holding that the description of the property in the affidavit of sureties was sufficient. In so holding, the Court disagreed with its previous interpretation of Section 63.2(3) of the Civil Procedure Law in the *Alraine* and *Kpene* cases, which were relied upon by movant, and which required that for any property to be sufficiently described, its metes and bounds must be stated in the affidavit of sureties. The Court held that where the property has been demarcated, mapped, and recorded, it is sufficient to state the lot number, location, the quantity of the **land**, its assessed value, and the owner.

Eugene D. M. Freeman appeared for appellant/respondent. *Weifueh Sayeh* appeared for the appellee/movant.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

The appellant/respondent appealed to this Court from a final judgment rendered against him in an action of summary proceedings to recover possession of real property, rendered by His Honour F. Nyepan Topor, then presiding over the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The appellee/movant has filed a motion to dismiss this appeal for reason that the appeal bond is defective, in that the affidavit of sureties which was attached to said appeal bond failed to sufficiently describe the property which secured the bond as the law provides.

The single issue which we are called upon to consider in the motion is whether or not the affidavit filed with the appeal bond meets the requirements of the statute with respect to affidavits of sureties attached to appeal bonds. For purposes of this opinion we shall quote below the relevant portion of the statute:

"3. *Affidavit of Sureties*. The bond shall be accompanied by an affidavit of the sureties containing the following:

(b) A description of the property, sufficiently identified to establish the lien of the bond." Civil Procedure Law, Rev. Code 1: 63.2(3)(b).

There are two reported cases found in our Law Reports which have interpreted the portion of the statute quoted above. These are the same two cases that appellee/movant has relied upon to have this appeal dismissed. The first of these two cases is *West African Trading Corporation v. Alraine (Liberia) Ltd.*, [1975] LRSC 16; 24 LLR 224 (1975). In that case, Mr. Chief Justice Pierre delivered the opinion of the Court. The *West African Trading Corporation v. Alraine (Liberia) Ltd.* case involved a motion to dismiss appellant's appeal because the affidavit of sureties attached to the appeal bond was defective. The affidavit of sureties contained the following: "(1) that the sureties are the persons whose names appeared on the attached appeal bond; (2) that they are freeholders and householders in the Republic of Liberia and own real property to the value of the said bond over and above their liabilities; (3) that the assessed value of their properties is $6,020.00; and (4) that the foregoing statements are true and correct to the best of their knowledge." A revenue certificate which contained the description of the properties offered as security was also attached to said bond. However, the Court did not pass upon the revenue certificate in that case.

Mr Chief Justice Pierre correctly opined that **land** offered as security for appeal bonds must be described in the affidavit of sureties, sufficiently well to identify the particular piece of property intended to be encumbered by the bond. We agree with this portion of the opinion of the late and venerable Chief Justice. However, we find ourselves unable to agree with that portion of the opinion which said that the best way to accomplish finding the property, which is mentioned in an affidavit of sureties, is to state the number of the plot and its metes and bounds. On the basis of that opinion, the motion to dismiss the appeal was granted and the appeal was dismissed.

The second of these cases, *West African Trading Corporation v. Alraine*, [1976] LRSC 23; 25 LLR 3 (1977), was a motion filed for the re-argument of the first *West African Trading Corporation v. Alraine* case, which was decided and recorded in [1975] LRSC 16; 24 LLR 224 (1975). The motion for re-argument was filed to reargue the motion to dismiss the appeal which was decided and reported in 24 LLR. The motion for reargument was based upon the Court's failure to pass upon the revenue certificate which contained a full description of the metes and bounds of the property that was pledged as security to the bond. Mr. Justice Robert Azango delivered the opinion in the motion for reargument. In his opinion, the Justice quoted word for word the opinion of Mr. Chief Justice Pierre as recorded in the first opinion in [1975] LRSC 16; 24 LLR 224. However, in the second opinion[1976] LRSC 23; , 25 LLR 3 (1977), Mr. Justice Azango stated that the description of the property offered as security on a bond must be made only in the affidavit of sureties. The two cases are identical in their interpretation of the Civil Procedure Law, Rev. Code 1:63.2(b).

These are the two opinions which movant's counsel strenuously argued before us in support of his motion to dismiss this appeal. We should like to examine once more in this opinion the bond

statute. *Id.* Our understanding of this statute is that the property pledged as security in the appeal bond must be described in a manner that would make it easy to locate when necessary.

The affidavit of sureties attached to the appeal bond in the motion to dismiss contains the following description of the property: Lot Number, 45; Location, Benson Street, Monrovia; acreage, 1/8 and property owner, Fode Kabba. It is common knowledge that Central Monrovia has been demarcated by the Bureau of Lands and Surveys; maps have been drawn of the demarcated areas and the numbers and description of all lots have been recorded. Any one wishing to locate lot number 45 on Benson Street in Monrovia may do so from the records at the Bureau of Lands and Surveys. It is therefore not reasonable to say that the property described in the instant case cannot be easily located. We do not agree with the interpretation given to section 63.2(3)(b) of the Civil Procedure Law in the *West African Trading Corporation* case, reported in [1975] LRSC 16; 24 LLR 224 (1975) and [1976] LRSC 23; 25 LLR 3 (1977), respectively, that the description of the property is sufficient only if the property is described by stating the number of the plot and the metes and bounds. It is our holding that in all areas where the property has been demarcated, mapped, and recorded, it is sufficient to state the lot number, location, the quantity of the **land**, its assessed value and the owner. Such description is sufficient to enable anyone to easily find the encumbered property.

The description of the property in the affidavit of sureties attached to the bond in this case is sufficient for such property to be located, if and when it becomes necessary.
In view of the foregoing, the motion to dismiss appellant's appeal is and the same is hereby denied. Costs are to abide the final determination of the appeal. And it is hereby so ordered.
Motion denied.

MR. JUSTICE BADIO *dissents.*

I did not feel free signing the judgment in this case relating to the motion to dismiss the appeal, because of the position we took in similar motion and under like circumstances.
The issue involved in this case relate to the question of whether or not the full description of a property in the affidavit of surety has any effect on the appeal bond.
On November 21, 1995, the movant/appellee filed a three count motion which declared *inter alia* that the appellant's appeal bond is defective because the surety affidavit lacks the description of the property pledged to establish the lien of the bond as required by statute. Our Civil Procedure Law contains the following:

Legally Qualified Sureties:
"3) *Affidavit of Sureties*. The bond shall be accompanied by an affidavit of sureties containing the following:

(a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security;

(b) A description of the property sufficiently identified to establish the lien of the bond;

(c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and

(d) A statement of the assessed value of each property offered. Civil Procedure Law, Rev. Code 1:63.2

Annexed to the bond filed on February 28, 1994 are (a) affidavit of sureties, and (b) a statement of property valuation issued by the Tax Division of the Ministry of Finance. For the purpose of this opinion, we quote the affidavit:

"Personally appeared before me a duly qualified Justice of the Peace for Montserrado County, in my office in the City of Monrovia, Fode Kabba and Abu Donzo, sureties, one being the freeholder and householder to the attached appeal bond in favour of Sylla and Company Bakery, by and thru its attorney-in-fact, Kafumba Konneh, plaintiff/ appellant in then above entitled proceedings, and made oath according to law that one is the owner of the real property described as follows:

Lot No. Location Valuation Acreage Property Owner
45 Benson Street $13,000 1/8 Fode Kabba

as per metes and bounds of the property indicated on the statement of property valuation of February 16, 1994 issued by the Real Estate Tax Division, Ministry of Finance signed by the Justice of the Peace and the affiants- Fode Kabba and Abu Donzo."

Now, the affidavit does not contain a "description of the property sufficiently identified to establish the lien on the bond." Black's Law Dictionary defines description as it relates to real property as: "That part of a conveyance, advertisement of sale etc., which identifies the **land or premises intended to be effected; of land**, to give the metes and bounds." To give effect to that law, we must state briefly that a description of **land** is to trace or outline, in detail, the exact metes and bounds of a **land**. Therefore, deeds which convey real property must contain description by metes and bounds to identify the particular plot of **land** sufficiently and correctly. Using this as background, it is necessary to indicate that the Civil procedure Law, Rev. Code 1: 63.2(3)(b) means that the affidavit of sureties which accompanies the bond must verify the truthfulness of the contents of the bond to which it is annexed and describe the piece or plot of **land** sufficiently to be easily identified. In essence, the affidavit must show clearly that the affiant, being under oath before an officer of law authorized to administer oaths, testified as to what is contained in the document-- that is the bond-- as being within his personal knowledge. Therefore, the affidavit of sureties constitute a very pertinent and indispensable part of the appeal bond and without a proper description on oath, sufficient to identify the property and establish the lien of the bond, the bond is invalid.

The requirements of the law with respect to affidavit of sureties, which must accompany the bond, must be complied with literally. We have no authority to hold or even interpret the law otherwise. As a Court of last resort, we must interpret the law as it is written by the law makers, considering very intelligently and precisely the intent of the legislators. In other words, the legislators placed emphasis on affidavit of sureties because its office is to confirm the sureties' declaration under oath that the metes and bounds indicated in that document and the bond are true and correct and that the descriptions are for the property offered as security.

My colleagues hold the view that because the property was described by metes and bounds in the property valuation certificate, the certificate serves the purpose of the intent of the law. That analysis must be considered arbitrary because the statute directs that "title bond shall also be accompanied by a certificate of a duly authorized official of the Department of the Treasury (Ministry of Finance) that the property is owned by the surety or sureties claiming title to it in the affidavit, and that it is of the assessed value therein stated, but such certificate shall not be a pre-requisite to approval by the judge. Civil Procedure Law, Rev. Code 1:63.2(2)(4). In essence, the property valuation certificate certifies that the individuals whose names appear in the bond as sureties, and who, in fact, subscribed to the affidavit of sureties are truly the owners of the properties described, and that those properties are registered with the real estate division of the Ministry of Finance, and are of the assessed value stated by them in the affidavit of sureties. It is

not a certificate sworn to under oath by the owners of the property. In fact, the law on qualification of sureties does not require that the property valuation certificate from the Division of Real Estate must include the description of the property as set forth in the affidavit of sureties. But if it is done as in this case, it must be regarded as a surplusage. In other words, any false description could be indicated on the certificate issued by then Real Estate Division without penalty, unlike the surety affidavit which would expose the sureties to penalty for false representation. I must emphasize again that the description of the property must appear in the affidavit of sureties. [1976] LRSC 23; 25 LLR 3; 25 LLR 422; 27 LLR 306.

Incidentally, I observe that my colleagues decided to discuss at length this Court's ruling on similar issues - that is, the law relating to surety affidavit and statement of property valuation as recorded in *Kerpai v. Kpene*, [1975] LRSC 16; 24 LLR 224 (1975) and [1977] LRSC 4; 25 LLR 422 (1977), evading of course their conclusion that the description indicated in the statement of property valuation served the general intent of the law makers. I observe further that they discussed briefly that the surety affidavit now in question did sufficiently identify the property offered by Fode Kabba since indeed it mentioned lot no. 45, situated on Benson Street in Monrovia, without indicating the description by metes and bounds as required by law. From that principle, one can derive several corollaries which could be confusing. In short, we must look at the intrinsic requirement of the law and not extrinsic or extraneous factors which could suggest some required result.

The description of the real property offered by an appellant as security must be identified sufficiently to establish the lien on the bond, and that requirement must appear in the bond and the affidavit of sureties. Civil Procedure Law, Rev. Code 1:63.2(2)(c) and 63.2(3)(b). As I have already noted, the property valuation statement of the Ministry of Finance must be prepared by duly authorized officials of the Real Estate Tax Division to indicate that the property is owned by the sureties whose names appear on the appeal bond and are claiming title to it in the affidavit. Also, the statement must show that the property is of the assessed value stated in the affidavit of sureties. But the statement is not a prerequisite to the approval of the bond. In essence, the certificate is only necessary to clarify that the sureties own the property mentioned in the bond and described in the affidavit of sureties and also that it is of the assessed value indicated in the affidavit. That is the only requirement and the office of that certificate from the Finance Ministry, nothing else. We, as interpreters of the statutes or laws of this country cannot, under any circumstance, construe the law as being suggestive of any circumstance or condition other than the explicit wordings of the statutes. Any attempt by us to misconstrue and misinterpret the law, as done in the opinion of the majority, must be regarded as *ultra vires.*

As a matter of course, the two basic requirements mentioned above, i.e., the affidavit of sureties and the statement of property valuation, did not spring full-blown from any single imagination and they do not suggest perplexing meaning to warrant discretionary analysis or interpretation;

they were studied sufficiently and their individual significance broadly considered, especially from a legal standpoint, as well as what their individual function should be. We therefore repeat that the requirements of the statute, with respect to affidavit of sureties, are mandatory and must be literally complied with since, indeed, the statute is not ambiguous.

Because of the laws cited and the accompanied circumstances outlined herein, I have refused to sign the majority opinion and feel that the appeal should have been dismissed.

Kashouh v Manly-Cole [1964] LRSC 11; 15 LLR 554 (1964) (16 January 1964)

GABRIEL W. NAH, Appellant, v. JOSEPH A. NAGBE and W. D. RICHARDS, Appellees. APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued April 13, 1964. Decided May 3, 1964. 1. Where an appeal is tried on an insufficient bill of exceptions, the Supreme Court may review the case on the record. 2. A probate court has no jurisdiction to try an action of which the gravamen is fraud. 3. Where objectants to the probate of a deed allege that the deed is fraudulent and profer a prima facie valid prior deed to the same property, the probate court cannot properly dismiss the objections and order the allegedly fraudulent deed admitted to probate.

On appeal, a ruling of the probate court admitting a deed to probate over objections filed by appellees was reversed. D. W. B. Cooper for appellant. Winfred Smallwood

for appellees. MR. Court. JUSTICE MITCHELL

delivered the opinion of the

A close perusal of the records brought before this Court on appeal reveals that Gabriel W. Nah of the Commonwealth District of Monrovia is alleged to have bought a tract of **land from one Rachel R. Banks of Monrovia. This land** is described as Block Number 6, situated at Halfway Farm, Monrovia, Montserrado County. Title deed for the said **land**, given to appellant by his grantor, shows on its endorsement that it was executed on April t, 1954, and probated and registered on the i3th day of - December of the same year in ,Vol. 8o-B, page 999--moo--quite eight-odd months after its execution.

At the sitting of the Monthly and Probate Court of Montserrado County, in its May term, 196o, the said Gabriel W. Nah, objectant below, now appellant, believing, as it would appear, that another deed was about to be offered in probate for the identical tract of land, undertook to file the following caveat: "Please take legal and sufficient notice and enter in your office and/or the records of the aforesaid court that Gabriel W. Nah, bona fide owner of Block 6, Halfway Farm, Monrovia, objects to the admission into probate and ordered registered any and all documents such as warranty deeds, public land sale deeds, public land grant deeds, indentures of lease, assignments of lease, etc., in favor of Joseph A. Nagbe or Joseph W. Nagbe from W. D. Richards et al., and/or any other person or persons in connection with the aforementioned and above-described piece or parcel of land and/or property, located and described supra. And that the said caveator/objectant will in due course of time file his said objections to the admission into probate and registration and/or any legalizing of such documents in keeping with law." This caveat was filed by the caveator on May 14, 196o; and on October 26, 196o, according to the records before us, Joseph A. Nagbe, one of the respondents below, now appellees, appeared in the probate court and offered for probate a warranty deed for one-half of Lot Number 6, situated in Halfway Farm, Commonwealth District of Monrovia, Montserrado County, under the signature of W. D. Richards as grantor. According to the caveat filed in the said court, the caveator was advised of the offer of this deed for probate and filed his formal objections on May 27, 196o. The objectant averred that he possessed a genuine title deed for the identical tract of land sought to be transferred to Joseph A. Nagbe by W. D. Richards; and he simultaneously made profert of his said title deed which

showed on its face that it had been probated and registered many years before. He alleged, further, that W. D. Richards, the grantor to Nagbe had no legal title to the aforesaid tract of land which he was then attempting to part with. He also alleged that the warranty deed issued to Joseph Nagbe was the subject of fraud which ought to vitiate and make void the transaction. In conclusion he stated that since objectant's interest would be adversely affected if the said instrument of conveyance were admitted into probate and ordered registered, he requested the court not to admit the same. In their answer to the objections, the respondents alleged that the property in question was not the bona fide property of the objectant; that the land was owned jointly by Rachel R. Banks, grantor to objectant, and respondent W. D. Richards; that the said Rachel R. Banks in her own right was not legally clothed to convey title thereto, since the property in question was acquired by inheritance from the estate of the late Jacob W. Prout; and that the deed

under which objectant claimed title to the land was fraudulent in that it purported to have been executed on April 1, 1954, whereas the endorsement on the back thereof showed that it was probated and ordered registered on the 13th day of December of the same year; and moreover, that although it was purportedly signed by Winfred Smallwood as Registrar of Deeds for Montserrado County, the said Winfred Smallwood was not appointed by the President until 1956. Respondents alleged further that the records from the archives of the State Department showed that said deed was not registered on December 13, 1954, as would appear from its endorsement, but that it was registered on December 13, 1957, and probated on the same day; and that besides this act of fraud, it also carried the forged signature of appellee W. D. Richards who never . subscribed his genuine signature thereto, which facts evidenced objectant's deed to be fraudulent.

Pleadings progressed as far as the respondents' rejoinder and rested. After a hearing was had on the several issues raised on both sides, the probate commissioner, on November 17, 196o, entered a ruling dismissing the objections and ordering the deed of respondent Joseph A. Nagbe probated and registered. From that ruling the objectant noted his exceptions and brought this appeal. This case was called for hearing by this Court on the r4th day of April of the current year; and in our effort to delve into its merits, we have been shocked over a few points which we shall treat later in this opinion. Now to the bill of exceptions which is the framework of this appeal. It is composed of only one count, and that one count is, word for word, as follows: "Because on the 18th day of November, 196o, Your Honor did not sustain the objections and subsequent pleadings on the ground of overruling them. (See ruling of Sheet 2, minutes of 13th day's session which fell on November 18, 1960.) " Our statute defines a bill of exceptions as : (C . . . a written instrument stating that the judgment, decision, order, ruling, or other matter excepted to and the basis of the exceptions and containing a motion or prayer for relief." 1956 Code, tit. 6, § 1012. In view of this definition of a bill of exceptions, we wonder what the appellant seeks to have us review in this appeal. Surely if his objections and subsequent pleadings were insufficient in law and thus subject to dismissal, there was no proper alternative to the lower court's dismissing them. Yet, although the bill of exceptions is obscure and evasive, this Court nevertheless may, according to law, review the case on the records brought forward, and we shall proceed to do so, regardless of what we think about the insufficiency of the bill of exceptions. Respondents, in their answer, attacked the objectant's right to possession of the property, and they alleged that there were many discrepancies, which indicated fraud in

the procurement of the deed. In addition
they alleged that since the property was owned by both Rachel R. Banks and W. D. Richards, objectant's title was not legal because
Rachel R. Banks could not sell in her own right, or in other words, part with title to anyone, without the genuine signature of respondent,
W. D. Richards, who claimed not to have attached his signature thereto,
although the copy from the archives of the State Department
shows his signature thereon. Our law is not silent on this point, but makes it imperative that: "When fraud is alleged, a jury must pass upon the evidence in support of the allegation."
Beysolow v. Coleman, [1946] LRSC 4; 9 L.L.R. 156 (1946), Syllabus 3. We are shocked at the probate commissioner's failure to recognize that, since fraud was alleged in the respondents'
answer, the facts in connection with the proof thereof had to be heard and disposed of by a jury. He should have known that he was
without legal right to make a ruling on the facts because his competence only extends to disposing of law issues brought before him,
and other matters concerning estates; and equity was the proper forum to give relief. "Upon an allegation that a party has committed
fraud, every species of evidence tending to establish said allegation should be adduced at the trial." Henricksen v. Moore, 5 L.L.R. 60 (1936), Syllabus 2. Evidence could not have been taken in the probate court to prove fraud because such facts had to be passed upon
by a jury, and the probate court is not authorized to empanel a jury who are sole judges of the facts in any given case. At the same
time, objectant's deed could not be considered to be a fraudulent one unless the facts in connection with the alleged fraud had first
been produced and proven, and although the objectant's deed had been probated and registered, and besides that, had not been cancelled,
the court merely dismissed the objections

and ordered the second deed for the identical piece of property
probated and registered--an act that was obviously liable to engender confusion even greater than the litigation already entered
into. In view of all these palpable errors, we are of the considered opinion that the ruling of the court below should be reversed
and the warranty deed for Block Number 6 at Halfway Farm in the Commonwealth District of Monrovia from W. D. Richards, grantor, to
Joseph A. Nagbe, should be denied probate until respondents have instituted the proper proceedings and relieved themselves of the
fraud alleged. Costs in these proceedings are ruled against the appellees.
And it is hereby so ordered.
Reversed.

Clarke v Minister of Finance et al [1984] LRSC 55; 32 LLR 464 (1984) (23 November 1984)

A. BENEDICT CLARKE, SR., Petitioner, v. THE HONOURABLE MINISTER OF FINANCE, R. L., Chairman, Permanent Claims Commission, and THE MINISTER OF JUSTICE, R. L., Secretary, Permanent Claims Commission, Respondents.
APPEAL FROM THE CHAMBERS JUSTICE GRANTING A PETITION FOR A WRIT OF MANDAMUS.

Heard: November 5, 1984. Decided: November 23, 1984. 1. Under the principle of estoppel, a party is precluded from disavowal of his own act. 2. Under the doctrine of estoppel, personnel of the same agency are estopped from attacking the authority of their colleagues of similar ranks, as with the Assistant Minister of Justice for Litigation. 3. Where the statute of limitations does not run against the government, it is fair that the statute also not run against a private individual in a case in which the government is a party. 4. A petition for the correction of a deed should be filed by the party seeking the correction, with notice to adjoining owners, inviting them to file their claims or objections. 5. The writ of mandamus is the appropriate writ for the just compensation of a person whose property has been taken by the government. 6. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. 7. A writ of mandamus should issue whenever the petitioner can make it plain (a) that he has the legal right to have the act done; (b) that it is the legal duty of the respondent to perform said act; and (c) that if the writ is granted, petitioner will obtain relief for which no other plain, speedy and adequate remedy exists.

Petitioner sought a writ of mandamus against the Minister of Finance and the Minister of Justice, in their respective capacities as Chairman and Secretary of the Permanent Claims Commission, to compel them to compensate petitioner for two lots claimed by petitioner and occupied by government agencies. The petitioner had earlier written the Permanent Claims Commission requesting compensation for use by government agencies of the mentioned parcel of land which petitioner said had devolved up464

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on him from his grandmother.
Although a survey of the land had been conducted by the Ministry of Lands, Mines and Energy, at the request of the Permanent Claims Commission, and the petitioner had been certified as the owner of the land, the Commission had failed to compensate the petitioner.
Also, when in response to a letter from the petitioner, the Head of State suggested that the matter be settled through court proceedings, the Ministry of Justice, acting by the instructions of the Assistant Minister of Justice for Litigation, commenced proceedings for cancellation of the deeds of the only other claimants to the property. When payment was still not received from the Permanent Claims

Commission, petitioner filed the instant petition praying for issuance of a writ of mandamus against the respondents. In response to the petition, respondents, represented by the Ministry of Justice, challenged the authority of the Assistant Minister of Justice for Litigation to instruct cancellation of the deed of the other claimants to the property. The respondents also asserted that the petitioner was time barred under the statute of limitations from instituting the mandamus proceedings, and that in any case, mandamus would not lie since title to the property was not clear. The Justice in Chambers granted the petition and ordered the writ issued. An appeal was taken from the said ruling to the full Bench, where, after a hearing, the ruling was affirmed. The Supreme Court, in affirming the ruling, held that the Ministry of Justice legal counsels were estopped from disavowing the act of the Ministry or challenging the authority of the Assistant Minister of Justice for Litigation, he being of the same agency. In response to the government's assertion of the statute of limitation, the Court held that where the statute of limitation does not run against the government, it should also not run against a private party to a suit in which the government is also a party. On the question of whether mandamus was the proper remedy, the Court held that it was the appropriate remedy to compel an official to perform an act where such official was clothed with the duty to perform the act or take the action but had

failed to do so. The Court observed that the Ministers of Finance and Justice were duty bound to act in compensating the petitioner since there were no other claimants to the land, the deeds of the only other claimants having been cancelled in an earlier court proceeding undertaken at the instance of the government. The Court therefore affirmed the ruling of the Chambers Justice and ordered that the writ be issued and that prompt compensation be made to the petitioner. M Fahnbulleh Jones appeared for the petitioner/appellee. Abraham Kromah, Solicitor General of Liberia and S. Momolu Kiawu appeared for the respondents/appellants. MR. JUSTICE YANGBE delivered the opinion of the Court. The petitioner, son of the late Eva Watson-Clarke, granddaughter of the late R. J. Watson of Grand Cape Mount County, has filed this petition claiming payment from the Government of Liberia for occupying two lots of his. According to the records, the petitioner inherited the two lots from his mother who became owner of said lots by virtue of a Last Will and Testament of her grandfather, R. J. B. Watson, dated January 30', 1906. The petition states that the petitioner had communicated with the Permanent Claims Commission about his lots, Nos. 30 and 31, with buildings thereon, which were being used by the government and for which he had requested compensation. The Permanent Claims Commission had in turn written Major Fodee Kromah, the Minister of Lands, Mines and Energy, on July 20, 1983, requesting him to dispatch a team of surveyors to Robertsport, Grand Cape Mount County, to investigate, ascertain and confirm the physical existence of the property, survey it and have transfer deeds made and forwarded to the Commission, with the appropriate engineering advice, for the Commission's consideration. In compliance with this letter, Minister Kromah, on January 16, 1984, wrote

the Auditor General informing him that in response to his letter of July 20, 1983, relative to the claim submitted by Mr. A. Benedict Clarke, Sr., for his two lots situated in Robertsport, Grand Cape Mount County, the Ministry

had conducted an exhaustive investigation into the issue and was now submitting documentary evidence of its findings. In his letter, the Minister intimated that although the land referred to was not contested during the investigation and survey, it was important to indicate that a substantial portion of Robertsport City Hall (2,722.5 sq. ft.) was located on the property. Additionally, he continued, the building currently used by the Young Men Christian Association (YMCA), as well as the Post Office building in Robertsport, were entirely located on the property. These were indicated on the attached Site Plan, he said. The Minister further indicated in his letter that it was necessary to prepare a corrected survey certificate reflecting the adjustment to the metes and bounds of lots Nos. 30 and 31, now 5 and 6, in Block D-42, which certificate he also attached to the letter. The Minister expressed the hope that the information and material which he had provided would assist in the negotiations with Mr. Clarke. The Ministry was prepared to provide any additional technical information on the issue, he concluded. The petitioner/appellee has filed this petition praying that this Court orders the issuance of the writ of mandamus against the respondents herein to appear and show cause, if any, why they should not be ordered to appear and compensate the petitioner/ appellee for his two lots which the Government of Liberia was enjoying and for which he had not refused to execute deeds in its favor. There are four major contentions presented in the records before us, which, in our opinion, if settled, will resolve the issues raised in this case. They are: a. The statute of limitation b. The principle of estoppel c. The correction of the numbers of the lots by the probate court upon the request of the Ministry of Lands and Mines. d. The principle of adverse claim The respondents/appellants have contended that the petitioner/appellee is barred from instituting this action because petitioner/appellee was aware that the property had descended to him in the 60's, over 20 years ago, prior to the filing of this

petition for mandamus on the 12th day of June A. D. 1984. The petitioner/appellee, in countering this argument, asserted that prior to the filing of this petition, he wrote the Head of State of Liberia on the 27th of November 1980, informing him that he is the owner of the two lots which were being used by the Government of Liberia and that therefore he was claiming ownership and compensation. In the letter to the Head of State, petitioner/appellee expressed his willingness to execute the appropriate deeds in favor of the Government of

Liberia upon payment of consideration for same. It would appear that the Head of State suspected that someone else was also claiming title to the property, for in his January 7 th 1981 acknowledgment of the letter of the petitioner/appellee, the Head of State suggested that petitioner/appellee should resort to a court of competent jurisdiction to establish his ownership of or title to the property. Accordingly, on the 26th of August 1983, Elwood L. Jangaba, Sr., Assistant Minister of Justice for Litigation, addressed a letter to the county attorney for Grand Cape Mount County, forwarding the pertinent documents in connection with the claim of petitioner/appellee to the two lots and instructing the county attorney to file a proceeding in the 5th Judicial Circuit for cancellation of deeds against respondents named in that suit. The letter stated that the Azango Law Firm would associate with the county attorney in the cancellation proceedings. The records in this case evidence that the cancellation proceedings were had, in consequence of which a decree was, on the 18th day of January 1982, entered by the then Circuit Judge, His Honour E. S. Koroma, now our colleague. The case was captioned as follows: "A. Benedict Clarke, Sr. of the City of Monrovia, sole surviving lineal heir of the late Eva Watson-Clarke of Grand Cape Mount County, and the Republic of Liberia, by and thru the Minister of Justice, R. L...PETITIONERS
VERSUS

Mamie Gordon Dukuly and
E. D. E. Hoff, Special Administrator of the Estate of the late William S. Hoff, of Robertsport, Grand Cape Mount County, Liberia,
RESPONDENTS ACTION: BILL IN EQUITY FOR THE CANCELLAT 1ON

OF TWO FRAUDULENT DEEDS FOR LOTS NOs. 30 AND 31, SAME BEING SITUATED AND LYING IN ROBERTSPORT, GRAND CAPE MOUNT COUNTY, R. L."

This is the basis of the doctrine of estoppel invoked by the petitioner/appellee against the Ministry of Justice assertion of the statute of limitation. At first, during the argument before us, we were focused on addressing ourselves to the doctrine of estoppel, as opposed to the statute of limitation. However, our attention was redirected when, in answer to a question from the Bench, counsel for respondent/appellants said that the Assistant Minister of Justice for Litigation, who wrote the County Attorney for Grand Cape Mount County to file the cancellation proceeding in favor of A. Benedict Clarke, Sr., the petitioner/appellee, had no legal authority to authorize the cancellation of the deeds of Mamie Gordon Dukuly and E. D. E. Hoff. To this, petitioner/appellee responded that respondents/appellants could not repudiate the letter of their colleague, the Assistant Minister of Justice for Litigation, who was from the same Ministry of Justice, which counsel is now representing respondents/appellants in this case. The contention of petitioner/appellee that the respondents/ appellants could not disavow their own act, In re the letter of Minister Jangaba to the County Attorney, mentioned supra, is sound, for the house that is divided cannot

stand. Therefore, in our opinion, the doctrine of estoppel invoked by petitioner/ appellee is applicable, and the respondents/appellants are estopped from attacking the authority of their colleague, the Assistant Minister of Justice for Litigation at the Ministry of Justice. East African Company v. Dunbar, 1 LLR 279 (1895). As to the statute of limitations contention, the petitioner/ appellee cited the following authority: "Unless otherwise specifically provided by statute no statute of limitations shall bar any action brought or any defense or counterclaim interposed by the Government of the Republic of Liberia." Civil Procedure Law, Rev. Code I :2.7. Counsel for petitioner/appellee argued that since indeed under this statute, one cannot plead the statute of limitation against the

government, the converse is also true, that the government's defense based upon the plead of statute of limitation against an individual should also not prevail. Therefore, he said, the plead of statute of limitation should be overruled. The statute merely provides that the statute of limitation cannot be pleaded against the Government of Liberia. There is no provision in the statute stating that the government cannot succeed in a suit against it on the basis of the statute of limitation. Indeed, there is space for judicial deduction to supply the gap and construe the statute to make it effective under the notion of equal justice in order to balance the equation. The contention of the petitioner/appellee has posed a question, in our opinion, to be decided for the first time in the judicial history of this country. In our view, the argument of the petitioner/appellee is logical, for if the statute does not run against the government, it is fair enough for the statute not to run against an individual in a case in which the Government of Liberia is a party. The record also shows that originally the numbers of the two lots in question were 30 and 31, but that after the survey of the said property, the numbers were changed to 5 and 6. The reason for the changes is obvious in the records, as indicated in the letter signed by the Minister of Lands and Mines, together with the certificate issued by him, after resurvey of the two lots, all of them being in accordance with the two deeds of the petitioner/ appellee. The relevant part of the letter from the Minister of Lands and Mines is quoted below, as follows: "The Auditor General Permanent Claims Commission Monrovia, LIBERI A. Mr. Auditor General: This is in response to request contained in your letter Ref. No: PRC-4001/'84, dated 20 July, 1983, relative to claim submitted by Mr. A. Benedict Clarke, Sr. for two (2) lots situated in Robertsport, Grand Cape Mount County. Let me assure you that this Ministry has conducted an exhaustive research into the issue, and now submits documentary evidence of our findings. Although the land referred to was not contested during our

investigation and survey, it is important to indicate that a substantial portion of Robertsport City

Hall (2,722.5 sq. ft.) is located on the property. Additionally, the building currently used by the Young Men Christian Association (YMCA) as well as the Post Office Building in Robertsport are entirely located on the property. This situation is indicated on the attached Site Plan. It was necessary to prepare a corrected survey certificate reflecting the adjustment to the metes and bound for lots Nos. 30 and 31, now 5 and 6 in Block D-42. Copies of corrected survey certificate have been duly probated and are attached.
We have prepared transfer deeds for lots 5 and 6 in Block D-42 which are also attached. We hope the information and material which we now provide will assist you in your negotiation with Mr. Clarke. Meanwhile, this Ministry is prepared to provide any additional technical information which you may require on the issue." From the tenor of the letter we have quoted, supra, the identity of the land in dispute claimed by petitioner/appellee is clearly established as being that of the petitioner/appellee per his deeds, except that in keeping with the letter and the certificate, the nos. of the lots were subsequently changed from 30 and 31 to 5 and 6 respectively. These changes were the result of the layout of the City of Robertsport in 1972. All of the communications we have quoted, the certificate and court's decree were written or undertaken predicated upon the request of the Ministry of Justice and the Permanent Claims Commission, prior to the filing date of the petition for a writ of mandamus. It is therefore strange for respondents/appellants to again question the petitioner/appellee's ownership to the property and the changes made to the numbers of the two lots which were done upon their requests. We do not want to give the impression here and sanction that the Ministry of Lands and Mines, or any surveyor for that matter, has the right to unilaterally petition the probate court for correction of deeds without notice to the adjourning owners of the premises. However, the facts and circumstances in this case seem to support the position taken by the Ministry of Lands,

Mines and Energy in asking the probate court to correct the deeds. As we have stated supra, the deeds of the only claimants, Mamie Gordon Dukuly and E. D. E. Hoff, who were claiming title to the property, had been cancelled by the said court in that county. During the survey of the premises, nobody else interposed objections; nor has anybody else claimed ownership to said lots up to this moment. We want to emphasize further that whatever may be the reason for the correction of the deeds, the petition therefor should be filed by a party seeking the correction, with notice to adjourning owners, inviting them to file their claims or objections, if any. This procedure will definitely avoid future controversy. Lastly, respondents/appellants maintained that mandamus will not lie in this case because the title of petitioner/appellee to the two lots is not clear. Under normal circumstances, we would be in accord with this theory, but in view of the decree of court referred to above, in which case the respondents/appellants participated as one of counsels for petitioner/appellee, coupled with the absence of another claimant to the property, we hold that the title of petitioner/appellee,

A. Benedict Clarke, Sr., to the two lots in issue is not in doubt. Hence, mandamus is the appropriate writ for just compensation of petitioner/appellee for his property. The respondents/appellants in this case, as can clearly be seen from the title of the case, are agencies of the government and one of the functions of one of the agencies, that is, the Permanent Claims Commissions, is to settle all just and lawful claims against the Government of Liberia. It performs this function in collaboration with the Ministry of Finance, and as necessary, with the legal advice of the Ministry of Justice. In case of any refusal by any of the agencies to perform the functions assigned to them, the statute provides: "Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. Rev. Code I :16.21(2). This provision of the statute quoted above has been the same, almost word for word, prior to and after this country was founded in 1847, and throughout the several revised statutes up

to this moment. In Karnga v. Coleman, [1937] LRSC 10; 5 LLR 405 (1937), this Court held that: "A writ of mandamus should issue whenever petitioner can make it plain; .1) that he has a legal right to have the act done for which he is petitioning; (2) that it is the legal duty of defendant to perform said act; (3) that if granted, petitioner will obtain relief for which no other plain, speedy and adequate remedy exists." See also Wiles v. Simpson, 8 LLR 365 (1944) and King et al. v. Howard et al. [1946] LRSC 1; 9 LLR 135 (1946). In view of the above, the ruling of the Justice in Chambers is confirmed in its entirety. The Clerk of this Court is ordered to send a mandate to the respondents/appellants ordering them to adequately compensate petitioner/appellee for his two lots, formerly nos. 30 and 31 and now 5 and 6 respectively, located in the City of Robertsport, Grand Cape Mount County, Republic of Liberia. The Clerk of this Court is further ordered to place in the hands of the Marshal of this Court three copies each of the opinion and judgment in this case to be hand delivered by the Marshal to each of the respondents/appellants. The Marshal is further ordered to report to this Court or the Justice presiding in Chambers as to how he has carried out these instructions, and to do so within a week from the date of receipt of the mandate. And it is so ordered. Petition granted

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Yamma v Street et al [1956] LRSC 20; 12 LLR 356 1956 (29 June 1956)

JALLABA YAMMA, Appellant, v. CARL A. STREET et al., Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 7, 1956. Decided June 29, 1956. 1. Adjudication of an ejectment action arising from a boundary dispute where

title is uncontested ordinarily requires evidence of a survey of the disputed lands. 2. Where the verdict of a jury in an ejectment action is contrary to the evidence the trial court should grant a motion for a new trial. 3. Plaintiff in an ejectment action must rely upon the strength of his own title rather than the weakness of defendant's title. 4. In passing upon multiple objections to the introduction of evidence a trial court should clearly indicate which objections are sustained and which are overruled.

Appellees instituted an action of ejectment against appellant in the court below which rendered judgment upon a jury verdict in favor of appellees. On appeal to this Court the judgment was reversed, and the cause remanded for new trial.
M. M. Perry for appellant. appellees. J. Dossen Richards for

MR. JUSTICE SHANNON delivered the opinion of the Court. This is an appeal from a judgment in an action of ejectment instituted by the appellees against the appellant before the Circuit Court of the Sixth Judicial Circuit, Montserrado County. So many irregularities are apparent on the face of the records that we have decided to remand the case for a new trial. Both the appellant and the appellees claim title to lands which are contiguous, being in the same block. Their respective deeds are both numbered "22." Neither party

contests the validity of the other's deed. Both titles are derived from the late Joanna Coleman of Monrovia. The appellees, in their complaint as plaintiffs, alleged that "the defendant aforesaid has encroached upon the property of plaintiffs and detains from them a portion of said property, that is 1,485 square feet of land, to the injury, inconvenience and damage to and of plaintiffs," and they made profert of their deed to support same. The defendant, in his answer, denied the encroachment and claimed that he was on his own land, and also made profert of his deed. It would appear from the evidence in the case that the attention of the late Eugenia Street, from and under whom plaintiffs-appellees claim, was called by a surveyor to some incorrectness in the bearings shown in the deed on which she claimed title to the property. The surveyor, one Anderson, suggested that some legal steps be taken to correct same, and she commenced doing this by employing the services of Counsellor Carney Johnson, who, unfortunately, took sick. The said Eugenia Street subsequently died without having effected the corrections, but this was done after her death.
It does not appear that notice was given defendant-appellant, since in the attempted correction of the boundaries described in Eugenia Street's deed, a portion of the land claimed by the defendant-appellant was taken in. Carl Street, one of the parties plaintiff, when on the stand, was asked about the extent of the encroachment of defendant on their said land which was withheld from them, and answered to the effect that the encroachment was "eleven and a half feet." Abigail Street-Taylor, another party-plaintiff, in answer

to a similar question said : "He has encroached about twelve feet." Whilst it may be said that the two witnesses were ignorant of whether they were speaking in terms of linear or square measure, yet efforts through further questions should have been made to clear this.

It is puzzling how, in the face of such testimony from the plaintiffs, as also against the denial of the defendant, the trial jury arrived at the verdict which they brought in and which said : "After carefully hearing the statement of the witnesses and the law governing said charge, we, the jurors, do unanimously agree that plaintiffs are entitled to recover the land," meaning, thereby the 1,485 square feet as laid in the complaint. In an action of ejectment in the nature of the one before us, wherein each party has an uncontested title deed and the land is contiguous, the right way to determine whether one encroaches upon the other and to what extent, is to bring in qualified and unprejudiced surveyors. But this was not done in this case, even though the entire evidence of surveyor Anderson, taken together, appeared to suggest this; but the hint was not taken. The verdict of the jury was obviously against the evidence in the case, and the motion for new trial filed by the defendant, now appellant ought to have been granted ; the trial Judge erred in denying same. The decision of this Court in Johns v. Witherspoon, [1946] LRSC 3; 9 L.L.R. 152 (1946), relied upon by the plaintiffs at the trial in resisting the motion for new trial, and which seems to have influenced the judge in his ruling, appears to have been misapplied. That decision does not hold that a motion for new trial cannot be filed at all in ejectment, but rather that, where the jury is required to try mixed issues of law and fact, a motion for a new trial need not be taken as an initial step in an appeal from a verdict since the trial Judge would not be expected to go back on himself in rulings he had previously given in directing the jury to pass upon questions of mixed law and fact. In this instant case, there were really no questions of law raised in the pleadings and consequently none to decide on appeal. Moreover there were no technical questions of mixed law and fact, since indeed the only issue involved was whether defendant was encroaching upon plaintiffs'

land. It would be a travesty of justice to set up as a principle that, in an action of ejectment, no motion for new trial can be entertained where a verdict is manifestly against the evidence in the case ; and this seems not to have been the spirit and intent of the opinion of Johns v. Witherspoon, supra, upon which the trial Judge relied. It is a principle in trials for ejectment, which has been often enunciated by this Court, that plaintiff must recover upon the strength of his own title and not on the weakness

of his adversary; and this should have been adhered to, especially since, as has been shown, supra, each contesting party had a deed for Lot Number 22, obviously meaning Block Number 22. It is observed from the records in this case that, in the taking of testimony, there were times when several objections were interposed to a question and the trial court, in ruling thereon, would say : "Objections sustained" or, sometimes : "Objections overruled." This seems not to be sufficient and, in our opinion, it is necessary for the trial Judge to indicate which objections are sustained or overruled, and which are not, so as to enable the appellate court to pass clearly upon such rulings. This Court is of the opinion that the judgment in this case should be reversed and said case remanded for new trial with directions that qualified and unprejudiced surveyors be called in to pass upon the encroachment, if any, of the defendant upon plaintiffs' land. Costs to abide final determination of the case. And it is hereby so ordered. Reversed and remanded.

Bailey v Sancea [1973] LRSC 36; 22 LLR 59 (1973) (26 April 1973)

HARPER S. BAILEY, Appellant, v. ANNA C. SANCEA, headwife of CHARLES B. SANCEA, by and through her husband, Appellee.
APPEAL FROM
THE CIRCUIT. COURT, SEVENTH JUDICIAL CIRCUIT, GRAND GEDEH COUNTY.

Argued March 29, 1973. Decided April 26, 1973. 1. A bill of exceptions must particularize the aVeged errors of the lower court. 2. Plaintiff is required in his pleadings to allege the facts which give rise to his cause of action so as fairly to apprise the court and defendant of the cause of action. 3. When a party seeks the benefit of a statute he must plead appropriate facts to bring himself within its provisions and secure the benefit, as in the present case where plaintiff sought ejectment under statute, but failed to state facts sufficient to invoke it. 4. It is only an innocent subsequent purchaser for value who has superior title to realty when a purchaser fails to have the instrument conveying title probated within four months of acquisition. 5. A grantor who has warranted title to realty may not deny such warranty by reason of title after acquired by him. 6. When undue influence is alleged, the facts constituting it must be specially pleaded. 7. A person inducing belief in the existence of a certain state of facts is estopped from denying subsequently that such state of facts does not exist. 8. The doctrine of unjust enrichment will not permit a person to profit or enrich himself at the expense of another contrary to equity.

In 1965, appellant apparently conveyed to appellee a one-quarter acre town lot from a parcel of one and onehalf acre town lots allotted to him by tribal authority. Though the instrument was designated a bill of sale, it contained all the elements of a warranty deed. The full purchase price was paid to seller. Two years later, a deed to the one and one-half acre lot was executed to appellant by the

Republic. He thereafter brought an action in ejectment against the purchaser, primarily contending that he had no title to convey in 1965 and that, moreover, the defendant never offered the instrument for probate and was guilty of laches. The lower court dismissed the action, and the plaintiff appealed. The Su59

preme Court denied all arguments of appellant and emphasized the point that the grantor was estopped to claim any interest in the premises but after-acquired title, when he had warranted title at the time of conveyance to defendant. The judgment was affirmed. Appellant, pro se. Frank W. Smith for appellee. MR. Court. JUSTICE AZANGO

delivered the opinion of the

The record in this case reveals that on May 20, 1971, appellant instituted an action of ejectment against appellees to recover from them a one and one-half acre town lot situated on the left side of Tubman Avenue, in the City of Zwedru, Grand Gedeh County, of which the appellant claimed that he was the sole owner and possessor of the aforesaid one and one-half acre town lot covered by a public land sale deed in fee simple. He alleged that there had been a long-standing friendly relationship between appellant and appellees to the extent that at one time, while he was a stipendiary magistrate in the City of Zwedru, Charles B. Sancea was arrested and charged with the crime of grand larceny, and appellant became so concerned and involved himself that he was also arrested and charged with the commission of the crime of sedition. And again to show the state of relations, when Charles B. Sancea was arrested and charged with the offense of official misconduct as Bail Commissioner for Grand Gedeh County, on February 18, 1972, appellant's law firm was retained to represent him. However, when the aforesaid appellee was approached on March 18, 1972, by appellant to compensate him for the legal services he had rendered, appellee refused and offered him insults and showed him ingratitude. Hence, according to appellant, "It was these exasperating attitudes of appellee,

Charles B. Sancea, that gave birth to the institution of the ejectment action." He claimed also that he had been injured by means of appellees' undue influence and persuasion exercised over him for the purchase of land, at the time when appellant had not acquired a fee simple of the parcel of land. In addition, he contends appellees are guilty of laches because they didn't ask him for a deed at the time he received $40.00 from them six years prior to the start of the ejectment suit, and have said instrument probated. Pleadings were rested after plaintiff's reply. Hector Harmon, assigned circuit judge presiding over the August 1972 Term of the Seventh Judicial Circuit, Grand Gedeh County,

then dismissed the action on September 20, 1972. Appellant noted his exceptions at the time and has appealed to this Court on a bill of exceptions containing five counts. It must be borne in mind that a bill of exceptions must show with particularity the alleged errors of the lower court. Quaff v. Republic, 12 LLR 402 (1957). And only errors attributable to the trial judge should be included in the bill of exceptions. Benwein v. Whea, [1961] LRSC 25; 14 LLR 445 (1961). It is in essence a complaint alleging that the trial judge has committed one or more errors, all therein specified, which have resulted in a final judgment adverse to the contentions of appellant. Richards v. Coleman, [1938] LRSC 15; 6 LLR 285 (1938). It would seem therefore that this court has no bill of exceptions before it to which to direct its attention to ascertain whether the trial judge's ruling has been in accordance with law or not. Yates v. Brother, 1 LLR 2 (1860. Nevertheless, we shall, in fairness to justice, examine the pleadings in this case in their reverse order and see whether or not the judge was justified in dismissing the action. From a careful reading of the pleadings, we are of the

opinion that counts one, two, and three of appellant's reply are not sustained as against count one of appellees' answer, for the reason that a complaint in an action of ejectment must state that plaintiff is possessed of the real property sought to be recovered and the defendant is wrongfully withhodling possession thereof, or that defendant has unlawfully dispossessed or ousted plaintiff or has trespassed or tortiously entered upon the premises, without any color of right. In such action the plaintiff may also ask for damages. Rev. Code I :62.1, 62.2, 62.3. Furthermore, one of the fundamental rules of pleadings requires that the facts on which the plaintiff predicates his cause of action, and the defendant his grounds of defense, shall be alleged and these are to be so stated as fairly to apprise the court and the adverse party of the cause of action or the nature and scope of defense. The sufficiency of a pleading depends upon facts stated therein, not upon the proof ; generally, the sufficiency of a pleading must be determined by inspection of the pleading itself without reference to the evidence. In this connection, it should be observed that there is an essential difference between matters of pleadings and matters of evidence, for in pleadings the facts must be positively averred while in presenting evidence, conclusions may be inferred. If a material fact is lacking from a complaint or a petition it will go down before a demurrer. 41 AM. JUR., Pleadings, § 6. Moreover, it is a universally recognized rule that the courts take judicial notice of public statutes and the general laws of the Legislature, although the statute itself is not required to be pleaded. However, it is obvious that in all cases, when one seeks the benefit of a statute he must by appropriate averment bring himself within its provisions; that is to say, he must plead facts demonstrating his rights to recover under the statute. 41 AM. JUR., Pleadings, §

Inspecting the complaint of plaintiff, we see that al-

though he has averred that at the commencement of the action he was and still is the owner and possessor of the one and one-half acre town lot within Zwedru, yet he has failed to state that defendant is withholding the property as required. Nor was a deed proferted to support plaintiff's claim, and there is no showing upon the record that at the time of the sale of the quarter-lot to appellees in 1965, plaintiff had any legal right or title to the land and could sell. To the contrary, he has contended that "while he . . . was in the midst of his trouble which was solely and wholly attributable to the cause of appellee, Charles B. Sancea, he was persuaded and unduly influenced by the defendant Sancea to purchase his quarter-town lot and being in extreme need of money at the time, was constrained to yield to defendant's request." Of this we shall speak more later, although this does not constitute ground for the maintenance of an ejectment action under our code. He has further contended that defendants are guilty of laches and are therefore estopped from claiming title because the said deed executed to appellees by appellant has not been properly probated and registered, for if any person shall fail to have any instrument relating to real estate probated and registered within four months after its execution, his title to such real estate shall be null and void against any party holding a subsequent deed for the property which was probated and registered within four months. Salifu v. Lassannah, [1936] LRSC 13; 5 LLR 152 (1936). However, it is quite evident that such failure operates only in favor of an innocent purchaser for value, which appellant is not. More to the point is the argument advanced by appellees that a grantor is estopped from denying the validity of his own title. "Further that a grantor of land with full convenants of warranty is estopped to claim any interest in the granted premises. The principle is particularly applicable where the grantor seeks to set up an after-

acquired title. Where through subsequent conveyances of the same land the title returns to a grantor with warranty, he is estopped to allege a breach of the last warranty where the same proof would establish a breach of his own. A grantor is estopped by a deed itself to assert fraud in its inducement, as distinguished from fraud in the factum." 19 AM. JUR., Estoppel, § 10, pp. 606-607. In other words, as argued by counsel for appellees, the law of estoppel does bar appellant's right to recover the land, for the law of estoppel to avoid circuity of action is well established ; as where a party conveys land with warranty to which he has no title, and afterwards acquires a good title by descent or purchase, and thereupon brings an action against his grantee to recover the land. In such case, the demandant has a good title to the land, and no title passed by his deed to the grantee, yet as he would be liable on his warranty for the value of the land, if he should recover, the principle of avoiding circuity of action interposes and rebuts his rights. And further, an action

of ejectment does not lie for the recovery of possession of land where there has been a contract for the sale thereof, the purchase price paid, and possession delivered in pursuance thereof. Being mindful of the universal principle of law that reality of assent is essential to the validity of a contract and that a party must not only be mentally competent but he must exercise his will freely and understandingly, we have not been able to discover from the pleadings, carefully read, any specific allegations to excite suspicion of undue influence exercised on appellant. On the other hand, the transaction appearing to have been just, proper, and reasonable, there is no presumption of undue influence. Besides, when undue influence is relied upon, according to the weight of authority, it must be clearly set up in the pleadings by stating in substance the facts which show the domination of the will of the influencing party. As in

the case of duress, undue influence is affirmative and new matter which must be pleaded specially. It must be established. That is, the facts constituting the undue induence must be stated, and general allegations of the ultimate fact of the undue influence is not sufficient. It is necessary to plead the facts constituting undue influence and not mere conclusions of law. On June 26, 1965, appellant conveyed a one-quarter acre town lot to Anna C. Sancea, from the one and onehalf acre town lot which had been alloted to him by tribal authority, by what appears to be a warranty deed, though the instrument of conveyance was called a bill of sale by the grantor. From a careful scrutiny of the record there is no indication that there was a principal and agent involved in the transaction from which one could perhaps legally conclude that the act of the agent in selling the one-quarter acre town lot to appellees was not authorized by appellant and, hence, fraudulent or beyond the agent's capacity to convey. To the contrary, the sale was an outright one with the full knowledge and consent of Harper S. Bailey. The legal maxim that one cannot repudiate his own acts is as old as the law itself. That is, when one by his acts, representations, or omissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other person rightfully relies and acts on such belief he cannot subsequently deny the existence of such facts. In such a situation, the person inducing the belief in the existence of a certain state of facts is estopped from denying that the state of facts does not in truth exist. Since it was appellant who executed the unprobated "bill of sale" to Anna C. Sancea, head wife of Charles B. Sancea, he cannot be permitted to recover against her simply because in 1967 he later obtained a title deed from the Republic of Liberia, or contend that since appellees have not probated the instrument they are guilty of laches.

In addition, to permit appellant to prevail would be a disservice to the doctrine of unjust enrichment, which is that one shall not be allowed to profit or enrich himself at the expense of another contrary to equity. With reference to count three of appellant's reply, in which he contends that count three of appellees' answer is a sham plea to the issue at bar, it is our holding that it is not sustained for the reason that there is no reason to believe that appellees have falsely alleged facts and have not pleaded the said issues in good faith. With reference to counts five, six, and seven of the reply, said counts are not sustained as against the answer, in that besides the inapplicable invocation of the doctrine of ex post facto, they are not only repetitious and redundant but are irrelevant and immaterial to the maintenance of ejectment actions. Earlier in this opinion, we mentioned that at the time appellant sold the quarter acre town lot in 1965 to appellees, he had not yet obtained a deed from the Republic of Liberia for the one and one-half acre town lot, including the quarter acre lot which he sold to appellee. This means that at the time appellant sold the parcel of land in question, neither appellant nor appellees had a deed covering the land. The conduct of the appellant, who is a member of this bar, was unethical, and we wonder how he expected to benefit from such an act when there was no legal theory he could proceed upon. Accordingly, appellant is precluded from insisting that his adversary cannot set up an outstanding title, or that defendant is a mere trespasser. And even if he could, if neither party has a legal title, appellant cannot recover on a claim of title he must establish in an action of ejection brought as plaintiff. In view of the foregoing the judgment of the lower court is hereby affirmed, with costs against appellant.
It is so ordered.
2115rmed.

Dennis et al v Tarpeh et al [1988] LRSC 59; 35 LLR 310 (1988) (29 July 1988)

SAMUEL FORD DENNIS et al., Informants, v. **AUGUSTUS BARBOUR TARPEH et al.**, Respondents.

APPEAL FROM THE CHAMBERS JUSTICE RULING DENYING A BILL OF INFORMATION.

Heard: May 26, 1988. Decided: July 29, 1988.

1. Subordinate courts must execute the mandate of the Supreme Court in every case and make returns thereto.

2. An inferior court's disregard of the Supreme Court's mandate is contumacious.

3. Trial courts should follow strictly, both in the spirit as well as in the letter, all opinions given by the Supreme Court as one of the most patent means of unifying the practice.

Informant filed a bill of information before the Justice in Chambers contending that the trial judge had violated the mandate of the Chambers Justice who had ordered that the trial court proceed to put the parties in possession of their respective parcels of **land** based upon the report of a board of arbitration appointed by the trial court and the parties to demarcate the metes and bounds of **land** which was the subject of dispute in an action of ejectment. The Chambers Justice had also ordered that no new board of arbitration be set up but that the original board be used for the purpose of enforcing the trial court's judgment.

However, when the mandate was sent to the trial court, the respondents contended that the surveyors would be bias against their interest since the said respondents had refused to pay the additional charges requested by the surveyors as a condition to their having to go to the **land** and make the required demarcation. The respondents had therefore requested that the trial court appoint a new team of surveyors. The trial court granted the submission and ordered the appointment of a new team of surveyors. It was from this ruling that the informant filed the bill of information.

After a hearing, the Chambers Justice ruled that the trial judge had violated the mandate of the justice forbidden the appointment of any new surveyors board of arbitration and ordered that the trial judge be cited in contempt. From this ruling, an appeal was taken to the Full Bench.

The supreme Court affirmed the ruling of the Chambers justice, holding that subordinate courts were under a legal duty to follow strictly the spirit and letter of the opinions of the Supreme Court and that a failure to obey the mandate of the Court was contumacious. The Court determined that the act of the trial judge in appointing a new team of surveyors was a violation of the Court's mandate. The Court held nevertheless that because of the passage of time which had made it impossible to contact the original arbitrators, and in the interest of justice and a speedy

disposition of the matter, a new team of arbitrators be appointed to have the respective parties placed in possession of their parcels of **land** shown in the original report of the board of arbitration.

M Kron Yangbe appeared for petitioners. Roger K Martin appeared for respondents.

This is an appeal from a ruling made on a bill of information by our distinguished colleague, Mr. Justice Junius, presiding in Chambers.

Samuel Ford Dennis et al., informants herein and plaintiff in the lower court, instituted an action of ejectment against respondents herein in the Sixth Judicial Circuit Court, Montserrado County, to recover possession of a certain parcel of **land** situated in Paynesville, Monrovia, which parcel of **land** respondents were alleged to have been withholding wrongfully from informants.

During the March, A. D. 1979 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, when the action of ejectment was called for trial, predicated upon the joint request of counsel representing the various parties, the court constituted a board of arbitration comprising a team of surveyors, one of which was selected by the informants, one by the court, and one by the respondents, to study all of the documents relating to the properties and to conduct a survey of the said disputed. property and make a report to the court, along with their findings and recommendations. The records show that the board, after due consideration, submitted a report containing their findings and recommendations. It would seem that copies of the said report of the board of arbitration were served on all the parties concerned and that there was no legal objection interposed by any of the parties to the action of ejectment against the report. Hence, the court confirmed and affirmed said report, thereby making it a part of the records in the proceedings. Thereafter, the court rendered final judgment in the case and ordered the clerk to issue a writ of possession to be placed in the hands of the sheriff, with instructions that he proceed to the premises and place the parties in possession of their respective properties. The sheriff proceeded to the premises, but while attempting to place the parties in possession of their respective properties, the respondents therein fled to the Chambers of our former colleague, Mr. Justice Morris, and filed a petition for a writ of prohibition. In response to the petition and writ, the respondents in the prohibition proceedings, now informants, filed their returns.

At the call of the petition for hearing before the Chambers Justice, the counsel representing the parties jointly requested the court to have the case remanded to the trial court to resume

jurisdiction over the case and to enforce its judgment. Justice Morris, in granting the submission, said inter alia:

"When this case was called for hearing of the petition for a writ of prohibition, a submission was spread on the minutes of today's sitting by the petitioners' counsel informing us of the unanimous agreement reached between the both counsel praying for the remand of the case to the court below to resume jurisdiction. There being no objection interposed by the respondents' counsel to the contrary, it is our holding that the same is hereby granted and the peremptory writ ordered issued.

The Clerk of this Court is hereby instructed to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and proceed to execute the mandate of this Court as in keeping with the report of the arbitration in conformity with the orders of the trial judge who accordingly passed upon same.

It is further commanded that this case be given priority by the judge presiding therein in the execution of our mandate. Costs disallowed. AND IT IS HEREBY ORDERED.

In keeping with the mandate of Justice Morris, the parties then proceeded to the Civil Law Court, whereupon they again requested the appointment of the board of arbitration. Informants herein appointed their surveyor and the court appointed a surveyor who was also to serve as chairman of the arbitration board. The respondents however, for reasons not apparent on the records before us, did not appoint a surveyor.

Consequently, on the 22nd day of October, 1986, Counsellor Moses K. Yangbe, counsel for informants, brought to the attention of the court the continued attitude of the respondents in baffling the trial of the case by constantly applying to the Chambers Justice for remedial process even though final judgment had been rendered on the 26th day of April, 1979. The counsel noted that a bill of costs issued by the court had not been implemented because of the delay tactics practiced by the respondents and that the respondents were requested to appear on the 22n d day of October 1986, and to bring a surveyor to represent them on the board of arbitration, but that they had failed to appear or to bring the said surveyor. The counsel therefore requested the court to order the clerk to issue and place in the hands of the sheriff a writ of possession as well as the bill of costs for the enforcement of the judgment of the court in keeping with the records.

His Honour Napoleon B. Thorpe, then presiding by assignment over the September A. D. 1986 Term of the Civil Law Court, Montserrado County, granted the request and ordered the clerk of court to issue the writ of possession in keeping with the board of arbitration report showing the metes and bounds of the area surveyed and shown in the said writ of possession and to place same in the hands of the sheriff for service in keeping with the ruling and mandate of the Supreme Court of Liberia. It is worthy to note that these prohibition proceedings are the second involving the issuance of a remedial writ in this case against the execution of the order of the trial court.

The issue presented before us is whether or not Judge Thorpe was legally correct in ordering a new writ of possession? In our opinion, the judge should have cited all the parties concerned to be present before the issuance of the writ of possession since the writ of possession had already been issued in the case by his predecessor, Judge Emma Shannon-Walser, who listened to the evidence and rendered final judgment in the case. We therefore hold that Judge Thorpe erred when he ordered the issuance of the second writ of possession.

Justice Tulay having heard the petition for a writ of prohibition, granted same, and in so doing, made the following ruling, to wit:

"In view of the above reasoning, we grant the writ of prohibition prayed for and order the alternative writ issued with the instruction to the court below that no further board of arbitration be set up and that the deeds be made to reflect the recommendation made in the report and the parties be placed in possession of their respective properties."

On the 25th day of June, 1987, when the trial court again resume jurisdiction to enforce its judgment in keeping with the mandate of Chambers Justice Frederick K. Tulay, counsels for respondents requested the trial court to replace the surveyors board of arbitration previously constituted, and based upon whose report and recommendations the case was decided and the writ of possession had been ordered issued to place the parties in possession of their respective properties. The basis for this application was that the original surveyors had become bias to the interest of respondents since they had requested extra payment of $1, 500.00 each in advance before proceeding to the disputed area to place the parties concerned in possession of their respective parcel of **land**. According to respondents, the payment for the services of the surveyors who were on the original board of arbitration of 1978 had already been made by respondents in the sum of $750.00, which was respondents' share of the charge, but that because the said surveyors did not end the work at the time, the parties were not placed in possession of their respective parcels of **land** until after the reading of the mandate from Chambers Justice Tulay by the trial court. The Chairman of the board of arbitration confirmed that they had

charged the sum of $3,000.00 to be paid by both parties in order for them to proceed to the disputed area and place the parties in possession of their respective lands. The respondents contended that because of their inability to pay the additional charge of $1,500.00, the surveyors had turned against them, and that therefore they, the respondents, feared that if the surveyors were to continue carrying on the assigned job, their (respondents) interest would be irreparably damaged. The respondents therefore prayed for the replacement of the original surveyors. To this application, the trial court made the following ruling:

"In view of the facts stated above of the surveyors that unless the said additional charge is agreed upon to be paid they will not proceed to the disputed area, and considering the position taken by defendants indicating their inability to pay the excessive charge, this court hereby orders the surveyors concerned discharged from further participation in the placement of the parties in possession of their respective parcels of **land**, and further orders that they be replaced by one surveyor to be named on each side and one appointed by the court to serve as chairman of the board so that the three surveyors may proceed to the .disputed area to place the respective parties in possession of their parcels of **land**. And it is so ordered."

The issue presented is whether or not the mandate of Chambers Justice Tulay was violated. According to the mandate, the trial court was required to continue with the original surveyors who constituted the original board of arbitration; that no further board of arbitration was to be set up; that deeds be made to reflect the recommendations contained in the 1978 board of arbitration report; and that the parties be placed in possession of their respective properties. Yet, Judge Thorpe undertook to grant the submission made by the respondents for the replacement of the original surveyors, contrary to the mandate of our former colleague, Mr. Justice Tulay, who was then presiding in Chambers. Informants not being satisfied with the ruling of Judge Thorpe, excepted to the same, said exceptions being duly noted by the court.

During the current term of this Court, a bill of information was filed by informants before His Honour David D. Kpomakpor, and heard by our distinguished colleague, Mr. Justice Junius, who after the hearing, granted the information on the 25th day of April, A. D. 1988.

For the benefit of this opinion, we hereunder quote, word for word, the relevant portion of Justice Junius' ruling:

"In view of the foregoing, the information is hereby granted and the Clerk of this Court is ordered to communicate with the court below to inform His Honour Napoleon B. Thorpe to

appear to show cause why he should not be held in contempt for going contrary to the mandate as the law requires. In the meantime, the Clerk is to inform the trial judge now presiding to resume jurisdiction and enforce the mandate of the Supreme Court of Liberia. Since the object of the law is to do justice and justice delayed is justice denied, and since to locate the former members of the board that had been dismissed by Judge Thorpe would bring hardship and undue delay, the Clerk is hereby ordered to inform the presiding judge to appoint a team of surveyors to implement the mandate. And it is so ordered."

Respondents not being satisfied with the ruling of Mr. Justice Junius, excepted to the same and announced and appeal there-from to this Court of diener resort.

As stated earlier, the issue presented is whether or not the mandate of Chambers Justice Tulay was fully executed or was violated by Judge Thorpe, who was then presiding over the Civil Law Court, Sixth Judicial Circuit, when the said mandate was sent from the Chambers of this Court to the trial court for implementation.

The records show that Chambers Justice Tulay's ruling specifically pointed out that no new surveyors should be appointed and that the original surveyors, upon whose report and recommendations the action of ejectment was decided, should continue with the final implementation of the mandate. Contrary to this mandate, Judge Thorpe elected to replace the original surveyors.

In the case Thomas et al. v. Dayrell et al.[1966] LRSC 21; , 17 LLR 284 (1965), this Court held that "subordinate courts must execute the Supreme Court's mandate and make due returns." Also in the case The National Industrial Forest Corporation v. Baysah et al[1976] LRSC 30; , 25 LLR 74 (1976), decided on April 23, 1976, this Court held that an inferior court's disregard of the Supreme Court's mandate is contumacious." Similarly, in the case Richards v. McGill-Hilton, [1937] LRSC 24; 6 LLR 81 (1937), decided December 10, 1937, this Court held that "trial judges should follow strictly both in the spirit as well as in the letter all opinions given by this Court, as one of the most patent means of unifying the practice:"

The ruling of our distinguished colleague, Mr. Justice Junius, was predicated upon the above mentioned decisions of this Honourable Court and we are in perfect agreement with the said ruling. Unfortunately, before the ruling of the Chambers Justice reached this Court en banc on appeal, Judge Thorpe, whom our colleague had ordered to appear, departed this world due to a protracted illness. Consequently, we are unable to affirm that aspect of the ruling ordering Judge

Thorpe to appear and show cause why, if any, he should not be held in contempt "for going contrary to the mandate of this Honourable Court."

In our opinion, that portion of the ruling of Chambers Justice Junius ordering the trial court to resume jurisdiction over the case and enforce the mandate of this Court by the reconstitution of the board of arbitration since due to lapse of time it would be impossible to contact the members of the original board of arbitration to assist the court in implementing the mandate, should be and the same is hereby confirmed and affirmed. Costs are assessed against the respondents. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over the case and enforce its judgment. And it is hereby so ordered.

Information granted.

Nah v Nagbe & Richards [1964] LRSC 41; 16 LLR 89 (1964) (3 May 1964)

GABRIEL W. NAH, Appellant, v. JOSEPH A. NAGBE and W. D. RICHARDS, Appellees.
APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO
COUNTY.

Argued April 13, 1964. Decided May 3, 1964. 1. Where an appeal is tried on an insufficient bill of exceptions, the Supreme
Court may review the case on the record. 2. A probate court has no jurisdiction to try an action of which the gravamen is fraud.
3. Where objectants to the probate of a deed allege that the deed is fraudulent and profer a prima facie valid prior deed to the
same property, the probate court cannot properly dismiss the objections and order the allegedly fraudulent deed admitted to probate.

On appeal, a ruling of the probate court admitting a deed to probate over objections filed by appellees was
reversed. D. W. B. Cooper
for appellant. Winfred Smallwood

for appellees. MR. Court.
JUSTICE MITCHELL

delivered the opinion of the

A close perusal of the
records brought before this Court on appeal reveals that Gabriel W. Nah of the Commonwealth District of Monrovia is alleged to have
bought a tract of **land from one Rachel R. Banks of Monrovia. This land** is described as Block Number 6, situated at Halfway Farm,
Monrovia, Montserrado County. Title deed for the said **land**, given to appellant by his grantor, shows on its endorsement that it was

executed on April t, 1954, and probated and registered on the i3th day of - December of the same year in ,Vol. 8o-B, page 999--moo--quite eight-odd months after its execution.
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At the sitting of the Monthly and Probate Court of Montserrado County, in its May term, 196o, the said Gabriel W. Nah, objectant below, now appellant, believing, as it would appear, that another deed was about to be offered in probate for the identical tract of land, undertook to file the following caveat: "Please take legal and sufficient notice and enter in your office and/or the records of the aforesaid court that Gabriel W. Nah, bona fide owner of Block 6, Halfway Farm, Monrovia, objects to the admission into probate and ordered registered any and all documents such as warranty deeds, public land sale deeds, public land grant deeds, indentures of lease, assignments of lease, etc., in favor of Joseph A. Nagbe or Joseph W. Nagbe from W. D. Richards et al., and/or any other person or persons in connection with the aforementioned and above-described piece or parcel of land and/or property, located and described supra. And that the said caveator/objectant will in due course of time file his said objections to the admission into probate and registration and/or any legalizing of such documents in keeping with law." This caveat was filed by the caveator on May 14, 196o; and on October 26, 196o, according to the records before us, Joseph A. Nagbe, one of the respondents below, now appellees, appeared in the probate court and offered for probate a warranty deed for one-half of Lot Number 6, situated in Halfway Farm, Commonwealth District of Monrovia, Montserrado County, under the signature of W. D. Richards as grantor. According to the caveat filed in the said court, the caveator was advised of the offer of this deed for probate and filed his formal objections on May 27, 196o. The objectant averred that he possessed a genuine title deed for the identical tract of land sought to be transferred to Joseph A. Nagbe by W. D. Richards; and he simultaneously made profert of his said title deed which

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showed on its face that it had been probated and registered many years before. He alleged, further, that W. D. Richards, the grantor to Nagbe had no legal title to the aforesaid tract of land which he was then attempting to part with. He also alleged that the warranty deed issued to Joseph Nagbe was the subject of fraud which ought to vitiate and make void the transaction. In conclusion he stated that since objectant's interest would be adversely affected if the said instrument of conveyance were admitted into probate and ordered registered, he requested the court not to admit the same. In their answer to the objections, the respondents alleged that the property in question was not the bona fide property of the objectant; that the land was owned jointly by Rachel R. Banks, grantor

to objectant, and respondent W. D. Richards; that the said Rachel R. Banks in her own right was not legally clothed to convey title thereto, since the property in question was acquired by inheritance from the estate of the late Jacob W. Prout; and that the deed under which objectant claimed title to the land was fraudulent in that it purported to have been executed on April 1, 1954, whereas the endorsement on the back thereof showed that it was probated and ordered registered on the 13th day of December of the same year; and moreover, that although it was purportedly signed by Winfred Smallwood as Registrar of Deeds for Montserrado County, the said Winfred Smallwood was not appointed by the President until 1956. Respondents alleged further that the records from the archives of the State Department showed that said deed was not registered on December 13, 1954, as would appear from its endorsement, but that it was registered on December 13, 1957, and probated on the same day; and that besides this act of fraud, it also carried the forged signature of appellee W. D. Richards who never . subscribed his genuine signature thereto, which facts evidenced objectant's deed to be fraudulent.

Pleadings progressed as far as the respondents' rejoinder and rested. After a hearing was had on the several issues raised on both sides, the probate commissioner, on November 17, 196o, entered a ruling dismissing the objections and ordering the deed of respondent Joseph A. Nagbe probated and registered. From that ruling the objectant noted his exceptions and brought this appeal. This case was called for hearing by this Court on the r4th day of April of the current year; and in our effort to delve into its merits, we have been shocked over a few points which we shall treat later in this opinion. Now to the bill of exceptions which is the framework of this appeal. It is composed of only one count, and that one count is, word for word, as follows: "Because on the 18th day of November, 196o, Your Honor did not sustain the objections and subsequent pleadings on the ground of overruling them. (See ruling of Sheet 2, minutes of 13th day's session which fell on November 18, 1960.) " Our statute defines a bill of exceptions as : (C . . . a written instrument stating that the judgment, decision, order, ruling, or other matter excepted to and the basis of the exceptions and containing a motion or prayer for relief." 1956 Code, tit. 6, § 1012. In view of this definition of a bill of exceptions, we wonder what the appellant seeks to have us review in this appeal. Surely if his objections and subsequent pleadings were insufficient in law and thus subject to dismissal, there was no proper alternative to the lower court's dismissing them. Yet, although the bill of exceptions is obscure and evasive, this Court nevertheless may, according to law, review the case on the records brought forward, and we shall proceed to do so, regardless of what we think about the insufficiency of the bill of exceptions. Respondents, in their answer, attacked the objectant's right to possession of the property, and they alleged that there were many discrepancies, which indicated fraud in

the procurement of the deed. In addition
they alleged that since the property was owned by both Rachel R. Banks and W. D. Richards, objectant's title was not legal because
Rachel R. Banks could not sell in her own right, or in other words, part with title to anyone, without the genuine signature of respondent,
W. D. Richards, who claimed not to have attached his signature thereto,
although the copy from the archives of the State Department
shows his signature thereon. Our law is not silent on this point, but makes it imperative that: "When fraud is alleged, a jury must pass upon the evidence in support of the allegation."
Beysolow v. Coleman, [1946] LRSC 4; 9 L.L.R. 156 (1946), Syllabus 3. We are shocked at the probate commissioner's failure to recognize that, since fraud was alleged in the respondents'
answer, the facts in connection with the proof thereof had to be heard and disposed of by a jury. He should have known that he was
without legal right to make a ruling on the facts because his competence only extends to disposing of law issues brought before him,
and other matters concerning estates; and equity was the proper forum to give relief. "Upon an allegation that a party has committed
fraud, every species of evidence tending to establish said allegation should be adduced at the trial." Henricksen v. Moore, 5 L.L.R. 60 (1936), Syllabus 2. Evidence could not have been taken in the probate court to prove fraud because such facts had to be passed upon
by a jury, and the probate court is not authorized to empanel a jury who are sole judges of the facts in any given case. At the same
time, objectant's deed could not be considered to be a fraudulent one unless the facts in connection with the alleged fraud had first
been produced and proven, and although the objectant's deed had been probated and registered, and besides that, had not been cancelled,
the court merely dismissed the objections

and ordered the second deed for the identical piece of property
probated and registered--an act that was obviously liable to engender confusion even greater than the litigation already entered
into. In view of all these palpable errors, we are of the considered opinion that the ruling of the court below should be reversed
and the warranty deed for Block Number 6 at Halfway Farm in the Commonwealth District of Monrovia from W. D. Richards, grantor, to
Joseph A. Nagbe, should be denied probate until respondents have instituted the proper proceedings and relieved themselves of the
fraud alleged. Costs in these proceedings are ruled against the appellees.
And it is hereby so ordered.
Reversed.

King v Cooper et al [1937] LRSC 14; 6 LLR 12 (1937) (30 April 1937)

SUSANA A. KING, Appellant, v. MOMORAH COOPER, BOTEE, MARUTU and JANGA, Appellees.
APPEAL FROM THE CIRCUIT COURT.

Argued April 20,
21, 22, 1937. Decided April 30, 1937. 1. The execution of a deed for real property is one of the most solemn business acts that man
can perform; and it is evidence against all parties to it, and of all rights transferrable by it. 2. Hence a party having granted
a deed for all her right, interest, and title in an estate with the exception of one lot expressly designated is precluded from averring
subsequently that she had made, or intended to make, any other reservation.

In an action of ejectment brought in the Circuit Court,
judgment was rendered for defendants upon a jury verdict. On appeal to this Court on bill of exceptions, reversed. Doughba Carmo
Caranda for appellant. Coleman for appellees. S. David

MR. JUSTICE RUSSELL delivered the opinion of the Court. The above cause was instituted by appellant in the court below to recover a certain tract of **land** lying and being in the settlement of Clay-Ashland,
Montserrado County, being a portion of 340 acres formerly owned by the late Alfred B. King. The appellant, and also one Mary C. Davis,
late of Monrovia, were the heirs of the said Alfred B. King, deceased, they having succeeded to said property through their parents,
the father of the appellant and the mother of the late Mary C. Davis. The evidence of appellant in the court below is in chief as
follows: "The property was left by the late Senator King of

Clay-Ashland and he died intestate. The property
then descended to my father and Mrs. Davis' mother. I being living in the home in Clay-Ashland all the deeds came into my possession.
Mrs. Davis knew nothing of them. She went to America and after the death of Senator King, her uncle, she never asked any questions.
They were then in the possession of Mr. King's wife (sic). After the death of Senator King's wife, I being in the home, they came
into my possession. When Mrs. Davis returned from America, I, of my own accord took that deed and several others, brought them to
Monrovia, took them to her home, called my three children and called her son, and put them on her dining room table and told her
to look them over and told her that that was the property left us by her uncle. She said, 'Alright, I thank you, because I knew nothing
of this.' " Later on Mrs. Davis seemed to have had a desire to sell her portion of this estate, and she said to Mrs. King, the appellant:
"Cousin Susan, buy my portion of the estate as you have been paying the taxes and caring for the property ever since our uncle died.
I don't care for any **land** in Clay-Ashland. I have enough property in Monrovia and I can hardly pay the taxes on these." Upon this

suggestion, one Henry F. Cooper, son of plaintiff (appellant) brought the property in question by paying to Mrs. Davis the sum of four hundred dollars as is evidenced by a document which reads as follows: "KNOW ALL MEN BY THESE PRESENTS that I Mary C. Davis of the City of Monrovia, one of the heiri of the estate of the late Alfred B. King of the city of Clay-Ashland, County of Montserrado and Republic of Liberia, in consideration of the sum of Four Hundred dollars ($4.00.00) to me paid by Henry F. Cooper of the city of Monrovia, County and Republic aforesaid, the receipt whereof is hereby acknowledged, do hereby sell, assign and transfer to the

said Henry F. Cooper, his heirs, executors, administrators and assigns all and whatever interest I may have as an heir to the estate of the aforesaid Alfred B. King, situated and located in the City of ClayAshland, with the exception of one town lot which I hold in reserve for my son William R. Davis."

"Signed sealed and delivered in the presence of : [Sgd.] WM. R. DAVIS FRANK T. GRIMES." "In witness whereof I have hereunto set my hand and seal this 4th day of June A. D. 1928. [Sgd.] MARY C. DAVIS" This document was probated on the irth day of June, 1928. After the execution of this assignment of interest to Henry F. Cooper, who in turn transferred all his interest to his mother, the appellant, plaintiff in the court below, the said Mary C. Davis contracted with the defendants in this case to sell them one hundred acres of land of this estate in question. To support defendants' title, they make profert of a receipt, exhibit "2," from Mary C. Davis to John W. Cooper on behalf of one native woman named Cargar for the sum of ten pounds sterling, and upon payment of the full contract price for the one hundred acres of land, the said Mary C. Davis duty executed a deed to the defendants for the one hundred acres of land. **In this deed it is set out that: "This portion of land** was excluded from that sold Henry Cooper as per deed given by me sometime previous to this." This deed to defendants is dated October 2, 1928, and was probated October 4, 1928 or two days after its execution.

On the 13th day of September, 1932, at the call of the case for hearing, the presiding judge made the following ruling: "Count one of the answer over-ruled and that both parties bear the expense of a surveyor to survey the tract of land in question and obtain a certificate of two competent surveyors to be produced in Court. Parties to select their own surveyors. The object of the survey being to ascertain if the one hundred (too) acres of land are or are not in the three hundred and forty (340) acres of land laid down in the complaint. Case to go to the trial docket with the facts ascertained by the surveyors." The case was not taken up again until July 14, 1936, with His Honor Nete-Sie Brownell, Judge,

presiding. At this stage of the case counsel for both the parties agreed that a "survey was unnecessary in view of the certificate of Surveyor S. T. Nimmo filed in this case showing that one hundred acres which formed the landed estate of the late Alfred B. King in question." Both counsel agreed that the following proposition should form the issue to go to the jury: "Did Mrs. Mary C. Davis in assigning all of her interest in the estate of A. B. King to Henry F. Cooper and the latter to S. A. King, appellant, intend to include or exclude in the assignment of her said interest the one hundred (too) acres deeded to defendants (appellees), and for which she had received money after the assignment of her interest in A. B. King's estate?" Upon this issue so accepted, the case went to the jury on July 21, 1936. The jury, after hearing all the evidence in the case, came to the conclusion that the defendants (appellees) were not guilty of withholding land from plaintiff, but that said defendants were entitled to the possession of "their one hundred (too) acres of land, according to the evidence." Upon this verdict of the petit jury, the court below accordingly entered judgment, from which verdict

and judgment plaintiff, now appellant, prayed an appeal to this Court on a bill of exceptions of twenty counts. In our opinion, the trial was regular, and no question of law raised in the bill of exceptions can have any weight with us in the decision of this case. The question that claims our attention is whether the late Mary C. Davis had the right to transfer the one hundred acres of land in question to the defendants, now appellees, in this case, after she transferred all her right and interest in the estate of the late A. B. King to Henry F. Cooper, who afterwards transferred his said rights and interest to his mother, the appellant in this case. In the assignment of the aforesaid interest of the late Mary C. Davis to Henry F. Cooper, she made only one exception in said instrument of assignment, and it is in these words : "With the exception of one town lot, which I hold in reserve for my son William R. Davis." But in the deed to the defendants, now appellees, the late Mrs. Davis expressly stated : "this portion of land was excluded from that sold to Henry F. Cooper as per deed given by me some time previous to this." Upon this question of fact we do not see our way clear to come to the same conclusion as the jury and the court below, for in the case Smith v. Hill, this Court said : . . .
For the execution of a deed for real property is one of the most solemn acts that mankind can perform in the way of a business transaction ; therefore, when it is properly and lawfully executed, it is evidence against all parties to it, and it is evidence of all title or rights transferable by it to all mankind. It is also the best evidence of its own terms and character, when fraud was not used as one of the ingredients to procure the same." I L.L.R. 157, 159 (1882). Inasmuch as there was but one town lot excepted in
"

the deed of assignment to Henry F. Cooper, which antedated the deed to appellees, we are of opinion that after the late Mrs. Mary C. Davis had transferred all her interests and rights in the estate of the late A. B. King to the said Henry F. Cooper, there was no other part or portion of said estate reserved except the said "one town lot" situated in the City of Clay-Ashland, for her son William F. Davis. Therefore, her subsequent act in settling the one hundred acres in question to the appellees, out of the three hundred forty acres of the estate of the late A. B. King, was illegal. The judgment of the court should therefore be reversed, and the case remanded with instructions to the court below to resume jurisdiction and give effect to the opinion herein expressed, and appellees should be ruled to pay all costs; and it is hereby so ordered. Reversed.

Pratt v Philips et al [1947] LRSC 25; 9 LLR 446 (1947) (12 December 1947)

JACOB 0. PRATT, Plaintiff-in-Error, v. JAMES T. PHILLIPS and His Honor EDWARD J. SUMMERVILLE, Assigned Circuit Judge of the Sixth Judicial Circuit, Montserrado County, Defendants-in-Error.
PETITION FOR WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, \IONTSERRADO COUNTY.

Argued October 15. 16, 1947. Decided December 12, 19471 1. Ejectment supports the idea of adverse possession. In ejectment questions of both law and fact are involved in such trials of title and therefore should be tried by a jury under direction of the court. 2. Where an applicant for a writ of error has failed to aver that the application is not for a dilatory purpose and the defendant-in-error has not raised the issue, the Court will not deny the writ on said grounds, .for courts will not do for litigants what they ought to do for themselves. 3. Notice to the court that the attorney, having been appointed Assistant Secretary of State, can no longer represent the client, is not notice of abandonment of the cause itself.

Defendant-in-error successfully sued plaintiff-in-error in ejectment. Plaintiff-in-error was denied an alternative writ of error by the Justice in Chambers. On appeal to this Court en bane, petition for writ of error granted.

B. G. Freeman and 0. Natty B. Davis for plaintiff-inerror. H. Lafayette Harmon for defendants-in-error.
MR. JUSTICE RUSSELL delivered the opinion of the Court. The majority of us are of the opinion that the writ of error prayed for should issue. Our learned and distinguished colleague, His Honor Mr. justice Barclay, from whose Chambers this case is before us on appeal, is, however, still of the opinion that the writ should be denied and has couched his reasons in

a dissent which he will read and file immediately hereafter.

The application for the writ of error was filed in the office of the clerk of this Court on November 4, 1944 by Jacob 0. Pratt, defendant in the court below, against His Honor Edward J. Summerville, the trial judge, and James T. Phillips, plaintiff below. The following errors were assigned : (1) That James T. Phillips, defendant-in-error, instituted in the court below a suit of ejectment against Jacob 0. Pratt, plaintiff-in-error and defendant therein ; that the legal issues were heard and disposed of by His Honor Judge Smallwood who ruled the case to trial upon the data that would be submitted after a survey of the land in question had been made by a surveyor who was simultaneously appointed by the court. (2) That the said case was assigned for hearing by His Honor Judge Summerville and when the case was accordingly called on October 24, 1944 Counsellor Charles T. 0. King, counsel for defendant, having been notified of said assignment, filed a notice of his abandonment of the defense for the reason that he was inhibited by public policy from further practicing law before the courts of the Republic of Liberia whilst he served as Assistant Secretary of State of Liberia. (3) That notwithstanding said notice showed that only the defense by Counsellor King had been terminated for reasons expressed, the lower court upon application of plaintiff's counsel rendered judgment in favor of plaintiff without the aid of a jury and in the absence of defendant. (4) That this act of the trial court in attempting to so divest defendant of property is in contravention of the law of the land which requires that all questions of fact in ejectment cases must be tried by a jury. These are the principal reasons upon which plaintiff-

in-error based his application and accordingly prayed that the writ of error be granted in order that the entire records be sent hither and the errors assigned, if found to exist, corrected.* In answer to the contentions in the application, defendant-in-error contended : (1) That the clerk of this Court in issuing the alternative writ had commanded the marshal to "summon His Honour Edward J. Summerville and Jacob 0. Pratt, defendants-in-error and consequently James T. Phillips was never summoned and therefore is not under the jurisdiction of the Court. That the Writ of error also commanded the defendants-in-error to appear on the 14th day of October, A.D. 1944; when the said Writ of error was dated as being issued on the 13th day of November, A.D. 1944--which was a physical impossibility." (2) That Counsellor King, counsel for defendant, had filed an abandonment of the cause in the court below, and inasmuch as defendant had neither appeared in person to repudiate this act of his counsel nor had given notice of change of counsel, plaintiff had no alternative but to apply for, and the trial judge had no alternative but to have rendered, judgment in favor of plaintiff since the case had been

ruled to trial on the data that should be submitted by the surveyor; that the report of the surveyor has been to the effect that defendant Pratt was occupying a portion of the land called for by plaintiff Phillips' deed; that the defendant had refused to turn over to the surveyor his title deed as per order of court so as to facilitate the survey. Hence the surveyor had no alternative but to make said survey using only the plaintiff's deed and to report accordingly.
· Previous decisions in the same cause: [1941] LRSC 8; 7 L.L.R. 218 (1941); 7 L.L.R. 276 (undated).

These, in fine, are the contentions of the parties before us in this case. We will now examine the notice of abandonment as filed by Counsellor King in the court below: "Charles T. 0. King, Counsellor-at-law, of counsel for Jacob 0. Pratt, defendant in the above entitled cause, most respectfully motions this Honourable court:-- That having been commissioned by His Excellency the President of the Republic of Liberia as Assistant Secretary of State, and in view of the ruling of the Honourable the Supreme Court of the Republic of Liberia at its April Term, A.D. 1944, prohibiting lawyers who are engaged in the Executive Government from prosecution of [sic] their clients in the courts so long as they are engaged in Government Service; he gives notice that he hereby abandons the defence of the above named defendant.
)

"Respectfully submitted. "Dated this loth [Sgd.] CHAS. T. 0. KING, day of October, Chas. T. 0. King, A.D. 1944. "Filed : This loth day Counsellor-at-law, counsel of October, A.D. 1944. For Jacob 0. Pratt. [Sgd.] D. W. B. MORRIS, Clerk, 6th Jud. Cir. Ct.111o. Co." To attempt to construe said notice as an abandonment of the cause itself would be unreasonable, for in that case counsel would still be acting as legal representative of defendant, now plaintiff-in-error, quite contrary to the inhibition which he declared had impelled him to file said notice.

Under these circumstances, therefore, after the filing of said notice the defendant himself, now plaintiff-inerror, should have been summoned whenever the cause was assigned, but we have noted that neither in the records nor in the arguments before Court have the defendantsin-error alleged that the plaintiff-in-error had been duly summoned to defend himself since he no longer had counsel at bar. With reference to the mistakes alleged to have been made by the clerk of the Court in the issuance of the alternative writ, we are of the opinion that defendant, plaintiff-in-error herein, ought not to be made to suffer for this error on the part of the clerk, especially where he had no duty to perform in connection therewith. It should also be noted that the parties that should have

been summoned were duly notified, said notice being accepted and returns made thereto. In similar cases this Court has gone on record as supporting this view and has laid down what should be done in the circumstances. In the case Jantzen v. Freeman, 2 L.L.R. 167, decided April 12, 1914, His Honor Mr. Justice T. McCantsStewart, speaking for the Court, said inter alias "[A] party should not suffer from the mistake or negligence of an officer of the court in cases where the party has no duty to perform in connection with the record; but such mistake or negligence should be remedied by amendment, or otherwise, so as to promote justice." Id. at 171.

The crux of the case, however, would seem to rest upon the manner in which the trial judge finally disposed of the case and rendered judgment, that is to say, without the aid of a jury. The trial judge based his action upon the fact that Judge Smallwood had ruled that the case should be tried on the data which the surveyor would bring in regarding the two pieces of property. The report of the surveyor was that Pratt was occupying a portion of Phillips' land. The judge held that the report

of the surveyor was in the nature of an award by an arbitrator and, since it was not attacked by the defendant, plaintiff-in-error herein, all the court had to do was confirm it and give final judgment accordingly without the aid of the jury. He predicated his authority for so doing upon the opinion rendered by this Court on January 1o, 1916 in the case Roberts v. Howard, 2 L.L.R. 226, 6 Semi-Ann. Ser. 17, involving ejectment, wherein it was held that where the facts are admitted in a case, leaving only issues of law to be determined, it is not error for the court to hear and determine same without the intervention of a jury. Now we must emphasize here that in the case cited above the facts, as the opinion recites, were admitted, while in the case at bar no evidence has so far been adduced to prove that the facts were also admitted, thus leaving only issues of law to be disposed of. The report of the surveyor we hold to be in the nature of evidence rather than an award. Again, we do not see that the silence of plaintiff-in-error could reasonably be construed as an admission of the facts since it has not been shown that he was summoned to appear after his counsel had given notice that he was inhibited from further practice as a lawyer. Since the matter involved facts, it should have been submitted to a jury. Defendant-in-error further alleged that plaintiff-inerror refused to turn over to the surveyor his title deed as ordered by the court. If, as the records state, the surveyor was appointed by the court to survey the parcel of land in question and the court ruled that the parties turn their deeds over to said officer, it seems to us not only a reflection on the authority and dignity of the court to say that a litigant refused to obey the court's order, but also a reflection upon the trial judge who permitted it.

Where is the inherent power of the court to hold in contempt those who neglect and refuse to obey its mandate? In Ruling Case Law we find that, "It is a general prin-

ciple that a disobedience of any valid order of the court constitutes contempt, unless the defendant is unable to comply therewith." 6 Id. Contempt § 15, at 502 (t9t 5). Judge Bouvier states that: "Contempts of court are of two kinds: such as are committed in the presence of the court, and which interrupt its proceedings, which may be summarily punished by order of the presiding judge; and constructive contempts, arising from a refusal to comply with an order of court. . . ." i Bouvier, Law Dictionary Contempt 65 (Rawle's 3d rev. 1914). Inasmuch as the court had inherent power to enforce its order, we cannot accept the alleged refusal of plaintiffin-error to turn over to the surveyor his title deed as a ground for divesting him of his property except by the law of the land. Indeed, we must question the validity of the survey and the subsequent report thereon. We are amazed that the surveyor was able to determine who was the trespasser when he had only one of the deeds in his possession and therefore was unable to compare their respective dates of issuance, probate, and registration. In the case Reeves v. Hyder, i L.L.R. 271 (1895) this Court held inter alia: "Ejectment . . . supports the idea of adverse possession, hence a trial of the legal titles of the contending parties. It being a mixed question of both law and fact, the statute provides that such trial is to be by a jury, with the assistance and under the direction of the court. . . Id. at 272; Harris v. Locket, L.L.R. 79 (1875). Our distinguished and learned colleague who is dissenting is quite insistent on the point that since under Rule of this Court all applications for writs of error require that the applicants aver that they did not apply for the writ for the mere purpose of delay, and that inasmuch as said averment is missing from plaintiff-in-error's application in the case at bar, this Court ought sua sponte

to dismiss the case for noncompliance with said rule; and he gave as his authority citations from the common law. Rules of Sup. Ct. IV, 3, 2 L.L.R. 663. We too are deeply committed to a uniform practice and procedure in our courts of justice, but in our zeal to accomplish this end we must not be unmindful of the precedents this Court has set and the interpretations it has given in its rulings from time to time. It is an established rule coeval with the establishment of our judicial system that the common law of the United States and England is the common law of Liberia in such matters where our statute law is silent; but where provision is made in the laws of this country, then the statute must prevail. This Court long ago laid the basis for our rejection of the point upon which our learned colleague is insisting. In the case Clark v. Barbour, 2 L.L.R. Is, r Ann. Ser. 17 (1909), the Court declared that it was the province of the court to decide issues only when raised in the pleadings and not within its province to raise the issues. In their answer, defendants-in-error

failed to attack this alleged defect in the application and hence we are of the opinion that this Court could not, consistent with the doctrine laid down in the above-cited case, raise said issue and dismiss the case, for courts will not do for litigants what they ought to do for themselves. In view of what we have said above, we have no alternative but to grant the application of plaintiff-in-error and order the writ to issue, commanding that a certified copy of the records of the court below in the case be sent hither for the correction of any errors that may appear therein; costs are ruled against defendants-in-error; and it is hereby so ordered. Petition granted. MR. JUSTICE BARCLAY, dissenting. My disagreement with the conclusions arrived at by my distinguished and esteemed colleagues in granting

the petition for a writ of error being of such a fundamental nature, I have deemed it necessary and proper to prepare and file this dissenting opinion. On November 4, 1944 plaintiff-in-error filed a petition praying for the issuance of a writ of error. Accordingly and in accordance with our method of procedure the chief clerk of this Court was instructed by the Justice presiding in Chambers to issue and have served an interlocutory writ ordering the trial judge and the opposing party to appear on a certain date and at a certain time named in the said instructions before the Justice presiding in Chambers to show cause, if they so desired, why the writ of error prayed for should not be granted. Defendant-in-error Phillips in his returns attacked the said writ as being materially defective and prayed that the petition be denied for the following reasons: (I) That the summons required the marshal to notify His Honor Edward J. Summerville and Jacob 0. Pratt to appear on October 14, 1944 to show cause why the writ prayed for should not be granted. (2) That the said notice of summons shows on its face that same was issued under seal of court on November 13, 1944, yet required the defendant-inerror to appear on October 14, 1944, which is an impossible date for their appearance since defendants-in-error were required to appear the month before said notice to appear was issued. (3) That the marshal was required to make his returns one month before the notice of summons to be served by him was issued. (4) That Pratt's counsel filed an abandonment of the defense of the case on behalf of his client, and defendant, now plaintiff-in-error, did not at any time repudiate the act of his counsel or give notice of change of counsel, and said application for a petition did not show that the said counsel was

not authorized to file the abandonment of the cause which he filed. (s) That defendant, now plaintiff-in-error, having abandoned the defense, the only issue to be decided was the issue of the survey so as to determine whether or not he was occupying

the **land** covered by the title deed of the plaintiff, now defendantin-error. The plaintiff in such a case could legally waive trial by jury and have the court render final judgment. The returns of the judge showed that the wife of plaintiff-in-error informed
the court of the lunacy of plaintiff-in-error, and for that reason the writ prayed for should not be granted. The returns of the
judge further showed and made the following statement of facts of the case : "That His Honour R. F. D. Smallwood who decided the
law issues raised in the pleadings ruled the case to trial on a single question, that is, whether or not, Jacob 0. Pratt defendant,
now plaintiff-in-error was operating on the lands of James T. Phillips, plaintiff, now defendant-in-error as alleged in the complaint.
That to the end of arriving at a conclusion on this point, Judge Smallwood appointed Dr. Joseph F. Dunbar, a licensed Government
Surveyor, to survey the **land** in question. Both parties were required to tender their respective title deeds to the surveyor, and
they were also permitted to obtain the service of any other surveyor to associate himself with Dr. Dunbar in the survey. Plaintiff
Phillips tendered his deed to Dunbar the surveyor, but Pratt refused and failed to surrender his deed to the surveyor. That . . .
the surveyor Dunbar repaired to the area whereat the **land** is situated and after making a survey gave a certificate to the court that
the **land which Pratt the defendant was operating on is a portion of the land**

owned by Phillips as shown
by his title deed. That thereafter the case remained open for some months without defendant Pratt, now plaintiff-in-error filing
any objections to the certificate given by Surveyor Dunbar by way of challenging the corrections of the survey. Hence during the
September Term of the court A.D. 1944 when this case was reached on the trial docket counsel for plaintiff pointed out that in face
of defendant not having filed ally objections to the survey although he had several months in which to do this there was no opposing
evidence to said certificate and therefore requested the court to give final judgment of the conclusion of the facts shown in the
surveyor's certificate." The judge in his returns further pointed out that defendant, now plaintiff-in-error, was guilty of the following
laches: (t) He failed to give the surveyor appointed by the court a deed under which he claimed title when requested by the surveyor
to do so. (2) He failed to be present at the survey. (3) Although he had several months in which to file objections to the survey
he neglected to do so. The situation then became one where even if plaintiff-in-error had retained other counsel to come into court
in his interest, such counsel, not having any facts to oppose the surveyor's certificate, would have been unable to put in a defense.
It is to be remembered that there are certain preliminary requisites under the law to be met or performed, failure or neglect to
do which, since they are jurisdictional as declared by this Court in several previous opinions, precludes us from assuming jurisdiction.
Upon an inspection of the petition and the affidavit attached thereto in support thereof, a violation of Rule IV subsection 3 of
this Court is glaringly apparent in that

the material averment, "that he does not apply for the writ . . . for the mere purpose of delay," is conspicuously absent from the affidavit. 2 L.L.R. 663. (Emphasis added.) The majority holds that since no attack was made on said affidavit by either of the defendants-in-error, the Court should not raise the issue sua sponte. In this I haVe disagreed with my esteemed colleagues for I have always held that this Court should insist on a uniform method of procedure. In the case at bar, it is my opinion that the observance of the Rules of Court should be enforced by the Court itself, whether the violation is brought to our notice by opposing counsel or not, otherwise the rule could be made ineffective by agreement or by tacit understanding of counsel not to attack its violation. Otherwise the Court, adhering to the idea that it should not of itself raise the issue of the violation of its rules, would find itself in the unenviable quandary of seeing its rules disregarded with impunity and of being helpless to enforce them. In support of my position I quote Cyclopedia of Law and Procedure: "The Court may of its own motion, even though the question is not raised by the pleadings or is not suggested by counsel, recognize the want of jurisdiction, and it is its duty to act accordingly by staying proceedings, dismissing the action, or otherwise noticing the defect, unless the petition be reformed where it can be done." I I Id. Courts 701 (1904). Judge Bouvier states the same principle as follows: "The fundamental question of jurisdiction, first of the appellate court, and then of the court from which the record comes, presents itself on every writ of error and appeal and must be answered by the court whether propounded by counsel or not." 2 Bouvier, Law Dictionary Jurisdiction 1761 (Rawle's 3d rev. 1914). In the case Harmon v. Republic, [1934] LRSC 29; 4 L.L.R. 195, 2 New

Ann. Ser. 24. (1934) involving a writ of error in an action of escheat, this Court inter alia enunciated the principle as follows : "Rule IV, 3, of the Revised Rules of the Supreme Court of Liberia provides that " 'Any person wishing to bring a writ of error before this court shall file his assignment of error with the clerk of this court and shall verify the same, alleging in his affidavit of verification that he does not apply for the writ of error for the mere purpose of delay. . . . Said assignment of errors shall be considered and dealt with as a bill of exceptions. Immediately upon the granting of an application for a writ of error the clerk of this court shall issue the same, and the party shall deliver it to the marshal, or a deputy marshal for service upon the party against whom the writ is obtained.' . . . "The rules and practice of the Court are the law of the Court. This is a legal maxim. Every court is the guardian of its own records and master of its own practice. Roberts v. Roberts, I L.L.R.

107, 109 (1878). "This being so, plaintiff-in-error should have observed and followed same in its entirety, and failure so to do renders said writ of error void for want of jurisdiction ; therefore defendant-in-error's motion to dismiss the petition for the writ of error is legally founded. . . ." Id. at 196. It is a remarkable coincidence that in the Harmon case cited above it was Counsellor Brownell, then Solicitor General of Liberia, who made the motion to dismiss the writ of error, pointing out in the following words the violation of the Rule of Court: "I. Because the defendant in error says, contrary to the rule of the court prescribing how writs of error are to be obtained, the petition filed in these proceedings has not been supported by an affidavit

of verification setting forth that petitioner 'does not apply for the writ of error for the mere purpose of delay,' which averment is essential and a prerequisite to the procurement of a writ of error." Id. at 195. In that instance Counsellor Harmon who was on the opposite side lost out. In the case at bar it is Counsellor Brownell who now violates the rule by omitting the averment above-mentioned, which averment he in the former case contended was essential and a prerequisite to the procurement of a writ of error. This Court supported that contention in the Harmon case. Next to be considered is the notice of summons which is to place defendants-in-error within the jurisdiction of the Court. With a summons so materially defective I fail to see how the defendants-in-error, though apparently summoned and appearing, can legally be held, especially where said appearance attacks so strongly the defects in the summons and where, upon inspection, the attack is found to be absolutely true and is undefended by plaintiffin-error. A defendant does not waive objections to the summons by appearing in order to attack it. It is contended by my learned and distinguished colleagues that in a case of this nature since the error was made by the clerk of Court the Court should order an amendment of the summons and proceed, on the principle that no party should be made to suffer because of the acts of the court. While that contention might apply in some instances, I do not consider it applicable to writs or notices of summons so materially defective, since the summons is the very basis upon which a defendant is brought within the jurisdiction of the court. This is particularly true in a case such as this where the summons was attacked by the opposing party and was allowed to remain from November, 1944 until October, 1947 undefended and uncorrected by plaintiff-in-error. In the case Moore v. Gross, 2 L.L.R. 45, decided in

the year 1911, this Court held through Mr. Justice McCants-Stewart that: "While a party cannot be held responsible for an immaterial error or omission made by a clerk of court in transcribing the records on appeal, yet material errors and omissions in the prep.aration of the record on appeal resulting from the neglect of the party to the action,

or his counsel, are ground [sic] for the dismissal of the appeal." Id. at 46. In the case McAuley v. Laland, 1 L.L.R. 254 (1894) this Court held on page 255 that "while we must admit the binding force of the legal maxim that 'the acts of the court should prejudice no man,' we are of the opinion that the acts of the court should be carefully distinguished from the unauthorized, unlawful or neglectful actions of its officers or of the parties to the suit." In the McAuley case it was held on page 254 that "it is the writ of summons or notice served upon the appellee and the returns thereto made, which give the court jurisdiction over the case." In my opinion the correct procedure would have been to withdraw and refile at the expense of the erring clerk, since the former process was void. In Cyclopedia of Law and Procedure the principle is stated in the following manner: "In case process is made returnable to a day which is not a legal return-day it is bad, as where it is made returnable at a wrong term or a time when no term is to be held, or at a day out of term. In like manner where the date fixed for return is an impossible one, or is a day past, the process is void. . . ." 32 Id. Process 432 (1909) . In my opinion these are jurisdictional issues which cannot be overlooked by the Court. These questions in the past have always been held by this Court to be jurisdictional issues upon which cases have been invariably dismissed. Being jurisdictional issues they should have been first complied with in accordance with law, a failure

or neglect of which should be sufficient to warrant the Court in denying the petition. Coming now to the question of the abandonment of the defense by plaintiff-in-error's counsel because of his inability to continue representing his client due to his appointment as Assistant Secretary of State, and to the contention that plaintiff-in-error, then defendant, did not have notice of the assignment of the case, I again disagree with my esteemed colleagues who have taken the position that it was the duty of the Court to notify defendant Pratt, plaintiff-in-error herein, of the abandonment of his defense by his lawyer. In my humble opinion it was the duty of Pratt's attorney to notify his client of his inhibition. I quote from Ruling Case Law: "Even though an attorney clearly has good cause for retiring from a case, it is his duty to give his client reasonable notice before withdrawing, and he should not abandon it on the eve of the trial, without giving his client a reasonable opportunity of resorting to other assistance. . . ." 2 Id. Attorneys at Law § 3o, at 958 (1914). Apparently, from what has been brought out in the records, Counsellor King was still representing defendant Pratt, plaintiff-in-error herein, to all intents and purposes when surveyor Dunbar filed his certificate, since it is stated in the returns of the judge, and not contradicted by the opposing party, that after the certificate of the surveyor was filed several months elapsed before the case was reached on the trial docket, and that up to that time no objections had been filed to the report of the surveyor. And no objections were made to the appointment of the surveyor as an officer of the court to

go into the area in dispute and discover the real owner of the land in accordance with the survey and the deeds. Plaintiff-in-error refused or neglected to present his title deed to the surveyor when requested and absented him-

self from the survey. He also failed to object to the report of the surveyor, which report was the only issue upon which the whole case hinged in accordance with the ruling of His Honor R. F. D. Smallwood. In my opinion this silence of defendant, now plaintiff-in-error, was tantamount to an admission of the correctness of the survey and of his acquiescence therein and, as the trial judge rightly stated, the procurement of another counsel at that stage in the face of the negligence of defendant, now plaintiff-in-error, in protecting his rights under the law, would have meant that said new counsel, not having any facts to oppose the surveyor's certificate, would have been unable to put up a defense. Moreover, from the records I gather that the notice of abandonment was not filed until the case was assigned for hearing with the knowledge of King who until then still represented his client. Parties should not expect the Court to do for them what they should do for themselves. In my opinion, therefore, there being no disputed facts, we should apply the principle established in the case Roberts v. Howard, 2 L.L.R. 226, 6 Semi-Ann. Ser. 17 (1916), involving ejectment, that where the facts are admitted, leaving only issues of law to be determined, it is not error for the court to hear and determine same without the intervention of a jury. In our statutes it is provided that, "The trial of all mixed questions of law and fact, shall be by jury, with the assistance, and under the direction of the court, unless where the court could try question, if one of mere fact." Stat. of Liberia (Old Blue Book) ch. VII, § 3, 2 Hub. 1542. What is meant by the latter clause of that section, "unless where the court could try question, if one of mere fact"? Here is a case with only a single question to be decided which the jury under the circumstances could not decide even if it went on the land in dispute. Hence it is that Judge Smallwood, aware of that fact, appointed a technician, Surveyor Dunbar, to

go on the spot as an officer of court to make the necessary survey and report to the court. What then was the use of a jury, especially where the correctness of the report of the surveyor was unchallenged? In my opinion therefore this case falls within the latter clause of the statute quoted above, being a question of fact which the court could decide without the intervention of a jury. Viewing the case from every angle as above set out, I find myself in disagreement with the conclusions and opinion of my highly esteemed colleagues, and hence have refrained from attaching my signature to the judgment in this case.

Nancy v Curry [1960] LRSC 51; 14 LLR 150 (1960) (16 December 1960)

TEAH DEBO NANCY, Appellant, v. THOMAS B. CURRY, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 31, 1960. Decided December 16, 1960. 1. A notice of appeal which is not served and returned within the statutorily prescribed period of time is void. 2. The statute prescribing the period of time within which an appeal must be taken is mandatory. 3. Appellants are responsible for perfecting their appeals ; the failure of a clerk of court to perform a duty in connection therewith is not an acceptable excuse. 4. Where notice of appeal was served on the appellee seven days after expiration of the statutorily prescribed period of time, a motion to dismiss the appeal will be granted.

On appeal from a judgment upon an award of arbitrators in an ejectment action, a motion to dismiss the appeal was granted. E. Winfred Smallwood for appellant. lins and 0. Natty B. Davis for appellee. T. Gyibli Col-

MR. Court.

JUSTICE MITCHELL

delivered the opinion of the

From the record on appeal before this Court it is apparent that both the appellant and the appellee bought land from one Rachel Bank. The plaintiff below, now appellee bought a tract of land situated in the Halfway Farmland Area in the City of Monrovia, consisting of two town lots in Block Number i i, and his deed therefor was executed on August 19, 1953. The defendant below, now appellant, bought one town lot from the same grantor, situated in the same area and in the same Block Number II but with a different boundary description. The boundary of the land deeded to appellant was de-

scribed as beginning from the northwest corner of Keke Nuwa's property. The boundary of the land deeded to appellee was described as beginning from the northwest corner of the property of one Sarah Horace; and the deed of the said piece of property was executed on February 7, 1955. On October 5, 1954 Thomas B. Curry, the appellee in this case, sold one of his two lots to Chief Joe Joe of the Vonjima District, Western Province, retaining one lot from this particular tract

of land. Yet, when the appellee decided to institute his suit of ejectment on April 18, 1958 --quite three and a half years after he had disposed of one of the lots--he claimed title to both lots, and included both in his complaint, which complaint for the benefit of this opinion, we shall hereunder quote as follows: "Thomas B. Curry plaintiff, complains that he was possessed of a certain lot or parcel of land of the following description, as will more fully appear by copy of the title deed herewith filed and marked Exhibit `A' and forming a part of this complaint, the same being a part of Block Number 11, situated in the Halfway Farmland Area, and bounded and described as follows : `Commencing at the northwest corner of Keke Nuwa's two-half-lot parcel of land marked by a concrete monument and running parallel with it, south 54 degrees, east 132 feet, thence north 36 degrees, east 165 feet; thence north 54 degrees, west 132 feet; then south 36 degrees, west 165 feet, parallel with the eastern side of Johnson Street to the place of beginning, and contains two town lots or one-half acre of land, and no more.' "And that the said Teah Debo Nancy, defendant, unlawfully detains the said parcel of land from the plaintiff. All which the plaintiff is ready to prove. Wherefore plaintiff prays judgment for the recovery of said parcel of land from the defendant."

The defendant joined issue in the case, and pleadings travelled as far as the surrejoinder. Law issues were disposed of, and the court below ruled the case to jury trial on the complaint and certain counts in the answer and reply. Both parties thereafter stipulated and made submission to the court for arbitration, which request was granted and arbitrators duly nominated and appointed. Between the points of the submission to arbitration and the court's judgment upon the award of the arbitrators, according to the records before us, there seem to be many irregularities which this Court has not been able to consider because of the motion to dismiss the appeal that has been filed by the appellee. Appellant, being dissatisfied with the judgment rendered against her, took an appeal before us for further hearing. Were it not for the motion referred to, which serves as a supersedeas, we would now address our attention to all of the records in the case ; but because of that one important fact, however regular or irregular the proceedings were, we are barred from the privilege of entering into the merits of this appeal. In passing, however, we want it to be well understood that this Court expects counsel to superintend and supervise cases to the very last point in seeing that all necessary antecedent legal steps are fully met. We want it to be further known that, although this Court is at all times anxious and willing to do all that is necessary to be done in impartially disposing of all matters before us, yet we shall not and cannot do for parties in litigation that which they fail to do for themselves through negligence of counsel or otherwise. Those who fail to avail themselves of their legal rights must bear the consequences. When this case was called for hearing the appellee's motion to dismiss was read. In this motion appellee states that the appeal was not completed until 67 days after the rendition of the judgment in the court below; that is to say, although the appeal bond and bill of excep-

tions were filed within the sixty-day period of time specified by law, the notice of appeal, which should also be issued
and served within the same period of time, was not served and returned until seven days thereafter, excluding the date of service;
and therefore, the appeal should be dismissed. Appellant, in resisting the motion alleged, in substance, as follows : The requirement
of the statute was fully met by the service of notice of appeal and its returns, because the law does not require that the notice
of the completion of the appeal should be issued, served and returned within the sixty-day period of time contemplated by the law
for the completion of an appeal. Rather, the law only requires the bill of exceptions to be filed within ten days, and the appeal
bond within sixty days after the rendition of final judgment; and since both appellant's bill of exceptions and bond were filed in
conformity with law, the delay in the issuance, service and return of the notice was not appellant's responsibility. Moreover, it
being a duty imposed on the clerk of the court from which the appeal is taken to issue the notice of appeal forthwith after the filing
of appellant's appeal bond, and the clerk having been paid to perform this duty, the wilful neglect of the clerk in this regard should
not work prejudice to the appellant's interest. Those were the grounds of the motion and the grounds of appellant's objections which
appellant's counsel strongly argued to be substantial and meritorious. But this Court entertains the feeling that it would have been
more honorable for him to have submitted his grounds without argument rather than belabor the Court because indulgence was given
him. Whilst it is true that it is the service and return of the notice of appeal which gives this Court jurisdiction over the parties,
yet when the said notice is not served and re-

turned within the time prescribed by law for the completion
of the appeal, it becomes void. It is also true that it is a duty imposed upon the clerk to issue the notice; but still, it is the
responsibility of the party appealing to so surround his appeal with the safeguards of the law as to prevent his opponent from moving
for the dismissal of his cause for failure to do that which is incumbent upon him to do within the prescribed time. In McAuley v.
Laland, 1 L.L.R. 254 (1894), this Court said : "It is needless for this Court to enter into extensive argument to establish the well-known
requirements
of the law, as it should be obvious to every reflecting mind that an appeal is not complete until the appellee is duly summoned,
which summons places him under the jurisdiction of the court to which the appeal is taken; therefore, the summons or notice forms
a very integral part of an appeal and should be served within the time allowed for the completion of the appeal." To our minds, the

above-quoted decision of this Court completely settles the question of appellant's contention ; but let us go a little further to see whether it is confirmed by any subsequent decision of this Court. We quote the following syllabi : "The service of a notice of appeal upon the appellee by the ministerial officer of the trial court completes the appeal and places appellee under the jurisdiction of the appellate court. When not completed within the statutory time, this Court will dismiss said appeal for want of jurisdiction.
"The statute relating to the time within which appeals must be taken is imperative and includes everything necessary to be done to bring the appellee properly before the appellate court." Morris v. Republic, [1934] LRSC 16; 4 L.L.R. 125 (1934), Syllabi 2 and 3. The notice of appeal having been served on the appellee quite seven days after the statutory time for the

completion of the appeal by reason of the negligence of appellant's counsel whose duty it was to supervise this case . toiscmplen,hosidrpnfthCou that the defect is fatal. Therefore the appellee's motion to dismiss the appeal is granted and the appeal is hereby ordered dismissed with costs against the appellant; and the clerk of this Court is hereby ordered to send a mandate to the court below ordering it to resume jurisdiction and enforce its judgment.
Appeal dismissed.

Church of Christ v St. Timothy et al [1983] LRSC 80; 31 LLR 300 (1983) (7 July 1983)

CHURCH OF CHRIST (HOLINESS) OF LIBERIA, represented by Rev. K. T. BESTMAN, Appellant, v. **ST. TIMOTHY CHURCH OF BUCHANAN,** by and thru CHRISTIAN NATION CHURCH, an unincorporated association of religious churches of Liberia, represented by its Acting General Superintendent, Rev. J. WILMOT FORD, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: June 1 & 2, 1983. Decided: July 7, 1983.

1. Courts of records within their respective jurisdictions, as provided by our statutory laws, have the power to declare rights, statuses and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force of a final judgment.

2. The power granted to the court under the statute to declare rights, statuses and other legal relations is discretional.

3. The rights and obligations of members of a religious society are governed by the laws of that society. Every person entering into a religious society impliedly, if not expressly, covenants to conform to its rules and disciplines, and he has no right to insist on the exercise of his rights as a member where such insistence amounts to an invasive and destruction of property rights of the society and of the members thereof.

4. The rights of a member of a religious society are dependent upon the continuance of his membership so that when he ceases to be a member his rights and beneficial interests in the property of the association ceases, and he no longer has standing to sue in relation thereto.

5. The separation or secession of some of the members from a church does not destroy the identity of the church and lessen the rights of those adhering to the organization even though the minister and trustees are among the seeders.

6. On secession, whether by members from a church, or by a congregation from an ecclesiastical system with which it was associated, the seceding parties forfeit all rights to the church property even though they keep the name of the Old society, or even though they incorporate and take its name; and they cannot, either on becoming independent, or on uniting with another denomination, take with them the church property.

Elizabeth Ford, one of the Incorporators of the Church of Christ (Holiness) Liberia, Inc., and her husband, Rev. J. Wilmot Ford, and a few others who were also members of the St. Timothy Church of Buchanan, were dissatisfied and left the church to form another church known as Christian Nation Church (CNC) and decided to take along with them the real property which was acquired at the time they were under the umbrella of the Church of Christ (Holiness) Liberia, Inc., thereby depriving the majority of the members of the St. Timothy Church of Buchanan of the property of the church.

St. Timothy Church filed an action for declaratory judgment praying the court to declare the ownership of the property located in Buchanan on which St. Timothy was erected, which said property was purchased in the name of St. Timothy Church of Christ (Holiness) Liberia, Inc.

The trial court ruled that St. Timothy was the bona fide owner of the property on which the church was erected and not the Church of Christ (Holiness). From this ruling, the Church of Christ Holiness appealed to the Supreme Court.

The Supreme Court reversed the ruling of the trial court and held, among other things, that when appellees broke away or withdrew from the Church of Christ (Holiness) they forfeited all rights to the church property, and that the property on which St. Timothy Church was erected belonged to the St. Timothy Church of Christ (Holiness) Liberia, Inc., in whose name the deed was executed, and not the Christian Nation Church, appellees herein.

Nelson W. Broderick appeared for the appellant. Victor D. Hne and John T. Teewia appeared for the appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

Courts of record within their respective jurisdictions, as provided by our statutory laws, shall have power to declare rights, statuses and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force of a final judgment. The power granted under this statute is discretionary. Civil Procedure Law, Rev. Code 1: 43.1.

Relying upon the aforesaid statute, the appellees herein petitioned the Second Judicial Circuit Court, Grand Bassa County, praying for a declaratory judgment as to the ownership of the real property located in Buchanan, Grand Bassa County, on which a church known and referred to as St. Timothy Church of Buchanan is alleged to have been erected, and which parcel of **land** is the subject of dispute between the appellees and the appellants herein.

During the February 1982 Term of the Second Judicial Circuit, Court, presided over by His Honor Hall W. Badio, the proceeding came on for hearing. The presiding judge heard evidence and entered an extensive judgment in which he concluded, and we quote:

"In view of the law cited and the facts related herein, it is our opinion that the deed and the **land** is the bona fide property of St. Timothy Church and not the Church of Christ Holiness. Reverend J. Wilmot Ford being the administrative head of St. Timothy Church which has now consolidated its efforts and established a religious politic entitled Christian Nation Church (CNC), is hereby ordered to receive and have custody of the deed and control of the **land** and church constructed for St. Timothy Church on that **land**. Costs against the defendant. And it is so ordered."

The learned judge relied upon the principle of burden of proof and cited in support of his conclusion the case: Mobil Oil Company v Sano, [1968] LRSC 36; 19 LLR 12 (1968); Civil Procedure Law, Rev. Code 1: 25.3. In essence, the trial judge held that the testimonies of appellant's witnesses were not corroborated that is to say, hey did not prove their side of the case by preponderance of evidence. The appellant excepted to the court's final judgment and appealed the case to this Court of last resort.

Of the six-count bill of exceptions, the only issue which we deem necessary to discuss, and which in our opinion is relevant to the determination of the controversy is, whether from the circumstances attending the case and the evidence adduced at the trial, it has been established that the appellee is the legal owner of the subject property, or the appellant, and whether or not the judgment appealed from is supported by the evidence adduced at the trial. In order to settle this issue and make a declaration in keeping with law, we must review the entire records and take recourse to the evidence adduced at the trial.

The significant fact in this case, which has been admitted by both parties and as is more fully stated in their respective briefs, is that the churches which had organized themselves and formed

the religious organization in 1981 known and referred to as the Christian Nation Church (CNC), through which organization this proceeding was instituted for St. Timothy Church of Buchanan, appellee herein, were all belonging to the Church of Christ (Holiness) Liberia, Inc., the appellant herein. It is also not denied that the deed for the parcel of **land** was obtained in 1976, that is, two years after incorporation of the Church of Christ (Holiness) Liberia, Inc. as a body politic in 1974, and that negotiations for the purchase of the parcel of **land** in dispute was made in 1971 after Bishop K T. Bestman and Elizabeth Ford are said to have amalgamated in 1966. Also not denied by any of the parties is that the grantee in the deed for the parcel of **land** is "St. Timothy, Church of Christ (Holiness) Liberia, Inc." Moreover, 'it is not denied that the persons who broke away from St. Timothy Church of Buchanan are but a minority, and that the majority of the members continue to remain with the Church of Christ (Holiness) Liberia, Inc. And finally, it is not disputed that by an act of the Legislature, approved May 1, 1974, and published in hand-bills, the Church of Christ (Holiness) Liberia, Inc. is an incorporated religious organization whose original organizers, among many others, were Bishop Kerlson T. Bestman, Elizabeth Johnson and Elizabeth Ford, and that said organization has not been dissolved, but still operates in Buchanan and elsewhere in Liberia.

To support the fact that the organizers of Christian Nation Church (CNC) were originally members of Church of Christ (Holiness) Liberia, Inc., appellants herein, we deem it appropriate to quote a relevant portion of appellees' own brief, as follows:

"In 1980, when the Church of Christ (Holiness) of Liberia met at their Annual Conference in Niffu, Sinoe County, Rev. K. T. Bestman acted disgracefully for which the churches decided to put him out, but because of Sister Elizabeth Ford's advice they did not take this action. After the conference, they decided to call him but he refused to attend to the call and so three (3) out of the four Churches of Christ (Holiness) of Liberia, namely: St. Timothy Church, Buchanan, New Testament Church, Monrovia, Bethel Temple, Niffu, Sinoe County, decided to sever their affiliation with Church of Christ (Holiness) of Liberia, headed by Rev. K. T. Bestman, and this was done on January 10, 1981 . ."

The deed upon which the contending parties relied and which was proferted with their respective pleadings is a warranty deed from Murray Johnson to St. Timothy, Church of Christ (Holiness) of Liberia, Inc. for lot No. 54 and part of 35 of Block Nos. 73-74, situated at Central Buchanan, Grand Bassa County. The names of the grantor and that of the grantees cannot be questioned; for, oral testimony cannot defeat written evidence. The said deed shows on its face that it was executed, probated and registered in 1976, and so it was obtained two years after the church was incorporated as a body politic.

As to the relationship of Elizabeth Ford and Bishop Bestman to the church affairs, here is a relevant portion of Witness Elizabeth-Ford's own testimony made under oath, as follows:

"St. Timothy Church was founded by me in 1963 when Rev. K. T. Bestman came on his first visit, we met at the First Pentecostal Church in Co-Co-Wein. After service, he came to me and he asked me for us to join and work in my church. I told him that I was on my way to Monrovia so I could not say anything. He left. In 1965, he came to me for the second time and asked me if my little church was still going on, I said yes, he said he would like to go with me to see my

members; at that time I was in my last month to deliver. So I did not give any answer. In 1966, March, Reverend Bestman came to me and said that he still had interest in my service . . . Reverend Bestman and I joined together, that was in 1966, at that time Rev. Bestman's Church was Evangelical Church in Monrovia (sic) , .. ,"

Granting that Elizabeth Ford was the one who established the St. Timothy Church of Buchanan, by her testimony supra, yet it is quite clear that the relationship of Bishop Bestman to the St. Timothy Church of Buchanan dates as far back as 1963 and remained cordial until 1974, that is to say, eleven years after the Church of Christ (Holiness) Liberia, Inc., of which they said Elizabeth Ford and Bishop Bestman are founding members, was incorporated in 1974.

As is evident from the testimony of appellee's third witness, Rev. J. Wilmot Ford, only a minority of the members of the St. Timothy Church of Buchanan had severed their relationship with the Church of Christ (Holiness) Liberia, Inc., while majority of the members of the said church still remain, and as proof we quote few questions and answers of the witness on the cross examination, to wit:

Q. As a Minister of the Gospel and upon the oath which you have just taken, do you swear in the presence of Almighty God that all of the previous members of St. Timothy Church of Buchanan have severed their relationship with Church of Christ Holiness of Liberia, represented by Rev. Bishop K .T. Bestman and that there is not a single previous member of the St. Timothy Church remaining now with Church of Christ Holiness, respondent in this case?

A. When we wrote our letter we were in the church worshiping. After seven months, a letter came from Monrovia that Superintendent Krakue should put my church members out of St. Timothy and turn over to Rev. Bestman, thereby the very first two persons who consented and do not take part (sic), this house was turned over to them. And even right now among the crowd, a lady who entertained delegates from Monrovia after hearing about the letter from Monrovia, branched off from us and went on respondent's side. But I want to tell the court that 35% of the membership of St. Timothy is with the Christian Nation Church.

Q. Do you agree that St. Peter Church, Bethany Temple of Niffu, Sinoe County, and New Testament Church of New Kru Town, Monrovia, were all members of and under the umbrella of Church of Christ Holiness of Liberia, Incor-porated?

A. These three churches were working together and we had convention together but when we fell out, they moved."

From the answers given by said witness to questions on the cross-examination, it is quite clear that the entire membership of the St. Timothy Church of Buchanan did not sever their relationship with the Church of Christ (Holiness) Liberia, Inc.; instead, sixty-five percent (65%) of the members of St. Timothy Church of Buchanan is still with the church while only thirty-five percent (35%) of the members is alleged to be with the Christian Nation Church (CNC). What the records show is that Elizabeth Ford, one of the incorporators of the Church of Christ (Holiness) Liberia, Inc. in 1974 and her husband, Rev. J. Wilmot Ford, and a few others who were also members of the St. Timothy Church of Buchanan, were dissatisfied and left the Church

to form another church known as Christian Nation Church (CNC) and decided to take along with them the real property which was acquired at the time they were under the umbrella of the Church of Christ (Holiness) Liberia, Inc., thereby depriving the majority of the members of the St. Timothy Church of Buchanan. of the property of the Church. These are the facts in the case.

With this clear evidence on record, we are at a complete loss to understand why the trial judge held that the respondent, appellant herein, did not prove its side of the case. In our opinion, the burden of proof in this case rested on the petitioner to show that St. Timothy Church of Buchanan was never a founding member of the Church of Christ (Holiness) Liberia, Inc. under the leadership of Bishop Bestman. It was the appellee, and not the appellant, upon whom the burden also rested to prove that the deed for the **land** in question was not in the name of the Church of Christ (Holiness) Liberia, Inc., and that all of the members of St. Timothy Church of Buchanan had severed their relationship with the Church of Christ (Holiness) Liberia. Instead, Rev. J. Wilmot Ford has testified on the cross-examination that thirty-five percent of the members of St. Timothy Church of Buchanan have broken off and joined the Christian National Church. Here is another question put to Rev. Ford on the cross touching the point and his answer thereto:

"Q. May we understand from your answer that some of .the previous members of St. Timothy Church are still with Church of Christ Holiness?

A. If you are talking about the three members, I want to tell you that you have foundation members and ordinary members. Those members that founded the St. Timothy Church are those who are leaving the Church, who said they do not want Bestman. Those who do not seek nor labor for this property that is in question, we cannot call them foundation members."

With respect to the purchase of the **land** on which the St. Timothy Church of Buchanan was erected, Bishop Bestman testified, and it was corroborated by other witnesses without rebuttal, that:

"When we came to our first district conference in Buchanan in 1968, the Church borrowed the Methodist Church in Old-Field in Buchanan. In 1975 when we came to Buchanan for our general conference, the church said we will not borrow house but we will find a piece of **land**. During that time, CWW in the church (meaning Women Christian Society) put together and got $200.00 and they went to Bubu to sell them a piece of **land**. They told him when bishop comes to the conference, we will send you the balance. So when we came to the conference, they told me and I gave them the balance $200.00 . . . ."

The bishop further testified, and his testimony was corroborated by the testimonies of Witness Elizabeth Johnson, one of the organizers of St. Timothy Church and the Church of Christ (Holiness) Liberia, whose name and that of Elizabeth Ford appear in the Act of the Legislature of 1974, incorporating the Church of Christ (Holiness) Liberia, and witness Esther Weltee of Lower Buchanan, also a founding member of St. Timothy Church, that at the time the St. Timothy Church started operating, Elizabeth Ford was in Monrovia, and we quote the Bishop:

". . When I got the letter from the church, I came to Lower Buchanan. On that Sunday while we were in church, while preaching, Murray Johnson came in a car with the former Superintendent, Charles Williams, saying to us "well, I have come to close the church". I stopped preaching and came out with my members. He said, "Well, Babu who sold you this place is not for him; it is for me so I will close this place." Then Mr. Charles Williams told him not to close the church of God, but if he wanted money we could give him money. Then Charles Williams told me saying, bishop, you must go to Monrovia and bring the amount which is $475.00 for this **land** where your church is erected. I went to Monrovia and called on my members when I reached home. Mr. Ford is financial secretary, Elizabeth Ford is the treasurer. We went to one Peter Doe and we got $475.00 then I came to Buchanan the next day and paid the money to Murray Johnson . . . ."

We find nowhere in the records where the appellee rebutted these statements, but it is interesting to note from the records that Mr. Samuel B. Knowlden, whom the appellee, in their question on the cross, said was in charge of the **land** of Mr. Johnson and who issued the receipt for the $475.00, and who also as a lawyer offered the deed into probate, when introduced as a rebutting witness for the appellee, told the court that as far as the arrangement with Babu Wetell and Rev. Bestman, he knew nothing from the beginning. With this statement, the appellee rested with him on the direct examination. On the cross-examination, the said witness testified that Babu Wetell told him that Elizabeth Ford was using his (Babu Wetell's) piazza to hold service, and this was all he knew. This witness was thereupon discharged with the thanks of court. No other witness was introduced in rebuttal to say that the $475.00 was not paid to Johnson by Bishop Bestman. In our opinion, therefore, it is the appellee who alleged that fact but could not prove it, and not the appellant as concluded by the trial judge.

Having reviewed the evidence, we shall now take recourse to the law applicable to this situation.

As a general rule, the rights and obligations of members of a religious society are governed by the laws of that society. Every person entering into a religious society impliedly, if not expressly, covenants to conform to its rules and to submit to its authority and disciplines, and he has no right to insist on the exercise of his rights as a member where such insistence amounts to an invasion and destruction of property rights of the society and of other members thereof. 76 C.J.S., Religious Society, § 12.

Besides the act of Legislature incorporating the Church of Christ (Holiness) Liberia, Inc., we have found no other evidence as to the constitution and by-laws of this church from which we could draw conclusion as to the rights of a member after his withdrawal or excommunication; nevertheless, as a general rule, the rights of a member are dependent on the continuance of his membership; and when he ceases to be a member, his rights and beneficial interest in the property of the association cease, and he no longer has standing to sue in relation thereto. 76 C.J.S., Religious Society, § 15.

Elizabeth Ford and her husband, J. Wilmot Ford, who were Bishop Bestman's church financial secretary and treasurer, respectively, having severed their relationship with the Church of Christ (Holiness) Liberia, Inc., and joined another denomination known and called Christian Nation Church (CNC), it is beyond our understanding why under the law cited supra, the real property

of St. Timothy Church should be taken away to deprive sixty-five percent of its members of their church's property.

On the secession of thirty-five percent of the members of St. Timothy Church of. Buchanan from the Church of Christ (Holiness) Liberia, Inc., and in respect to the property of said church, we have this legal authority:

"The separation or secession of some of the members from a church does not destroy the identity of the church or lessen the rights of those adhering to the organization, even though the minister and trustees are among the seceders.

On secession, whether by members from a church, or by a congregation from an ecclesiastical system with which it was associated, the seceding parties forfeit all rights to the church property even though they keep the name of the old society, or even though they incorporate and take its name; and they cannot, either on becoming independent, or on uniting with another denomination, take with them the church property . . . ." 76 C.J.S., Religious Society, § 71(b).

In view of the legal authorities cited supra, and as the evidence reviewed is in harmony with the law, it is our holding that the declaratory judgment rendered by the trial judge should be, and the same is hereby reversed with costs against the appellees.

It is our further opinion and holding that the rights and control over the real property, that is, lot No. 54, part of 35 of block Nos. 73-74, situated in Central Buchanan, Grand Bassa County, is lodged with the St. Timothy, Church of Christ (Holiness) Liberia, Inc., the grantee whose name appear on the warranty deed from Murray Johnson; that it is the said church which has the right of possession and use of said property and not the seceders, appellee herein. And it is hereby so ordered.

Judgment reversed.

Nagbe v Nyema [1966] LRSC 74; 17 LLR 601 (1966) (16 December 1966)

JOHN NAGBE, Appellant, v. SOLO T. NYEMA, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 18, 19, 1966. Decided December 16, 1966. 1. A deed is not invalidated by a mistake in spelling the grantee's name if there is no real question as to the identity of the person who was intended to be designated as grantee. When the trial court's denial of a motion for continuance is shown to have been prejudicial and to have constituted an abuse of judicial discretion, the Supreme Court will reverse the judgment and remand the case for new trial.

2.

On appeal from a judgment on a jury verdict in an ejectment action, the judgment was reversed and the case remanded for new trial. G. P. Conger Thompson Diggs for appellee. for appellant. Richard

MR. JUSTICE WARDSWORTH delivered the opinion of the Court. An action of ejectment was instituted by plaintiffappellee in the above-entitled cause against John Nagbe, defendant-appellant, in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, on the 21st day of July, 1962, and issue was joined between the above named parties on the 31st day of July, 1962. The law issues having been duly disposed of, jury trial of the said case was commenced on the 13th day of July, 1965, before His Honor Judge Roderick N. Lewis, presiding by assignment over the August 1965 term of said court. The case having been argued and submitted by counsel representing the parties, the trial judge delivered his charge and the jury retired to their room of deliberation. After consultation and due deliberation, the jury returned
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a verdict in favor of plaintiff-appellee, to which verdict the defendant-appellant placed on record his exceptions and filed a motion for new trial on the it th day of August, 1965, which motion was resisted by plaintiff-appellee. After argument pro et con the trial judge denied said motion, to which ruling defendant-appellant excepted. On the 23rd day of August, 1965, the trial judge delivered final judgment in said case affirming the verdict of the jury, awarding appellee the premises, the bone of contention. To this final judgment the appellant excepted and gave notice of appeal before the Honorable Supreme Court of Liberia, sitting in its March 1966 term. Accordingly, appellant performed the requisite jurisdictional legal steps and is now before this forum of dernier resort basing his contention on a six-count bill of exceptions. We deem Counts 1 and 2 of the said bill of exceptions as being worthy of consideration and we hereunder recite said counts word for word. That on the 21st day session, July 19, 1965, when plaintiff-appellee had rested evidence, he offered for admission into evidence a land sale deed purporting to be the deed under which plaintiff-appellee claimed title to the subject property. Defendant-appellant objected to the admission into evidence of the said deed on the following grounds : Cl (a) that said deed carried the name of Solo Tuyena on its face and consequently plaintiff-appellee cannot recover under the strength of such a deed which does not carry its name, Solo Nyema ; and "(b) That said deed was never certified at its issuance by the land commissioner, as mandatorily provided for by statute, which would go to show that the said land was unencumbered at the time said deed was presented to the President of Liberia for his signature and therefore, said deed not having been legally procured, is insufficient to vest title on plaintiff appellee. "2. And also because defendant-appellant applied
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to court for a writ of subpoena for his witness, William H. Ketter, land commissioner for Montserrado County, and upon the returns of the sheriff showing that the said witness Ketter was without the bailiwick of the court, defendant-appellant filed a motion for continuance since said witness was to testify and corroborate defendant-appellant and his witnesses' testimony that the land **in question was unencumbered at the time defendant-appellant obtained permission from the said land** commissioner to build a house thereon, and further explain to the court the absence of his signature on the purported deed, since it was established by defendant and his witnesses that he applied for a deed from the said land commissioner and he said that the commissioner refused him a deed based upon instructions from the President of Liberia. Plaintiff-appellee resisted said motion and Your Honor denied said motion to which defendant-appellant excepted." In Count 1, appellant attacks the validity of the deed issued in favor of appellee because, as he alleges, there is a difference in the spelling of appellee's surname in that the name apparent on the face of the deed is "Tuyena" whilst that affixed to his complaint is "Nyema," and further because the said deed was not certified by the land commissioner for Montserrado County, as the law provides. This Court has held that: "An error committed by a party in the execution of a deed, where it does not appear to have been done with a fraudulent design, will not amount to fraud, nor will it vitiate the instrument." Worrell v. McGill, 1 L.L.R. 63 (1873). In buttressing this citation, eminent law writers have laid down the following principles: "If it can be ascertained from the deed who is intended, a deed is not vitiated by mistake in setting out the name of the grantee, as in the case of misspelling,

or the case of a misdescription of a corporation or religious society or other organization." i8 C.J. 1 75176 Deeds § 56. "Likewise where the grantee is known by different names or there are several persons of the same name, or where the grantee is described by surname only, the deed being sustained in the latter case even under the old rule to the contrary, if by intrinsic evidence the intended grantee could be ascertained. In short, while there is authority to the effect that an error in the grantee's name cannot be obviated at law by extrinsic parol evidence, and that a deed to a truly fictitious person is void, it is recognized in a multitude of cases that if the court can find that a certain person was intended as grantee, it matters not what name is given him in the deed, especially if he directed the use of the assumed or wrong name or accepted the deed as delivered." 8 R.C.L. 958-959 Deeds.§ 32. In view of the above-cited law, Count i of appellant's bill of exceptions is hereby not sustained. In Count 2 of said bill of exceptions, appellant complains that his motion for continuance, based on the facts recited supra, was erroneously

denied by the trial judge. It should be remembered that the granting or denial of a motion for continuance of a cause rests within the discretion of the trial judge. But since the subpoena for the witness had been returned by the sheriff, evidencing that the reasons underlying the said motion were cogent, and based on absence of a material witness, it is our considered opinion that the trial judge erred in denying said motion. Therefore Count z of appellant's bill of exceptions is hereby sustained. In passing, however, we have thought it proper to incorporate into this opinion the motion filed by defendantappellant in the lower court for continuance of the case because of the absence of the material witness. The body of said motion alleges:

I. That a subpoena was issued by order of this court for a material witness in the person of William H. Ketter, the land commissioner for Montserrado County, and as the returns will show, the said William H. Ketter is without the bailiwick of this court and therefore is unable to attend upon the trial of this case. "z. That the said witness is being called upon to prove to this court that he gave permission for defendant to build his house on a spot at Slip-Way at the time said premises was unencumbered. Defendant submits that this evidence is vital to defendant to prove that plaintiff is not the owner of the said piece of **land and that such property is govenrment land** and that the said witness William H. Ketter, who is the **land** commissioner for Montserrado County, upon approach by the defendant, stated to the defendant that said **land** has been declared government property and that the President of Liberia has so indicated. "Wherefore, and in view of the foregoing, defendant prays this court for the continuance of the said case to the foot of the docket or as such time will be available to court since without said testimony of this witness, the defendant would not have received a fair and impartial trial in keeping with law, and that this court will grant unto defendant all other and further relief in the premises as the nature of the case demands." In view of the fact that appellant's motion to continue the case so as to enable him to secure the testimony of a material witness was imprudently denied, this Court hereby reverses the judgment in said case and remands the same to be retried upon its merits at the next ensuing term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County. Costs to abide final determination. And it is hereby so ordered. Reversed and remanded.

Dean v RL [1966] LRSC 8; 17 LLR 204 (1966) (20 January 1966)

SAMUEL DEAN, Appellant, v. REPUBLIC OF LIBERIA, Appellee
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO

COUNTY.

Argued November 15, 1965. Decided January 20, 1966. 1. The Supreme Court will impose a disciplinary penalty upon a counsellor who attempts to mislead the Court by irregular procedure on oral argument. 2. Fraudulent design or intent is an indispensable element of the crime of obtaining money under false pretense. 1956 CODE 27:302.

On appeal, a judgment of conviction of obtaining money under false pretense was reversed.
A. Garga Richardson for appellant. No appearance

for appellee. MR. CHIEF the Court.
JUSTICE WILSON

delivered the opinion of

The history of this case may be briefly stated as follows. In the year 196o, one Maria Galizia subsequently private prosecutrix herein, sought information through the appellant's brother in law, Coker A. J. George, concerning the purchase by her from appellant of a certain tract of real property in the Sinkor area near Monrovia. A conference with the appellant followed. He expressed willingness to sell one town lot out of three and one-half acres of land in this area. But the Government of Liberia had need to use this parcel of land and offered the appellant another tract in lieu thereof. He made it known that he had not transferred the said land to the Government nor had he yet obtained a title deed for the land which the Government had offered in exchange. He invited the private prosecutrix to accompany him to the site of the

land offered to him by the Government and stated to her that he would be willing to sell it to her for $700. After inspecting the property, the private prosecutrix expressed her willingness to buy the lot, whereupon the appellant asked her for an advance of money to make a survey and put in the necessary boundaries, which he did. The lot was surveyed and concrete monuments placed at the four corners of same. Thereafter the private prosecutrix commenced making payments for the lot in installments, leaving still a balance to complete full settlement of the $700. After advancing the appellant the sum of 535, as the indictment alleges, she refused to pay the balance until a title deed was issued in her favor for the lot. This appellant was unable to do because the. Government of Liberia had not then issued a deed in his favor for said land. The private prosecutrix, considering the failure of appellant to be an act of deception designed to defraud her of her money, made a complaint to Counsellor Alfred Raynes, the county attorney for Montserrado County, who initiated proceedings against the appellant for the crime of obtaining money under false pretenses. At the November 196o term of the Circuit Court of the First Judicial Circuit, Montserrado County, the appellant was indicted by the grand jury for the commission of said crime. At the May 1963

term trial of the case was had and appellant, upon arraignment, pleaded not guilty to the charge. The empaneled jury sworn to try the issues thus joined, after hearing evidence, returned a verdict of guilty against appellant. Motions for new trial and arrest of judgment were denied by the court and final judgment was rendered against appellant sentencing him to a fine of $25 to be paid forthwith together with restitution in the sum of $535. The appellant entered exceptions and prayed for an appeal to this Court which was granted. At the call of this case at the present term of Court, fol-

lowing a regular assignment thereof, the Republic of Liberia failed to appear to contest the appeal. Appellant having appeared through Counsellor A. Garga Richardson, trial of the appeal was commenced. On the 9th of November, 1965, appellant's counsel filed a motion for diminution of record, claiming the omission from the record certified to this Court of the following documents : (r) a warranty deed from Richard Bedell and wife to Samuel Dean for three and one-half acres of land situated in Sinkor, Monrovia; (2) a surveyor's certificate in favor of Samuel Dean for seven lots in Sinkor, Monrovia; (3) a blank deed for seven lots situated in Sinkor which should have been signed but was not signed at the time it was made profert. Appellant contended that these documents were regularly introduced, identified, marked, confirmed, and admitted into evidence and that their omission from the record would tend to prejudice this case before this Court. He concluded said motion with a prayer that an order be sent to the court below commanding clerk of that court to supply the missing records.

Relying upon the bona fides of appellant's counsel's submission, the clerk of the Circuit Court of the First Judicial Circuit, Montserrado County, was immediately summoned before this Court to show why this omission in the record existed, if at all there was an omission.

We must here observe that appellant's counsel commenced argument of his appeal without reference to the motion he had filed until the Court's attention was called thereto by the clerk. Under our procedure, such a motion had to be disposed of before the hearing of the appeal on the record could commence. When queried by the Court concerning this strange and unprecedented behavior, counsel stated that he thought that the missing record had been transmitted to this Court since the filing of his motion. It turned out, however, that the information which he gave to the Court, apart from being grossly

misleading, was tainted with deception and hypocrisy in that, as revealed by the clerk of the Circuit Court of the First Judicial Circuit, the identical record that counsel had alleged to be deficient had been taken by him from Mr. Isaac Woods, the retired clerk of Court and surrendered to one of the administrative assistants to the President of Liberia to be used in an investigation at the Executive Mansion; and

neither the original nor any copy thereof had been returned to the clerk's office. It seems rather ludicrous for counsel to have waived argument on the motion for diminution of record in this indirect way by proceeding to the argument of his appeal as though no such motion had been filed, nor the material documents he claimed to have been missing from the record produced by the clerk of Court, especially so when he admitted being the one who took said documents from the office of the former clerk of Court Isaac Woods and surrendered them to one of the administrative assistants to the President. We must therefore conclude that the motion was filed with a design to mislead this Court; and for this act, without prejudice to either of the parties in this case or the resolution of the issues involved herein, we penalize the counselor by a fine of $so to be paid forthwith. Now to the case. Traversing the bill of exceptions containing the assignment of errors complained of, we consider it necessary to bring under our consideration the portion thereof which attacks the jurisdiction of the trial court over the subject matter, namely the charge of receiving money under false pretense, which, according to appellant's counsel, could not be sustained against his client even if the allegations contained in the indictment were true. The record reveals eight or more receipts successively dated and made out to the appellant by the private prosecutrix showing payments for one town lot in Sinkor near Monrovia aggregating the sum charged in the indictment. The record also shows that preliminary to these successive

payments was an approach to appellant by the private prosecutrix through Mr. Coker A. J. George, for the purchase of one town lot in Sinkor near Monrovia, and not a spontaneous offer by appellant to induce the private prosecutrix to make the cash advances she made to him. Appellant contends that under the circumstances his inability to convey the property bargained for could not constitute ground for conviction of obtaining money under false pretense and that any obligation on his part arose out of a civil contract which could only be enforced by action for damages or specific performance. To resolve the question as to which form of proceeding would be maintainable, let us take recourse to the following statutory definitions. The crime of obtaining money under false pretense is defined as follows in our Penal Law. "Any person who makes false representations, with a fraudulent design to obtain money, goods, wares or merchandise with intent to cheat another, or a representation of some fact or circumstance alleged to be existing calculated to mislead which is not true or does not exist, with intent to cheat or defraud another of his goods, wares, money, merchandise or other property of value, is guilty of obtaining money under false pretense and punishable by a fine of not more than one hundred dollars; he shall be required to make restitution of the money or thing of value obtained." 1956 CODE 27 :302. Actions for specific performance are defined and subdivided as follows : "(b) Actions for specific performance in which it is sought to compel the respondent in pursuance of a contract into which he is alleged to have entered, to perform some act other than the

payment of money. Such actions are referred to briefly as actions for specific performance." 1956 CODE 6:163.

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Under the above-quoted statutory provisions a fraudulent design or intent forms the basis and is an indispensable element to a successful prosecution for obtaining money under false pretense, whereas intent is not an element of an action for specific performance of a contract. Since the record certified to us is the guide by which we must determine whether this case involves obtaining money under false pretense or specific performance of a contract, we must rely on the testimony of the private prosecutrix, the appellant himself, and Mr. Coker A. J. George, who were the only participants in the negotiations for the sale of the property to the private prosecutrix by the appellant. According to the record, the private prosecutrix was taken to the site of the property for inspection thereof before she commenced making the installment payments. Also in the record is a letter dated December 12, 1958, wherein the late Honorable Thomas E. Buchanan, then Secretary of Public Works and Utilities, wrote as follows : "I suggest that we assign a piece of land for Mr. Samuel Dean somewhere in Sinkor of equal dimension and value. I have instructed the Division of Surveys, Department of Public Works and Utilities accordingly and Mr. Samuel Dean can contact the Director of this Division for more information and final arrangements." The letter was addressed to appellant's attorney in response to an inquiry about the property in question and clearly negates the existence of any fraudulent design or intent on the part of appellant by showing that he had negotiated a bona fide arrangement with the Government to acquire the property in question with the intent of conveying same to the private prosecutrix.
We must conclude that the transaction in this case involves a contract between the appellant and the private prosecutrix which could be enforced only by a civil action

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and could not properly constitute the basis of a criminal prosecution for obtaining money under false pretense. The verdict of the empaneled jury and the judgment confirming it are accordingly hereby reversed and the clerk of this Court is directed to send a mandate to the court below informing it of this decision. And it is hereby so ordered.
Judgment reversed.

African Hebrew Israelite Foundation v Lewis et al [1984] LRSC 29; 32 LLR 184 (1984) (28 June 1984)

THE ORIGINAL AFRICAN HEBREW ISRAELITE FOUNDATION OF LIBERIA, represented by its Director, LEONARD OWENS, Appellant, v. FRANCIS H. LEWIS & his wife, EVA LEWIS, Appellees.
APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard:
June 4, 1984. Decided: June 28, 1984. 1. One cannot convey title to real property in fee simple and at the same time execute a conditional lease agreement for the same property. 2. In order for the court to allow the testimony of a witness, the evidence sought to be introduced by such testimony must have a tendency to establish the truth or falsity of the allegations or denials of the parties, or it must be related to the extent of the damages. 3. An answer which is general in its character and which does not raise specially some question of law, precludes the defendant from raising legal questions and the court from deciding same at the trial. Courts of justice will only decide questions of law when properly raised in the answer and pleadings. 4. There are no pure issues of law that a court can properly decide in isolation of facts that are denied generally or specifically. 5. The reading of a mandate from the Supreme Court in the lower court during the absence of one of the parties is considered a harmless error as long as such action does not affect the substantial rights of the absent party. 6. There is sufficient grounds for cancellation of a lease or deed for real property when either instrument was obtained through misrepresentation, deceit, and fraud.

The appellant, by and through its representative, Mr. Leonard Owens, negotiated an agreement with the appellees for 153.9 acres of land containing seven unfinished concrete buildings, to be used to operate a school. The appellees requested that the appellant prepare the lease agreement and return same for their signatures, specifically requesting that the document indicates that the premises will only be used as a school, and that the enrollment at any time will not be less than 300 students. Shortly thereafter, the appellant returned and asked the appellees to give
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him a copy of the original deed as he needed it to draw up a map of the premises and enclose only the portion of the premises containing the buildings. The appellees gave the appellant the deeds. This was in August 1981. Appellant did not return with the prepared documents until February 1982, whereupon he presented the documents to the appellees for signatures.
It is noteworthy that during the interim the appellees contend that a member of the appellant's church gave them incense which they burned all night, only to find out later that the incense caused appellees to experience a feeling similar to a drug-induced stupor, information which was not denied or challenged by the appellant. The appellees reluctantly signed the documents and learned later

that they had signed both a land grant in fee simple, as well as a long term lease agreement for the same real property. The appellees subsequently filed a lawsuit to cancel both instruments. In its bill of exceptions, the appellant contended that appellees, having signed both instruments, should be estopped from what amounts to repudiation of their own acts. The appellant further contended that (1) it was not present during the reading of the mandate pursuant to a prior hearing of this matter before the Supreme Court; (2) that it was denied a motion for continuance to allow the return of one of its witnesses, Henry Lavala, who would have testified that he introduced the appellant and appellees; and (3) that the court committed several "prejudicial and illegal acts" which the appellant did not specifically name. The supreme court found, however, that both the warranty deed and lease agreement were obtained by misrepresentation, fraud and deceit practiced by the appellant against the appellees. Therefore, the lower court's decision to cancel the instruments was affirmed.

Octavious Obey appeared for the appellant. Logan Broderick and S. Edward Carlor appeared for the appellees.
MR. JUSTICE YANGBE delivered opinion of the Court. This appeal emanates from a proceeding instituted in the Civil

Law Court, Sixth Judicial Circuit, Montserrado County, by Francis and Eva Lewis against a group of Negroes from America called the Original African Hebrews Israelite Foundation of Liberia, by and through its director, Leonard Owens. This matter involves the cancellation of a warranty deed and a land grant agreement allegedly signed by the appellees, transferring in fee simple and a conditional lease 153.9 acres of land to the appellant on grounds of fraud. The evidence adduced in this case and certified to this Court on appeal reveals that in May of 1981, or thereabouts, the appellees were approached by appellant, Leonard Owens, about the latter's intention to establish a Christian Missionary School in Liberia and a proposal to complete the seven (7) unfinished concrete buildings on the appellees' Kakata rubber farm, provided appellees would execute an agreement granting the appellant Foundation the exclusive right to manage, control and operate a school on the premises. The records further show that Mr. Owens made certain representations to the effect (a) that his organization would operate the school as a Christian educational institution, as intended by appellees and, (b) that the enrollment of the institution will consist of no less than three hundred (300) students from all walks of life. In total reliance upon such representations made by Mr. Leonard Owens, and being anxious to see the completion of the project on which they had invested well over Three Hundred Thousand Dollars ($300,000.00) of hard-earned money, the appellees agreed to lease their property. It was then tentatively agreed that Mr. Owens would prepare a draft of the agreement and submit it to the appellees for review and signatures. Within a few days after the conversation, Mr. Owens allegedly returned to the appellees' residence and requested for their title

deeds to the premises so as to enable him to draw a map of the premises, enclosing only the school buildings referred to above, and this the appellees did. From that day the appellees never laid eyes on Mr. Owens or their deeds for a considerable period of time. During this interim, a member of the Hebrew Israelite Foundation went to the residence of the appellees one evening and gave them a pack of incense which appellees were told to light and burn in their bedroom in order to

drive away evil spirits. Co-appellee Francis Lewis testified that after inhaling the incense all night, as they had been told to do, he suddenly became dazed, confused, sick and was hospitalized for eight (8) consecutive days trying to recover from this state of stupor. Immediately upon his discharge from the hospital, and while still suffering from the lingering effects of the drugs allegedly administered to him by the appellant, and not quite of sound mind and memory to enter an agreement, the appellant, Leonard Owens, urged and allegedly influenced appellees to sign the land grant agreement, without giving them the opportunity to read and understand what they were signing, or contact a lawyer. It is important to mention here that the alleged effect of the incense on co-appellee, Francis Lewis, was not denied by the appellant, hence we assumed that same was admitted. The appellees, believing that the document presented to them by Mr. Owens for signatures was a lease agreement with sufficient consideration (and not a deed of conveyance in fee simple), which had been drawn up in keeping with their strict instructions to him as mentioned above, reluctantly signed the document presented to them by Mr. Owens. Shortly thereafter, the appellees were invited to a grand party given by Mr. Owens where they were photographed by newspaper men, followed with great publicity. But no sooner did the excitement of this publicity subside the appellees heard news that the document they had signed was not a lease agreement but rather a conveyance in fee simple of One Hundred and Fifty Three point Nine (153.9) acres of prime real estate to appellant Owens. Alarmed by this surprising disclosure, and never having signed any transfer deed to their land, the appellees contacted a lawyer for immediate cancellation of the documents. Proceeding was accordingly instituted by the appellees' counsel. While deciding the issues of law, the trial judge ruled the case to trial to prove the facts stated in their complaint and abated the entire answer of the appellant. After due hearing, the court decreed cancellation of the purported land grant agreement and reconveyance, from which appellant has appealed to us for a final review and decision. Having stated the brief history of the cause of these proceedings, we shall first concentrate on, and pass upon, the

alleged errors committed

by the court below as raised in the bill of exceptions. The appellant has argued that the appellees had signed the agreement of lease and warranty deed in favor of appellant and that to cancel the two instruments at the instance of appellees would be tantamount to a repudiation of the appellees' own acts. Under this assertion, the appellant has invoked the doctrine of estoppel. Recourse to the answer of the appellant evinces that it is a general denial. This Court held in the case Williams v. John and Allen, 1 LLR 259 (1824), that: "An answer which is general in its character and which does not raise specially some questions of law, precludes the defendant from raising legal questions, and the court from deciding same at the trial. Courts of justice will only decide questions of law when properly raised in the answer and pleadings" In our view, there are no pure legal issues of law that a court can properly decide in isolation of facts that are denied generally or specifically. This is foremost in this case because the allegation of fraud, which is only alleged in the complaint, is predicated solely upon documentary evidence attached to the complaint. In this case, such evidence will consist of the warranty deed and the agreement of lease which can only properly and legally be pleaded before court of justice during production of evidence in order to ascertain and pass upon the probative value thereof. The doctrine of estoppel, in our opinion, is synonymous to the theory that no one should be allowed to disavow his own acts. Furthermore, the appellant has contended that appellees, having signed the two documents referred to, should not be permitted to question the legal effect of the same. This issue is mixed law and facts, affirmative in nature, and therefore should have been pleaded specifically as such. Civil Procedure Law, Rev. Code 1:9.8 (1) and Hill v. Tetteh, 2 LLR 492 (1924). The appellant has also charged that the trial court, placing the appellant on bare denial of the facts alleged in the complaint, prevented the appellant from introducing an affirmative defense. As we have stated above in this opinion, the appellant, having

generally pleaded to the complaint, was barred from raising any affirmative defense. The court therefore had no choice but to restrict the appellant to the consequence of a general denial which has the same effect as ruling a party on a bare denial. The complaint contains allegations of fraud allegedly committed by the appellant against the appellees during the procurement of the lease agreement and the warranty deed. The court below therefore correctly ruled same to trial for production of evidence, either oral or written, to be decided by the court alone. Wilson v. Wilson, [1978] LRSC 34; 27 LLR 182 (1978). Counts 1 and 2 of the bill of exceptions, as well as count 1 of the brief are therefore not sustained. In count 2 of the brief of the appellant, it is contended that the court read the mandate in the absence of a summons or notice of assignment served on the appellant and, as a result, appellant claimed it did not have its day in court. The reading of a mandate from this Court in the lower court is a mere notice to the parties of the instructions of the Supreme Court to the lower tribunal regarding how the

case should be conducted. Whilst we are in agreement with the appellant that it should have been previously notified for this purpose, the record in this case shows that only the mandate was read that day and nothing else, and thereafter appellant was served with, and acknowledged a notice of assignment to participate in the hearing of the case as per the mandate. Accordingly appellant was present and did take part during the trial of the case on its merits. Appellant has not indicated what harm it has suffered in consequence of its absence during the reading of the mandate, nor have we been able to gather from the records what substantial right of the appellant has been affected. Therefore, we hold that the error complained of is harmless in nature. Civil Procedure Law, Rev. Code 1:1.5. Count two of the brief is therefore not sustained. In count three of the brief, as well as counts four and thirteen of the bill of exceptions, the appellant contended that the court below committed a reversible error when the court questioned one of the witnesses and officials of the appellant as follows: Q. "Tell us when did your organization arrive in Liberia, and what year was it legalized?

Q. Do you have a copy of the Act of Legislature which incorporated you? If so, would you let us have a copy of it?" The records in this case which we are governed by reveal that these questions were asked on sheet two, the 9 th day's jury session, August 29, 1983, June Term, 1983, but no objections were interposed by either party and the questions were answered. Consequently, count three of the brief, as well as count four of the bill of exceptions, have no legal basis as they are not in accord with section 51.7 of the Civil Procedure Law, Rev. Code 1. These counts of the brief and the bill of exceptions are therefore overruled. In count four of the bill of exceptions, it is alleged that Mr. Henry Lavala, former principal of Booker Washington Institute, introduced the director of the appellant's company, Mr. Leonard Owens, to Mr. and Mrs. Francis Lewis, the appellees in this case, and that Mr. Lavala was at the time of the trial without the bailiwick of the Republic of Liberia. Therefore, appellant moved the court below for continuance. It is also alleged, in the motion for continuance, that if the desired witness, Lavala, was present within the Republic of Liberia, he would have testified to that effect and, additionally, establish that appellees did sign the two instruments that are the subjects of this case. Only relevant matters must be testified to in a given case; that is, the evidence must have a tendency to prove what is denied by the parties. Civil Procedure Law, Rev. Code 1:25.4. In this case, the introduction by Mr. Henry Lavala of Mr. Owens to appellees on one hand, and the signing of the agreement and the deed by the appellees on the other hand, were not denied in the complaint. Therefore since they were not controverted issues, they did not require production of evidence, oral or written. Hence, in our opinion, the denial of the motion for continuance is not erroneous. Count four of the brief and counts six and seven of the bill of exceptions are therefore overruled. We have already passed upon count five of the brief

in this opinion regarding the effect of the general denial. However, we reiterate that the questions asked one of the witnesses of the appellant on the direct regarding whether the witness could

identify the warranty deed and the agreement, was adroitly intended to introduce the affirmative defense by the appellant, which appellant was precluded from doing by virtue of a general denial in the answer. Counts one and five of the bill of exceptions, together with count eight thereof, are therefore overruled. The appellant contended in count six of the bill of exceptions that the court committed certain prejudicial and illegal acts during the trial of this case, but without alleging distinctly the points of contentions as intelligent notice to its opponent and for the court to decide. This Court has held in numerous opinions as well as in Mourad v. O.A.C., [1974] LRSC 43; 23 LLR 183 (1974), Sampson and Johnson v. Republic, [1952] LRSC 5; 11 LLR 135 (1952), and Boakai et al. v. Republic, 13 LLR 400 (1959), that a bill of exceptions should contain distinct allegations setting forth clearly the errors committed by the trial court which are complained against, and this Court should not be left with the burden to search the record to discover the irregularities complained of. However, under the theory that equity looks at the substance and not the forms, having exhausted those counts of the bill of exceptions in this case that are clear to us, we shall now concentrate on the evidence adduced on both sides, ascertaining whether the allegations of fraud stated in the complaint were proven in the trial court to justify reversion or affirmance of the decree in this case. One of the prevailing contentions in the record before us is the co-existence of the lease agreement and the warranty deed for the same transaction. Both documents allegedly granted to the appellant the identical parcel of land by the appellees, but with different conditions of conveyance, that is to say, a fee simple conveyance by the warranty deed and a conditional lease agreement containing the following: "This agreement shall have perpetual existence for as long as the foundation maintains a school on the aforementioned premises. In the event that the property shall cease to be used as school, it shall revert to the heirs of the owners. " During the trial in the court below, a question was asked of one of the witnesses, an official and witness of the appellant, as to what was the significance of the lease agreement in view of the conveyance of the fee simple title to the 153.9 acres of land

in favor of appellant. He answered that the grant made in either document was intended as a gift and that both parties agreed to, and believed in, the co-existence of the warranty deed together with the lease agreement containing the proviso quoted herein above. The appellees denied the testimony given by the appellant, asserting that the two documents were

irreconcilably inconsistent. In our view, title to realty cannot be a complete sale and at the same time be a conditional lease agreement. Mr. Lewis and his wife testified that the parties originally agreed for a lease of the premises occupied by seven concrete buildings but it was never their intention for the fee simple sale of the property, or a portion thereof, to the appellant and never realized that they had signed a deed as well. They were only aware of signing a lease for a valuable consideration. Mr. Lewis also testified that he parted possession with the deed to the property to survey same and to draw up a map thereof. After signing of the lease agreement, Mr. Lewis said he requested a copy thereof but the appellant refused to hand him the copy and promised to give it at a later date. From August 6, 1981, the lease was not returned to him until February 1982. The appellant testified that the grant of the 153.9 acres of land for which the lease agreement was executed with the expressed conditions that we have quoted above, together with fee simple conveyance of the identical land by the appellees to the appellant in the same transaction, was intended by the parties as a gift. The questions which arise as a result of this testimony are, assuming that the testimony is true, are: (a) why wasn't a deed of gift executed instead of a warranty deed, and why was the lease agreement necessary and executed for the same parcel of land by the same parties upon the contingency already specified earlier? (b) what about the testimony of co-appellee Francis Lewis, to the effect that only the area occupied by the seven (7) buildings was intended to be leased. This was the area for which the appellant's representatives, Leonard Owens, requested the deed in order to conduct a survey and draw up a map for said premises. Yet appellant requested and was given the deeds of appellees' entire 153.9 acres of land embracing the entire rubber farm and the

residence of the appellees. Our answer to these questions is only one, and that is, that the deed and lease agreement were procured by the appellant through misrepresentation, deceit and fraud practiced by the appellant against the appellees and which provide valid and sufficient grounds for cancellation of the instruments. Banks v. Hayes, [1949] LRSC 5; 10 LLR 98 (1949). Therefore, we hold that the judgment rendered by the trial court be affirmed. The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction and enforce its decree with costs ruled against the appellant. And it is so ordered. Judgment affirmed.

King v Moore [1968] LRSC 4; 18 LLR 231 (1968) (18 January 1968)

BROWN KING, Appellant, v. PHILIP MOORE, his Agent, JOE TORTINEH, and all persons acting directly or indirectly under their authority,

Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 30, 1967. Decided January 18, 1968. 1. When the record of a case on appear discloses that material issues of law and fact have not been dealt with by the judge of a lower court in ruling upon the pleadings in a case, as in a motion to dismiss the complaint, the case will be remanded to be regularly tried.

Plaintiff sought to enjoin defendant from constructing a building on land he claimed was his though both derived their properties from a common grantor. Defendant moved to dissolve the temporary injunction, and in effect, dismiss the complaint. The motion was granted by the lower court. On appeal by plaintiff, judgment was reversed and the case remanded. John W. Stewart, Sr., for appellant. ardson for appellee. A. Garga Rich-

MR. JUSTICE ROBERTS delivered the opinion of the Court. We shall aim at being circumspect in this opinion due to the fact that some of the issues contained in the briefs filed in this case and argued before this Court are still in litigation, pending determination, in other cases : Bassa Brotherhood Society v. Hon. Stephen B. Dunbar, and Bassa Brotherhood Society v. Lucy Gibson. A concise account of this case shows that several years ago a group of citizens organized themselves into a body under the name and style "Bassa Brotherhood Benefit Society," which was duly incorporated by Act of the Leg231

islature of Liberia. As time elapsed, and the Society acquired property, it purchased a parcel of land containing ten acres, situated in the area of Monrovia known as "Bassa Community." It was the policy of this organization to give to each of its members a portion of this land on which to build a house. According to the records in this case, both appellant and appellee were each accorded this grant which carried a common boundary. During the March 1966 Term of the Sixth Judicial Circuit Court, appellant filed an action for an injunction against appellee. In the complaint, appellant alleges that he commenced the construction of a concrete building on his portion of land given him by the Society; that appellee had not only encroached on his land but had also broken down the concrete pillars erected by him and commenced construction of a building on a portion of his property, without any justifiable cause; that he had advised appellee to desist from his illegal trespass and encroachment but to no avail ; that appellee's act of encroachment and destruction of the pillars was a deliberate act tending to deprive him of the opportunity of erecting his house ; that appellee is an irresponsible person without any means of compensating appellant for damages which renders him the victim of irreparable loss. To this complaint, appellees filed a seven-count answer, which we feel quite necessary to quote exactly as it appears in the records : "1. Because defendants submit that the writ of injunction was served on them on Friday, the 27th day of

May, 1966, and their appearance should have been within four days, but instead the court ordered them to appear on the 3oth day of May, 1966, to show cause why the injunction should not be perpetuated, failing which the injunction would be perpetuated. The defendants consider the foregoing in contravention of the statutes and a breach of the Civil Procedure Law. "2. And also because defendants say and submit that

the bill of complaint as a whole shows a lack of equitable averment, in that, if defendants at all broke down the pillars of plaintiff, he has a legal remedy and, therefore, injunction will not lie. "3. And also because defendants say the bill of complaint is ambiguous and indistinct, in that, the Bassa Brotherhood Benefit Society owns and occupies ten acres of land ; **plaintiff is seeking to enjoin defendants from using a portion of this land** when and, indeed, he is not authorized to do so by the Society, that is to say, he is not the President of the said Society, neither a member of the Board of Trustees, and he is not legally clothed to institute said action. "4. And also because defendants say the bill of complaint is further defective, in that, plaintiff has not made profert of any legal title to the property upon which the alleged encroachment is made, neither has he shown the metes and bounds of his property, as well, for the portion being encroached upon by defendants for which this injunction should be perpetuated. "5. And also because defendants say, the said tract of land was given by the Bassa Brotherhood Benefit Society to both plaintiff, and co-defendant Philip Moore as an adjacent neighbor, without any description, nor was the quantity of land given to each of them described and marked, and neither one of them has the right to enjoin the other for encroachment when they have no deed, or even a certificate, designating the portion each of them should occupy. Defendants submit that the bill of complaint is without legal and equitable foundation and, therefore, it should be dissolved. "6. And also because defendants say that taking for granted that it was true that defendants had encroached upon a portion of plaintiff's alleged premises given to him by the Bassa Brotherhood Benefit Society, and that defendants encroached upon it by erect-

ing thereon a substantial concrete building, this act of the defendants is not irreparable and plaintiff has a remedy to recover that portion of the land which he allegedly owns and upon which defendants are alleged to be constructing a building, by the institution of an action of ejectment through which he will recover a brand new building. Defendants submit that their act of constructing the building is not irreparable, nor is it injurious, but rather is to the benefit of defendants and plaintiff, and injunction, therefore, will not lie. To restrain any citizen from making

improvements which will not only be for his benefit but for the benefit of all citizens and the public in general is in contravention of law and public policy. "7. And also because defendants say that it is a legal maxim of law and equity that he who goes to equity must go with clean hands. Defendants submit that plaintiff does not have any title or any legal right from the Bassa Brotherhood Benefit Society, nor is he clothed with authority to institute action for and on behalf of said Society ; plaintiff is, therefore, without authority to institute this action, and same should therefore be dissolved. "WHEREFORE, and in view of the foregoing, defendants pray this Court to dismiss the complaint, with costs against plaintiff, without prejudice. "Respectfully submitted, PHILIP MOORE and JOE TORTINEH, defendants, by and through their counsel. "[Sgd.] A. GARGA RICHARDSON,

4ttorney and Counsellor at Law."

Subsequently, appellees filed a motion to dismiss the complaint, based on the points raised in the answer. Contending that the answer and the motion of appellees are without merit, appellant states that:

"His Honor, Frederick K. Tular, called the case for hearing of the motion on the 3 ist day of October, 1966, and after hearing argument reserved his ruling until the 9th day of November, 1966, when he entered a ruling dismissing plaintiff's case on an issue strictly of fact, which, although raised in the complaint, was never denied nor traversed in the answer nor the motion for Dissolution and, therefore, was not argued at the hearing." But the trial judge based his ruling strictly on count six, the last count of the complaint, which reads : "And plaintiff, further complaining says, that defendant intends to misuse said premises and deprive plaintiff of the opportunity of constructing his house by breaking down his concrete pillars, encroaching on plaintiff's property and molesting plaintiff's rights, the said defendant being an irresponsible person without means of indemnifying plaintiff, and plaintiff, having no remedy at law, will suffer irreparable loss unless defendant is enjoined from further use and destruction of the aforesaid premises." And count two of the answer, which reads : "And also because defendants say and submit that the bill of complaint as a whole shows lack of equitable averment, in that, if defendants at all broke down the pillars of plaintiff he has a legal remedy at law and, therefore, injunction will not lie." As regards the other issues raised, the judge in his ruling, says : "The other matters and/or issues raised in the plaintiff's complaint, as well as defendant's motion to dissolve the injunction, are extraneous to the subject of injunction and the motion for the dissolution of the injunction and are hereby not considered." The Court goes on to say: "If the defendants are breaking down plaintiff's con-

crete pillars, the remedy for that is at law ; plaintiff could, through the Republic of Liberia, institute a malicious mischief suit against them." Appellant tried to be very exhaustive in his elevencount brief filed with us, and both appellant and appellee strenuously and ably presented their contentions during their arguments before this Court. After recourse to the complaint, answer, and the motion to dissolve, we find pertinent issues both as to law and fact which the judge neglected to pass on, especially so where appellant had raised demurrers to appellees' answer and the motion to dissolve, which presented issues of law, incumbent on

the judge to resolve. Also, the appellant contended that the answer of appellee was uncertain, vague, hypothetical, evasive and argumentative, which rendered it insufficient, and, further, that appellee admitted that both he and his adversary were given a parcel of land by the Bassa Brotherhood Benefit Society, but that no boundary was defined between them. We wonder how an issue of fact like the latter could be disposed of without hearing evidence. A very interesting and important issue raised in the answer is that appellant, not being the President of the Society, nor a member of the Board of Trustees, is not legally clothed with authority to sue or be sued. All of these points raised by both sides seemed trifles to the judge, but to us present worthy and interesting issues necessary to be passed upon. This Court has held that it is always necessary that a judge in passing upon pleadings in a case, make his ruling so comprehensive that it embraces every material issue involved. There are numerous opinions of this Court which state that all issues of law must be disposed of before a cause is tried. Therefore, it is our considered opinion that the ruling therein entered by the trial judge dissolving the injunction be and the same is hereby reversed, and the case ordered remanded to the lower court to be tried regularly.

Costs in these proceedings are to abide final determination of the case. And the clerk of this Court is instructed to send a mandate to the court below informing it of this judgment. And it is hereby so ordered.
Reversed and remanded.

West Africa Ltd v Ghandour [1968] LRSC 17; 18 LLR 298 (1968) (19 January 1968)

THE SHELL COMPANY OF WEST AFRICA, LTD., by and through its agent, IAN FORGAN, Appellant, v. FOUAD GHANDOUR, Appellee.
APPEAL FROM
THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, NIMBA COUNTY.

Argued November 15, 1967. Decided January 19, 1968. Where an action of debt is brought on a written instrument, profert thereof must be made before judgment can be taken. 2. Where a bill of particulars is required by the nature of the complaint, a verified bill, describing with sufficient particularity the facts which the plaintiff intends to prove, must accompany the complaint, and where there is a failure to do so, the defendant may demur to the complaint.
3. No evidence can be admitted which supposes the existence of better evidence. The best evidence in the case must always be produced.
4. The original of a writing, document or record is the primary evidence of the matter contained in such writing, and under the best evidence rule oral testimony should not be admitted in proof of such writing without accounting for its absence. 5. Where contradictory parol evidence is offered to prove the terms contained in a writing not produced in evidence, such oral testimony is insufficient to establish the action sued upon. 6. Under the recording statutes, all written instruments affecting an interest in real property must be probated and registered within four months after execution. 1.

Under a right to sublet, plaintiff allegedly leased premises to defendant for the construction of a gas station and its operation by the defendant for a leasehold period of eighteen years, at an annual rental, receiving defendant's check at the time of agreement in payment of the first four years' occupancy, but no further sum thereafter, for which plaintiff sued on an action of debt, prevailing in the lower court. On appeal from the judgment of the lower court, the judgment was reversed.
Samuel E. H. Pelham

for appellant.

Moses K. Yangbe

for appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the
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Court.

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This arose from an action of debt, sued on in the Circuit Court of the Ninth Judicial Circuit, Nimba County, during its November 1966 Term. Fouad Ghandour is the plaintiff, and Shell Company of West Africa, Ltd., by and through its Manager, Ian Forgan, is the defendant. The plaintiff's complaint avers the following : "1. That in the year 1958, plaintiff entered into a lease agreement with one Mary Noh Donzoe, otherwise known as Mary Flomo, for a certain

parcel of land situated in Ganta, Liberia, which agreement was thereafter canceled by mutual consent of the two parties and a subsequent agreement concluded between them for the identical tract of land, with right to sublet. "z. That in consequence of plaintiff's subsequent agreement, which granted him the right to sublet the premises, he and defendant concluded a lease agreement for the use of this land by the defendant as a gas filling station for a period of 18 years certain from 1962, up to and including the 31st day of December, 1985. "3. That according to the said sublease agreement between plaintiff and defendant herein, defendant promised and agreed to perform the following: "(a) To demolish the old building on the leased premises and pay plaintiff therefor $25,000.00. "(b) To pay rents to plaintiff for 18 years at the rate of $1,000.00 per annum from the signing of the agreement. "(c) Further agreed to refund amount paid by plaintiff to Mary Flomo, plaintiff's lessor, for the optional right given the plaintiff to sublet, making a total sum of $45,000.00. "4. That defendant only paid plaintiff rent for four years, beginning from 1962, up to and including 1966, in all the sum of $4,000.00, which check for this amount was deposited by plaintiff and returned to de-

fendant by the Bank of Monrovia ; and the agreement in his possession will also be produced by the writ of duces tecum. "5. That defendant has made several promises to pay said amount upon demand of plaintiff, but has failed to do so ; wherefore, plaintiff demands judgment against defendant for $45,000.00."
There were several other documents made profert with the plaintiff's complaint, such as a public notary's certificate to the cancellation of the former lease agreement with Mary Flomo, the canceled lease agreement, and the substituted agreement, together with a statement of the purported indebtedness. The defendant having been summoned, appeared and answered in two counts only, which we hereunder make a part of this opinion. "I. Because the defendant demurs to the complaint of the plaintiff on the ground that it does not set out any bill of particulars in support of the alleged indebtedness of $45,000.00 sought to be recovered, or a copy of the alleged contract under which the plaintiff has based his claim of such indebtedness, in order to give due notice of the facts the said plaintiff intends to establish the case on. "2. And also because defendant further demurs to the complaint on the ground that the averments thereof disclose an action of damages for breach of a contract, whereas the action as filed seeks to recover a sum certain as debt, confusing the form of action for damages. "Wherefore, defendant prays that the complaint be dismissed and the plaintiff ruled to pay all costs and expenses incurred by the said company." Pleadings in the case traveled as far as the rejoinder and rested. At the November 1966 Term of the Ninth Judicial Circuit Court, this case was heard and the trial judge made the following ruling on the issues of law involved in the pleadings. "This court, therefore, rules that the complaint with

From this ruling made on the legal issues, plaintiff excepted and brought her appeal for consideration by this Court. The bill of exceptions on which this appeal has come before this Court embraces three counts, which we shall hereunder quote : t4 1. Because plaintiff says the court erred in dismissing the action of ejectment on the ground that plaintiff did not pay the costs of court when she withdrew her action with the right reserved to refile, when indeed and in truth, nonpayment of costs prior to refiling is no ground for dismissal of an action under , our Code of Laws, to which plaintiff excepted. "2. And also because plaintiff says the court erred in sustaining counts seven and eight, which counts raised the doctrine of estoppel and at the same time denied that defendant ever withheld any permission belonging to the plaintiff, which pleas are inconsistent and, therefore, the answer of defendant should have been dismissed. To which plaintiff excepted. "3. And also because plaintiff says the court further erred when ruling that plaintiff has withdrawn her case of ejectment more than once, predicated upon the mere allegations of defendant which is not supported by the record and which plaintiff denied categorically in her pleadings. Plaintiff maintains that this was a factual averment which should have been ruled to trial. The court not having taken this into consideration, makes the ruling erroneous. To which plaintiff excepted." This case was called for hearing on the Loth day of April of the current year, when counsel for appellant in the course of their arguments traversed the grounds of their bill of exceptions and strongly contended : "1. That the failure to pay costs after the withdrawal of their complaint and refiling, is no ground according to statute for a dismissal of their case.

"2. That it was inconsistent for defendant to have pleaded in counts seven and eight of her answer the doctrine of estoppel, and simultaneously denied withholding and detaining any land belonging to the plaintiff, and for that matter the said answer should have been dismissed; therefore, it was error for the court below to sustain said two counts. "3. That the court below further erred when it ruled also that plaintiff had withdrawn her suit of ejectment more than once, since it was a factual issue averred by defendant and denied by the plaintiff in their pleadings, which was never proved at the trial." Appellee, in countering the argument of the appellant, argued that plaintiff instituted the identical ejectment suit in the year 1964, when the same was dismissed by the then presiding Judge, Hon. John A. Dennis. That at the March 1966 Term of the Circuit Court, the action was refiled, withdrawn and filed for another time, which practice is not sanctioned by the law. They also contended that after the withdrawal of this suit in the lower court, and refiling, costs were not paid in keeping with the statute in vogue, which amounted to an incurable legal error and warranted the dismissal on the legal issue.

Arguing further, they maintained that the place where plaintiff's affidavit was taken was omitted in the jurat, which omission was also an incurable error because it rendered the complaint insufficient. Closing, they rested their argument on the point that plaintiff failed to make profert of her chain of title, which is an essential requisite in ejectment suits. These were the main points argued for and against, and now that we have set forth all of the issues or at least the main issues relied upon in this appeal, we will proceed to direct our consideration thereto. In complying with a statute which requires certain legal requisites to be met, any failure to comply with the whole, or any portion thereof amounts to a noncompliance therewith. And when such noncompliance is attacked

by the adversary, the Court is left with no choice than to direct its attention thereto. The statute which prescribes the mode by which pleadings may be withdrawn or amended is specific, and reads : "At any time before trial any party may, insofar as it does not unreasonably delay trial, once amend any particular pleading made by him by: "(a) Withdrawing it and all subsequent pleadings made by him ; "(b) Paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and "(c) Substituting an amended pleading, to which the opposing party may make a responsive pleading in the same manner as he did to the withdrawn pleading. . . ." 1956 Code 6:32o. It maps the course to be undertaken in all amendments or withdrawals, and in doing so, any neglect to comply with all provisions subjects the violating party to the sanctions of the law. A withdrawal of a complaint, or any subsequent pleading, by either side, and a refiling of an amended complaint, or pleading, as the case may be, is incomplete until costs incurred by the opposing party are completely paid by the party acting under the statute, before the refiling. Moreover, this Court has over and again said that every statute must be construed with reference to the object intended to be accomplished by it. The question of the nonpayment of costs after the withdrawal by plaintiff, is an issue at bar, although it is incumbent upon the trial judge to consider all of the issues of law raised in the pleadings. Yet, if it is found by the trial court that there are legal issues which warrant a dismissal, consideration of factual issues to be determined by a jury is not necessary. Count one of the bill of exceptions is, therefore, not sustained, for in Harmon v. Woodin, 2 L.L.R. 334 (1919) , the Court held that the discharge of a defendant, or the dismissal of a suit,

quashes all process then existing against him in said action, hence, in either such case, the court loses jurisdiction both of the person and subject matter. Count two of the bill of exceptions has led us to a further examination of the record, and for the benefit of this opinion

we shall quote counts seven and eight of defendant's answer: "Count 7. And also because defendant submits that in 1963, the plaintiff instituted an action of ejectment against the defendant which action was heard and the law issues disposed of during the March Term, 1964, by Judge Dennis and on the law issues plaintiff's action was dismissed with cost against her to which she took exceptions, the dismissal of plaintiff's action being based on the violation of the provisions of the statutes, that is to say, plaintiff was not vested with legal title to the property which defendant is possessed of, plaintiff's deed applying to a piece of land situated on Carrey Street. See copy of said ruling annexed and marked exhibit 'B.' "Count 8. And also because defendant says that the original deed of the plaintiff did not permit her to claim defendant's land ; that plaintiff surreptitiously and by false representations to court had her said deed corrected in 1949, after defendant had acquired her title in 1943, simply to claim defendant's land. Defendant, therefore, respectfully requests this court to take judicial notice of the records in the deed correction proceedings, done in 1949, September 8; plaintiff's title, therefore, is not a perfect one." Upon considering these two counts, we are in a quandary to understand in principle what appellant intends to show by count two of her bill of exceptions. Appellee has not been contradictory or inconsistent in her said counts seven and eight, which could have led to their dismissal. On a close examination, the aforesaid count seven does invoke a plain bar, which is not contradicted by her count eight because the said count eight merely refers to her original

title which possessed her of the said tract of land even prior to plaintiff's surreptitious attempt to gain ownership to said land now in question. These two counts, therefore, in our opinion, are not inconsistent, nor contradictory to each other, and were not cause for a dismissal of the defendant's answer in the court below, as appellant argues they should have been. Count two of the bill of exceptions, therefore, being without legal soundness, is not sustained. Count three of the bill reads : "And also because plaintiff says that the court further erred, when in ruling it said that plaintiff had withdrawn her case of ejectment more than once, predicated upon the mere allegations of defendant which are not supported by the records of the court and which plaintiff denied categorically in her pleadings. Plaintiff maintains that this was a factual averment which should have been ruled to trial in the case, if need be, and which the court did not take into consideration, which makes the court's ruling erroneous." Our Code of Civil Procedure, 1956 Code 6:313, as well as many opinions of this Court provide that trial courts are entrusted with the duty of determining all issues of law raised by the pleadings in a case before the facts therein involved are heard by a jury. Johnson v. Dorsla, 13 L.L.R. 378 (1959). In the instant case the defendant made prof ert of a certificate under the seal of this Court, certified by the Clerk of this Court: "This is to certify that up to the issuance of this certificate, no appeal has been filed and/or docketed in this office

by Monah, alias Ida Phillips, entitled : objection to the probate and registration of public land sale deed in the City of Monrovia, that is to say since the determination on the 22nd day of April, 1964, of the case : Monah, alias Ida Phillips, Objector-Appellant versus Martha Nelson et al., Respon-

dents-Appellees. Tried and decided April 22, 1949, which judgment in said cause was reversed and case remanded. "Issued under hand and seal of Court this 16th day of October, 195o. "[Sgd.] S. BENONI DUNBAR, SR., Clerk, Supreme Court of Liberia." This certificate on its face did not require any oral proof to substantiate its genuineness. It had been issued in proof of the fact that plaintiff had withdrawn her case. Yet, despite this document which defendant requested the Court to take judicial notice of, appellant claims it presents a question of fact and should have been proved at the trial. This count of the bill of exceptions is erroneous and without legal merit. For even if the case had not been dismissed on the law issues in the pleading, the question of the certificate tendered under seal of this Court could not have been a subject matter for proof at the trial. Moreover, a plea in bar when raised supersedes all other issues of law raised in the pleadings and must be given priority in all cases. In Thompson v. Republic of Liberia, [1960] LRSC 3; 14 L.L.R. 290 (1961), Mr. Justice Pierre, speaking for this Court, held, at p. 293 : "That no oral testimony can be taken to explain a written document, is a maxim as old as the practice in this jurisdiction." Our Civil Procedure Law, 1956 Code 6:725, provides : "A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record of entry of a specified tenor is found to exist, attested as a copy of official record in accordance with the provisions of section 723 ( ) is admissible as evidence that the records of his office contain no such record or entry." Besides the certificate from the clerk of this Court that no appeal had been filed in his office, all of the papers in

connection with the withdrawal were made profert by defendant in her pleadings, as certified copies of documents deposited in the office of the court below, in accordance with the law. Thomas v. Republic of Liberia, 2 L.L.R. 562 (1926). With all of the copies of such documents authenticated under seal, appellant still maintained that oral testimony was preeminently necessary, which in our opinion is a fallacy, for a plea in bar is sufficient to dismiss a plaintiff's action. Hence, appellant's count three of her bill is also denied. This is a case in which defendant acquired title to the land in question in the year 1943, when plaintiff's original deed gave her title to a tract of land separate and distinct from that of the defendant, and in 1949, when defendant had been in possession of the said tract of land for six years, plaintiff, against law and equity, claimed the said property

to be hers. When the court below decided that she was barred against bringing any further suit against the defendant, she excepted
and brought her appeal. Her bill has been closely examined. The records brought forward in the case have also been inspected and
examined. The dismissal in the lower court on the law issues raised in the pleadings have been reviewed. It is our judgment that
we must limit our opinion to the ruling of the court below from which the appeal was brought and we find that the decision of the
court below was correct and in harmony with the law. Hence, its judgment is hereby affirmed, with costs against the appellant, a
mandate to this effect to be sent by the clerk of this Court to the court of original jurisdiction. And it is hereby so ordered.
ilffirmed.

Jawhary v Watts et al [2005] LRSC 10; 42 LLR 474 (2005) (1 March 2005)

HAFEZ M. JAWHARY, a Lebanese National, Petitioner/Appellant, *v.* THE INTESTATE ESTATE and/or HEIRS OF THE ROSETTA WATTS JOHNSON, REBECCA WATTS PIERRE'S INTESTATE ESTATE, thru EUGENE COOPER and MABEL S. PIERRE, 1st Respondents/Co-Appellees and THE J. N. LEWIS INTESTATE ESTATE, thru JOSEPH N. LEWIS et al., 3rd Respondent/Co-Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 22, 2004. Decided: March 1, 2005.

1. An action has three (3) stages: the pre-trial, trial and post-trial; the pre-trial stage includes the commencement of the action and determination of pre-trial motions, which include summary judgment, motion to dismiss, motion to strike, disposition of law issues, etc.
2. A demand for jury trial is not a pre-trial motion and can be heard at any time before trial begins.
3. Trial has been defined by the Supreme Court as the presentation of oral or written evidence.
4. The disposition of law issues is part of the pre-trial stage of the proceedings and disposes of the legal issues raised and determines whether the factual issues should be tried.
5. When law issues are disposed of, the court determines the legal issues and may dismiss the action or rule it to trial of the facts either by the court or a jury.

6. A motion for jury trial should be heard and disposed of after the court rules on the legal issues and rules that the issues of fact are to be tried.
7. It is improper for the court in an action for declaratory judgment to hear a motion for jury trial prior to disposing of the law issues, for to do so would have presupposed that the judge would rule the case to trial when ruling on the disposition of the law issues.
8. The granting of a petition for declaratory judgment is purely discretionary, and the court may either dismiss a petition for declaratory judgment on the law issues or rule it to trial.
9. Ordinarily, law issues are to be disposed of first, to be followed by the facts, and thereafter, a court is authorized to enter final judgment. However, in the case of a declaratory judgment proceeding, which usually considers issues of law, unless there is disputed fact, the necessity for trial of the fact does not exist, and the trial court may enter judgment at the time of disposing of the issues of law without taking evidence regarding the facts.
10. Where the judge in an action for declaratory judgment exercises his discretion granted him by Section 43.5 of the Civil Procedure Law and dismisses the petition for declaratory judgment, the motion for jury trial becomes moot and the court is not deemed in any way to have denied the petitioner of the right to a jury trial.
11. A judge is not in error in deferring the hearing of the motion for jury trial after the disposition of law issues, since under the Civil Procedure Law, the court is empowered to determine the sequence in which the issues in a case shall be tried.
12. Whenever a complaint is filed in which the plaintiff claims title to real property, a copy of the document upon which title is based should be filed with the complaint.
13. It is the rule of modem practice that when a pleading is founded on a written instrument, a copy thereof may be annexed and made a part of the pleading by reference as an exhibit.
14. Any claim or defense which a party relies upon to substantiate his cause of action or his defense is material and should be specifically pleaded so as to give the opposing party notice of what the adversary intends to prove.
15. Any matter not laid down in the written pleadings of a case cannot be expected to receive the legal consideration of the court, and courts of justice will only decided questions of law when properly raised in the pleadings.
16. It is mandatory for the petitioner in a declaratory judgment action to annex to the petition for declaratory judgment the addendum to the lease agreement, which the petitioner had requested the court to declare valid and of full force and effect as a matter of law, in order to give the required notice to the adversary for review and challenge the document if he/she so desires.
17. The legal standard in a declaratory judgment should not be entered if it will not terminate the controversy in dispute, and the court may refuse to render or enter a declaratory judgment where such judgment would not terminate the uncertainty or controversy giving rise to the proceeding.

Petitioner/appellant filed a petition in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, seeking a de-claratory judgment from the court that three lease agreements and addendums thereto which the petitioner had concluded with the first, second and third respondents for a parcel of land in Monrovia, upon which he had constructed the Holiday Inn Hotel, were valid. The second and third respondents were the same Estate, the J. N. Lewis Intestate Estate, but was named as separate respondents being represented by different persons claiming legitimacy to represent the Estate. The third respondent moved the trial court to drop

the second and third respondents as misjoined parties because firstly, the second respondent, being the J. N. Lewis Intestate Estate, the same Estate as the third respondent, was represented by persons whose letters of administration had been revoked and they had been accordingly removed as administrator and administratrix of the J. N. Lewis Intestate Estate by the Monthly and Probate Court for Montserrado County, a decision confirmed by the Supreme Court. Hence, the third respondent said, any agree-ment signed by the alleged representatives with the petitioner after the revocation of their letters of administration was null and void. Secondly, the motion to drop noted that the third respondent had conceded that it did not own and had no interest in the property in question, which the petitioner said he had leased from the Estate; hence, as the Estate had no dispute with the first respondents for the said parcel of **land** for which the petitioner was seeking a declaratory judgment, it could not be a party to the proceedings.

The first respondents, in their response, asserted that they had in a previous litigation obtained judgment that confirmed their ownership to the property in question, for which the pe-titioner was seeking declaratory judgment; that the petitioner was *estopped* from challenging the title of the first respondents, they being the lessors of the petitioner; that they denied the petitioner's claim that he had any addendum to the original lease which gave him a further sixty-three years rental to the property, and that they challenged him to produce the said instrument, failing which he would have violated a fundamental principle of pleading—the requirement of notice.

The trial court dropped the second respondent but retain the third respondent as a party to the declaratory judgment proceedings. Thereafter, in ruling on the law issues, the trial judge denied the petition.

On appeal by the petitioner to the Supreme Court, the Court affirmed the trial court's ruling dismissing the petition. The Supreme Court held that the trial judge had not erred in not disposing of the motion for jury trial before hearing and disposing of the law issues. The Court reasoned that as a motion for jury trial is not a pre-trial motion, whereas the disposition of law issues is a pre-trial matter, it is only after the disposition of the law issues that a determination can be made as to whether the case will be submitted for a jury trial. The Court further opined that since it is during the disposition of the law issues that the trial judge determine whether to dismiss the case on legal issues or rule it to trial of the facts, it would have been improper for the trial judge to rule on the motion for jury trial before disposing of the law issues.

On the issues of the trial court's denial of the petition for declaratory judgment while disposing of the law issues, the Court stated that although ordinarily laws issues are disposed of first and followed by trial of the facts, in the case of declaratory judgment the trial court is authorized to enter judgment when disposing of the law issues without taking evidence regarding the facts if the facts are not disputed by the parties. The facts in the instant case were not disputed, the Court said. The petitioners had admitted that the property belonged to the first respondents, the second respondent had been dropped from the suit, and the third respondent had stated that it did not have interest in the property and therefore was not contesting the first respondents right to the property.

The Court also held that the petitioner had violated the fundamental principle of law on notice in not attaching to the petition the addendum to the lease agreement which he claimed to have entered into with the first respondents and which he wanted the trial court to enter a declaratory judgment on to the effect that the said addendum extending the lease for another sixty-three

years was valid and of full force and effect. Accordingly, the Supreme Court agreed with the trial court that in order for the lower court to pass on the validity of the addendum to the lease agreement, it was mandatory that the petitioner attached the addendum to the petition and that a failure to do so deprived the lower court of the right to give legal consideration to the claim and which rendered the petition dismissible.
Lastly, the Court held that the judge correctly denied the petition, for to have granted it would have meant that the trail judge would have (a) recognized the validity of an addendum which had not been attached to the petition and which the court had not seen; (b) recognized the validity of a lease agreement with the second respondents, signed by persons whose authority had been revoked and which was therefore null and void; and © recognized a lease agreement of the third respondent when the said respondent had said it had no claim to or interest in the property covered under the lease. Judgment was therefore affirmed.

Joseph N. Blidi appeared for the petitioner/appellant. *Oswald Tweh* and *James E. Pierre* appeared for the respondents/co-appellees. *Roger K. Martin* appeared for the 3rd respondents/co-appellees.

MADAM JUSTICE COLEMAN delivered the opinion of the Court.

This appeal is before us from the ruling of His Honour Wynston O. Henries, Resident Circuit Judge, Sixth Judicial Circuit Court, Montserrado County, dismissing petitioner/ appellant Hafez M. Jawhary's petition for declaratory judgment, filed in January 2003 against the respondents/co-appellees the Intestate Estate of Rosetta Watts Johnson and Rebecca Watts Pierre and the Intestate Estate of the late J. N. Lewis.

The petitioner, Hafez M. Jawhary, filed a nine-count petition for declaratory judgment against the Intestate Estate and/or heirs of the late Rosetta Watts Johnson and the Intestate Estate of the late Rebecca Watts Pierre, represented by Eugene Cooper and Mabel S. Pierre, administrator and administratrix, as 1st respondents; the Intestate Estate of the late J. N. Lewis, represented by its administrator and administratrix, Samuel A. W. Freeman and Wisseh Munah, as 2nd respondents; and the Intestate Estate of the late J. N. Lewis, represented by its administrators and administratrix Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, as 3rd respondents. For the benefit of this opinion, we herewith quote verbertim courts 1, 2, 3, 6, 7 and the prayer of the petition.

"1. That petitioner entered into separate and distinct lease agreements all for the same half lot of **land**, Lot N0. 115, lying and situated on Carey Street, Monrovia, Liberia, as follows, to wit:

(a) That the first lease agreement for the said premises was entered into by and between the late Rosetta Watts Johnson and the petitioner for a period of thirty (30) years certain, commencing

from the 29th day of March A. D. 1973 up to and including the 28th day of February, A. D. 2003.

The metes, bounds and description of said demised premises are specified in the lease agreement as follows:

COMMENCING AT THE N.W. ANGLE OF THE EASTERN HALF OF LOT NO. 115; THENCE NORTH 52 DEGREES WEST 62½ LINKS; THENCE SOUTH 38 DEGREES WEST 200 LINKS; THENCE SOUTH 52 DEGREES EAST 62½ LINKS; THENCE NORTH 38 DEGREES EAST 200 LINKS TO THE PLACE OF COMMENCEMENT AND CONTAINS ONE-EIGHTH (1/8) OF AN ACRE OF **LAND** AND NO MORE.

(b) That pursuant to Article IV of the said lease agreement, petitioner constructed on the leased premises the Holiday Inn Hotel, a five (5) story building, one of the best hotels on the West Coast of Africa and one of the leading **land** marks in the City of Monrovia, Liberia. Petitioner respectfully requests court to take judicial notice of copy of said lease agreement, marked as P/1, and attached to this petition to form a cogent part thereof. This Honourable Court is also requested to take judicial notice of the historical fact of the construction and existence of the Holiday Inn Hotel located on Carey Street, Monrovia, Liberia.

© That while the lease agreement between Rosetta Watts Johnson and petitioner was still in full force and effect, the parties hereto executed an addendum thereto amending Articles I and II, whereby an additional twenty (20) year period was added, commencing at the end of the first 30-year period in 2003. Petitioner hereby gives notice that he will produce said lease agreement and any other documentary and oral evidence during trial at any other time appropriate.

“2. That while the aforesaid lease agreement and the addendum thereto were still in force and effect, the Intestate Estate of the late J. N. Lewis, represented by its administrator and administratrix, Samuel A.W. Freeman and Wisseh Munah, respectively, started laying claim to the same property/parcel of **land** subject of the aforesaid agreement and addendum thereto. The said administrator and administratrix of the Intestate Estate of the late J. N. Lewis insisted that petitioner enters into lease agreement with the J. N. Lewis Estate or be ejected therefrom. In order to avoid unnecessary and expensive litigation, and because of the huge investment petitioner had made in the premises which he wanted to protect, as well as the fact that there was a serious crisis in the country, petitioner entered into a lease agreement with the Intestate Estate of the late J. N. Lewis, represented by its administrator and administratrix Samuel A.W. Freeman and Wisseh Munah for a total period of sixty-three (63) years of twenty-one year intervals, effective March 1, 2003 up to and including February 28, 2066, A. D. The metes, bounds and description of the premises as set forth in certified copy of the warranty deed in favor of the late John N. Lewis executed by William Draper and his wife Margaret, and as set forth in the lease agreement are as follows:

...BOUNDED ON THE SOUTH BY A LINE OF SEVEN HUNDRED EIGHT LINKS DIVIDING FROM RANGE 111, ON THE WEST BY A LINE OF 63½ LINKS DIVIDING IT FROM LOT OF RANGE 11 AND ON THE EAST BY A LINE OF 63¼ LINKS DIVING IT FROM LOT 115 AS DESCRIBED IN THE AUTHENTIC RECORDS OF SAID

SETTLEMENT CONTAINING FIVE (5) ACRES OF **LAND** AND NO MORE. CONNECTING AT THE N. W. ANGLE OF THE EASTERN HALF OF LOT 115. THENCE NORTH 52 DEGREES WEST 62½ LINKS; THENCE 38 DEGREES EAST 200 LINKS TO THE PLACE OF COMMENCEMENT AND CONTAINING ONE EIGHTH (1/8) OF AN ACRE OF **LAND** AND NO MORE.

Petitioner requests court to take judicial notice of the certified copy of the warranty deed in favor of the late John N. Lewis, copy of a letter dated September 23, 1988 and signed by Counsellor David D. Gbala on behalf of the J. N. Lewis Estate, claiming title to the demised premises and opting for a lease agreement to be entered into with the petitioner as well as the sixty-three (63) year lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis and the petitioner marked as Exhibits P/2, P/3 and P/4, respectively, to form cogent parts of this petition.

"3. That still while the aforesaid lease agreements and addendum were in full force and effect, the second group of administrators and administratrix of the Intestate Estate of the late J. N. Lewis, in persons of E. Kofa Benson, Joseph N. Lewis and Deborah Tequah, also began to lay claim to the aforesaid demised premises and also opted to enter into a lease agreement with the petitioner hereinabove stated. Petitioner entered into a lease agreement for a total period of sixty-three (63) years at 21-year intervals/options that are certain and precise commencing from the 1st day of March, A. D. 2003 up to and including the 28th day of February A. D. 2066. Petitioner requests court to take judicial notice of the said lease agreement, marked as Exhibit P/5, and attached to this petition to form an integral part thereof.

"6. That the petitioner herein found it strange, unbelievable and untrue that the two groups of administrators and administratrixes of the Intestate Estate of the late J. N. Lewis filed a one-count return to the petition of the Instate Estate of the late Rebecca Watts Pierre in which they conceded that the premises on Carey Street, on which the Holiday Inn Hotel is located, which the petitioner herein is leasing from the Estate, does not belong to them, but it rather belongs to the Intestate Estate of the late Rebecca Watts-Pierre. See copy of said return, marked as Exhibit P/7and attached to this petition to form an integral part thereof.

"7. That this Honourable Court on the 15th day of November 2000 A. D., rendered its final judgment, awarding title of the lease premises to the Intestate Estate of the late Rebecca Watts Pierre and declaring all claims made on the said premises by the Intestate Estate of the late J. N. Lewis null and void.

"WHEREFORE and in view of the foregoing, petitioner respectfully prays Your Honor and this Honorable Court to declare:

(a) That the lease agreement entered into by the late Rosetta Watts Johnson and the petitioner herein, as well as the addendum to said lease agreement, is still in full force and effect and binding on successors, heirs, administrators, beneficiaries and all others, including the Intestate Estate of the late Rebecca Watts Pierre, represented by its administrator and administratrix Eugene Cooper and Mabel S. Pierre, unless and until they expire in keeping with their terms and conditions.

(b) That the lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis for sixty-three (63) years from the 1st day of March, A. D. 2003 up to and including the 28th day of February, A. D. 2066, in which the J. N. Lewis Intestate Estate is represented by Samuel A. W. Freeman and Wisseh Munah, administrator and administratrix, respectively, of the said estate, is still in full force and will remain in full force and effect until February 28, A. D. 2066.

© That the lease agreement entered into for sixty-three (63) years by and between the Intestate Estate of the late J. N. Lewis, represented by its administrators, E. Kofa Benson and Joseph N. Lewis, and Deborah B. Tequah, administratrix, and the petitioner, is still in full force and effect up to and including February 28, 2066, A. D.

(d) That since E. Kofa Benson, one of the administrators of the Intestate Estate of the late John N. Lewis, was not made a party to the petition to remove cloud on title to real property and he knew nothing about said action and therefore did not have his day in court, the final judgment in said action did not affect his interest in the J. N. Lewis Estate. Hence, the lease agreement which E. Kofa Benson signed on behalf of said Estate between the petitioner herein and the estate is in full force and effect and will so remain until the 28th day of February, A. D. 2066.

(e) That since the returns to the petition to remove cloud on title to real property was not signed by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, administrators and administratrix of the Intestate Estate of the late John N. Lewis, contrary to what the court was made to rule against them in its November 15, 2000, A. D., final judgment, the said judgment is not binding on the Intestate Estate of the late John N. Lewis.

(f) That since the petitioner, lessee of the parcel of **land** on which the Holiday Inn Hotel is located, was not made a party to the petition to remove cloud on title to real property, the court's final judgment of 15th November, A. D. 2000, has no binding effect on him whatsoever and on his leasehold rights in said demised premises; and further prays that the petitioner be granted any and other relief deemed legal, just and equitable."
A writ of summons was issued and served on the 1st, 2nd, and 3rd respondents, who separately filed their returns.
The 1st respondents, heirs of the late Rosetta Watts Johnson and the late Rebecca Watts Pierre, filed a 40-count returns alleging in substance that the petition should be dismissed because any judgment rendered will obviously not terminate the alleged uncertainty or controversy which gave rise to this proceeding.
We herewith quote counts 1, 2, 3, 5, 6, 8, 9, 13, 32, and 33 of the returns filed by the 1st respondents.

"1. As to the entire petition, 1st respondents say that the peti-tion should be dismissed because any judgment rendered will obviously not terminate the alleged uncertainty or controversy which apparently gave rise to the proceeding. 1st respondents submit, as a matter of law, that section 43.5 of the Civil Procedure Law requires the court to "refuse to render or enter a declaratory judgment, where such judgment, if rendered, would not terminate the uncertainty or controversy which gave rise to the proceeding". It is clear that any judgment rendered will not meet the statutory requirement of bringing finality to the matter and therefore the petition should be

dismissed. This is confirmed by the fact that a final judgment in these proceedings will not put 1st respondents in possession of the property and that 1st respondents will have to institute still another proceeding to regain possession of the property after the termination of the lease agreement on February 28, 2003.

"2. Further to the entire petition, 1st respondents say that it is a well settled principle of law that the possession of the demised premises by the tenant is for many purposes considered to be the possession of the landlord and serves as adequate notice of the landlord's rights in the **land** until the tenancy is expressly repudiated and notice thereof given to the landlord. 51 C. J. S., *Landlord and Tenant,* §254. Given that possession by a tenant is possession by his landlord for all intent and purposes, it is well settled that during the existence of the relationship of landlord and tenant, a tenant occupying a premises upon the strength of his landlord's title is *estopped* from challenging, questioning or disputing his landlord's title. Thus, a tenant is *estopped* to assert that a better title than the landlord's is outstanding in some third person. 49 AM JUR 2d., *Landlord and Tenant* §915. 1st respondents therefore pray that the petition be dismissed because of lack of capacity of the petitioner to maintain the action against his lessor.

"3. Further to count 2 above, 1st respondents say since the execution of the agreement of lease in 1973, and during the past almost 30 years of the lease, petitioner has enjoyed uninterrupted and continuous use and possession of the demised property. This is confirmed by the fact that the petitioner has not informed 1st respondents, his lessors, of any adverse claims being filed or of any interference with his use, enjoyment and possession of the demised premises by a third party. lst respondents say had there been such adverse claim or interruption, petitioner would have immediately brought this to 1st respondents' attention, who would have been obligated under Article IV of the agreement to defend the lessee's (petitioner) peaceful use and occupancy of the demised premises during the entire life of the agreement against the claims of any third parties.

"5. 1st respondents submit, as a matter of law, that a lessee's right to the use, possession and enjoyment of demised premises are derived solely and exclusively from that of his lessor and a lessee is therefore without the authority or competence to institute or maintain proceedings against a lessor which questions or denies the lessor's title to the property subject matter of the lease agreement between the lessor and lessee.

Stated differently, a lessee cannot legally question or deny his lessor's title to the property since ultimately the lessee's rights to the use or occupancy of the demised property are derived from the lessor's title. A lessee is *estopped* as a matter of law from questioning the legitimacy of his lessor's title to property while at the same time enjoying the use of the property based on an agreement of lease concluded with the lessor. 1st respondents therefore pray that Your Honour will dismiss petitioner's petition because of the lack of capacity of a lessee to question the title of his lessor.

"6. Further to count 5 above, 1st respondents say same should also be dismissed because the legal pre-requisite to institute or maintain an action for declaratory judgment is that there must be an actual controversy existing between the parties. 1st respondents submit that there is no controversy between petitioner and 1st respondents as to their respective rights, status and legal

relationship in respect of the one half lot of **land** in the City of Monrovia on which the Holiday Inn Hotel is erected. The undisputed and acknowledged fact is that the petitioner is 1st respondents' lessee and this relationship is clearly defined and established in the agreement of lease which was executed in 1973 between the petitioner as lessee and the late Rosetta Watts-Johnson as lessor. This fact is not in dispute and has been specifically acknowledged by the petitioner in counts 1(a) and (b) of the petition for declaratory judgment and the attached Exhibit P/1 - the probated and registered agreement of lease executed in 1973 between the petitioner, as lessee, and Mrs. Rosetta Watts-Johnson, 1st respondents' predecessor-in-title and interest as lessor.

"8. 1st respondents therefore specifically and expressly deny petitioner's allegation in count 1© of the petition that an addendum was executed by 1st respondents extending the period of the lease for an additional twenty (20) years as of February 28, 2003, the date of the expiration of the agreement. For the petitioner to even suggest that 1st res-pondents would think about extending the lease agreement with petitioner Jawhary is ridiculous and unthinkable. Given the well known disagreement and litigation involv-ing 1st respondents and petitioner over the years about the lease agreement, no rational or reasonable person will believe petitioner's fairy tale that 1st respondents would extend the period of its lease with the petitioner. This alleged addendum is clearly a manufactured instrument.

"9. And 1st respondents say the petitioner's lease of the property was for a single certain period of thirty (30) years. Sufficient proof of this is that at no time in the past has petitioner alleged or referred to the fact that he had obtained an addendum from 1st respondents extending his lease for another twenty (20) years. 1st respondents submit that had petitioner obtained any extension of the lease, this fact would have been referred to in the numerous pleadings and communications which have been exchanged between the parties. 1st respondents say that quite on the contrary, petitioner has consistently confirmed and acknowledged that his leasehold rights in the property was for the agreed single certain thirty (30) year period. Proof of this can be seen from the following official documents attached in bulk as Exhibit R/1.

> 13. Further to count 12 above, 1st respondents say that in any event, the question of title to and ownership of the property has already been settled by this very court based on a petition to remove cloud on title which was instituted by 1st respondents against the J. N. Lewis Estate in 1998. 1st respondents say that after pleadings were exchanged and a regular trial held on November 15, 2000, Judge Varnie Cooper entered final judgment in favor of 1st respondents and against the J. N. Lewis Estate. The final judgment confirmed and affirmed that 1st respondents have valid title to the property, the subject matter of the present action for declaratory judgment. 1st respondents say that Judge Cooper's final judgment put judicial finality to the question of the ownership of the property; the matter is now *res judicata* and it would be improper and irregular for this court to attempt to re-litigate the same question. Copy of the final judgment is attached hereto as 1st res-pondents' Exhibit R/4.

1st respondents submit that it is a basic and elementary principle of law that a judgment rendered by a court of competent jurisdiction on the merits is a bar to any future proceedings involving the same parties or their privies, on the same cause of action in the same or other court as long as the judgment has not been reversed, vacated or annulled. 50 C. J. S. *Judgment* § 598. Hence, the principle of *res judicata* bars petitioner from re-litigating the same issue of title which had

previously been passed upon and adjudicated on its merits by this court in the action to remove cloud over title to real property.

> 32. 1st respondents say neither of the returns filed by the two sets of administrators of the J. N. Lewis Estate to the petition to remove cloud on title contested nor questioned Rebecca Watts-Pierre Estate's title to the property. After a regular trial on November 15, 2000, a final judgment was rendered confirming title to the property in favour of the Rebecca Watts-Pierre Estate. See Exhibit R/3-copy of the final judgment in count 13 of these returns above. 1st respondents hereby reconfirm and incorporate counts 13, 14, 15, 16 & 17 of these returns that the matter having been adjudicated on the merits and a final judgment handed down, the principle of *res judicata* bars any further review, modification or reversal of same.
> 33. As to count 5 of the petition, 1st respondents say that the ruling by Judge Varnie D. Cooper to drop Samuel A. W. Freeman and Wisseh Munah as authorized representatives of the J. N. Lewis Estate was legal, proper and in keeping with the Supreme Court's opinion of July 21, 2000, which affirmed the final judgment of the Monthly & Probate Court for Montserrado County revoking Samuel A. W. Freeman and Wisseh Munah letters of administration. 1st respondents request Your Honour to take judicial notice of the aforesaid Supreme Court's opinion of July 21, 2000, attached in count 2 of 3rd respondent's motion to drop, as Exhibit M/4; count 13 of 3rd respondent's returns and count 3 of the 3rd respondent's motion to drop. 1st respondents say under the principle of law that judges of concurrent jurisdiction cannot review, modify, alter or reverse a colleague's prior ruling, Your Honour is therefore obligated by law to adhere to, confirm and fully implement Judge Cooper's ruling dropping Samuel A. W. Freeman and Munah Wisseh as administrator and administratrix of the J. N. Lewis Estate."

The 2nd respondent, the Intestate Estate of the late J. N. Lewis, represented by Samuel A. W. Freeman and Wisseh Munah, filed a seven-count returns in which they denied having knowledge of any motion to drop, but admitting that their letters of administration was revoked by the Supreme Court of Liberia, and claiming that this revocation does not affect the title of the J. N. Lewis Estate, who has a superior title.
The 3rd respondent, the Intestate Estate of the late J. N. Lewis, represented by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, filed a sixteen-count returns and a motion to drop the 2nd and 3rd respondent as misjoined party. For the benefit of this opinion we herewith quote counts 1, 3, 4, 5, 6, 10, and 13 of 3rd respondent's returns.

"1. 3rd respondent says it is simultaneously filing a motion requesting that the J. N. Lewis Estate be dropped as a respondent in these proceedings and also for Samuel A. W. Freeman and Munah Wisseh to be dropped because the latter do not represent the J. N. Lewis Estate. 3rd respondent hereby expressly adopts and incorporates the said motion to drop misjoined party as an inherent and integral part of these returns.

"3. As to count 2 of the petition, 3rd respondent says that the alleged agreement (Exhibit P/4 of the petition) was executed on December 5, 1996 by Samuel A. W. Freeman and Wisseh Munah. Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tecquah say that at the date the document was signed, the aforesaid Samuel A. W. Freeman and Wisseh Munah were without the legal authority to act for or represent the estate because they had previously been suspended by the Monthly & Probate Court for Montserrado County on December 2, 1996. The suspension was subsequently confirmed by a formal court order which was affirmed by the Supreme Court of

Liberia on July 21, 2000. Your Honour is requested to take judicial notice of Exhibits M/1, M/3 and M/4 attached to 3rd respondents' motion to drop.

"4. Further to count 3 above, 3rd respondent says Exhibit P/4 - document purporting to be a valid lease agreement-- was actually signed on December 5, 1996 by Samuel A. W. Freeman and Wisseh Munah on behalf of the J. N. Lewis Estate, as lessor, and Hafez Jawhary, as lessee, for the lease of one-half lot of **land** on Carey Street in the City of Monrovia, on which the Holiday Inn Hotel is erected, for the period March 1, 2003 - February 28, 2066. 3rd respondent says that although Samuel A. W. Freeman and Wisseh Munah claimed to be executing the document in their capacity as administrator and administratrix of the J. N. Lewis Estate, their actions were clearly illegal and null and void *ab initio* since they had previously been suspended by the Montserrado County Probate Court on December 2, 1996 - three (3) days prior to the execution of the document. The purported agreement therefore cannot and does not bind the Estate of the late J. N. Lewis or confer any rights on Hafez M. Jawhary.

"5. Still further to count 4 above, 3rd respondent says that when the purported lease agreement was presented to the Probate Court for Montserrado County for probation, 3rd respondent filed a caveat with the court, objecting to the probation of the agreement because of the lack of capacity of Samuel A. W. Freeman and Wisseh Munah to act on behalf of the estate. 3rd respondent says the agreement was not probated or registered and therefore confers no rights or benefits on the purported lessee. This is confirmed by the certificate from the clerk of the probate court, previously attached as Exhibit P/1.

"6. And further to count 5 above, 3rd respondent says that the agreement is therefore invalid, null and void *ab initio* and does not obligate the estate or confer any rights or benefits on the petitioner, Hafez M. Jawhary, since Samuel A. W. Freeman and Wisseh Munah had been suspended and were therefore not competent, qualified or authorized to act for, bind or represent the J. N. Lewis Estate.

"10. And 3rd respondent says that on September 29, 1995 when the document (Exhibit P/5 of the petition) was signed, Deborah Tequah and Joseph N. Lewis were not administrators of the J. N. Lewis Estate. 3rd respondent says it is a basic and elementary principle of law that only the act of an administrator who has been qualified is competent to bind an estate or can legally act for and represent said estate. 3rd respondent says that Deborah Tequah and Joseph Lewis, along with Patrick Lewis were first issued temporary letters of administration by the monthly and probate court only on December 17, 1996 as is confirmed by Exhibit M/2, attached to the motion to drop, which is hereby incorporated. And as previously stated, Koffa Benson has never been an administrator of the J. N. Lewis Estate. Therefore, the document attached to the petition for declaratory judgment as Exhibit P/5 is null and void and invalid.

"13. As to count 5 of the petition, 3rd respondent says that the ruling by Judge Varnie D. Cooper to drop Samuel A. W. Freeman and Wisseh Munah as authorized representa-tives of the J. N. Lewis Estate was legal, proper and in keeping with the Supreme Court's opinion of July 21, 2000, which affirmed the Monthly & Probate Court for Montserrado County ruling revoking Samuel A. W. Freeman's and Wisseh Munah's letters of administra-tion. 3rd respondent incorporates count 3 of the motion to drop and the attached Exhibit M/6---Judge Varnie D.

Cooper's ruling of August 31, 2000. And 3rd respondent says under the principle of law that judges of concurrent jurisdiction cannot review, modify, alter or reverse a colleague's prior ruling, Your Honour is therefore obligated by law to adhere to, confirm and fully implement Judge Cooper's ruling dropping Samuel A. W. Freeman and Wisseh Munah as administrator and administratrix of the J. N. Lewis Estate. This means that Samuel A. W. Freeman and Wisseh Munah should not be permitted to be parties to the declaratory judgment proceedings and represent the J. N. Lewis Estate."

A reply was filed and withdrawn by the petitioner, and an amended reply filed on February 21, 2003, containing 37 counts traversing the 1st respondents' returns, denying the allegations of the 1st respondents' returns, and praying the court to grant petitioner's petition; to dismiss the 1st respon-dents' returns with cost against 1st respondents and to grant unto the petitioner any and all further relief deemed legal, equitable and just.

The motion to drop 2nd and 3rd respondents as misjoined parties, filed by the 3rd respondent, represented by Deborah B. Tequah, Joseph N. Lewis and Patrick C. Lewis on January 3, 2003, contained a request to the court to drop as misjoined parties Samuel A. W. Freeman and Wisseh Munah, named as administrator and administratrix of the Intestate Estate of the late J. N. Lewis, on the theory that they cannot represent the J. N. Lewis Estate as administrator and administratrix of the said Estate, because they were suspended by the monthly and probate court in May 1996 from being administrator and administratrix. The motion also requested the court to drop the J. N. Lewis Estate as 3rd respondent in the petition for declaratory judgment on the theory that the 3rd respondent should not be a party to the declaratory judgment proceedings because the estate recognized and agreed a long time ago that whatever claims it may have had to the property had long since been time barred.

The 3rd respondent, in the motion to drop misjoined parties, further stated that the J. N. Lewis Estate had no right or interest in the said property as neither Rosetta Watts-Johnson's nor Rebecca Watts-Pierre's title to the property had been called into question by the J. N. Lewis Estate, and that no claim or proceeding had ever been filed by the J. N. Lewis Estate against the Rosetta Watts-Johnson's or Rebecca Watts-Pierre's Estate for the said property.

In ruling on the motion to drop misjoined parties on March 31, 2003, the court ordered that Samuel A.W. Freeman and Wisseh Munah, named as administrator and administratrix of the Intestate Estate of J. N. Lewis, be dropped, but that the J. N. Lewis Estate, represented by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, 3rd respondent, shall remain as party respondent in the declaratory judgment proceedings.

Both the movant and the petitioner excepted to the judge's ruling on the motion to drop misjoined parties, and reserved the right to take advantage of the statute.

The petitioner/appellant filed two (2) separate motions for jury trial on January 27, 2003, and February 13, 2003, respectively, stating *inter alia*, that there were issues of facts and allegations of fraud involved, which required the impartial determination of the case by a jury, and demanded a jury trial.

After pleadings rested, notice of assignment was issued on April 1, 2004, for the disposition of the law issues. When the parties appeared pursuant to the notice of assignment for the hearing of the disposition of the law issues, the petitioner made a submission to the court to dispose of the motion for jury trial before disposition of the law issues on the ground that under the law, practice and procedure, where a motion is pending, said motion should firstly be disposed of

before the law issues are heard and determined.
The 1st and 3rd respondents, in resisting that request, stated that a motion for trial by a jury is a special motion that can only be entertained after the court has passed on the law issues and ruled the matter to trial. They requested the court to deny the submission of the petitioner and proceed with the arguments on the law issues as per the notice of assignment.
In its ruling on the submission of the petitioner and the resistance to the request to defer the hearing on the disposition of the law issues until the hearing and determination of the motion for jury trial, the court acknowledged the constitu-tional right of a party to have a jury trial, but concluded that the law issues must first be disposed of, and, if the court determines that there are issues of facts to be tried, then the motion for jury trial can be heard. To this ruling, the petitioner/movant excepted.
The law issues were argued and the court reserved ruling. On April 8, 2004, His Honour Winston O. Henries rendered his ruling on the law issues, in which he denied the petition for declaratory judgment. Relevant portions of the judge's ruling are herewith quoted:

"We again reiterate that we therefore cannot grant that aspect of petitioner's petition for declaratory judgment and declare the two leases executed by the petitioner and the J. N. Lewis Estate to be valid and in full force and effect, because we will then in effect be setting aside and reversing the ruling of our colleague, Judge Varnie Cooper, who had previously determined that the title to the property was vested solely in the Rebecca Watts Pierre Estate. In the mind of the court, Judge Cooper's final judgment settled and brought finality to the question of title to and ownership of the property.

Another reason why we cannot declare petitioner's two lease agreements which the J. N. Lewis estate signed as lessor as valid and binding is because it is an elementary principle of property law that a lessor's right to execute a binding and enforceable lease agreement with a lessee is based on a lessor's legitimate and *bona fide* legal title to the demised premises. By the J. N. Lewis Estate's own admission and also by the November final judgment, a determination had been made that the J. N. Lewis Estate did not have legal title to the property. The lease agreement which they signed with the petitioners was obviously null and void *ab initio*, and could not and therefore did not confer any rights, privileges or benefits on the petitioner/lessee.

Finally, the court feels compelled to remark that during the oral arguments on the law issues, counsel for petitioner Hafez Jawhary called the court's attention to count 4 of petitioner's amended reply and argued that petitioner Jawhary had never "challenged, questioned or disputed" 1st respondents' title to the property. The obvious follow up question must be why then did the petitioner institute these proceedings against the 1st respondents? (Emphasis added)

After having reviewed the pleadings and having listened carefully to the oral arguments at the hearing disposing of the law issues, we do not believe the petitioner has presented sufficient and adequate factual and legal grounds to justify us exercising the discretion granted us by statute and granting the petitioner's petition for declaratory judgment.

WHEREFORE, and in view of the foregoing, and for the reasons stated herein, the petitioner's petition for declaratory judgment is hereby denied. Costs of these proceedings are ruled against the petitioner. AND IT IS HEREBY SO ORDERED."

The petitioner excepted to the judge's ruling on the law issues and announced an appeal to the Honourable Supreme Court. The J. N. Lewis Estate, as the 3rd respondent, repre-sented by Joseph N. Lewis, Patrick C. Lewis and Deborah B. Tequah, did not appeal. The Intestate Estate of the late J. N. Lewis, as 2nd respondents, represented by Samuel A. W. Freeman and Wesseh Munah, but who were dropped as representatives of the said estate, having been dropped as 2nd respondent, also did not appeal.
In its bill of exceptions, the petitioner/appellant alleged that the judge made several errors in his ruling on law issues. For the benefit of this opinion we herewith quote counts 1, 3, and 5 of the bill of exceptions.

"1. When on the 8th day of April, A. D. 2004, Your Honour denied petitioner's motion made on the record to hear petitioner's earlier motion for jury trial before hearing the law issues thereby in effect denying petitioner his right to jury trial which is inviolate under our constitution and statute."

"3. When Your Honour held that it was mandatory that the addendum to the lease agreement of 1973 should have been attached to appellant/petitioner's petition or reply despite the fact that the appellant gave notice as required by law he would produce same during trial."

"5. That Your Honour exceeded the limit of the discretion granted under chapter 43 of 1 LCLR in that you disallowed the appellant from presenting the addendum during trial, denied petitioner's right to jury trial, etc."
Although there were many issues raised by the parties, we consider that the relevant issues for determination of this appeal are:

1. Whether or not the trial judge erred in not disposing of the motion for jury trial before hearing and disposing of the law issues?
2. Whether or not it was mandatory for the petitioner to have attached to the pleadings the addendum of lease for which the petitioner had requested the court to declare valid?
3. Whether or not the judge abused his discretion when he dismissed the petition for declaratory judgment in his ruling on the law issues based on the pleadings filed?

We will dispose of the issues in the order stated above.
Regarding the first issue, i.e., whether or not the trial judge erred in not disposing of the motion for jury trial before hearing and disposing of the law issues, the records before us reveal that the petitioner filed two (2) separate motions for jury trial on January 27, 2003 and February 13, 2003, stating that there were issues of facts and allegations of fraud involved for the impartial determination of the case, and therefore demanded trial of the case by jury.
Notice of assignment was issued for disposition of law issues on April 1, 2004. When the parties appeared for the disposition of laws issues, the petitioner requested the court to dispose of the motion for jury trial before the disposition of law issues because, according to the petitioner, under the law, practice and procedure, where a motion is pending, said motion should be disposed of before the law issues are heard and determined.
The 1st and 3rd respondents, in resisting the said submis-sion, stated that a motion for trial by a jury is a special motion that should be heard and disposed of after the court has passed on the law issues and ruled the matter to trial.
The court, in its ruling on the request of the petitioner, acknowledged the constitutional right of a

party to have a jury trial but concluded that the law issues must first be disposed of and, if the court determines that there are issues of facts to be tried, then the motion for jury trial can be heard.

Did the judge err in refusing to hear and determine the motion for jury trial before the disposition of the law issues?

In its brief and argument before this Court in support of its contention that a motion for jury trial must first be heard and disposed of before the court can proceed to hear and dispose of the law issues in the main suit, the appellant relied on the case *Insurance Company of Africa v. Gipli*, 33 LLR 330, 334 (1985). The Court notes that there is no such case reported in 33 LLR 330, 334. In fact, the *Insurance Company of Africa v. Gipli* case is nowhere reported in 33 LLR, but rather in 32 LLR, and the relevant holding in that case is that: "A motion, being an application for an order granting relief incidental to the main relief sought in an action, must be entertained before the basic suit or issues raised in the action."

In its brief and argument before us on this point of law, the 1st respondents stated that the trial judge did not err and his ruling was proper, logical, and consistent with the practice and procedure in this jurisdiction that the court must first make a legal determination as to whether or not the matter should be ruled to trial, and if the court so determines, then it can hear the motion for a jury trial.

This Court says that the law relied on by appellant in the *Insurance Company of Africa* case is the law on motion in general and is not applicable to motion for jury trial. This Court determined in the case *Tradevco v. Cavalla Rubber Corporation*, 39 LLR 578, 583 (1999) "that an action has three (3) stages, the pre-trial, trial and post-trial. The pre-trial stage includes the commencement of the action and determination of pre-trial motions, which include summary judgment, motion to dismiss, motion to strike, disposition of law issues, etc."

We are of the view that a demand for jury trial is not a pre-trial motion and can be heard at any time before trial begins. Trial has been defined by this Court as the "presentation of oral or written evidence." *Id.*, at 583. The disposition of law issues is also part of the pre-trial stage of the proceedings and disposes of the legal issues raised and determines whether the factual issues should be tried.

When law issues are disposed off, the court determines the legal issues and may dismiss the action or rule it to trial of the facts either by the court or a jury. It is therefore logical that a motion for jury trial should be heard and disposed of after the court rules on the legal issues and rules that the issues of fact are to be tried. We are in agreement with the position of the 1st respondents that it would have been improper for the court to have heard the motion for jury trial prior to disposing of law issues, for to do so would have presupposed that the judge would rule the case to trial when ruling on the disposition of law issues. The granting of a petition for declaratory judgment is purely discretionary and the court may either dismiss a petition for declaratory judgment on law issues or rule it to trial. This Court held in the case *Liberia Trading & Development Bank (TRADEVCO) v. Mathies and Brasilia Travel Agency*, 39 LLR 272 (1999), syl.1, that: "Ordinarily, law issues are to be disposed of first, to be followed by the facts, and thereafter, a court is authorized to enter final judgment. However, in the case of a declaratory judgment proceeding, which usually considers issues of law, unless there is disputed fact, the necessity for trial of the fact does not exist, and the trial court may enter judgment at the time of disposing of the issues of law without taking evidence regarding the facts."

The judge, having exercised his discretion in dismissing the petition for declaratory judgment, as granted to him by Section 43.5 of the Civil Procedure Law, 1 LCLR 219, and the *Tradevco v. Brasilia Travel Agency* case, quoted above, the motion for jury trial became moot and the court did not in any way deny the petitioner of his right to a jury trial. Accor-dingly, this Court holds that the judge did not err in deferring the hearing of the motion for a jury trial after the disposition of law issues, since under the Civil Procedure Law the court is empowered to determine the sequence in which the issues in a case shall be tried.

The second issue for our consideration is whether or not it was mandatory for the petitioner to attach to the pleadings the addendum to the 1973 lease agreement which the petitioner requested the court to declare valid?

In count 1© of the petition for declaratory judgment filed by the petitioner, he alleged that while the lease agreement between Rosetta Watts Johnson and the petitioner was still in full force and effect, the parties executed an addendum thereto for an additional twenty-year term to commence at the end of the first thirty-year term, which was in 2003. The petitioner gave notice that he would produce the addendum during the trial.

The 1st respondents/co-appellees Rosetta Watts Johnson Intestate Estate and Rebecca Watts-Pierre Intestate Estate, in their returns at count 8, specifically denied the existence of any such addendum and challenged the appellant to produce said addendum. From January 3, 2003, when the petition was filed, up to April 8, 2004, when the law issues were disposed of, the petitioner still had not produced the addendum which he had requested the court, as a matter of law, to declare valid and of full force and effect.

The 1st respondents also alleged that in a petition for certiorari, dated April 24, 2001, which was submitted to the Supreme Court and argued by the petitioner's counsel during the March, A. D. 2001 Term of Court, the petitioner con-firmed that the petitioner leased the subject premises for thirty (30) years. Count 9(d) of the 1st respondents' returns also referred to count 2 of a second petition for certiorari, dated January 2, 2002, filed by the petitioner's counsel on behalf of the petitioner, growing out of a proceedings in the debt court for Montserrado County and instituted by the 1st respondents against the petitioner, wherein the petitioner confirmed that the totality of the period of the lease was for thirty (30) years, commencing in 1973 and expiring on February 28, 2003, without mentioning any addendum.

The petitioner, in his amended reply, denied, amongst other things, that he ever acknowledged in any pleading that his leasehold right was limited only to the thirty-year period as alleged by the 1st respondents.

The 1st respondents, in their brief and argument before this Court, contended that the petitioner/appellant was required, as a matter of law and practice, to annex the said addendum which he requested the court to declare, as a matter of law, valid, legal, binding and in full force and effect, in order to comply with the "notice requirement" to afford the respon-dents the opportunity to review and attack the document.

The appellant/petitioner, in his brief and argument before this Court, stated that giving notice to produce the document at the trial was sufficient and therefore it was not mandatory to annex the document (i.e., the addendum to the 1973 lease agreement) to the pleadings.

In disposing of this issue, the trial court held that in order for the court to be able to pass on the validity of the addendum to the lease agreement, the addendum should have been annexed to the pleadings as all documents necessary to the proper determination of the case are to be attached with the pleadings. The trial court relied on this Court's holding in *Walker v. Morris*, 15 LLR

422, 430 (1963). The trial court also relied on the holding in the case *Cess- Pelham v. Pelham*, [1934] LRSC 6; 4 LLR 54, 55 (1954), to the effect "that whenever a complaint is filed in which the plaintiff claims title to real property, a copy of the document upon which title is based should be filed therewith."
Other relevant portions of the trial court's ruling which we concur with and incorporate as part of this opinion are, as follows:

"The court notes that the petitioner is vague about the specifics of this addendum. For example, he does not specify in what year the addendum was signed, only that it was signed sometime within the 30-year period (1973- 2003) of the original lease; he does not say whether the lessor, Rosetta Watts-Johnson, prior to her death in 1979 or her grantee, Rebecca Watts Pierre, prior to her death in 1990, executed the addendum, or whether the adden-dum was subsequently executed by the administrators of the Rebecca Watts-Pierre Estate; nor does he specify the amount of the annual rental to be paid over the 20-year period of the addendum.

It is important to emphasize that in their returns, the 1st respondents emphatically and categorically denied the existence of any addendum and challenged the petitioner to produce it. Given the 1st respondents' specific denial, and the lack of specificity of the details of the addendum, the court is of the strong opinion that the document should have been attached as an exhibit to the pleadings. This would have made all these questions moot.

And the court notes that the petitioner had ample opportunity to have annexed the addendum, either by withdrawing and filing an amended petition and attaching the document as an exhibit, or alternatively, attaching it as an exhibit to his reply. Although the petitioner withdrew its reply and filed an amended reply to the 1st respondents' returns, the alleged addendum was still not attached.

We are of the opinion that the petitioner should have annexed the addendum to his pleading, thereby providing the 1st respondents with the required legal notice and an opportunity of attacking the document if it so desired. In the case *Garnett Heirs et al. v. Allison*, 37 LLR 611 (1992), syl. 8, the Supreme Court held as follows: "It is the rule of modem practice that when a pleading is founded on a written instrument, a copy thereof may be annexed and made a part of the pleading by reference as an exhibit." The requirement that notice be given an adversary is one of the most basic and an elementary principle of law in this jurisdiction and our Supreme Court has enunciated this principle in numerous opinions.

In *Karout v. Peal*, [1979] LRSC 42; 28 LLR 254, 259 (l979), the Supreme Court held that: "The fundamental principles upon which all complaints, answers or replies, shall be construed, shall be that of giving notice to the other of all facts which it is intended to prove...."

Any claim or defense which a party relies upon to substantiate his cause of action or his defense is material, and should be specifically pleaded so as to give the opposing party notice of what the adversary intends to prove. *Intrusco v. Tulay and Dennis*, [1984] LRSC 11; 32 LLR 36 (1984), syl. 3.

This Court is at a loss to see how we can be expected to make a definitive declaration of law that the addendum is valid and binding on the 1st respondents when we have not seen or reviewed this document. In *Nyumah v. Kemokai*, 34 LLR 230, 231 (1986), our Supreme Court ruled that: "Any matter not laid down in the written pleadings of a case cannot be expected to receive the legal consideration of the court, and courts of justice will only decide questions of law when properly raised in the answer and pleadings."
In view of the above, we uphold the trial court's ruling that it was mandatory for the petitioner to annex to the petition for declaratory judgment the addendum to the 1973 lease agree-ment, which the petitioner had requested the court to declare valid and of full force and effect as a matter of law, in order to give the required notice to the adversaries, the respondents, for them to review and challenge the document if they so desired. Over the years, this fundamental principle of notice has been relied upon by the courts of this country and continues to be so under existing law. And we so hold.

The third and final issue that this Court will review and pass on is whether or not the trial judge erred or abused his discretion when he dismissed the petition for declaratory judgment in his ruling on the law issues, based on the pleadings filed?
The petitioner in these declaratory judgment proceedings requested the court to declare several agreements to be in full force and effect. Those documents were:

(a) The lease agreement and an alleged addendum to the lease agreement between Rosetta Watts Johnson and petitioner (we note that the said addendum was never attached to any of the pleadings filed by the petitioner);

(b) The lease agreement entered into by and between the Intestate Estate of the late J. N. Lewis for sixty-three (63) years from 2003 to 2066, signed by Samuel A. W. Freeman and Wisseh Munah, administrator and administratrix;

© The lease agreement entered into for sixty-three (63) years entered into by and between the Intestate Estate of the late J. N. Lewis, represented by its administrators, E. Koffa Benson, Joseph N. Lewis and Deborah Tequah, and the petitioner.
It is very important to state here that the three (3) lease agreements that petitioner requested the lower court to declare valid and in full force and effect cover the same 1/8 acre of **land** that the petitioner is occupying. Two of the named parties/lessors represent the Intestate Estate of J. N. Lewis, and the third party/lessor is the Rosetta Watts-Johnson Estate, from whom the petitioner originally took possession of the premises. We also note that petitioner has paid rent to the third party/lessor for the last thirty (30) years, that is, from 1973 when he entered into a lease agreement with the late Rosetta Watts-Johnson to the present.

This Court held in the case *Liberia Trading and Development Bank (TRADEVCO) v. Mathies and Brasilia Travel Agency*, 39 LLR 272, 282 (1999), relying on the provisions of Section 43.5 of the Civil Procedure Law: "That the legal standard in a declaratory judgment should not be entered if, it will not terminate the controversy in dispute." Also, Section 43.5, of the Civil Procedure Law, Rev. Code 1, I LCLR, 219 states clearly that: "The court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding."

If the trial court had declared the rights requested by the petitioner, one wonders whether any declaration of validity by the court that three lease agreements running for concurrent tenancy covering the same property, and from three different lessors, would have terminated the dispute, especially where one of the agreements that petitioner requested the court to declare valid was never produced.
The other two agreements are agreements signed by the petitioner and two (2) sets of administrators for the J. N. Lewis Estate. One set of the administrators for the J. N. Lewis Estate had been dropped from the declaratory judgment proceedings because the court had determined that they had no legal authority to represent the estate.
The 3rd respondent, the J. N. Lewis Estate, represented by its legally recognized representatives, in its brief and argument before this Court, stated that the Estate had made representation in the lower court that the lease agreement which Deborah Tequah, Joseph N. Lewis and Koffa Benson signed with the appellant on September 29, 1995 to take effect in 2003 for 63 years, was null and void *ab initio* and of no effect because at the time of the signing of the agreement, none of them were qualified or competent to act for or represent the J. N. Lewis Estate. This decision was confirmed by this Court in an opinion delivered on July 22, 1997.

The 3rd respondent, in its brief and argument before us, informed this Court that when its legal representatives filed a motion to drop the J. N. Lewis Estate from the petition for declaratory judgment in the lower court, the J. N. Lewis Estate informed the lower court and also re-confirmed its contention before this Court, that the J. N. Lewis Estate had no claim or interest to the subject property for which the petitioner was requesting the court to declare said agreement illegally entered into valid.
Mr. Justice Morris speaking for the Court in the *Tradevco v. Mathies and Brasilia Travel Agency* case, quoted *supra*, stated "ordinarily law issues are to be disposed of first, to be followed by trial of the facts and thereafter a court is legally authorized to enter final judgment. However, in the instant case, the situation is different because this is a declaratory judgment proceeding, which usually considers issues of law, unless there is disputed fact, the necessities for trial of the facts do not exist, and the trial court may enter judgment at the time of disposing of the issues of law without taking evidence regarding the facts."
We are of the view that there was no material or genuine factual issue in dispute warranting the production of evidence in determining the issue of title to the demised premises, and in declaring the rights of the petitioner in the three separate agreements. Had the judge granted the petition for declaratory judgment as requested, he would have had to declare the three (3) separate lease agreements signed by three (3) parties for the same property valid and in full force and effect, which would have meant the following:

(a) Acknowledging that each of the three (3) parties had title to the same property;

(b) Acknowledging two (2) sets of administrators for the one J. N. Lewis Estate;

© Declaring an unavailable addendum to a lease agreement valid;

(d) Reversing the decision of the Supreme Court confirming the final judgment of the probate court revoking the letters of administration previously issued to the 2nd respondents to serve as administrators of the J. N. Lewis Estate;

(e) Ignoring the admission made on the records by the J. N. Lewis Estate, represented by the legitimate administrators (3rd respondents) that they have no interest in the demised premises and acknowledging that the 1st respondents, the Intestate Estates of Rosetta Watts-Johnson and Rebecca Watts-Pierre, were the legitimate and bona-fide owners of the property, the subject of these proceedings.

The trial judge, in his sound discretion, denied the petition for declaratory judgment, for to do otherwise clearly would not have terminated the controversy which is the objective of declaratory judgment. Rather, such decision would have made three separate parties legitimate owners of a single property, and thereby fail to terminate the controversy in dispute.

This opinion does not cover the issue of the validity or non validity of the addendum to the lease agreements allegedly existing between the parties, but merely affirms and confirms the judgment of the trial court, which denied the petition for declaratory judgment.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the trial court be affirmed and confirmed with costs against the petitioner. The Clerk of this Court is hereby ordered to send a mandate to the lower court ordering the judge presiding therein to resume jurisdiction over this matter and enforce its judgment. And it is hereby so ordered.

Judgment affirmed.

Ginger et al v Bai et al [1969] LRSC 38; 19 LLR 372 (1969) (13 June 1969)

MOSES GINGER, SAMMANI, a Bassa man CATHERINE NELSON MAY-SON, and all those who are claiming tenancy and/or occupancy under the defendants, Appellants, v. SANDO BAI, one of the two sons of the late MOMO BAI (BOI) and FARMAH, the two Brothers of OLD COFFEE FARM area, CALDWELL, for himself and representing his sisters, their nephews and nieces, HOWAH BAI, ZINNA BAI, MAIMA KAIZOLU, by and through her husband, LANSANNAH KAIZOLU, ZOE MIATTA BAI, and ISARTA BAI, daughter of the late MOMO BAI, all of CALDWELL, Appellees.
APPEAL FROM THE CIRCUIT
COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Date of argument not shown. Decided June 13, 1969. 1. In an action of ejectment the jury's verdict must sufficiently describe the land awarded so that a writ of possession can be issued based upon the description.
2. The plaintiff in an action of ejectment must furnish clear and convincing proof of his title and may not, in any event, rely upon the weakness of defendant's title. 3. When a charge has been raised by one of the parties of jury tampering, the trial court should suspend all other proceedings to properly investigate this serious allegation.

After an initial trial ending in a verdict for defendants

and reversal by the Supreme Court of the judgment therein, the action in ejectment was tried a second time, the jury's verdict favoring plaintiffs. The defendants appealed from the judgment entered against them. At the trial, the evidence presented by plaintiffs as to the property claimed by them, appeared vague and uncertain, their surveyor admitting to the state of confusion as evidenced by various deeds and descriptions and the uncertainty raised thereby. In the motion brought for a new trial, the defendants also charged jury tampering. The
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and the case remanded with instructions to the lower court for its proper treatment therein. for appellants.
Nete Sie

MacDonald M. Perry Brownell for appellees.

MR. court.

JUSTICE
MITCHELL

delivered the opinion of the

The plaintiffs filed an action of ejectment in the Circuit Court, Sixth Judicial Circuit, Montserrado County, in the June 1963 Term. They averred that they were the owners in fee simple and entitled to possession of a parcel of property, lot no. 7, consisting of thirty acres of land, which they had purchased from the Republic of Liberia and subsequent grantors, of which the defendants were adversely, wrongfully and unlawfully occupying and withholding approximately five acres. As a result, they claimed damages of about $1,000.00. The defendants denied the allegations, and claimed they were lawfully in possession of the disputed land. At the first trial a verdict was returned by the jury for the defendants, and an appeal was taken from the judgment. At the March 1967 Term of this Court, this appeal was heard and the case remanded for certain irregularities which took place during the trial below. The case has been tried again in the lower court and is now before us· for a second time on a bill of exceptions consisting of four counts, brought by the defendants on appeal, charging variance of proof from the facts complained of, and various irregularities at the trial. When Oscar Gray, who did the surveying, was on the witness stand, he made the following statement: "May I further state that in my statement, I want the court to further understand that we were given four

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deeds covering 40 acres of land, but during the confusion between the two parties concerned, we handled three deeds
covering 3o acres of land, but, approximately, Moses Ginger et al. are now occupying four acres of land out of the 40-acre block
and three acres out of the 3o-acre block." Plaintiffs' suit claimed that defendants were occupying five acres of their thirty-acre
tract of land, and Oscar Gray, the surveyor, should have been their principal witness. A forty-acre tract was not involved in the
case at all. The testimony of this witness showed that the defendants occupied only three acres of the thirty acres in question and four acres of the forty-acre
tract. The survey about which he testified had not been completed when confusion engulfed the parties. This testimony obviously occasioned
a variance between the complaint of the plaintiffs and their evidence offered in support. No other witness for the plaintiffs testified
to the particular five-acre tract of land which they claimed the defendants unlawfully withheld. The jury, after deliberating, returned
a verdict in the case which read : "We, the jurors, to whom the case in ejectment, Sando Bai, plaintiff, versus Catherine Nelson
Mayson, defendant, was submitted, after a careful consideration of the evidence adduced at the trial of said case, do unanimously
agree that the plaintiff is entitled to his land in the action of ejectment." This verdict results in complete uncertainty as to
the land the jury claimed the plaintiffs were to be possessed of, the 4 acres of the 40 acres, the 3 acres of the 3o-acre tract,
or the 5 acres claimed by the plaintiffs in their complaint. It was, therefore, error when the trial judge dismissed the motion for
a new trial and rendered judgment in favor of the plaintiffs. It goes without saying that the jury was charged with the responsibility
in its verdict to describe the land to which . the plaintiffs were entitled. When the evidence

was not
conclusive on this point and the verdict of the jury remiss in any description of its award, judgment rendered thereon is liable
to reversal, because such judgment could include land beyond the power of the jury to award. In fact, the court's ruling made on
the motion for a new trial is not sufficiently clear, because the moment the issue of tampering was raised by the defendants, the
court should have immediately investigated this all-important allegation to ascertain the truthfulness or falsity of the charge made,
suspendig its judgment on all other issues. In Duncan v. Perry, 13 L.L.R. sio (196o), this Court said that a plaintiff in an ejectment
action must rely upon proof of title in himself, and cannot prevail merely by reason of defects in the defendant's title, being required
to furnish clear and convincing proof of title. The verdict must show what was awarded, and must not be so uncertain that a writ
of possession cannot be issued upon it. In the case before us, the verdict is ambiguous and does not indicate on its face what property
the plaintiffs were entitled to. Hence, no judgment affirming the verdict could legally describe the property of which a party was
to be possessed. Therefore, the judgment is reversed and the case remanded, the issues of law to be resolved before trial by jury

properly instructed in the law governing ejectment, costs to abide the final determination of the case. And the clerk of this Court is hereby ordered to send a mandate to the court below informing it of this opinion. And it is hereby so ordered. Reversed and remanded.

Yarkpawolo et al v Robertson [1969] LRSC 18; 19 LLR 226 (1969) (7 February 1969)

JOE YARKPAWOLO and his wife, and RACHEL JOHNSON-MASSAQUOI, DANLETTE JOHNSON-TUCKER, CATHERINE JOHNSONWHISNATN, R. H. WRIGHT-BREWER, RAE BREWER-WILES, by and through her husband, LOUIS A. WILES, GABRIEL EL PHILIPS, VICTORIA JOHNSON-CURRIE, by and through her husband, HAROLD CURRIE, and CHARLES R. JOHNSON, heirs of G. M. JOHNSON and F. E. R. JOHNSON, deceased, Appellants, v. JOHN Y. ROBERTSON and GENEVA JOHNSON-DUFF, by and through her husband, ADOLF DUFF, Appellees. APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 4, 1968. Decided February 7, 1969. 1. A sale or conveyance of jointly held property may be made by the act of all of the co-tenants joining in such conveyance or ratifying, but one joint tenant acting alone cannot convey a portion of jointly owned property. 2. In ejectment, the plaintiff must recover upon proof of title, whose strength must be evidenced by a continuous and consistent chain. 3. In ejectment, the plantiff must show a legal and not merely an equitable title to the property in dispute, and mere showing of heritable blood does not sufficiently establish a legal title.

An action of ejectment was brought by plaintiffs, who purchased the property from one of the heirs to an undivided estate, of which the land sold was a part. They sought to evict a prior purchaser who had paid the sale price in escrow, for the same parcel from the same grantor, pending division of the property among the heirs consenting to the transaction. The other heirs intervened. A jury verdict was returned for the plaintiffs, which was affirmed by the court. An appeal was taken from the judgment. Judgment reversed.

J. Dossen

Richards and Philip J. L. Brumskine for appellants. The Simpson law firm, by G. P. CongerThompson and Samuel Perry Baker for appellees.

MR. JUSTICE ROBERTS delivered the opinion of the court. John Y. Robertson brought an action of ejectment against Joe Yarkpawolo and his wife, to evict them from a piece of property located in Monrovia, and situated in the area known as "Buzzie Quarter." Before

the disposition of the issues of law involved, when pleadings had progressed to the surrejoinder, upon motion filed March 13, 1967, and granted by the court, intervenorsappellants entered the case. Pleadings advanced as far as the surrebutter, and on February 13, 1968, the issues of law having been resolved, the case was ruled to trial, and the jury returned a verdict in favor of the plaintiff on February 2 1, 1968. Defendants filed a motion for a new trial on the ground that the verdict was against the weight of evidence which was denied. Subsequently, defendants appealed from the final judgment. The case arose from the following facts. F. E. R. Johnson, of Monrovia, died seized of real property situated in Monrovia, Buzzie Quarters, consisting of a sevenacre lot, which after his death descended to his two sons, F. E. R. Johnson and G. M. Johnson. They died seized of the property without having provided properly for its disposition, though they had sought to partition it before their deaths. Despite this, Mrs. Geneva Johnson Duff, the oldest heir of F. E. R. Johnson, unilaterally and without the assent of the other heirs, bargained, sold and conveyed to John Y. Robertson, plaintiff in the ejectment suit, a half-lot portion of the undivided and unallotted sevenacre lot of land situated in Buzzie Quarters. In passing, we would like to mention that the instrument of convey-

ance was put into evidence and forms part of the record certified to us. This document, as other warranty deeds, contained an authority-to-convey clause : "That at and until the ensealing of these presents, I/we was (were) lawfully seized in fee simple of the aforesaid granted premises, that they are free from encumbrances; that I/we have good right to sell and convey to the said John Y. Robertson, his/her/their heirs and assigns forever, as aforesaid ; and that I/we, will and my heirs, executors and administrators and assigns shall warrant and defend the same to the said John Y. Robertson, his/her/their heirs and assigns forever against the lawful claims and demands of all persons." The record also disclosed that eight months prior to the sale, September 7, 1965, from Mrs. Duff to John Y. Robertson, Joe Yarkpawolo also dealt with Mrs. Duff for the purchase of a lot which included the same piece of property, subsequently sold to Robertson, upon which Yarkpawolo had settled prior to paying $750 to her on December 22, 1964. This was strongly denied when she took the witness stand and these questions were propounded to her : "Q. In your testimony you said that defendant Yarkpawolo was to buy this property from you for $75 0.00, but up to the time you sold it to the plaintiff you have not seen that money, even though Mr. Emmett Harmon had advanced it to Mr. Yarkpawolo. Is it not a fact that when Mr. Yarkpawolo came to know that the property you were selling him was joint property of the Johnson estate, and that you alone had no right to single-handedly dispose of any portion of that property, he declined to purchase the **land from you? "A. Defendant Yarkpawolo approached me for the purchase of a piece of land** to which I con-

sented, but afterwards, considering that houses were built thereon, I told him I could not sell him the property. As a matter of fact, the amount is with Mr. Brewer. "Q. I suggest that you are making a mistake, your memory is failing you. What caused you to change your mind and sell the property to the plaintiff was the fact that Yarkpawolo, the defendant, having come to know that the property did not belong to you alone, but to the Johnson estate, you could not sell it, and he therefore gave the money to Mrs. Rachel Massaquoi and other members of the family in your presence to be held until such time that the property could have been partitioned, and each know his or her share. Is it not what happened? "A. I could not sell the **land because houses were on the land**. "Q. If what you say is true that you could not sell him that particular lot because houses were built on it, did you offer to sell him another lot on which there were no houses? [Objection: On the ground irrelevancy; the Court: objections sustained. To which defendant excepted.] "Q. We appreciate that you are not very well and that your memory could deceive you; but I therefore jog your memory by asking you, did you not on December 2, 1964, receive $750.00 from Yarkpawolo, the defendant, with the understanding that you would sell him one lot when the property is partitioned? "A. No, I did not receive the money from Yarkpawolo. The young man was working with Mr. Emmett Harmon, and Brewer told Mr. Harmon not to pay me the money. "Q. And so, do you tell this court and jury you did not, on December 22, 1964, sign a note of hand

in favor of Mr. Joe Yarkpawolo, your signature to which receipt was witnessed by two persons? "A. Yes. I made out a paper, and after discovering what I did, I told him that I could not sell him the property; but I did not receive one cent of the money." We find it difficult to give honor to this testimony due to the following note of hand : "For and in consideration of the amount of $75o.00, I, Geneva Johnson-Duff, of the City of Monrovia, Montserrado County, Republic of Liberia, one of the heirs of the late F. E. R. Johnson, do, for myself, my heirs, assigns and administrators, promise to issue a deed for one lot of **land** belonging to the Johnsons' heirs located at the Buzzie Quarters, to Mr. Joe Yarkpawolo, as soon as it is surveyed and my share assigned to me. "Done in Monrovia, Liberia, this 22nd day of December, 1964. "[Sgd.] GENEVA JOHNSON DUFF. "Witnesses : "[Sgd.] JOSEPH W. HOWARD "[Sgd.] DANIEL BOYMAH." The record further shows that Joe Yarkpawolo, having learned of the joint ownership, and apprehensive of purchase without warranty, approached the other heirs. A family conference was held and a mutual understanding was reached to accommodate Mr. Yarkpawolo, in that an amount of $937.00 was paid through Mr. Herbert Brewer, this amount to be held pending the partitioning of the property according to the receipt marked exhibit This amount was paid on August 13, 1965 ; still, Mrs. Duff, who participated

in the family conference and endorsed its conclusions, sold the half-lot on September 7, 1965 to Robertson. Thus, we have attempted to give a summary of the sur-

rounding circumstances of the case. Though there are other issues of interest, we prefer to limit our determination to the following: ( ) Did Mrs. Duff have legal authority to sell? (2) Is appellee Robertson vested with title to justify an ejectment suit? The entire case is centered around these two issues which were raised by appellants throughout their pleadings, during the trial, and strenuously argued before us. This is a piece of property jointly owned by the heirs of the late F. E. R. Johnson and G. M. Johnson, in which they all share equally. As mentioned earlier in this opinion, no division of the property has been effected so as to sever this joint ownership, giving to each of the heirs individual title in fee simple which would authorize conveyance to third parties. Did Mrs. Duff hold a fee simple? "A title in fee or fee simple is a full and absolute estate, beyond and outside of which there is no other interest or right; a title to the whole of the thing absolutely; it is an indefeasible title or estate, in which is blended the right of possession and the right of property." 31 C.J.S., Estates, § 8. During the trial, Mrs. Duff admitted that the property was not partitioned when, during direct examination, she said : "I have been asking the family over and over again to divide the property and give me my share or every place where the property is jointly owned, and they have refused to. So I sold half a lot to Mr. Robertson. "I am asking this court to please have the Buzzie Quarters surveyed and my portion turned over to me." This is evidence given by Mrs. Duff herself which substantiates appellants' contention that the property was not apportioned, hence there was no title to convey. The division which is made between several persons of lands is either voluntary or compulsory. Voluntary divi-

sion is that made by the owners by mutual consent. It is effected by mutual conveyances or releases to each person of the share which he is to hold executed by the owners. A compulsory partition is that which takes place without regard to the wishes of one or more of the owners. If it appeared to Mrs. Duff that the other heirs were reluctant to partition the property, she could have proceeded through the second means of partitioning. But strangely, Mrs. Duff bases her authority to sell on the unchallenged and uncontested acts of her sister, Victoria, and brother, Charles, which she testified to : "My sister, Victoria, was the first person to sell the land in Buzzie Quarters and no one said anything to her, so I sold the half-lot to the plaintiff with the understanding that when the property is partitioned, this will be deducted from my share." On direct examination she also said : "I was not the first person who sold land to other people out of the family. My sister,

Victoria, was the first person to sell land in Buzzie Quarters. They have not bothered her, it is I whom they have come to bother.
When it comes to the Johnsons' joint property, my late father was the oldest; his brother, Gabriel Johnson, was the next. Mr. Brewer
is the end to the property, his mother was the youngest. When it comes to the division of the property I am the oldest and my father
was the oldest. Mr. Brewer employed his surveyors whom he wants to survey the land in Buzzie Quarters. He ordered Mr. Scotland, the
surveyor, to go to Buzzie Quarters and survey the lots that my sister, Victoria, had sold to the Buzzie people. Issued deeds to them. I told the surveyors that
I defy him to put his foot on the Johnsons' property." To further expose the illegal acts of her sister and brother, she elected
to put into evidence copies of two warranty deeds, marked by court exhibits "A" and "B," issued by Charles R. Johnson and Victoria
Johnson Bal-

thazara. The doctrine of stare decisis, which is to "abide by former precedents" could
not easily be confused with the acts of her brother and sister, since their doings have not been brought into litigation, and a judicial
decision of approbation given. "A sale or conveyance of joint property before severance may be made by the act of all of the co-tenants
joining therein; but one joint tenant acting alone cannot sell or convey the joint property so as to bind his co-tenants or divest
them of the interest therein unless they have previously authorized or subsequently ratified such sale or conveyance, and in the
absence of such authorization or ratification, a contract of sale is not binding on a joint tenant who does not sign it. . . ." Appellees
stressed that the intervenors gave their consents to the sale of the property in question. Even though there is no direct showing
that the heirs, the intervenors, gave approval, would such a consent as referred to by appellees legalize the transaction? "A sale
or conveyance of joint property may be made by the act of all of the co-tenants joining therein; but one joint tenant acting alone
cannot sell nor convey joint property." Coming to the second issue, if Mrs. Duff lacked a title to convey, would anyone acquiring
property from her be vested with legal title? Mrs. Duff had no title to the property; therefore, she could not convey to any person
or persons. This court has held in Cooper-King v. Scott, [1963] LRSC 38; 15 L.L.R. 390 (1963), that a plaintiff in ejectment must recover upon proof of title, which must be evidenced by a continuous and consistent chain,
and he must recover unaided by any defects or mistakes of the defendant. Proof of the plaintiff's title must be beyond question,
and not presumed, but must be established. In this case, appellee Robertson is without this chain of

title, nor has his grantor the right to convey to him. Appellee Duff seems to rely on her inheritance to be obtained. As to this,

the Court has held that in ejectment the plaintiff must show a legal and not merely an equitable title to the property in dispute.
Horace v. Harris, [1947] LRSC 14; 9 L.L.R. 372 (1947) Also see Cooper v. Cooper Scott, ii L.L.R. 7 (1951) where the Court said, in an action of ejectment, the mere showing of heritable
blood does not sufficiently establish title, and title must be proved for the party to prevail. Because of the foregoing, we find
ourselves compelled to reverse the judgment of the lower court, and the clerk of this Court is hereby ordered to send a mandate to
that court and the judge, informing him of this judgment. And it is hereby so ordered.
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Reversed.

Lib. Trading Corp. v Cole [1970] LRSC 50; 20 LLR 100 (1970) (11 June 1970)

LIBERIA TRADING CORPORATION, represented by H. TAVERNA, manager, and the widow and heirs of S. DAVID COLEMAN, represented by Ettal Coleman and Othello Coleman, Appellants, v. SAMUEL B. COLE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 10, 12, 17, 18, and 19, 1970. Decided June 11, 1970. 1. In an action of ejectment, the plaintiff
may ask for damages sustained by him by reason of the wrongful detention, as well as recovery of the land, and the jury in such a
case can return a verdict inclusive of monetary damages it finds the plaintiff has sustained. 2. The amount of monetary damages found
by a jury need bear no relation to the degree of misconduct of the defendant giving rise to such damages. 3. The failure of a party
to object to the award set forth in a copy of an arbitration award served upon such party, within the time allowed by statute for
objections, is tantamount to conceding the correctness thereof.

Appellee brought an action of ejectment, in which he sought not only possession of the land in dispute but monetary damages, occasioned by the loss of a prospective lease agreement resulting from
the occupancy of the land by appellants. A board of arbitration was appointed and rendered its first report to which appellants objected. After a second report was submitted, no objections were made to it by appellants until several weeks had gone by and after the award, found for the plaintiff, had been confirmed by the trial judge. The case, based primarily on the second report, was given to the
jury and it returned a verdict for the plaintiff, finding him the legal owner and awarding a substantial amount to him for the damages
sustained. An appeal was taken by the defendants from the judgment of the court. Judgment affirmed. Morgan, Grimes and Harmon for
appellants. uel B. Cole, appellee, pro se.
100

Sam-

delivered the opinion of

the Court. An action was instituted by Samuel B. Cole, the appellee, against the Liberia Trading Corporation in 1961, claiming that the said L.T.C. had encroached upon two lots purchased from C. C. Burke. He produced an undated deed issued to him by C. C. Burke, dated 1950, for two lots in the same area as the Coleman's deed. This deed was probated in 1952. Upon an appeal to the Supreme Court growing out of the circuit court's denial of the Coleman heirs' application to intervene as partydefendants, the case was remanded, with instructions that the Coleman heirs be joined. In keeping with the opinion of the Supreme Court, the plaintiff instituted an action of ejectment against L.T.C., and the widow and heirs of S. David Coleman. The defendants in their answer contended that even though plaintiff and defendants purchased their land from the same grantor, the defendants have an older deed than that of the plaintiff. Because of this, application was made to the court by both parties that the dispute be submitted to a board of arbitrators, composed of surveyors, to ascertain whether the metes and bounds of both deeds call for the same parcel of land. The board was set up and in the presence of both parties the two parcels of land were surveyed. The first report submitted by the board was objected to by defendants on the grounds that the report was meaningless and inconclusive as to the points in controversy, and they prayed that the report be resubmitted for a more definite and intelligible result. Since there was no resistance to this application, the report was returned to the board for clarification. When the board submitted the second and final report there was no objection made to it, and the report was made a part of the record in the case. A jury was selected and the case was tried. We, note

that during the trial of the case defendants approached plaintiff in an effort to compromise the issues, though it appears that no understanding could be reached. The second report of the arbitrators was not objected to for several weeks by the defendants, the trial judge having characterized the correctness of the report as the sole issue. Prior to being submitted as evidence before the jury at the trial of the case after the arbitrators had testified that the report was signed by them, it was confirmed, as required by statute. Failure on the part of the defendants to file' objections within the statutory time constituted a waiver and was tantamount to the admission of the correctness of the survey. The final judgment was rendered on August 23, 1967, in favor of plaintiff, to which judgment defendants noted exceptions and announced an appeal to this Court, which was granted. Defendants submitted a bill of exceptions containing twenty-three counts;

count eleven reads : "And also because there being not the slightest evidence to prove that plaintiff suffered or sustained damages to the extent of $12,000., the jury arbitrarily awarded said damages which the court confirmed, to which defendants then and there excepted." In his complaint seeking recovery of the land at issue, the plaintiff alleged injury to him and prayed for damages. Our Civil Procedure Law at the time of the bringing of the proceeding, provided for damages to the plaintiff in ejectment suits. "Ordinarily no damages shall be granted in an action of ejectment. However, a plaintiff may ask for damages for the wrongful detention of his land in his complaint in an action of ejectment, and the question of damages shall thereupon be decided along with the question of rightful possession ; provided, however, that the plaintiff is never entitled to damages when his

complaint is based on a forfeiture of the land for nonpayment of rent." 1956 Code, 6:1126. The evidence in this case shows that there was an agreement between the plaintiff and a prospective lessee to lease the two lots in dispute for a period of twenty years, at an annual rental of $1,000. Factories and residential quarters to the value of several thousand dollars were to be erected, but the agreement could not be concluded because of the alleged unlawful possession of the premises by the defendants. The plaintiff's evidence was not rebutted or impeached. A jury may award damages in the amount of the loss sustained by the plaintiff without regard to the degree of misconduct of which the defendant is found guilty. King v. Williams, 2 LLR 219 (1916). The damages found in amount of $12,000.00 was included in the verdict and was confirmed by the trial judge in his final judgment. The verdict and judgment thereon were entirely proper, and count eleven of the bill of exceptions is therefore not sustained. As to confirmation of arbitration awards and objections to them, our statutes are clear. "A copy of an arbitration award shall be served on the parties to the arbitration, who shall have not less than four days to file written objections to the award. The objections may be based on any one or more of the following grounds only : corruption of the arbitrators ; gross partiality; want of notice of the time or place of the proceeding; or error of law apparent on the face of the award. Written objections except errors of law shall be verified by affidavit." Civil Procedure Law, 1956 Code, 6:1283. "If at the end of four days after service of a copy of the award on each party no exceptions or objections have been filed or objections thereto have been overruled,

it shall be confirmed. Whenever an award is confirmed, judgment may be entered thereon at any time." Civil Procedure Law, 1956 Code, 6:1285. Appellants having failed to pursue their rights in filing objections to the award of the arbitrators within the time allowed by law, the inaction was tantamount to

conceding the correctness of the award. Therefore, in view of the foregoing, it is our considered opinion that the judgment of the trial court should not be disturbed, wherefore it is hereby affirmed with costs against defendants-appellants. And it is hereby so ordered. ilffirmed,

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Cooper v K & H Co. [1978] LRSC 35; 27 LLR 187 (1978) (30 June 1978)

ISAAC COOPER, on behalf of himself and the Dagboe People, Appellants, **v.** K. & H**.** CONSTRUCTION COMPANY, et al., Appellees.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,

MONTSERRADO COUNTY.

Argued May 10,1978. Decided June 30, 1978.

1. A court should not render a declaratory judgment where such judgment if rendered would not terminate the controversy giving rise to the proceeding. Rev. Code 1:43.5.
2. A judge must pass upon all issues of law raised in the pleadings before proceeding to trial.

This was an action of ejectment in which plaintiffs' claim to the **land** rested, at least in part, on adverse possession. Persons claiming to be the landlords of the defendants in the ejectment action were allowed to intervene. Defendants filed a motion to dismiss which was denied.

Defendants and intervenors then filed a motion for a declaratory judgment in which the court ruled that plaintiffs could not rely upon adverse possession to have the defendants and intervenors evicted from the premises. The plaintiffs appealed from that holding, contending that the denial of the motion to dismiss and ruling on the motion for a declaratory judgment were contradictory as to plaintiffs' rights as adverse possessors. The Supreme Court found several questions of law outstanding which should have been resolved by the Circuit Court before it rendered the declaratory judgment, and it therefore *remanded* the case for *a new trial.*

Toye C. Barnard and *Moses Yangbe* for appellants. *Samuel Payne Cooper* and *Lawrence A. Morgan* for appellees and intervenors.

MRS. JUSTICE BROOKS-RANDOLPH delivered the opinion of the Court.
On 'July 31, 1976, one Isaac Cooper on behalf of him
self and the Dagboe People of Zinnah Hill, Paynesward,
instituted an action of ejectment against the K. & H.

Construction Company and Mensah Morgan Construction and Industrial Corporation, in which the plaintiffs set forth that they are owners and entitled to the possession of a parcel of **land** consisting of 88.61 acres. The complaint states as follows: "Plaintiffs in the above entitled cause complain of the defendants in manner following, to wit:
"1. That plaintiffs are owners and entitled to the possession of the parcel of **land** commonly known as Zinnah Hill, consisting of 88.61 acres of **land**, as will be more fully seen from a copy of a map hereto attached as well as the description thereof and marked Exhibit 'A' to form a part of this complaint.
"2. Plaintiffs further complain that since their occupation of the herein above described premises, they have been paying their real estate taxes up to the present. Plaintiffs hereby give notice that at the trial they will produce the receipts covering the taxes paid to Government for the property in support of this complaint. "3. That the said plaintiffs and their ancestors have occupied the herein described premises since the year 1904, which occupation has been notorious, continuous and overt, without any molestation or hindrance, or adverse claim whatsoever. "4. And also because plaintiffs further say that during the period in which they have exercised possessory rights over the herein described premises, they have made marked improvements thereon, which improvements include agricultural developments and other infrastructural developments, to which facts

plaintiffs hereby give notice that at the trial they will

produce evidence to prove.

"5. Plaintiffs further complain that the herein named defendants without any color of right and without the permission of the plaintiffs have illegally and wrongfully entered upon the herein described premises and commenced carrying on excavations, crushing of rocks and other marketable products in violation of the rights of the plaintiffs. Whereupon the said plaintiffs informed the said defendants that they are owners of the property which they are operating upon but the defendants have failed to pay any heed to plaintiffs' notice and warning, as will more fully appear from copies of letters addressed to the defendants dated November 22, 1975, hereto attached and marked Exhibits 'B' and 'C' respectively to form a part of this complaint.

"6. Plaintiffs further say that as the result of the illegal and wrongful occupation of the aforesaid premises by the defendants, plaintiffs have sustained injury and damage for the loss of the use of said premises.
"Wherefore, and in view of the foregoing, plaintiffs demand judgment against the defendants, evicting and ejecting them from the said property of the plaintiffs, and that plaintiffs be awarded adequate and ample damages to compensate the plaintiffs for the unlawful detention of their property by the defendants." Defendants having appeared filed an answer in which they raised several issues, salient among which are:
(1) That defendants are tenants of Ellen Mars-Melton, and others who should have been joined;
(2) that the property was in fact that of the Mars who held title deeds to said property. To the answer plaintiffs filed a reply in which they stated that it was uncertain whether the property had descended from Alexander Mars, Sr., or Alexander Mars, Jr., although defendant's Exhibit "A" is

a certified copy of a warranty deed from Alexander B. Mars, Sr., to Alexander B. Mars, Jr.; that defendants should have shown who was Alexander B. Mars' grantor; that the descriptions of the intervenors' deed are different from the descriptions of plaintiffs' property and that plaintiffs' property which they acquired and occupied since 1904 is not the property of defendants and defendants' grantors; and that the property, the subject of the action, is not owned and was never owned by the late A. B. Mars because it was public domain and owned by the Republic of Liberia at the time when they occupied the same in 1904 and by virtue of which they had become owners of the property under the statute of limitations. Defendants subsequently filed a motion to dismiss.

Meanwhile, Ellen Mars-Melton, Caroline Mars-Wright, and Catherine Mars-Freeman voluntarily appeared and filed a motion to intervene and answer to the effect that:

"1. Because intervenors submit that they legally own the property, Lot No. 3 upon which defendants operate and occupy as lessees of intervenors, by virtue of, inheritance as sole and legal heirs of the late A. B. Mars, Jr., which property came to them by descent as will appear from copy of a warranty deed from A. B. Mars, Sr., to A. B. Mars, Jr., hereto attached and marked Exhibit 'A.'

"2. And also because intervenors submit that, by virtue of said ownership by them of the said property as mentioned above, they entered into lease agreements with defendants for portions of said property which they (defendants) occupy and upon which they are operating, respectively, as lessees, which agreements were duly probated and registered according to law without any objection whatsoever from plaintiffs, as will also appear from copies of said lease agreements hereto attached and marked Exhibits 'B' and `C' respectively, to form a part of this intervenors' answer.

"3. And also because intervenors submit that they, intervenors, being lessors of defendants as aforesaid who are the rightful owners of the said property, plaintiffs should have joined the said Ellen Mars-Melton and the others, heirs and owners aforesaid as co-defendants, especially so since plaintiffs made proffer of letters addressed to the respective managers of defendants and furnished carbon copies of same to Mrs. Ellen Mars-Melton, one of the heirs and owners of the said property, thereby recognizing and accepting her and the others as rightful owners of the property in question as parties. Plaintiffs having failed under the law to so join these parties, the rightful owners of the said property, in their complaint, renders the said complaint a fit subject for dismissal, for which intervenors so pray.

"4. And also because intervenors submit that plaintiffs have failed to show any legal title in the subject real property, which showing could render them legally possessed of and entitled to possession of the property, subject of these proceedings; further, the fact that plaintiffs' parents or forebears lived on the property from 1904 does not vest legal title to said property in the said parents. Plaintiffs' contention therefore that they are entitled to the. Property in question because they have lived there on since 1904 is legally insufficient and cannot sustain an action of ejectment against intervenors whose occupancy and possession of said property is predicated upon a valid title deed. The action of ejectment as filed by plaintiffs should therefore be dismissed and intervenors so pray.

"5. And also because intervenors further submit that plaintiffs have failed to make proffer of any paper title whatsoever with complaint vesting title in them or any person or persons under whom they claim, a condition indispensable and precedent to the eviction of the defendants in

possession of property on the paper title adverse to plaintiffs and against whom plaintiffs have brought suit. Intervenors submit that in actions of ejectment, the plaintiffs must make proffer of their paper title along with their complaint. Intervenors strongly contend further that the exhibition of a mere description of a certain piece of property as plaintiffs have done does not constitute a paper title. For this fatal legal blunder intervenors pray dismissal of the action with costs against plaintiffs.

"6. And also because intervenors say that it was the late A. B. Mars, the benefactor of Ellen Mars-Melton, et al., who, many years ago, brought a paramour of his along with her family (parents and some relatives) from the Dai Tribal Section in the hinterland and permitted them to live on the parcel of **land** in question, because of the proximity of the **land** to his home and the absence of transportation facilities to the Dai Tribal Section in the interior of Suehn. It was from that time that these people have continued to inhabit the premises as tenants of the Mars', and not as having exercised possessory right over or ownership to the said property, the subject of these proceedings, hence they are estopped from challenging the intervenors or their tenants' ownership and right of possession of the property. And these intervenors are ready to prove.

"7. And also because intervenors submit that plaintiffs desiring to bring suit against the K. & H. Construction Company and the Corporation of Mensah Morgan Construction and Industrial Corporation, may do so only by bringing such action by and through the General Managers, .. for which fatal legal blunder intervenors pray that the entire action should be dismissed. See also assignment of lease, Exhibit 'D.'

"8. And also because intervenors submit that plaintiffs are in full knowledge of the fact that intervenors are the rightful owners of the property on which defendants are operating and that the said plaintiffs were in possession of this knowledge at the time of the institution of this suit, because plaintiffs

and intervenors had prior to the institution of this suit appeared before an investigating commission set up by the President of Liberia to look into plaintiffs' claim of title to the property in question and as a result of said investigation and, in recognition of

intervenors' deed to the property, the President of

Liberia ruled that defendants continue to pay rents

for the premises to the intervenors. Copy of the

President's letter to this effect is being hereto attached

and marked Exhibit 'E.'

"9. And also because intervenors further submit that the allegations that plaintiffs have been paying taxes on the **land** occupied by intervenors is false and untrue. Intervenors give notice that they will show that the estate of the late A. B. Mars has been and is still paying the taxes on the **land** from year to year in keeping with the deed for said property. And intervenors also give notice that they will have the proper authorities appear in court to bring the records to prove this allegation.

"10. And also because intervenors deny all and singular the allegations of law and facts set out and contained in plaintiffs' complaint not specifically traversed in this intervenors' answer.

"Wherefore, and in view of the foregoing, intervenors pray that the action be dismissed and plaintiffs ruled to pay all cost in these proceedings." In attempting to support their action of ejectment,
plaintiffs/appellants in the court below proffered a map of the 88.61 block acres of **land** which they claim to own by adverse possession, admitting in Count 6 of their reply to the intervenors' answer that they do not own a paper title or deed to the property in question but that their forebears occupied it as public domain and that the Mars never possessed said property.
The case was called at the December 1976 Term of the Civil Law Court, Montserrado County, at which time the motion to intervene filed by Ellen Mars-Melton, Caroline Mars-Wright, and Catherine Mars-Freeman was entertained and granted, thus joining the parties in the case. The court also at that time entertained the motion to dismiss and the resistance, and after arguments denied the same.
Defendants and intervenors thereafter filed a motion for a declaratory judgment on which the court ruled that the plaintiffs may set forth in their pleadings and legally rely upon adverse possession or the statute of limitations to have the defendants and intervenors evicted from the premises, the object of the proceedings. To this ruling, the plaintiffs/appellants excepted and announced an appeal to this Court on a bill of exceptions containing four counts.
Count I of the bill of exceptions indicated that the trial judge rendered contradictory and confusing ruling with respect to the motion of the intervenors to dismiss the complaint which he denied, and on the declaratory judgment which he upheld, for on the motion to dismiss the complaint the judge ruled that a title by adverse possession within the statutory limitation will support ejectment, but in his ruling on the application for a declaratory judgment, he ruled conversely to the effect that the plaintiffs may not rely on adverse possession to evict the defendants and intervenors in these proceedings.
A series of issues of law and facts have been raised in the pleadings, but the trial judge did not dispose of all of the pertinent issues of law before he gave a declaratory judgment in the matter. On sheet 8 of the 9th day's session, Thursday, December 3o, 1976, the plaintiffs in resisting the motion for a declaratory judgment raised the issue that the ruling or decision on the motion to dismiss the complaint constituted *res judicata.* In his ruling, however, the trial judge failed to pass upon this legal issue.
The Civil Procedure Law, under the power of courts to render declaratory judgments, provides that "courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary." Rev. Code: 43.1.
If the law governing declaratory judgments must have such a binding effect, it means that in order to arrive at its decision in the matter, the court must of necessity consider and pass upon the legal issues involved; for it is only then that a trial judge would be in the position to give a ruling that would have full effect and conform with the provision of the statute mentioned above. There is a long list of cases which establishes the principle that precedent to further acts of a judge in determining a matter is the requirement by the laws of this Republic that the issues of law in the pleadings must first be passed upon. *Johns v. Johns, [1952] LRSC 29; 11* LLR 312, 315 (1952) ; *Porte v. Porte*, [1947] LRSC 7; 9 LLR 279, 283 (1947).
This Court does not question the rights of the defendants and intervenors to apply for a

declaratory judgment, for the statute plainly provides that this process is available to the parties in an action, but considers that in
order to bring finality in a matter which a declaratory judgment is designed to attain, the trial judge must have examined carefully and disposed of the legal issues raised in the pleadings in order that the rights of all the parties concerned may be protected, for under the caption "Declaratory Judgment to Terminate Controversy," the Civil Procedure Law states that "the court may refuse to render or entertain a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding." Rev. Code 1. : 43.5.

Plaintiffs/appellants have raised the question of contradictory rulings by the trial judge in the court below on the legal issue of basing an action of ejectment on what is purported to be a title by adverse possession. This Court does not wish to believe that the trial judge has not comprehended the legal principles regarding actions of ejectment, or title by adverse possession, or that rulings on issues of law are either in the affirmative or negative and can in no wise be both. Various legal issues were raised in the pleadings that the trial judge should have passed upon if the declaratory judgment is to be finality in the matter.

In light of the above, some of the issues which should have claimed the trial judge's consideration are: (a) did the ruling on the motion constitute *res judicata* in the matter? (b) Did the plaintiffs in fact have a legal title by adverse possession, and if so, could that title prevail against the intervenors' deed or paper title to the **land**? *Minor v. Pearson*, **2** LLR 82 (1.912) ; *Reeves v. Hyder*, LLR 271 (1895). (c) Against whom is the plaintiff legally claiming adverse possession since they claim that the **land** was public domain when their ancestors settled on it; have they title by adverse possession to enter an action of ejectment against defendants or intervenors?

(d) What is the status of a paper title as against the proffer of a map with assertions of overt and notorious?

occupation of the property and its development? (e) Are plaintiffs in fact squatters on the property in question, and if so what legal effect would this have upon the issue of title by adverse possession? (f) Should intervenors be required to have proffered a deed without any break in the chain of title in the action, of ejectment against them?

In view of the foregoing, the case is remanded for a new trial to dispose first of the legal issues involved. In remanding the case for a new trial, the Clerk of this Court is ordered to send a mandate to the court below ordering it to assume jurisdiction over this matter and give it precedence over all other matters on the lower court's docket with costs to abide final determination. And it is hereby so ordered.

Reversed and remanded.

Richardson v Gibbidon [1965] LRSC 13; 16 LLR 286 (1965) (26 January 1965)

NATHANIEL R. RICHARDSON, Petitioner, v. EDWIN J. GABBIDON, by his Attorney in Fact, SAMUEL B. GABBIDON, Respondent.
APPLICATION FOR

INTERPRETATION AND CONSTRUCTION OF JUDGMENT.

Argued November 26, 1964. Decided January 15, 1965. An application to the Supreme Court
for interpretation and construction of one · of its judgments is not authorized by the Constitution or laws of Liberia or by the
rules of the Supreme Court and such an application will be denied.

Petitioner filed an "application for an interpretation and construction" of a judgment previously rendered by the Supreme Court in Richardson v. Gabbidon, is L.L.R. 434 (1963). The Supreme Court refused
to entertain the application and ordered it denied.
Richard A. Diggs, Momolu S. Cooper and A. Gargar Richardson for petitioner.
Henries
Law Firm (Joseph A. Dennis of counsel) for respondent.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court. On the 21st day
of October, 1959, Edwin J. Gabbidon by his attorney in fact, Samuel B. Gabbidon, filed a petition for cancellation of false administrator's deeds and relief against fraud against Nathaniel R. Richardson, respondent, in the Equity Division of the Circuit Court of the Sixth
Judicial Circuit, Montserrado County. Pleadings in the case rested and His Honor, Joseph P. Findley, presiding by assignment over
the September, 196o term of the Civil Law Court, heard the law issues and on the 6th day of September, 1960, gave a ruling on the
pleadings determining the issues to be proved at the trial.

Later, His Honor, John A. Dennis, presiding
over the October 1961 term of the aforesaid Civil Law Court, called the case, heard the facts and rendered a decree thereon on the
8th day of February, 1961. From this final decree in which petitioner's bill of complaint was sustained, respondent Richardson appealed
his cause before the Supreme Court for further adjudication and thus the case travelled to this forum for a review. This Court, sitting
in its March term, 1963, assigned for hearing, called and heard the case and on the loth day of May, 1963, delivered a majority opinion
from the bench, affirming the final decree of the lower court in Richardson v. Gabbidon, [1963] LRSC 44; 15 L.L.R. 434 (1963) . The judgment on this majority opinion was with mandate dispatched accordingly for enforcement by the lower court and was
in time obeyed according to returns made. · Quite six calendar months thereafter, Nathaniel R. Richardson petitioner, petitioned
this Court on an application entitled : "Application to Court for an Interpretation and Construction of Its Judgment of May 1o, 1963,
Growing out of the case : Nathaniel R. Richardson, appellant, versus Edwin J. Gabbidon, by and through his attorney in fact, Samuel
B. Gabbidon, Appellee. Bill in equity for cancellation of false administrator's deeds and relief against fraud." Herein, we quote

said application in its body, word for word : "And now comes Nathaniel R. Richardson, appellant in the above-entitled cause in which final judgment was rendered by this Honorable Court on the loth day of May, 1963 at the March term of Court and respectfully prays Your Honors for a construction and interpretation of the aforesaid judgment and assigns the following reasons for said request, to wit : "1. That on the first day of May, 1947, the executors of Toussaint L. Richardson, grandfather of appellee, Edwin J. Gabbidon, in consideration of the sum of

seven hundred and fifty dollars ($750.00) then due your petitioner, that is to say, the amount of two hundred and fifty-dollars ($250.00) which testator owed him during his lifetime, and the amount of five hundred dollars ($500.00), to which appellant as one of the aforesaid executors was entitled to, as his 5% commission as such executor, the estate at the time not having liquid cash to pay unto appellant in satisfaction of said claims against the estate, conveyed unto appellant twenty-five (25) acres of land of the following description : Ist Division: "Commencing from the southwest corner of the adjoining lot Number i in division of the aforesaid estate and owned by David Dean; thence bearing south 37 degrees, west io chains ; thence bearing south 54 degrees, east 23.50 chains ; thence bearing north 36 degrees, east io chains. Thence bearing north 36 degrees, west 23.60 chains, to the place of commencement and containing an area of 23.5o acres of land. 2nd Division: "Commencing from the southwest corner of the adjoining Lot Number 4, owned by Mr. I. K. Essel in the subdivision of the aforesaid estate, thence bearing south 54 degrees, east 2% chains; thence bearing north 36 degrees, east 6 chains ; thence bearing north 54 degrees, west 2% chains to the place of commencement, containing an area of 1.50 acres of land, **making a grand total of 25 acres of land** and no more. "And will more fully appear from said executor's deed, copy whereof is herewith filed as Exhibit A and forms a cogent part of this submission. "2. That although the opinion and judgment of this Honorable Court handed down on the aforesaid tenth day of May, 1963, in no way relates to and includes the above property, nevertheless appellee Gabbidon has been from the date of the rendition of the afore-

said judgment and is still harassing and molesting appellant's grantees, from some of whom he has already succeeded in obtaining large sums of money as repurchase price of the portions of said land which appellant sold them, by means of summary ejectment and otherwise, under the pretext that, by virtue of the aforesaid judgment of this Honorable Court hereinabove referred to, the appellee is also entitled to the possession of the 25 acres of land conveyed to the appellant by the executors of T. L. Richardson aforesaid since 1947, long before the execution of the administrator's deeds (the subject matters of the cancellation

suit) in settlement of petitioner's claims against the estate of the testator, Toussaint L. Richardson, although the said opinion and judgment only expressly referred to : "1. Administrator's deed from James L. Richardson, administrator of the intestate estate of John T. Richardson, to Nathaniel R. Richardson, dated May io, 1956, for ioo acres of land situated in Sinkor, Monrovia, on the Mesurado River; "2. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May 1o, 1956, for so acres of land situated on the Mesurado River; "3. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson dated May io, 1956, for 15 acres of land situated on the Mesurado River; "4. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson dated May 1o, 1956, for 3o acres of land situated on the Mesurado River;

"5. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson dated May io, 1956, for 5 acres of land; **and The parcel of land** involved in the ejectment case of J. N. Togba, M. V. Privilegi and Nathaniel R: Richardson, appellants versus Joshua Edwin Gabbidon, Appellee, filed in this Court on appeal during the October term, 196o, which case, the opinion states, related to and includes a portion of the identical property for the deeds ordered cancelled by this opinion and judgment. " (For reliance see copy of executor's deed from Samuel B. Gabbidon and Nathaniel R. Richardson, probated May 8, 1947, and registered in Volume 59, page 283; and pages 6-12 of said judgment.) "In view of the above-stated facts and with a view to removing all doubts and misunderstandings as to the effects and intended meaning of the opinion and judgment handed down by this Honorable Court on the Toth day of May, 1963, your humble petitioner has deemed it proper to pray your Honors for an interpretation and construction of the aforesaid judgment and for such other and further relief in the premises as unto this Honorable Court shall seem proper, just and equitable." The respondent through his counsel filed a very extensive and elaborate resistance; but out of sound judgment it does not appear necessary to make the same a part of this opinion. At the hearing on the foregoing application, this Court expressed a particular desire to have counsel representing the petitioner justify their motives and intentions in reference to some authority of law, whether statutory or constitutional, which gives precedence to so strange, peculiar, oblique and clandestine an attempt to introduce such an unfounded procedure into our practice; and the

more the Court sought to have them justify same under some principle of law, the more they evaded a responsive

answer. In all of our search of legal textbooks, embracing theories as well as practice and procedure, our minds have been left with no other conclusion except that this attempt to introduce such an unprincipled procedure into our aged practice is from no other motive than to bring the dignity of this Honorable Court into public criticism and disrepute. This Court is, under the statute laws of Liberia, authorized to exercise appellate jurisdiction over all matters on appeal from courts of record. The Constitution, which is the framework of our laws, in positive and unambiguous terms enumerates the matters in which this Court shall have or exercise original jurisdiction. (See Constitution of Liberia, Article IV, Section 2.) The application in point, the subject of this opinion, is neither one over which this Court is empowered to exercise original jurisdiction, nor is it a case that has come on appeal from any of the courts of award within the Republic. Notwithstanding this is glaringly known by counsel of this Honorable Court, they have presented their application and seek to have this Court render an opinion and judgment in review of a subject matter that is res judicata by interpreting the law that has already been interpreted by this Court. Such procedure is altogether vague and unfounded in law and practice. When the cancellation suit in equity which is now res judicata was adjudicated by His Honor, John A. Dennis, then assigned judge presiding, in his final decree among other counts he said, and I quote for the benefit of this opinion: "Another link in the chain of evidence is that one of the blocks willed to the petitioner by the late Toussaint L. Richardson, the grandfather of the petitioner, as denied by the respondent in his answer and petitioner, was by said will made a residuary legate. "Whether or not courts of equity can afford relief

in this case has already been passed upon. Courts of equity exercise very broad and far-reaching jurisdiction in the protection of legatees in fraudulent convenances by providing cancellation proceedings. "A resume of the evidence is that the executors of the testate estate of the late Toussaint L. Richardson, of which respondent was one, conveyed real property to themselves. It is contrary to law for administrators or executors to convey to themselves any of the real property of the estate they administered." The final decree was the subject of the then appeal; and it was this very final decree that was reviewed by this Court at its March, 1963 term, and confirmed in the majority opinion delivered by Mr. Chief Justice Wilson in this wise: "The judgment of the court below is hereby confirmed with the amendments stated, supra." Richardson v. Gabbidon, is L.L.R. 434, 444 (1963). Still, regardless of the judgment then rendered being enforced and the subject matter no longer the concern of this Court, having been disposed of for a period longer than one calendar year and more than six months before the filing of the application, counsel whom the law considers to be arms of the Court have screened themselves under pretentious veils and appeared before this bar to argue a cause that has no precedent in our judicial system, nor supported by any law, under the pretext of seeking a right and avoiding drawn-out litigation. The rules

of this Court make it permissible for any party against whom a judgment has been rendered by this Court to file a petition for reargument if it appears that some palpable mistake was made as an oversight of some important principle of law or fact; and in that case the party petitioning may benefit if the ground is conceded, but not otherwise, and we will quote the said rule hereunder : "For good cause shown to the Court by petitioner,

a reargument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact or point of law." "A petition for rehearing shall be presented within three days after the filing of the opinion, unless in cases of special leave granted by the Court." "The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice concurring in the judgment shall order it." R. Sup. Ct. VIII (3), 13 L.L.R. 701-702. If counsel for petitioner had adopted that course, their application would have precedent; but the course which they elected to pursue is one that is very strange and would make a dishonorable inroad into our judicial system which this Court enjoys no authority under the law to permit. By this act of counsel for the petitioner, they rendered themselves reprehensible and liable to answer in contempt proceedings; however because it is the first act, the Court strikes this strong note of warning to them and all other members of the bar of this Court against recurrence thereof in any form, shape or fashion; otherwise, we shall be obliged to do that which is right and just to be done in and about the premises and according to the gravamen which the case presents. The application is therefore dishonorably denied with costs against the petitioner. And it is hereby so ordered.
Application denied.

Acolatse v Dennis [1973] LRSC 45; 22 LLR 147 (1973) (8 May 1973)

MacDONALD C. ACOLATSE, Appellant, v. SAMUEL FORD DENNIS, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 17, 1973. Decided June 8, 1973. 1. An agreement with an attorney for his compensation out of the recovery he sues for is not champertous. 2. Though an attorney may violate Rule 10 of the Code of Moral and Professional Ethics, by the acquisition of an interest in the subject matter of litigation, his suit for compensation is not thereby rendered dismissible.
3. A rule of court has the full force and effect of law, unless it conflicts with a statute. 4. A party will not be allowed to maintain a position inconsistent with the position under which it has accepted benefits. 5. Though a document may require a revenue stamp,

it is error for a trial court to rule it inadmissible without allowing forty-eight hours for the party to rectify the omission.

Appellant and appellees entered into an agreement for appellant to institute an action in their behalf for cancellation of a quit-claim deed to zoo acres of land. In consideration for his legal services he was to receive fifty acres of the total acreage sued for, instead of payment in money. The cancellation suit was successfully prosecuted through appeal. Appellees apparently refused appellant's request for the fifty acres and claimed they had paid a retainer and the expenses which appellant was to have defrayed. However, they also recognized their obligation, but maintained they were not yet in possession of the zoo acres and the matter was still in litigation.
The appellant began an action for specific performance of the agreement. At the trial the appellant sought to introduce in evidence the agreement itself and two supporting documents. The trial court refused to admit them, on the ground they did not have revenue stamps affixed as required. Since these documents were vital to plaintiff's case, a motion to dismiss the action was granted at the
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conclusion of the presentation of his evidence. An appeal was taken from the judgment of the court.
In argument before the Supreme Court, the appellees raised other defenses, as well. They maintained the agreement was champertous and that appellant had violated the Code of Moral and Professional Ethics, in that contrary to Rule io he had sought to acquire an interest in the subject matter of the litigation he was conducting. The Supreme Court was of the opinion that champerty was not involved since the agreement amounted to an accord upon a contingent fee, but that the agreement did violate Rule io. However, such violation does not contemplate the dismissal of an action for the attorney's fee. As to the lower court's dismissal of plaintiff's complaint, the Supreme Court was of the opinion that the agreement should have had a revenue stamp affixed, but the lower court ought to have allowed plaintiff forty-eight hours to correct the omission before barring receipt of the document in evidence. On that basis the judgment was reversed. However, since the property was still in litigation and the appellees could not deliver what was not yet theirs to deliver, and to avoid a multiplicity of suits, the Supreme Court ordered the parties to arrive at a fair fee payable in money, all rights of appellant being reserved to him in event of failure to so agree. Appellant, pro se. Joseph Williamson and Samuel E. H. Pelham for appellees. MR. JUSTICE AZANGO delivered the opinion of the Court. Appellant alleges he agreed to institute an action for cancellation of a deed and as compensation for his legal services received from appellees a promise in writing that they would convey to him fifty acres of land out of the 200 acres which were the subject of the suit he started and

concluded successfully, from trial through appeal. Appellant instituted this action for specific performance of the "statement of understanding," as the agreement for compensation was entitled. The appellees contend that appellant was paid a retainer and, moreover, they were not in possession of the 200 acres of land. They also claim appellant violated the agreement by not defraying all expenses entailed by the suit he brought in their behalf. Pleadings were rested after the reply, the issues of law were disposed of, and the case ruled to trial on March 20, 1972, after which the trial was held, resulting in dismissal of plaintiff's action after he had testified and unsuccessfully tried to have the statement of understanding and other accompanying documents admitted in evidence. Exceptions were noted and an appeal was announced and perfected. This case is, therefore, before us for review on a bill of exceptions containing two counts.

The appellant, in substance, contends that the documents offered in evidence should not have been barred for lack of revenue stamps, and he reiterates the exception taken to the court's ruling. When the case was called before us, appellant maintained his position taken in the bill of exceptions. Appellees' counsel contended that under the law of champerty, appellant could not recover under the circumstances. In order to resolve these issues we shall proceed to examine the ruling of the trial judge on the application to dismiss the proceedings, pursuant to the Civil Procedure Law, Rev. Code i :26.2, as well as the law governing champerty and decide whether or not Rule fo of our Code of Moral and Professional Ethics, which is set forth following, is applicable in the instant case.

"No lawyer should acquire interest in the subject matter of a litigation which he is conducting, either by purchase or otherwise, which said interest he did not have or own prior to the institution of the suit." In substance appellees are contending that champerty

is the unlawful maintenance of a suit in consideration of some bargain to have a part of the thing in dispute or some profit out of it in case of the successful conclusion of the suit, which a champertor undertakes to carry on at his own expense and which is against our Code of Ethics. In this consideration, we wish to mention that by the great weight of modern authority contingent fees charged for professional services dependent on the amount of recovery are not within the rules against champerty. An agreement by an attorney for compensation out of the recovery is not champertous, since, in contributing his services he does nothing unlawful, being a part of his professional duty, and contracting for a part of the thing recovered is not in itself illegal. 5 R.C.L. 276-278. Appellees' counsel's contention that appellant has violated the terms of the statement of understanding which he seeks to enforce by not defraying expenses as agreed, by demanding and accepting $260.00 therefor, indicates that inasmuch

as he did not defray the expenses he could not be held guilty of champerty. On the other hand, appellant is merely seeking to enforce a contract voluntarily made by the parties. And a contract made between an attorney and client allowing the former a contingent interest in the subject matter as compensation for his professional services is valid and not champertous unless unfair advantage is taken of the client because of the confidential relationship existing in such cases. Where the contract is champertous, as it is not in this case, it has been ruled that the client may recover in an action against the attorney for money he received. Let us now turn to Rule io of the Code of Ethics upon which appellees rely. The enforcement of a rule of court is incumbent upon this Court. Unless it conflicts with a statute, a rule has the full force and effect of law and will always be so treated. Howard v. Dunbar, [1961] LRSC 31; 14 LLR 515 (1961). It

was, therefore, improper for the appellant, as a lawyer, to have sought to acquire interest in the property which was the subject of the lawsuit he started for his clients. The record of this case discloses that the statement of understanding is dated May 22, 1968, and according to the record of the trial court, appellant had no interest in the property which was the subject matter of the suit he instituted prior to the commencement of the suit. From the foregoing, it would seem that appellant has violated Rule to of the Code of Ethics. However, there is no authority for supposing that the penalty for violating this provision of the Code of Ethics should be the dismissal of the suit instituted by him. Appellees have not denied that they bound themselves by contract to convey fifty acres of land to appellant. Appellees have alleged that the contract was immoral and fraudulent without producing evidence to prove the existence thereof. Moreover, can they repudiate their own act in a transaction from which they have accepted benefit? Appellant successfully conducted the suit for cancellation of a quit-claim deed from the lower court to the Supreme Court. It appears to us that it would be unconscionable to permit appellees to maintain a position inconsistent with the one they have acquiesced in and accepted benefit from. Further, even though appellant appears to have violated the Code of Ethics as aforesaid, it seems to us that appellees are bound to compensate appellant with some equitable remuneration for his valuable service rendered. It is, moreover, equitable that he should be well rewarded, otherwise there will be no incentive for lawyers to put forth their best efforts in discharging the duties which they owe to their clients. The question now is whether or not the statement of understanding should be enforced and the fifty acres of land promised by appellees ordered conveyed to appellant. We are unwilling to order the conveyance, though

appellees have stated that they are prepared to do so when they come

into possession of the land. But the land is still a subject of litigation in ejectment proceedings before the Circuit Court, and they cannot give that which is not yet theirs. They have yet to come into possession of the zoo acres of land. We hold that to enforce the statement of understanding in its present form or context will eventually be lending aid to a multiplicity of suits which will also prove disadvantageous to appellant and compel him to incur unnecessary expenses. We are, therefore, of the opinion that appellant should be and he is hereby entitled to reasonable compensation in terms of cash and not land. As to the exceptions to the ruling of the trial judge on the motion to dismiss for failure to have affixed revenue stamps to the documents proferted by appellant including the statement of understanding, the latter document was understood and considered by both the appellant and appellees as a contract and, therefore, requires a revenue stamp under the Revenue and Finance Law, 1956 Code 35 :570. Though this document was probated and registered according to law, since it does not bear the required $1.00 revenue stamp, it is invalid and inadmissible in evidence under section 573 of such title; but when instruments which ought to be stamped are offered in evidence without the required revenue stamps, the court will, in keeping with the statute, allow forty-eight hours for the omission to be rectified. Scotland v. Republic, [1931] LRSC 6; 3 LLR 252 (1931).

It was, therefore, error for the trial judge to rule the document inadmissible in evidence without giving appellant forty-eight hours to rectify the omission. The purpose of the statute requiring such a document to be stamped is primarily to raise revenue and avoid

fraud, but it is not intended to impair the obligations of

contracts, nor can it be construed that the Legislature intended it to do so. The document marked SP/2, also offered in evidence and refused, was simply a letter from the appellees to the appellant informing appellant of the termination of appellant's services as their counsel. It does not seem to be the type of declaration stated by section go, supra, to require a revenue stamp. We are, therefore, of the opinion that the trial judge erred when he refused to admit this unstamped document into evidence. The other document excluded, marked by the court SP/3, is also a copy of a letter written to appellees by appellant in which appellant demanded that appellees convey to appellant the fifty acres of land agreed upon. "A copy of a writing is not admissible as evidence unless the original is proved to be lost or destroyed or to be in the possession of the opposite party who has received notice to produce it." Rev. Code i :25.6 (2). "A party may not introduce in evidence a copy of a writing, the original of which is in the possession of his adversary or testify concerning the contents of such original until he shall have served on the adversary reasonable notice to produce it and the adversary shall

have neglected or refused to comply with the notice." Id., 1:25.6(3) This provision imposed on appellant the responsibility of demanding from appellee the production of the original letter for the purpose of tendering it in evidence, and since the record does not indicate that such a demand was made by appellant, the trial judge did not err in refusing the document's admission into evidence. In view of the foregoing, we are of the opinion that the trial judge erred in his ruling dismissing the entire proceedings on the grounds set forth therein, by not affording appellant all of his rights guaranteed to him by law in such matters.

We are also of the holding that appellant is entitled to compensation for legal services rendered in terms of cash and not in land, which was the subject of the litigation instituted by appellant, as mentioned earlier in this opinion. The parties are hereby instructed to negotiate reasonable and equitable terms of compensation, taking into consideration the rules governing schedules of legal fees; what shall be adequate remuneration to be paid by appellees to appellant for the services already rendered by him shall be agreed upon in terms of his complaint herein ; and upon failure to agree, appellant may seek enforcement of his rights before the courts, in accordance with this opinion. Costs in these proceedings are disallowed. It is so ordered. Reversed.

Karpeh et al v Fisher [1974] LRSC 28; 23 LLR 91 (1974) (3 May 1974)

ROBERT KARPEH and NMONA NAGBE, Appellants, v. GEORGE T. FISHER, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 2, 1974. Decided May 3, 1974. 1. The doctrine of res judicata can be invoked in a pending proceeding only when identical issues in a prior proceeding between the same parties or their privies were conclusively adjudicated therein.
2. An appeal will be dismissed on motion when, as in this case, a bill of exceptions only has been filed and no other requirements of the appellate process were complied with by appellants.

The appellants were defendants in an action of ejectment in which judgment was rendered against them on July 5, 1973. An appeal was announced by counsel and a bill of exceptions filed, but no other steps were taken thereafter to perfect the appeal. Appellee's counsel moved to dismiss the appeal, alleging the appellate process had not been completed, as related above. Counsel for appellants filed a submission in reply thereto. In it he alleged that he had been substituted as counsel in place of original counsel since deceased. It was, he stated, only after judgment had been rendered against his clients,

his announcement of an appeal from the judgment, and the filing of a bill of exceptions on July 13, 1973, that he learned of the
prior adjudication by the Supreme Court of the issues presented in the case he was appealing. Therefore, he asserted no argument
against the motion to dismiss the appeal and claimed that he had informed his clients that he would withdraw the appeal, for to do
otherwise would show contempt for the Supreme Court by reason of its prior decision in the same matter. Hence, he raised by implication
the doctrine of res judicata, which, if allowed, would necessitate the negation of the case before the Supreme Court.
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The Supreme Court in its opinion discounted the argument, for the prior case, which was a contempt proceeding, did not
involve the same parties nor the same issues raised herein, which related to a quarter-acre lot of land and not a dispute over 6.8
feet of land settled by stipulation of the parties, in the prior case. The Court, of course, dismissed the appeal for the obvious
defects in the appellate procedure, including the lack of an appeal bond.
MacDonald Acolatse for appellants. ell for appellee. Nete-Sie
Brown-

MR. Court.

JUSTICE AZANGO

delivered the opinion of the

When this case was called, appellee's counsel moved the Court to
dismiss the appeal on the grounds that although a final judgment in the case was rendered on July 5, 1973, an appeal was announced
and a bill of exceptions filed on July 13, 1973, no appeal bond had been filed, nor was a notice of completion of the appeal issued
and served, nor any .fee paid to the clerk of the court below to prepare and transmit to this tribunal the record in the case, all
necessary to the perfection of an appeal. In a submission filed by appellants' counsel he alleged in substance that the lawyer initially retained by appellants had died. Thereafter, an associate of deceased counsel requested him to handle the action of ejectment brought
against his clients and he had agreed. He states that it was only after trial, when final judgment had been rendered against his
clients and the appeal process begun by him, that he became aware of the prior adjudication by the Supreme Court of the issues in
the case now before us, citing Karpeh v. Fischer, rz LLR 167 (1954). Upon learning the facts he advised his clients that when the
motion to dismiss the appeal was called for argument he

would assent to the granting of the motion for

to do otherwise would be contemptuous of this Court in view of his knowledge of the prior determination of the issues presented herein, as stated before. Nonetheless, although arguing res judicata by virtue of the prior case cited, he seems to object to the present action commenced to enforce it, claiming appellee was seeking more than had been agreed to by the parties in that prior case. Since, of course, if a matter has been decided by the Supreme Court it becomes res judicata, the judgment therein being conclusive and binding upon the parties, barring any subsequent suit on identical issues by the same parties, Phelps v. Williams, [1928] LRSC 14; 3 LLR 54 (1928), we will have to consider the case cited above by counsel for appellants, to see whether a final and conclusive judgment was rendered in that case, which involved contempt proceedings. It is a fundamental principle of jurisprudence that material facts or questions which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies. But the fact that different demands spring out of the same transaction, act, or contract does not ipso facto render a judgment in one a bar to an action in another. The issue out of which the appeal arose commenced with the contention of plaintiff in the court below that he is the bona fide owner in fee of a certain parcel of land on Perry Street in the City of Monrovia, which is a portion of Lot No. 19, bounded and described as follows : commencing at the North West corner of the adjoining Southern lot owned by George T. Fisher and running North 37 degrees East 132 feet parallel with Perry Street thence North 54 degrees West 82-1/2 feet, thence South 54 degrees and East 82-1/2 feet to the place of con-i-

mencement, consisting of one-fourth acre of land and no more as more fully appears, as alleged in the complaint, in a copy of the Public Land Sale Deed from the Republic of Liberia to George T. Fisher attached to the complaint as Exhibit "A," which also charges defendants are unlawfully and wrongfully occupying a portion thereof. Appellants claim otherwise, alleging occupation of land covered by a deed within the area of Half-Way Farm, 4th Row, No. 19, bearing no relation to land allegedly owned by the plaintiff. The deed defendants rely upon sets forth a description of the land claimed. "Commencing at the South Western angle of the abutting (1/20) one-twentieth of said Farm Lot owned by C. W. H. King and running South 38 degrees West 200 links ; thence running North 52 degrees West 128 links, thence running South 52 degrees 128 links to the place of commencement and containing one-fourth (1/4) of an acre of land and no more." The opinion relied upon by appellants' counsel as aforesaid, has made no reference to Block No. 19, a portion of which contains four lots, the third of which belongs to Robert Karpeh and the fourth to George T. Fisher. It has failed to state the points of controversy settled in the stipulation entered into, including the metes and bounds each contending party was to occupy.

There was no conclusive judgment between George Fisher, the defendant therein, and Robert Karpeh and Nmona Nagbe, who were the plaintiffs. Nor is there any recital in the opinion of the contentions of the respective parties. A judgment is essential to the doctrine of res judicata. When invoking the doctrine of res judicata the finality of the judgment or the final determination of the matter in the prior action is essential, since it is the general rule that the judgment must be final and not interlocutory. According to authorities, a judgment is an adjudication of all the matters which are essential to support the judg-

ment, when every proposition assumed or decided by the court leading to the final conclusion has been effectually passed upon in resolving the ultimate question. The foregoing is universally applied no matter the injustice done by such application to a particular case. But the doctrine does not apply to a subsequent action if the judgment first obtained was rendered because of a misconception of other available remedies. In such a situation the plaintiff is entitled to pursue his cause of action. The issue between the contending parties in the case, as aforesaid, relates to one-fourth of an acre of **land** upon which no prior judgment had been rendered and not the 6.8 feet of **land** referred to in the opinion referred to. It would, therefore, be paradoxical to conclude that an opinion given on one is a judgment on the other. The opinion referred to by appellants' counsel specifically mentions the name of George T. Fisher as one who, sometime in the past, had instituted an ejectment action against Sagbe Blamo, mother of Josiah Karpeh, who had leased a portion of his **land** to sundry persons. In the instant case, George T. Fisher is the plaintiff against Robert Karpeh and Nmona Nagbe, who were summoned, appeared, and submitted pleadings in the names stated, being two distinct and separate persons. According to authorities, identical persons or parties must be involved before the doctrine of res judicata can be applied. Nmona Nagbe and Robert Karpeh were not parties in the contempt proceedings in the opinion referred to by appellants' counsel. There is no prior conclusive judgment on the issues involved in these proceedings. Authorities can be quoted in support of the views herewith expressed. "The general rule is that a person relying upon the doctrine of res judicata as to a particular issue involved in the pending case bears the burden of introducing evidence to prove that such issue was involved

and actually determined by the prior action, where this does not appear from the record.
. . . It must clearly appear from the record in the former cause, or by proof by competent evidence consistent therewith, that the matter as to which the rule of res judicata is invoked as a bar was, in fact, necessarily adjudicated in the former action. If the

judgment in the prior case may have been based on any one of several issues involved therein, but is ambiguous and uncertain as to which of the several issues was the, one determined in arriving at the decision, the party invoking the application of the doctrine of res judicata is generally required to show upon which issue the judgment was in fact based; and where this is not done, the judgment does not constitute a conclusive adjudication as to any of the issues involved." 3o AM. jUR., Judgments, § 283 (1940). We are of the opinion that there must be an end to litigation; when a party has had an opportunity to present a defense and neglects to do so, the demands of the law require that he take the consequences. Having lengthily commented on the principle of res judicata, which was by means of pseudotactics introduced in the submission by appellant's counsel to serve as a bar to further litigating this matter, we shall now consider the motion to dismiss the appeal. As often as it is necessary for this court to say, we shall reiterate that although the right of appeal is vouchsafed to any person against whom a judgment has been rendered, yet such right is regulated by statutes which must strictly be followed. Any appeal not complying strictly with the statute regulating appellate procedure will render the appeal subject to dismissal. Caulker v. Republic, [1936] LRSC 12; 5 LLR 145 (1936) ; George v. Republic, r4 LLR 158 (196o). Our Civil Procedure Law is clear as to what is necessary to perfect an appeal.

"The following acts shall be necessary for the completion of an appeal : " (a) Announcement of the taking of the appeal ; "(b) Filing of the bill of exceptions; "(c) Filing of an appeal bond; "(d) Service and filing of notice of completion of the appeal. "Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal." Rev. Code z :51.4. We should not forget that the appeal bond is essential to perfecting an appeal and when not obtained or defective, the appeal it relates to will be dismissed by the appellate court. Having carefully considered the record in this case and the points raised in the motion to dismiss the appeal, we are of the opinion that the failure to file an appeal bond and issue and serve a notice of completion of the appeal, are grounds for granting the motion and, therefore, the appeal is dismissed with costs against appellants. The Clerk of this Court is hereby ordered to inform the court below of this judgment, with instructions that it resume jurisdiction and enforce its judgment in this matter. It is so ordered. Motion to dismiss appeal granted.

Bassa Brotherhood v Horton et al [1982] LRSC 18; 29 LLR 554 (1982) (5 February 1982)

THE BASSA BROTHERHOOD AND INDUSTRIAL BENEFIT SOCIETY, Informant v. **A. ROMEO HORTON**, personal representative of the late D. R. HORTON, et al., Respondents.

INFORMATION PROCEEDINGS FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT COURT, MONTSERRADO COUNTY.

Heard November 11 & 12, 1981 Decided February 5, 1982

1. By-laws are created for the governance of a corporation or organization; they may be created and made binding on the members by custom; and where not in violation of the Constitution or law of the State, by-laws shall be enforced for the governance of the members.

2. A by-law, which has been acquiesced in for a long period of time, is presumed to have been regularly adopted and is therefore enforceable according to its terms.

3. One who obstructs the enforcement of the judgment of the Supreme Court is in contempt of the Supreme Court.

4. The change in the membership composition and the nomenclature of the Supreme Court, as was done in 1980, does not affect the supremacy and the finality of the decisions of the former Bench or the current Bench.

5. As long as the judgment of the Supreme Court is not fully enforced and legally satisfied, the Supreme Court retains jurisdiction, and upon information given to it to that effect, the Supreme Court shall grant appropriate relief for the full enforcement of its judgment.

Informant filed a bill of information with the Supreme Court, complaining that the judgment of the Supreme Court evicting A. Romeo Horton, one of the respondents, and placing informant in possession of the property, had not been enforced and fully satisfied, and that Corespondent Horton had obstructed the enforcement of said judgment. The Supreme Court ruled that even though its membership had changed since its most recent decision in the case, not only was it duty bound to grant appropriate relief for the full enforcement of its judgment, but it will hold in contempt any person who may have obstructed the enforcement of said judgment. The information was granted.

J. Emmanuel R. Berry appeared for the informants. S.Raymond Horace appeared for the respondents.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Even though several opinions and judgments of this Court have been reported on this case, yet, each party in this information proceeding has only relied upon and cited in support of his argument the last opinion and judgment of this Court. *The Bassa Brotherhood Industrial and Benefit Society v. Dennis et al.*[1971] LRSC 60; , 20 LLR 443 (1971).

A careful look at that opinion reveals that although the judgment of the circuit court was objectionable in part, yet, the plaintiffs in the lower court did not announce an appeal; and that the defendant did appeal but subsequently withdrew the appeal. Despite this fact, the plaintiffs, for some unknown reasons, later applied to the Supreme Court for a writ of certiorari as a form of relief from the judgment. The Supreme Court expressed its regrets that the form of relief sought precluded a full treatment of the cardinal issues raised as it would otherwise have been had an appeal from the judgment been formally taken. The Supreme Court further opined that the extraordinary remedial writ of certiorari was not available where ordinary appellate procedure could have been taken, and that certiorari would not be used in a manner that it usurps or replaces the functions of an appeal. Therefore, although the Court en bane denied the issuance of the peremptory writ of certiorari, it modified the judgment of the circuit court and ordered that the informant be put in possession of the **land** awarded by the judgment of the circuit court without any regard to the internal bickering over its membership.

A further perusal of the opinion reveals that when the case was called before the Supreme Court, the Supreme Court inquired of counsel on both sides as to whom judgment could be rendered against should the Court decide in favour of the plaintiffs/informants, as the defendant, D. R. Horton, had died in 1964, during the pendency of the action. The counsel on both sides thereafter agreed that A. Romeo Horton, the oldest son of the deceased defendant, be substituted for his father. However, the legal significance of this requirement was only for the purpose of enforcing judgment; hence, basically procedural.

It is necessary to note here, as dictum, that according to the judicial history of this country, the simultaneous denial of an application for the remedial process and the modification of the judgment of the trial court, now as part of our court procedure, has its roots in the case *Helou Brothers v. Kiazolu-Wahab et al.*[1966] LRSC 60; , 17 LLR 520 (1966). But five years later, this Court, in the case *B. F. Goodridge, Inc. et al., v. Bsaibes et al.*[1971] LRSC 12; , 20 LLR 228, (1971), recalled that portion of the opinion recorded in the *Helou Brothers* case, insofar as it related to the simultaneous dismissal of an application for a writ of error and the modification of the lower court's judgment.

It appears that the concept that the Supreme Court may simultaneously modify the judgment of the lower court and also refuse to grant the issuance of the peremptory writ of certiorari is still riveted onto the mind of this Court. For some reasons which *dehors* the records, five years later (1971), the Supreme Court adopted the same procedure; in that, although it denied the issuance of the peremptory writ of certiorari, yet, it modified at the same time the judgment of the trial court, thereby completely losing sight of its holding in the *B. F. Goodridge et al.* Case already cited hereinabove. It is vitally important to observe again here that the *Helou Brothers et al.*, case no longer falls under the doctrine of *stare decisis* in this jurisdiction in consequence of its recall by this Court in 1971.

In answer to an inquiry from the Bench during argument before this Court, counsel for respondents frankly admitted that it was the inherent right of the Supreme Court to recall its former holdings in subsequent decisions, but contended that the recall did not take retroactive effect. In other words, he contended that the rights that were vested by those recalled decisions remained intact.

We are in complete agreement with this theory; therefore, the crucial issue that presents itself for a final determination of this outstanding and intricate **land** dispute is: what were the rights vested in the party litigants by the former Court in its holding of 1971 in the light of the facts of this case?

It is obvious from the opinion and judgment of this Court handed down in 1971 that the **land** in dispute was awarded to the informant, a fact conceded and not pursued in this information proceeding; hence, it is not an issue of controversy in the proceeding at bar.

In count three of the bill of information, Article 9, page 11 of informant's constitution and by-laws, is quoted, as follows:

"Ninety days after burial of a deceased member, who has erected a dwelling house on the Society's **land**, the bereaved family may recommend his or her heir or nearest blood relative to substitute such deceased member in the Society. But failing to make such recommendation, the Society shall have the ultimate right to evict the tenant so occupying the deceased member's house."

It is alleged, and not denied in the returns, that A. Romeo Horton, the oldest son of D. R. Horton, has never been recommended nor has he ever applied for membership to substitute his late father, D. R. Horton, in the Society as required by the provisions of the constitution and by-laws of the Society hereinabove quoted.

By-laws are rules and ordinances made by a corporation for its own government. The office of a by-law is to regulate the conduct and define the duties of the members towards the corporation and among themselves. The power to make by laws is usually conferred by expressed terms of the charter (constitution) creating the corporation. When not expressly granted, it is given by implication, and it is incident to the very · existence of a corporation. The power of making by-laws, if the charter is silent, resides in the members of the corporation.

By-laws, when contrary to the constitution or laws of the State, are void, whether the charter authorizes the making of such by-laws or not; because no legislature can grant power than that which it possesses. By-laws must not be inconsistent with the charter or constitution. All by-laws, if reasonable, bind all the members who are presumed to have notice of them. A by-law may be created and made binding upon the members by custom.

A by-law which is acquiesced in for eleven years, must be presumed to be regularly adopted; and by-laws adopted by stockholders, but not by an expressed vote of the directors, will be considered as adopted by the directors, where their conduct indicate that they have regarded them as the by-laws of the corporation.

In England, the term "bylaws" includes any order, rule or regulation made by any local authority or statutory corporation subordinate to parliament. Under some circumstances an action may be brought upon by-laws against members who may do acts in derogation of the by-laws. BLACK'S LAW DICTIONARY 182 (5th ed.).

Although A. Romeo Horton is not a member or officer of the Informant Society, he is privy to it, in that, he claims under his father, D. R. Horton, who was a founder and officer of the corporate body. Therefore, informant's constitution and by laws are binding upon him as far as they relate to the rights of the late D. R. Horton on the property at issue.

Counsel for respondents in concluding his argument, emphasized that we read carefully the last opinion of this Court as found in this same case (*The Bassa Brotherhood Industrial and Benefit Society v. Dennis et al.*[1971] LRSC 60; , 20 LLR 443 (1971)), as our guide in reaching our decision in this case. We will quote the pertinent portions thereof with reference to A. Romeo Horton as substitute for the deceased defendant, D. R, Horton, coupled with his continuous occupation of the **land** that was awarded to the Informant Society in the judgment of the trial court, as modified by this Court:

"For some unknown reason which is not apparent, there has been no motion filed for substitution of party defendant, although defendant Horton has died since the commencement of the suit in 1964. So, when the case was called at this Bar, we inquired of counsel on both sides as to whom judgment would be rendered against should the Court decide in plaintiff/petitioner's favour. The parties, thereafter, agreed that A. Romeo Horton, oldest son of the deceased defendant, was to be substituted for his father. The significance of this requirement is dealt with later in this opinion... '

We reproduce below the clarification together with the legal significance of the substitution of A. Romeo Horton in place of his late father, D. R. Horton, as ordered by the Supreme Court: "It is our opinion that the judgment and the writ of possession quoted from herein, seek to accomplish their purpose without regard to the split in the membership of the organization. It is not our opinion that property belonging to the Bassa Brotherhood Industrial and Benefit Society could be inherited by or descend to, the heirs of the late D. R. Horton, as petitioners in certiorari have interpreted the judgment. We do not feel that the text of the judgment justifies any such interpretation. The ten acres of **land** purchased by the Society from B. J. K. Anderson, and the thousand acres purchased from the Government is property of the Society as a corporate body holding to it and its successors in perpetuity."

Again, this Court held in the same opinion that:

"It was also necessary to redocket this case and hear it again, because defendant Horton died before the case was terminated and enforcement of the judgment against him was impossible. For how could the Court enforce a judgment against a dead man?"

Furthermore, judging from the opinion cited supra and the argument of the counsel for respondents, the question as to who are the legitimate members or officers of the Informant Society is not clear, and procedurally, such issue cannot be legally adjudicated in ejectment or information proceedings. We therefore suggest the writ of quo warranto as a better form of action.

Consequently, in our opinion, whether Harris T. Williams and Abraham Mayson, corespondents herein, on the one hand, and the informant, on the other, are the legitimate successors of the

deceased trustees of the Society whose names appear in the deed, is not the subject of this information proceeding or the parent action of ejectment.

Apart from the procedural reason stated hereinabove, which precludes us from passing upon internal matters, the last opinion of the former Bench in this case shows that there was a dispute which had arisen over the illegal expulsion of several members of the Informant Society by the late D. R. Horton, which, in keeping with the Informant Society's constituent documents, was referred to arbitration; but it is also observed that the expulsion of members of the Church, not the informant Society, was declared irregular and hence no appeal was taken from the decision. Consequently, what membership of the Informant Society bears on membership of the Church is not clear from the records.

From all indications, there are two obvious reasons why this case has found its way again on our docket by way of information, namely: 1) The last opinion of this Court is still being misconstrued to mean that A. Romeo Horton, the substitute for his late father, D. R. Horton, is to inherit the improve ments made by his late father on the **land** owned by and awarded to the Informant Society by the Court, and 2) the issue of who are the legitimate members and officers of the Society entitled to be put in possession as custodians of the property, remained undecided hitherto and it is expected that the same will be decided in these proceedings. We hold a negative view.

It was argued with emphasis that these points had been raised in the trial court; but the fact remains that the same can only be decided in appropriate proceedings and not information or ejectment proceeding.

Counsel for respondents also contended that respondents have not committed contempt of this Court. It would be superfluous to over-emphasize the fact that we inherited all the functions and powers of the former Bench which finally decided this case, confirming the judgment of the trial court and ordering that the Informant Society be repossessed of the real property in question.

We observe in that opinion that Co-respondent A. Romeo Horton obstructed the enforcement of the judgment of this Court, and his acts were therefore contemptuous to this Court; notwithstanding, the judgment has not yet been enforced, which is the basis of these proceedings.

We are of the firm conviction that all of the questions raised by this bill of information are fully discussed and settled in the opinion of this Court cited supra.

According to Article IV, Section 3rd of the suspended Constitution of Liberia, which was in vogue when this case was decided on November 26, 1971, the judgment of the Supreme Court is final to all intents and purposes. Similar provisions are contained in PRC Decree No.3, which reconstituted this Court and other subordinate courts of this country. Hence, the change in the membership composition and the nomenclature of this Court does not affect the supremacy and the finality of the decisions of the former Bench or the present Bench. This Court may only review its decisions upon petition filed for re argument, according to law; otherwise, its decisions are final in any given case. Hence, any attempt made by litigants before us, or lawyers for that matter, to castigate or impugn upon the former Supreme Court for whatever that Bench might

have done in a matter before it, is highly contemptuous, and this Bench will not tolerate it. We therefore sound this as a strong warning to all litigants, especially lawyers, against repetition of this act.

According to our Code of Moral Ethics, Rule 1, we are warned that:

"It is the duty of every lawyer to maintain towards the courts a respectful attitude, not only towards the judge temporarily presiding, but for the purpose of maintaining the supreme importance of his judicial office. Whenever there is proper ground for complaint against a judicial officer, it is the right and duty of the lawyer to submit his grievances promptly and fairly."

No petition was filed for re-argument in this case and the judgment rendered against informant for contempt of court was fully complied with. Therefore, it was final and it is obvious that we have no legal authority to interfere with the contempt committed by informant against the former Bench of this Court. However, as long as the judgment of the former and the present Bench of this Court is not fully enforced and legally satisfied, this Court still retains jurisdiction in any given case, and upon information given to this Court to that effect, appropriate relief will be granted for the full enforcement of the judgment.

In view of the revelations above, it is our opinion that A. Romeo Horton, the oldest son of and the substitute for D. R.Horton, co-respondents, Harris T. Williams and Abraham Mayson, be evicted from the ten acres of **land** and the one thousand acres of **land**, respectively, which were awarded to the Informant Society by the judgment of the trial court, and the Informant Society be immediately placed in possession thereof as its property in keeping with the metes and bounds of the deeds of the **land** in issue.

During the execution of the judgment, the sheriff is instructed to employ the technical aid of a competent and licensed surveyor from the Ministry of Lands, Mines & Energy of the Republic of Liberia to survey the respective parcels of **land** in keeping with the deeds of the Informant Society. The deeds for the property should be turned over by the sheriff to the Informant Society in these proceedings as custodian thereof on behalf of the Informant Society.

Costs of this proceeding to be charged against the respondents. And it is so ordered.

Information granted.

Kparnee v Tano-Freeman [1967] LRSC 18; 18 LLR 159 (1967) (16 June 1967)

NAGBE KPARNEE, Agent for MONAH, alias Ida Phillips, Appellant, v. SARAH TANO-FREEMAN, Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 10, 1967. Decided June 16, 1967. 1. A party to an action permitted
under the law to amend a pleading must before refiling, pay all costs thereby incurred by the opposing party to properly complete
such amendment. 2. When both questions of law and questions of fact are raised by the pleadings, the questions of law are first to
be decided by a trial court. 3. A trial court which determines a legal'issue by dismissal of the complaint, is not required to submit
to the jury questions of fact raised by the pleadings. 4. A plea which conclusively determines an action, supersedes all other issues
of law and fact. 5. Inconsistent defenses are not permissible in an answer, but in the cause at issue the defenses were only cumulative.
6. Presentation of an official document is proof of its veracity, in the absence of sworn proof to the contrary.

The plaintiff brought
an action in ejectment, seeking to recover land from the defendant claimed to be wrongfully withheld. The subject of the action concerned the same property involved in deed correction proceedings in 1949, which found the property claimed herein by plaintiff was legally
held by the defendant. An action in ejectment relating to the same property was also brought by the plaintiff in 1963 and dismissed.
The case at bar was brought by plaintiff in 1966, and withdrawn after objections were raised attacking it, with the right reserved
to refile, which was herein attempted, without first paying the costs incurred by the defendant. The action was dismissed and the
plaintiff appealed from the judgment. Judgment affirmed.

A. Garger Richardson and D. Caesar Harris for appellant. Richard Diggs and A. Lorenzo Weeks for appellee.
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MR. JUSTICE MITCHELL delivered the opinion of the

Court. A thorough
review of the records brought before us on appeal in this case shows that plaintiff filed her complaint in ejectment in the Circuit
Court of the Sixth Judicial Circuit, in the March 1966 Term, against defendant. After being attacked on several issues pleaded in
defendant's answer, plaintiff, on February 15, 1966, withdrew his complaint with the reserved right to refile. The pleadings after
refiling traveled as far as the surrebutter. Hon. Robert G. W. Azango, presiding over the aforesaid March Term of the Circuit Court,
heard the legal issues and dismissed the case, which ruling is set forth in the following: "Again, our Supreme Court has said, in
Thomas v. Dennis, [1936] LRSC 5; 5 L.L.R. 92, that hence, whenever a pleading is amended, whether it be that of plaintiff or defendant, or a case having been dismissed, plaintiff
desires to refile, the cost must first be paid previous to the amendment or refiling, as the case may be. Also in Davies v. Yancy,

et al.[1949] LRSC 4; , 10 L.L.R. 89, the Court said that, under our statutes, a plaintiff may amend his complaint once, or withdraw it and file a new one; but if he withdraws his complaint he must pay the costs of the action up to the time of such withdrawal. "Though there are many other interesting legal issues which we would like to pass upon, because of the violation of the statutes relating to amendment, withdrawal, and refiling of cases, which the plaintiff in this case did not conform to this case is, therefore, dismissed with costs against the plaintiff, who is forever barred from reinstituting the within case. And it is so ordered."

From this ruling made on the legal issues, plaintiff excepted and brought her appeal for consideration by this Court. The bill of exceptions on which this appeal has come before this Court embraces three counts, which we shall hereunder quote : i. Because plaintiff says the court erred in dismissing the action of ejectment on the ground that plaintiff did not pay the costs of court when she withdrew her action with the right reserved to refile, when indeed and in truth, nonpayment of costs prior to refiling is no ground for dismissal of an action under our Code of Laws, to which plaintiff excepted. "2. And also because plaintiff says the court erred in sustaining counts seven and eight, which counts raised the doctrine of estoppel and at the same time denied that defendant ever withheld any permission belonging to the plaintiff, which pleas are inconsistent and, therefore, the answer of defendant should have been dismissed. To which plaintiff excepted. "3. And also because plaintiff says the court further erred when ruling that plaintiff has withdrawn her case of ejectment more than once, predicated upon the mere allegations of defendant which is not supported by the record and which plaintiff denied categorically in her pleadings. Plaintiff maintains that this was a factual averment which should have been ruled to trial. The court not having taken this into consideration, makes the ruling erroneous. To which plaintiff excepted." This case was called for hearing on the loth day of April of the current year, when counsel for appellant in the course of their arguments traversed the grounds of their bill of exceptions and strongly contended : . That the failure to pay costs after the withdrawal of their complaint and refiling, is no ground according to statute for a dismissal of their case.
"

"2. That it was inconsistent for defendant to have pleaded in counts seven and eight of her answer the doctrine of estoppel, and simultaneously denied withholding and detaining any land belonging to the plaintiff, and for that matter the said answer should have been dismissed; therefore, it was error for the court below to sustain said two counts. "3. That the court below further erred when it ruled also that plaintiff

had withdrawn her suit of ejectment more than once, since it was a factual issue averred by defendant and denied by the plaintiff in their pleadings, which was never proved at the trial." Appellee, in countering the argument of the appellant, argued that plaintiff instituted the identical ejectment suit in the year 1964, when the same was dismissed by the then presiding Judge, Hon. John A. Dennis. That at the March 1966 Term of the Circuit Court, the action was refiled, withdrawn and filed for another time, which practice is not sanctioned by the law. They also contended that after the withdrawal of this suit in the lower court, and refiling, costs were not paid in keeping with the statute in vogue, which amounted to an incurable legal error and warranted the dismissal on the legal issue. Arguing further, they maintained that the place where plaintiff's affidavit was taken was omitted in the jurat, which omission was also an incurable error because it rendered the complaint insufficient. Closing, they rested their argument on the point that plaintiff failed to make profert of her chain of title, which is an essential requisite in ejectment suits. These were the main points argued for and against, and now that we have set forth all of the issues or at least the main issues relied upon in this appeal, we will proceed to direct our consideration thereto. In complying with a statute which requires certain legal requisites to be met, any failure to comply with the whole, or any portion thereof amounts to a noncompliance therewith. And when such noncompliance is attacked

by the adversary, the Court is left with no choice than to direct its attention thereto. The statute which prescribes the mode by which pleadings may be withdrawn or amended is specific, and reads : "At any time before trial any party may, insofar as it does not unreasonably delay trial, once amend any particular pleading made by him by: "(a) Withdrawing it and all subsequent pleadings made by him ; "(b) Paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and "(c) Substituting an amended pleading, to which the opposing party may make a responsive pleading in the same manner as he did to the withdrawn pleading. . . 1956 Code 6:32o. It maps the course to be undertaken in all amendments or withdrawals, and in doing so, any neglect to comply with all provisions subjects the violating party to the sanctions of the law. A withdrawal of a complaint, or any subsequent pleading, by either side, and a refiling of an amended complaint, or pleading, as the case may be, is incomplete until costs incurred by the opposing party are completely paid by the party acting under the statute, before the refiling. Moreover, this Court has over and again said that every statute must be construed with reference to the object intended to be accomplished by it. The question of the nonpayment of costs after the withdrawal by plaintiff, is an issue at bar, although it is incumbent upon the trial judge to consider all of the issues of law raised in the pleadings. Yet, if it is found by the trial court that there are legal issues which warrant a dismissal, consideration of factual issues to be determined by a jury is not necessary. Count one of

the bill of exceptions is, therefore, not sustained, for in Harmon v. Woodin, 2 L.L.R. 334 (1919), the Court held that the discharge of a defendant, or the dismissal of a suit,
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quashes all
process then existing against him in said action, hence, in either such case, the court loses jurisdiction both of the person and
subject matter. Count two of the bill of exceptions has led us to a further examination of the record, and for the benefit of this
opinion we shall quote counts seven and eight of defendant's answer : "Count 7. And also because defendant submits that in 1963,
the plaintiff instituted an action of ejectment against the defendant which action was heard and the law issues disposed of during
the March Term, 1964, by Judge Dennis and on the law issues plaintiff's action was dismissed with cost against her to which she took
exceptions, the dismissal of plaintiff's action being based on the violation of the provisions of the statutes, that is to say, plaintiff
was not vested with legal title to the property which defendant is possessed of, plaintiff's deed applying to a piece of land situated
on Carrey Street. See copy of said ruling annexed and marked exhibit 'B.' "Count 8. And also because defendant says that the original
deed of the plaintiff did not permit her to claim defendant's land ; that plaintiff surreptitiously and by false representations
to court had her said deed corrected in 1949, after defendant had acquired her title in 1943, simply to claim defendant's land. Defendant,
therefore, respectfully requests this court to take judicial notice of the records in the deed correction proceedings, done in 1949,
September 8; plaintiff's title, therefore, is not a perfect one." Upon considering these two counts, we are in a quandary to understand
in principle what appellant intends to show by count two of her bill of exceptions. Appellee has not been contradictory or inconsistent
in her said counts seven and eight, which could have led to their dismissal. On a close examination, the aforesaid count seven does
invoke a plain bar, which is not contradicted by her count eight because the said count eight merely refers to her original

title which possessed her of the said tract of land even prior to plaintiff's surreptitious attempt to gain ownership
to said land now in question. These two counts, therefore, in our opinion, are not inconsistent, nor contradictory to each other,
and were not cause for a dismissal of the defendant's answer in the court below, as appellant argues they should have been. Count
two of the bill of exceptions, therefore, being without legal soundness, is not sustained. Count three of the bill reads : "And also
because plaintiff says that the court further erred, when in ruling it said that plaintiff had withdrawn her case of ejectment more

than once, predicated upon the mere allegations of defendant which are not supported by the records of the court and which plaintiff denied categorically in her pleadings. Plaintiff maintains that this was a factual averment which should have been ruled to trial in the case, if need be, and which the court did not take into consideration, which makes the court's ruling erroneous.), Our Code of Civil Procedure, 1956 Code 6:313, as well as many opinions of this Court provide that trial courts are entrusted with the duty of determining all issues of law raised by the pleadings in a case before the facts therein involved are heard by a jury. Johnson v. Dorsla, 13 L.L.R. 378 (1959) In the instant case the defendant made prof ert of a certificate under the seal of this Court, certified by the Clerk of this Court: "This is to certify that up to the issuance of this certificate, no appeal has been filed and/or docketed in this office by Monah, alias Ida Phillips, entitled : objection to the probate and registration of public land sale deed in the City of Monrovia, that is to say since the determination on the 22nd day of April, 1964, of the case : Monah, alias Ida Phillips, Objector-Appellant versus Martha Nelson et al., Respon-

dents-Appellees. Tried and decided April 22, 1949, which judgment in said cause was reversed and case remanded. "Issued under hand and seal of Court this 16th day of October, 195o. "[Sgd.] S. BENONI DUNBAR, SR., Clerk, Supreme Court of Liberia." This certificate on its face did not require any oral proof to substantiate its genuineness. It had been issued in proof of the fact that plaintiff had withdrawn her case. Yet, despite this document which defendant requested the Court to take judicial notice of, appellant claims it presents a question of fact and should have been proved at the trial. This count of the bill of exceptions is erroneous and without legal merit. For even if the case had not been dismissed on the law issues in the pleading, the question of the certificate tendered under seal of this Court could not have been a subject matter for proof at the trial. Moreover, a plea in bar when raised supersedes all other issues of law raised in the pleadings and must be given priority in all cases. In Thompson v. Republic of Liberia, [1960] LRSC 3; 14 L.L.R. 290 (1961) , Mr. Justice Pierre, speaking for this Court, held, at p. 293 "That no oral testimony can be taken to explain a written document, is a maxim as old as the practice in this jurisdiction." Our Civil Procedure Law, 1956 Code 6 :725, provides : "A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record of entry of a specified tenor is found to exist, attested as a copy of official record in accordance with the provisions of section 723 (1) is admissible as evidence that the records of his office contain no such record or entry." Besides the certificate from the clerk of this Court that no appeal had been filed in his office, all of the papers in

connection with the withdrawal
were made profert by defendant in her pleadings, as certified copies of documents deposited in the office of the court below, in
accordance with the law. Thomas v. Republic of Liberia, 2 L.L.R. 562 (1926). With all of the copies of such documents authenticated under seal, appellant still maintained that oral testimony was preeminently
necessary, which in our opinion is a fallacy, for a plea in bar is sufficient to dismiss a plaintiff's action. Hence, appellant's
count three of her bill is also denied. This is a case in which defendant acquired title to the land in question in the year 1943,
when plaintiff's original deed gave her title to a tract of land separate and distinct from that of the defendant, and in 1949, when
defendant had been in possession of the said tract of land for six years, plaintiff, against law and equity, claimed the said property
to be hers. When the court below decided that she was barred against bringing any further suit against the defendant, she excepted
and brought her appeal. Her bill has been closely examined. The records brought forward in the case have also been inspected and
examined. The dismissal in the lower court on the law issues raised in the pleadings have been reviewed. It is our judgment that
we must limit our opinion to the ruling of the court below from which the appeal was brought and we find that the decision of the
court below was correct and in harmony with the law. Hence, its judgment is hereby affirmed, with costs against the appellant, a
mandate to this effect to be sent by the clerk of this Court to the court of original jurisdiction. And it is hereby so ordered.
Anirmed.

Jackson et al v Mason [1975] LRSC 7; 24 LLR 97 (1975) (2 May 1975)

ELIZA JACKSON, et al., Appellants, v. J. BENEDICT MASON, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued April 7, 8, and 9, 1975. Decided May 2, 1975. 1. All issues of law, whether necessary to the manner in
which the case is decided or not, must be ruled upon by the trial court. 2. The rendition of a judgment may be an operative fact
in a subsequent action by one of the parties to the judgment, although the principle of res judicata is not applicable. 3. A person
who is not a party but who is in privity with the parties in an action terminating in a valid judgment is bound by and entitled to
the application of the principle of res judicata. 4. A person who, being under no legal disability at the time, stands by and permits
property, which he claims, to pass into the possession of another without objecting thereto is presumed to have assented to the act

and is estopped from afterward raising claims thereto. 5. It is incumbent upon the plaintiff in ejectment to show a perfect chain of title before he can attack the weaknesses in the defendant's title. 6. Anything not contained in the trial court's record certified to the Supreme Court will not be considered. 7. An appearance must be made within ten days after service of the summons or resummons. 8. To enable a party to successfully plead the statute of limitations in an action of ejectment he must be able to prove that he, or he and his privies, have been in open and undisturbed possession of the property for at least twenty years consecutively ; that such possession was adverse to the title of plaintiff and/or those in privity with him; that neither plaintiff nor anyone under whom he claimed was under any legal disability to bring suit during this period of twenty years. 9. Letters granted to fiduciaries by a court are conclusive evidence, unless vacated, of the authority of such persons. 10. Points not made a part of the bill of exceptions are deemed to have been waived. 11. In actions of ejectment mere relationship by ties of blood cannot confer title to real property. 12. Courts often will refuse to interfere when antiquated demands are presented where gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights is shown.

An action in ejectment was instituted by appellants against appellees, claiming a superior title to the property occupied by appellees. The complaint was dismissed by

the trial judge and the appellants appealed therefrom.

The Supreme Court exhaustively examined the claims to title by the parties and found that appellants presented a very sketchy chain of title. Therefore, the Court affirmed the lower court's judgment, pointing out that remand of the case to the lower court for a new trial would serve no useful purpose, since the defects in appellants' case were incurable.

J. Dossen Richards for appellants. Nete-Sie Brownell, Moses K. Yangbe, and Stephen B. Dunbar for appellees.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

In the complaint which the appellants filed on July 24, 1972, they averred that the late Z. A. Jackson of the City of Monrovia acquired and possessed several pieces of real property, situated at various and different locations in the said City of Monrovia. He died seized of these several pieces of property according to the complaint.

In support of the allegation they made prof ert of a deed describing twenty acres and annexed it to their complaint as exhibit "A".
Because of the importance this deed is to play in the determination of this case, it is quoted hereunder word for word. "Republic
of Liberia "Know all men by these presents : That we, T. N. Watson, J. H. Watson, J. F. Poindexter, heirs of the late Colonel J.
Watson of the County of Grand Bassa and Republic of Liberia, and heirs of the President D. B. Warner, and Rachel Warner, late of
the City of Monrovia, in the County of Montserrado and Republic of Liberia, for and in consideration of Twelve Hundred Fifty Dollars ($1,250.00) paid to us by Z. A. Jackson of the City of
Monrovia, County and Republic aforesaid (the receipt is hereby acknowl-

edged) do hereby give, grant,
bargain, sell and convey unto the said Z. A. Jackson, his heirs and assigns all our rights and titles in lots Nos. 15 and 16 in Kroo
Town, lot No. R&S on Water Street, two (2) town lots of the late Henry Cooper Farm, lots Nos. 13, 14, and 15 situated on Benson Street,
and all other lots situated in the City of Monrovia that we have any right and title to with the buildings thereon and all the rights,
privileges and appurtenances to the same belonging, situated in the City of Monrovia, in the County of Montserrado and Republic of
Liberia, and bearing in the authentic records of said City the Numbers i 5, 16, R&S, 295, 296, 317, and Numbers 13, 14, and 15, and
bounded and described as follows : "Commencing at the junction of Benson and Clay Streets, thence running in a line North 54 degrees,
West 715 feet to a point; thence running in a line South 36 degrees West 1220 feet to a point; thence running in a line South 54
degrees East 715 feet to a point; and thence running in a line North 36 degrees East 1220 feet to the place of commencement and containing
20 acres of land and no more or 972,300 sq. ft. "To have and to hold the above granted premises to the said Z. A. Jackson, his heirs
and assigns to his and their use and behoof forever. And we, the said T. N. Watson, J. H. Watson and J. F. Poindexter, heirs of the
late Colonel J. Watson and our heirs, executors and administrators do covenant with the said Z. A. Jackson his heirs and assigns
that we were fully siezed in fee simple of the aforesaid granted premises, that they are free from all encumbrances; that we have
good right to sell and convey the same to the said Z. A. Jackson, his heirs and assigns forever as aforesaid, and that we will and
our heirs, executors and administrators shall warrant and defend the same to the said Z. A. Jackson, his heirs and assigns forever
against the lawful claims and demands of all persons.

"In Witness whereof we have hereunto set our hands
and seals this fourth (4th) day of December, 1908. "[Sgd.] T. N. WATSON [Sgd.] J. F. POINDEXTER [Sgd.] J. H. WATSON "Signed, sealed
and delivered in the presence of : "[Sgd.] CHAS. INNIS [Sgd.] W. N. SCOTT [Sgd.] JOHN A. Sims"

"ENDORSEMENT

"Warranty Deed from
T. N. Watson, J. H. Watson, J. F. Poindexter to Z. A. Jackson, 'let this be registered' R. J. Probated this 8th day of December,
1908. "[Sgd.] GEO. H. VAN DIMMERSON, Clerk, Monthly and Probate Court,
Montserrado County "Registered according to law, Vol. 31,
page 521 "[Sgd.] R. B. LOGAN,
Registrar, Mo.C. 9/1/08."

It might help to clarify some of the entanglements in this case, if we mention
that this deed allegedly executed in 1908, does not seem to have been registered until the late R. B. Logan was in office as Registrar,
which was very recently. Therefore, the registration date shown on the endorsement, 9/1/08, could be a mistake, but that is the certified
record and it has not been challenged. Elsewhere in the record we have found another endorsement to this deed, and it bears the name
of R. S. Wiles as Registrar. So R. B. Logan's name appearing on the endorsement could very well be a mistake also. Count two of the
complaint states that after a diligent

search it was determined that Z. A. Jackson died without leaving
a will, and consequently the Probate Court of Monrovia appointed the above named appellants as Administrators and Administratrices
to administer his intestate estate. Here again something seems to need untangling, because during argument before us one of the appellees'
counsel argued that Z. A. Jackson died in 1918, ten years after his deed had been signed and was probated and registered. The plaintiffs,
who brought this suit in 1972, are comparatively young people when we consider the year 1918 in which Z. A. Jackson is said to have died. Hence,
they must have been appointed by the Probate Court in recent years, long after Jackson's death. It is strange, therefore, that they
did not annex to their complaint some evidence of their having been appointed to administer this intestate estate. This point was
emphasized by the appellees' counsel during argument before us, when capacity to sue became a major issue. But we shall say more
about this later. Count three of the complaint alleges that the plaintiffs in this case are heirs of the late Z. A. Jackson and that
as such they are entitled to possession of the parcels of land described in the deed. They claim the right by descent or by inheritance
per stirpes. Here again there is no semblance of any ground to support the bare allegation of being heirs of the late Z. A. Jackson.
This point was also seriously urged at the hearing before us. It was finally contended that the several parcels of property described
in the deed have been taken by adverse possession by the plaintiffs without color of right. This is most confusing, but we shall
address ourselves to it later. The foregoing, in effect, is the position taken by the appellants in their complaint. Of the more
than twelve defendants, William Philips, represented by Counsellor Stephen Dunbar, and Theresa Eastman-Mason, represented by Counsellor
Nete-Sie

Brownell, filed separate answers. Counsellor Moses Yangbe represented the other defendants,
the members of the African Methodist Episcopal Church, and Monrovia College. Since these two institutions had not been specifically
named as defendants, he moved for and was granted leave to intervene on their behalf. Therefore, three sets of answers were filed,
one on behalf of Teresa EastmanMason, one on behalf of William Philips, and one on behalf of the other defendants, and the African
Methodist Episcopal Church and Monrovia College as intervenors. We shall deal with these three answers separately, and then consolidate
them to answer the plaintiffs' complaint made against all of them. The appellants' counsel has contended that the trial judge failed
to pass upon all of the issues raised in the pleadings before she dismissed their case in her ruling on the issues of law. This Court
has said on numerous occasions that before dismissing a case, or ruling it to trial by jury, all of the issues of law must be passed
upon and decided. As recently as the October 1974 Term, in Claratown Engineers, Inc. v. Tucker, [1974] LRSC 48; 23 LLR 211 (1974) , the Court
emphasized that all issues of law, whether necessary to the manner in which the case is decided or not, must be
passed upon by the trial court. In our review of the judge's ruling on the issues of law, upon which the case was terminated by dismissal,
we have observed that many salient and important issues were not decided. We will, therefore, traverse all of the pleadings, and
give such judgment as should have been given in the court below.
Defense of Defendant Teresa Eastman-Mason

Appellee Teresa Eastman-Mason
is the only surviving child of the late Louise Hood-Adams, daughter of the late Rebecca Warner-Demery, who was one of D. B. Warner's
two children. She is, therefore, the great-granddaughter of the late D. B. Warner who acquired lot No. 13 in 1836

by purchase from Jacob and Mary Warner, as we will see later on. Lot No. 13 is one of the parcels of property which
the appellants have claimed ownership of according to their complaint. They say that this parcel of property descended to them as
heirs of the late Z. A. Jackson. Besides the fact that they failed to show how this property ever came to be owned by Z. A. Jackson,
a requirement in ejectment, they also failed to show how this property could have come to them, even if it had been owned by Z. A.
Jackson, also a requirement in ejectment. Now let us look at No. 13 from the appellee's point of view. In the case of ejectment brought
in 1924 by Mary Schweitzer and Rebecca Demery, daughters of the late President D. B. Warner, relating to the same parcel of land,
decided by the Supreme Court in 1928, it was established that (a) this property had been owned by President D. B. Warner and had

come to him by purchase from his father, Jacob, and mother, Mary Warner, on April 8, 1836; (b) that this property had been known as Farm Lot No. 13 and had contained ten acres of land, or 40 town lots; (c) that of these ten acres one-quarter acre had been reserved as a burial ground, was fenced in and within the fence is the grave of President Warner, to this day. See Coleman v. Schweitzer, [1965] LRSC 23; 16 LLR 319. We know that this grave is on Camp Johnson Road in the City of Monrovia ; thus, the location of Farm Lot No. 13 on Camp Johnson Road has been established beyond any doubt. The averment in count one of the complaint to the effect that Lot No. 13 is situated on Benson Street in the City of Monrovia, would therefore seem to be in error, since Benson Street is quite many yards away from the Warner property on Camp Johnson Road. Moreover, the description in the plaintiffs' deed made profert with their complaint does not show Lot No. 13 to be on Benson Street; nor is it the description of Lot No.

but rather the metes and bounds contained in the deed is supposed to describe about eight separate parcels of property, spread over a large area of the City of Monrovia. They include the following places : Front Street, Benson Street, Henry Cooper's farm, which is in the area of Newport Street and Kroo Town, which is on Water Street. The description begins at the junction of Benson and Clay Streets, which is an area far removed from either of these places. And what is even more confusing, all of these several parcels together amount to only twenty acres of land, situated in different locations in Monrovia, covered by description of a single parcel, but for which of these parcels has not been stated. But such a description would be physically impossible, needing to cover the different parcels situated in different localities. These facts were pleaded by one of the appellees, Teresa Eastman-Mason, and were not denied by the appellants. On the contrary, the appellants have contended in their reply that (I) the deed on which the said Teresa Mason relies is a mortgage deed from Jacob Warner to D. B. Warner, and since she did not show whether the mortgage was ever redeemed, the deed cannot benefit her; (2) that appellee Teresa Mason should have shown the year in which D. B. Warner immigrated to Liberia from the United States, since he was born there in 1815. They also say that Teresa Mason should have shown whether in 1836 persons were then allowed to purchase and hold land in fee, since independence had not then been declared. (3) It is contended in count seven of the reply that Teresa Mason made no profert of a will to show that D. B. Warner left the property to his two daughters as has been alleged in her answer; nor did she show that D. B. Warner had not disposed of the property prior to his death in 1882. On these points we would like to say that when the Supreme Court decided the ejectment case brought by Mary Schweitzer and Rebecca Demery against Joanna Coleman

in 1928, as referred to above, these issues were passed upon and decided by a judgment which is, therefore,
stare decisis. They cannot be raised again, having already been settled. "The rendition of a judgment may be an operative fact in
a subsequent action between one of the parties to the judgment and a third person or between persons not parties to the judgment,
although the rules of res judicata are not applicable." Ali, RESTATEMENT OF THE LAW, Judgment, § II I. A judgment which finally decides
an issue in a court of competent jurisdiction may not be reviewed in a subsequent hearing except by a court of superior jurisdiction.
In this case the validity of the deed by which Jacob Warner transferred title of Lot No. 13 to D. B. Warner in 1836, and the issue
of D. B. Warner's right to acquire and own property before independence, and the issue of who were D. B. Warner's children, had all
been settled by the Supreme Court in its
opinion delivered in 1928. See Coleman v. Schweitzer,

supra. The plaintiffs contended in
their reply that they had never been parties to any litigation in which the subject property was in issue and, therefore, no previous
judgment relating to said Lot No. 13 can bind them. But count six of Teresa Mason's answer seems to have completely clarified this
point. "6. And also co-defendant Mason says that the title to the property in question was the subject of litigation between Reginald H. Jackson, Eliza Crayton, Isaac Crayton
and Lucretia Herron in the Civil Law Court, Montserrado County, March 1967 Term. That a verdict in favor of defendant Louise Hood
was rendered and a judgment thereafter. That said case was appealed to the Supreme Court and dismissed at its March 1972 Term of
Court. That the plaintiffs (in this case) are privy to the former plaintiffs and were in knowledge of the litigation but did not
intervene. That the present plaintiffs are claiming the same prop-

erty under the same J. T. Watson,
purported heir of D. B. Warner. Co-defendant Mason submits that the doctrine of res judicata applies to the present plaintiffs since
they are the same family or · . . purported heirs united in interest who litigated the case decided by the Supreme Court in its March
1972 Term of Court, and therefore are barred from maintaining an action under different names, although the same purported heirs
of J. T. Watson." This allegation as to the relationship between the plaintiffs in the case brought by Reginald H. Jackson and others
against Louise Hood in 1967, and the plaintiffs in this case, was not denied in the appellants' reply. Their only defense against
this allegation is contained in count nine of their reply, and they have stated therein that there is no "T. J. Watson" appearing
on the face of the deed upon which they relied in the complaint. The deed does name T. N. Watson and J. H. Watson as grantors, but

this error in the initials of one of the grantors is merely technical and immaterial. It certainly does not deny the alleged relationship between Eliza Jackson and others in this case, and Reginald Jackson and others in the 1967 case. We might mention in passing that Louise Hood who was sued by Reginald Jackson and other plaintiffs in 1967, is the child of Rebecca Demery, one of D. B. Warner's two daughters. Plaintiffs' failure to deny a family relationship between themselves and Reginald Jackson and the others named, and that they were privies to the plaintiffs in the 1967 action of ejectment brought against Louise Hood, leaves us to conclude that this allegation is true. Therefore, the judgment which was enforced against Reginald Jackson, et al., binds them also. We have legal support for this position which we have taken : "Briefly stated the doctrine of res judicata is that an existing final judgment rendered upon the merits,

without fraud or collusion, by a court of competent jurisdiction is conclusive of rights, questions, and facts in issue as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." 3o AM. JuR., Judgments, §161 (1940). "Privies--General Rule : A person who is not a party but who is in privity with the parties in an action terminating in a valid judgment is . . . bound by and entitled to the benefits of the rules of res judicata." A.L.I., RESTATEMENT OF THE LAW, Judgments, § 83 (1 942)· "Persons Having Future Interests : A person who has a future interest in land or other subject of property is, with reference to his interest therein, bound by and entitled to the benefits of the rules of res judicata resulting from a judgment in an action to which he is not a party, in accordance with the rules stated in the Restatement of Property. Id. §§ 18o-186. "Prerequisites for binding effect on living owner or future interest: A judicial proceeding has binding effect as against the future interest of a person who is alive at the time of the commencement of such proceeding when the requirements stated in some one section are satisfied, but not otherwise: . . . "(c) the proceeding, duly followed, is one binding the affected thing itself, thus binding both present and future interests therein without either joinder or representation of the owners of such interest; " (d) the proceeding duly followed is one which by statute binds such future interest without either joinder or representation of the owner thereof." A.L.I., RESTATEMENT OF THE LAW, Property, § r8o (1936) . Therefore, the fact that the plaintiffs in this case were not named as parties in the case of ejectment involving Lot No. 13, determined in 1967, does not relieve them of

the binding effect of res judicata, so long as they have not denied that they were in privity with Reginald Jackson and
others, who were plaintiffs in that case. In count five of her answer, appellee Teresa Mason has pleaded that Mary Warner Schweitzer
and Rebecca Warner Deanery, adjudged legal heirs of D. B. Warner, lived in open and notorious possession of D. B. Warner's property
up to the time of their deaths in 1935 and 1943, respectively; that at their deaths their wills disposing of their property, including
Lot No. 13, were probated without objection from any one. One would have thought that this important issue raised in the answer would
have been traversed in the reply. But the appellants have made no reference to this important issue in their succeeding pleading.
We must, therefore, give full credit to this point raised in the appellee's answer, because if a party who, being under no legal
disability at the time, stands by and permits property which he claims, to pass into the possession of another without objecting
thereto at the time, such party is presumed to have assented to the transaction and is estopped from afterwards raising claims thereto.
Mczluley v. Madison, 1 LLR 287 (1896). We now shall consider counts three, four, and five of the appellants' reply, which can be set forth succinctly: (1) that
Teresa Eastman-Mason's deed is void on its face because it was not probated and registered, and that the said deed made profert with
her answer was certified by Arthur Barclay as Secretary of State. They contend that this is false, because Arthur Barclay was not
Secretary of State in 1922; (2) that the deed annexed to appellee Mason's answer is further defective because it contains no metes
and bounds which would enable someone to locate the ten acres of land to which it is the deed ; they also say that although the document refers to the Colonial record for the boundaries (Vol. 4, pp. 170, 171, and 251), they contend that this record should have been
made profert, or notice should have been given that it would be pro-

duced at the trial. For these failures
they say the deed is defective ; (3) that Teresa Eastman-Mason has failed to establish by document or otherwise that she is an heir
of D. B. Warner, or of Jacob and Mary Warner ; nor has she shown any title or right to enable her to recover in ejectment. For these
reasons they contend her answer should be dismissed. As to the first point, with reference to appellee Mason's deed not being prof
erted, this raises the question of whether it could have been registered without probation. We know that it was registered, because
the Secretary of State certified to that effect, as has been stated in the plaintiffs' reply. The absence of endorsement showing
that it was probated does not necessarily mean that it was not. The State Department certificate endorsed on the deed is set forth.
"This is to certify that within document is in Volume i t, pages 137-38 of the records Montserrado County, filed in Archives of this

Department. Given under my hand and seal of Department of State, this t4th day of November, 1922. "[Sgd.] ARTHUR BARCLAY
Acting Secretary
of State."

It is not true, therefore, that Arthur Barclay had been shown to be the Secretary of State but that he was acting for
the Secretary of State in 1922. This was a common occurrence in the lifetime of President Arthur Barclay after he left the Mansion.
He acted in almost every cabinet post when its incumbent was absent from the country. As to the second point, that Mason's deed contains
no description of the land by metes and bounds except the Colonial record which it refers to, as compared to the plaintiffs' deed,
which contains one description covering eight separate pieces of property in several different locations in Monrovia, one must wonder
which of these two

documents is better than the other. But we shall come to this later in this opinion.
The third point is that Teresa Mason has failed to show any title in herself, to enable her to recover in ejectment. This Court has
said over and again, that "in ejectment, the plaintiff must recover unaided by any defects or mistakes of the defendant; and proof
of the plaintiff's title must be beyond questions." Cooper King v. Cooper Scott, [1963] LRSC 38; 15 LLR 390, 404 (1963). Therefore, it is incumbent upon the plaintiff to show a perfect chain of title in him before he can begin to attack
the weaknesses in the defendant's title. Gibson v. Jones, [1929] LRSC 3; 3 LLR 78 (1929) ; Williams v. Karnga, 3 LLR 234 (193r) ; Miller v. McClain [1954] LRSC 12; 12 LLR 3 (1954) ; Yamma v. Street, [1956] LRSC 20; 12 LLR 356 (1956). In count four of Mason's answer, she has denied that J. Watson is the heir of D. B. Warner, deceased, and she has emphasized
that in 1928 the Supreme Court adjudged that there were only two heirs of D. B. Warner: Mary Schweitzer and Rebecca Demery ; no mention
was made of any Watson, nor did the Watsons intervene to assert any rights they might have had. She claims that the decision of the
Supreme Court is stare decisis and should not be disturbed. Strangely, the appellants' reply did not challenge this point.
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Defense
of Defendant William Philips

Before going into the contents of defendant Philips' answer, we would like to observe that the reply
has indicted the answer for having been filed three days beyond the statutory time allowed for filing. The reply alleges that whereas
the complaint with a writ of summons and other documents were served on each of the defendants some time between July 24 and 29,
Philips' answer was not filed until August 11. We, therefore, checked the writ to see what return the Sheriff did make, and to our
surprise we found that there is no return endorsed on the back of that certified document found in the record. The parties must have

taxed the record before they were sent

up by the clerk of the trial court; and if they did, it must have been observed that no return had been made by the Sheriff. We are controlled by the certified record in all matters on appeal from the Circuit Court. But in addition to our inspection of the certified writ found in the record, we also looked up the trial judge's ruling on the pleadings, the only reference made by Judge Walser to defendant Philips' side of the case. "The Court: Counsellor S. B. Dunbar made application to this court for the opportunity to be heard on the legal issues raised in the answer on behalf of codefendant William Philips. Such a record will reveal that two notices of assignment were sent to Counsellor Dunbar; his first appearance was rather tardy, the court informed him that because of the fact that several issues or answers were filed, the plaintiffs had been given the opportunity to argue with the individual lawyers and therefore he could be excused for that date. The second assignment was returned stating that he was busy in the First Judicial Circuit Court. Knowing the status of the case Counsellor Dunbar was obligated to check and find out whether the case was still being heard after he left the First Judicial Circuit Court; the case was continued until the next day, and Counsellor S. B. Dunbar did not make an appearance although the records of the First Judicial Circuit will show that no session was held that particular afternoon. Counsellor Dunbar further made the plea that no summons had been served on his client, co-defendant William Philips, yet. The court's record shows that not one but two appearances were filed on behalf of co-defendant Philips, the first signed by the defendant was filed August 2, 1972, the second appearance was signed by Counsellor Dunbar and co-defendant William Philips, and dated August lith, 1972, nine days after the first appearance. "Section 3.63 of our Civil Procedure Law, as to the

effect of appearance on personal jurisdiction. An appearance of the defendant is equivalent to personal service of the summons upon him, unless an objection to jurisdiction of the person is asserted by motion under section 11.2 ( ) (b) or in the answer and is upheld by the court. In view of the foregoing Counsellor Dunbar's application is hereby denied. And it is so ordered." Nowhere in this ruling has any mention been made of the lateness of Philips' answer ; in fact, nowhere in the minutes is it shown that the point was ever raised, so the judge could not have passed upon it. "And an appearance shall be made within ten days after service of the summons or resummons." Rev. Code I :3.62. There is no way of knowing whether or not Defendant Philips' appearance and answer were filed within the ten days allowed by statute, especially in view of the fact that two appearances were filed, one on August 2, 1972, and the other on August r r. In fairness, therefore, we give the benefit of the doubt to the defendant. Although

Counsellor Dunbar took exception to this ruling of the judge, and announced that he would apply for a writ of certiorari, he has failed to do so and, therefore, his client maintains his status in the case as one of the successful defend ants. William Philips' answer raised two points : the statute of limitations and laches. He pleaded affirmatively that he concedes to the plaintiffs' ownership of the property in question, but they are barred by the statute of limitations, since he and his father before him had been in open and notorious possession of the property for more than seventy years. Over the years they had improved the property, without challenges from any source whatever. He contended that during this period plaintiffs suffered no legal disability which prevented them from asserting their rights in and to the property.

In count two of the answer it is alleged that about twenty years ago a portion of the property was leased by Philips to Jerry Williams, and later another portion was also leased to a Lebanese trader; both documents were probated without objections from the plaintiffs, or from any other persons. Philips finally contended that the plaintiffs were guilty of laches for not having brought their suit of ejectment within the statutory time and for not having objected to probation of the two lease agreements which he concluded with his two lessors. Plaintiffs filed a reply, and in that responsive pleading they claimed that the defendant's answer had been filed late ; we have already passed upon this issue earlier in this opinion. Their next challenge to the answer was to the effect that the two lease agreements made profert with the answer were concluded less than twenty years ago, and because of this the entire answer should be dismissed. We have not been able to understand what difference it would have made even if objections had been filed to the lease agreement, the older of which was concluded in 1953· At that time Philips and his father had already been in adverse possession of the property for more than fifty years. In Couwenhoven v. Beck, z LLR 364 (192o) this Court said that to enable one to successfully plead the statute of limitations in bar of an action of ejectment, he must be able to prove : ( ) that he, or he and his privies, have had open and undisturbed possession of the said property for at least twenty years consecutively; (2) that said possession was adverse to the title of plaintiff and/or those in privity with him; (3) that neither plaintiff nor anyone under whom he claimed was under any legal disability to bring suit during this period of twenty years. Our Civil Procedure Law provides that "an action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years." Rev. Code 1 :2.12 (2).

Unfortunately, the judge did not pass on either of these issues raised in the answer of William
Philips, which has compelled our having to do so in this opinion.
Defenses of Other Defendants and Intervenors

In the first two
counts and in count five of the defendants' amended answer, they have alleged that the present case of ejectment was filed in 1972,
while a similar case of ejectment involving the same parties and the same subject matter, filed in the June 1971 Term, was still
pending in court. They have alleged that pleading in the present case progressed as far as the reply of the plaintiffs ; and the
case was ready for hearing of the issues of law when plaintiffs filed a notice of withdrawal of the second case without leave of
court and without paying the costs. In Thomas v. Dennis, [1936] LRSC 5; 5 LLR 92 (1936) , this Court said that when a party intends either to withdraw a case with the express reservation to renew it, or to amend
a previous
pleading duly filed, the costs incurred by his opponent in

the case to be renewed, or in the pleading to be amended,
should be first paid before the case is either renewed or the pleading amended. In Davies v. Yancy, ro LLR 89 (1949), the Court held
that a plaintiff may amend his complaint once, or withdraw it and file a new one ; but if he withdraws his complaint he must pay
the costs of the action up to the time of such withdrawal. In count four of the answer the defendant and intervenors have questioned
the authority of Edwin L. Morgan to sue on behalf of Eliza Jackson, Edith Herron, Netty Bates, Richard Hoff, and T. A. Capehart.
They contend that Edwin Morgan cannot show any legal authority for him to act in their behalf, nor has he shown that they were incapacitated
to sue for themselves. We will consider this count later. Count six states that there is no showing that Z. A. Jackson, under whom
the plaintiffs claim on the strength of the deed made profert with their complaint, did not by sale or otherwise, dispose of Lots
Nos. 14 and r5 prior to

his death ; nor have they shown, this count charges, any executors' or administrators'
deed to support their claim to ownership of the subject property. They say also that proof of heritable blood is insufficient to
warrant recovery in ejectment. Cooper-King v. Cooper-Scott,
supra.

In count seven the defendants and intervenors have challenged
the correctness of the plaintiffs' allegation that application was made to the Probate Court in Montserrado County, and that said
court appointed plaintiffs, who have filed this suit, as administrators and admin.istratrices of Z. A. Jackson's intestate estate,

no evidence thereof having been made profert with their complaint. Count eight of this answer alleges that the action of ejectment should have been brought within twenty years after the death of Z. A. Jackson, and that his estate should have been closed within one year, as the law requires. They say that Z. A. Jackson died in 1918, and the application by the plaintiffs to administer his estate was made after more than twenty years following his death. They contend that plaintiffs' appointments and functions as administrators of the estate after so long a period of time is void ab initio. In Nungbor v. Fiske, 13 LLR 304, 308 (1958) , this Court said that "the law controlling intestate estates makes it mandatory for all such estates to be closed within a limited period unless foreign claims are involved ; and even in that instance, no intestate estate should remain open for more than eighteen months." That was the law which governed intestate estates when this case was filed in 1972. Count nine of this answer calls attention to the unintelligibility of count three of the plaintiffs' complaint. Recourse to the document shows that although the complaint has named several defendants, this count accuses one group of the plaintiffs of holding the property in adverse possession from the others without color of right. No-

where in the complaint has it been charged that defendants were withholding the property illegally, as is usual in actions of ejectment. From this count of the complaint it appears that one group of plaintiffs is accusing other plaintiffs of illegally withholding the property ; a very novel manner of pleading in ejectment. Actions for recovery of real property are usually brought in ejectment, and recovery is usually sought by plaintiffs against defendants ; this action seems to be different, when it claims that one group of plaintiffs is withholding the property, but in the prayer for relief asks that the defendants be ousted. In count ten of the answer defendants have pleaded that they came into possession of Lots Nos. 14 and 15 in 1922 and 1924, respectively, and that they acquired the property by purchase from F. E. R. Johnson, and others, as well as E. A. Snetter, as is evidenced by deeds made profert with their amended answer. They say that from the time of their purchase to the filing of the plaintiffs' case is more than twenty-five years, and they have been in continuous and notorious possession of these tracts of land undisturbed for all these years. They say further that their deeds were probated without any objections. Count eleven asserts that in addition to their ownership of Lots Nos. 14 and 15, they also own and are in possession of Lots Nos. 19, 19B, 20, and 21 respectively ; they made profert of deeds for these tracts. Count twelve of the amended answer of the intervenors asserts that their tenants to whom they have leased portions of their property, and who have been named codefendants in this action, do not have the necessary deeds to protect themselves, but that the intervenors hold themselves responsible to protect their tenants. These counts represent the position taken by these defendants and the intervenors in their amended answer. The plaintiffs filed an amended reply, and in count one they have attacked the caption of the intervenors' amended

answer, contending
that the caption has denominated the plaintiffs as respondents, and for this reason they prayed that the pleading be stricken. We
feel that this is a mere technicality, because the intervenors' motion to be allowed to intervene carries the same caption, and was
not resisted by plaintiffs ; nor was exception taken to the court's granting of the motion with the caption as it is. We do not think
that such a technical issue alters the position of the parties, nor does it affect the merits of the issues involved in the ejectment
suit. We, therefore, overrule count one. Plaintiffs' count five of their reply calls attention to the fact that the intervenors have
not contended for Lot No. 13 on Benson Street in their amended answer and, therefore, ask the court to take notice of this fact.
This fact is well taken, because in counts ten and eleven of the intervenors' amended answer, they made it clear that they were laying
claim to only Lots Nos. 14, i6, 19, 19b, 20, and 21. They have never
contended for Lot 13. On the other hand, defendant Teresa Eastman-Mason
in her answer claimed ownership of Lot No. 13. We have already commented on this lot in this opinion. We should like to observe that
there seem to be two No. 15 lots according to the deed made profert with the complaint, one in Kroo Town and one on Benson Street. It is
difficult to say which of the two lots is referred to at any stage of this case. But this is only one of the many ambiguities in
this deed. In count six the plaintiffs have asserted that they brought this action to recover Lots Nos. 13, 14, and 15 on Benson
Street, supporting the claim by their exhibit "A". They have, therefore, asked the court to take no notice of Nos. 21, zo, 19, and
19b. This is a strange position, considering that in their exhibit "A" not only are Nos. 13, 14, and 15 mentioned, but 19, 19b, zo,
21 and several other numbers, such as 16 R&S, 317, 295, 296. We are of the

opinion that all of the lot
numbers mentioned in the deed call for property which must be regarded as relevant to this case. Therefore, we cannot sustain count
six. Counts seven and eight of the reply traverse intervenors' count ten, which refers to property purchased in 1922 and 1924 from
grantors F. E. R. Johnson and others, as well as E. A. Snetter. Plaintiffs claim that these parcels were purchased by Z. A. Jackson
in 1908, and, therefore, the sales to intervenors in 1922 and 1924 were fraudulent transactions. They contend that since Z. A. Jackson
died in 1918, he could not have objected to probation of the deeds, but that had he been alive he certainly would have. They have
not explained why they, his privies, did not assert their rights when the deeds were offered for probation. The plaintiff's contention
is, therefore, unmeritorious, and is overruled. Counts nine and ten allege that intervenors' deeds executed in 1922 and 1924 are
illegal and fraudulent, because the 1924 deed was probated the same day of the sale of the property, February 6, 1924, contrary to

the probate laws which prescribe time in which to give notice to the public. They say the 1922 deed was not probated until two years after it had been executed, which is also contrary to the law relating to the probation of instruments. Plaintiffs must have known that in such circumstances there was adequate legal remedy available to them ; they have not explained why they could not have availed themselves of it. If they claim fraud, why didn't they move to cancel the deeds for fraud? This count is, therefore, also overruled.

Counts eleven and fourteen indict intervenors' count four, with reference to Edwin Morgan's capacity to sue on behalf of the heirs of the late Z. A. Jackson. Plaintiffs contend that under our present Civil Procedure Law it is not necessary to aver the capacity or the authority of a party to sue. "It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to

sue or be sued in a representative capacity. . . . When a party desires to raise an issue as to the . . . capacity of a party to sue or be sued or the authority of a party to sue in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge." Rev. Code 1 :9.5 (1). Now let us look at the intervenors' count four and see how lack of capacity to sue was pleaded. "4. And also because Edwin L. Morgan has no legal authority to file this case on behalf of Eliza Jackson, Edith Herron, Netty Bates, Richard Hoff and T. A. Capehart, because there is no power of attorney proferted to show Edwin L. Morgan's legal authority in keeping with law and practice, or the averment of any reason which incapacitated them to sue in their own names and to represent themselves." We hold that in this case it was not a power of attorney that was necessary, but rather letters of administration

which should have been annexed to the complaint, since Edwin Morgan had held himself out as an administrator of Z. A. Jackson's estate. We also hold that insofar as pleading a specific negative averment as to Morgan's capacity or authority to sue, this was adequately done in count four quoted. In McCauley v. Doe, [1973] LRSC 79; 22 LLR 310 (1973), an action of ejectment, this Court relied upon section 107.3 of the Decedents Estate Law in passing upon the executor's authority to represent the estate, and we also rely upon it in this case. "Letters granted to fiduciaries by the court are conclusive evidence of the authority of the persons to whom they are granted until the decree granting them is reversed or modified upon appeal or the letters are suspended, modified or revoked by the court granting them." Rev. Code 9:107.3. The Court also said in McCauley v. Doe, supra, that "it is in the best interest of legatees and creditors that evidence of the appointment of executors

and administrators be produced in court, and thereby protect estates from fraud and interference by unauthorized persons."
We, therefore, hold that the intervenors had a legal right to demand that the administrators of Z. A. Jackson's estate show evidence of their appointment as such. Count eleven of the amended reply is, therefore, overruled. Plaintiffs' count twelve questions the manner in which the intervenors have sought to plead the statute of limitations in count ten of the amended answer. They claim that the intervenors pleaded the statute of limitations by implication, instead of doing so affirmatively as the law requires. This position is well taken and so we uphold count twelve. Plaintiffs' count thirteen has sought to correct the third count in their complaint, which had been challenged in count nine of the intervenors' amended answer. They

ask that the portion of that count in the complaint be corrected to read : "The defendants have taken adverse possession of the said premises when they under the law have no color of right to said parcels of land." They claim that the error was a clerical error. This count is, therefore, sustained. This concludes the position taken in the

amended reply. After pleadings had been rested on both sides, the case came up for a hearing before the Sixth Judicial Circuit Court, and the judge dismissed it on the issue of law. Exceptions were taken and an appeal from the ruling was announced, and is now before us. In dealing with the capacity to sue, the plaintiffs in their bill of exceptions have accused the judge of having ruled on that issue of law out of context. In the judge's ruling thereon it appears that she relied upon the Court's position taken in Saleeby Bros., Inc. v. Barclay Export Finance Company Ltd., 20 LLR 52o (1971), an action of debt decided in the October r971 Term. The principle established in that case is entirely different from

what appears in this case; although in both cases a representative capacity to sue is involved. The case alluded to concerned a foreign company suing in Liberian court through an attorney-in-fact, which required him to be possessed of a power of attorney. This differs from a lawyer appearing for his client in a professional capacity, who would not need any special authority besides his license to do so. In this case the question at issue is not the necessity for a power of attorney to empower a party to sue in a representative capacity, but revolves about letters of administration, in keeping with the Decedents Estate Law. Two entirely different propositions are posed. The judge felt that the Court in its opinion in the Saleeby case ignored section 9.5 of

the Civil Procedure Law, and that the Court by that opinion invalidated subparagraph 4 of that section. Rev. Code 1 :9.5 (4). This is also an erroneous interpretation of the Saleeby opinion. Because the issues raised in the Saleeby case could be resolved without reference to this particular section, it did not mean that the Court had thereby invalidated the section. A Court is not compelled to use all of the law relevant, in disposing of an issue in a case; and the law not used although relevant, is not invalidated by its not having been used. The appellants' counsel argued before us that the judge in the court below had not passed upon all of the issues of law contained in the pleadings. We have already said that this is a mandatory requirement. But the intervenors' counsel objected to the point being raised in his argument when he had failed to make it a part of his bill of exceptions. This Court has confirmed the rule many times, that points not made a part of the bill of exceptions are deemed to have been waived. Torkor v. Republic, [1937] LRSC 25; 6 LLR 88 (1937) ; Richards v. Coleman, [1938] LRSC 15; 6 LLR 285 (1 93 8) . It is usual that in cases where issues of law were not properly passed upon before trial or dismissal of the case,

the case is remanded for a new trial with instructions. But in this case a new trial could serve no useful purpose. The deed made profert with plaintiffs' complaint would have to be used in another trial, and the many defects appearing therein could not be cured by another trial. The metes and bounds appearing on the face of the deed make it so uncertain as to which of the eight pieces of property is being described that no jury could with any fairness or certainty decide. Does that description belong to Lots Nos. Is and 16 in Kroo Town, or to No. R&S on Water Street, or to the two town lots of the late Henry Cooper's Farm ; or to Nos. 13, 14, and r5 on Benson Street? Or could it belong to either of the following lots : Nos. 295, 296, or 317? Or does it belong to "all other lots situated in the City of Monrovia," which the deed calls for? How would a new trial dispose of appellee William Philips' affirmative plea of the statute of limitations ? He has pleaded that he and his father before him had been in continuous and notorious possession of a portion of the property for more than seventy years ; and this fact was not denied by plaintiffs. Appellee Teresa Eastman-Mason, sole surviving heir of Louise Hood-Adams, who was the niece of Mary Warner Schweitzer and the daughter of Rebecca Warner Demery, has pleaded the doctrine of stare decisis in respect of Lot No. 13, one of the pieces named in plaintiffs' deed. She has contended that her grandmother's and grand-aunt's ownership of this property was adjudicated by the Supreme Court in 1928; and that it had been in her family before and ever since that time. She has also pleaded the doctrine of res judicata in respect of the said lot, and she has said in count six of her answer that this property was the subject of litigation between Reginald Jackson, Eliza Crayton, Isaac Crayton, and Lucretia Herron, against her mother in 1967. She contends that res judicata should bar the present plaintiffs who are rel a-

tives of the plaintiffs who sued in 1967, from bringing this suit. How could a new trial overcome her argument presented by these two doctrines, in view of the fact that this count of her answer was never traversed or denied? How could a new trial resolve the issue of the lack of plaintiffs' capacity to sue, raised in the amended answer of the intervenors, especially when the plaintiffs have failed to show any evidence of ever having been appointed administrator and administratrices of Z. A. Jackson's estate, as they have alleged in their complaint? Could a new trial supply the missing link in their chain of title, even if we were to accept the deed made profert with their complaint as a valid instrument, when there is no showing as to how this property of Z. A. Jackson came to be owned by them. There is a principle in ejectment, that mere relationship by ties of blood cannot confer title to real property. Cooper-King v. Cooper-Scott, supra. How could a new trial provide the missing link in the plaintiffs' chain of title to show how Z. A. Jackson's grantors, who took Lot No. 13 from the late Col. J. Watson, according to the deed made profert with the plaintiffs' complaint, came to be in possession of this lot when, according to the Supreme Court's decision of 1928, this property was shown to have been purchased in 1836 by D. B. Warner from Jacob and Mary Warner? This fact plaintiffs have not denied, although Teresa Mason had pleaded it in her answer. As it is, there is no showing in the pleadings to connect Lot No. 13 purchased by D. B. Warner in 1836, with Col. J. Watson, whose heirs are supposed to have sold it to Z. A. Jackson in 1908. No new trial can supply this important missing link, and unless it is supplied the plaintiffs have a defective chain of title. Compared with appellee Mason's deed, which is claimed to contain no proper metes and bounds, it must crumble. This point was also raised by the intervenors. It is an acknowledged principle in ejectment that, where a plaintiff seeks to recover on a record or paper

title he must show a regular chain of title from the Government or from some other grantor in possession. Some grantor must be shown to have been in possession claiming title to the premises at or about the time his deed in the chain of title was made. It follows, therefore, that if the person from whom plaintiff claims never entered on or claimed the land, and no other person in plaintiff's chain of title ever had any title or possession, plaintiff cannot recover. In this case plaintiffs' only deed filed with their complaint was allegedly executed in 1908 in favor of Z. A. Jackson by grantors T. N. Watson, J. H. Watson and J. F. Poindexter. There is no showing from whom the grantors took their title, nor has it been shown that these grantors were ever in possession of this property.
On the other hand, defendant Mason, as well as the intervenors, claim that their chain of title began in the deed of D. B. Warner executed in 1836 and that they and their privies before them have been in continuous possession from that time up to the filing of

this case in 1972. In the circumstances it is difficult to imagine how appellants could ever hope to recover in ejectment. In Smith v. Faulkner, [1946] LRSC 5; 9 LLR 161, 175 (1946), this Court said : "Courts often act upon their own inherent doctrines of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights." In CooperKing v. Cooper Scott, supra, the Court also held that "there would be untold disturbance to society if unduly belated demands were allowed to defeat long-established vested titles to real property, especially where the silence of claimants for long periods of time could be presumed as acquiescence in the previous disposition of the property, and where the status quo, having been longestablished, could not be disturbed without hurt to the rights of innocent parties." [n view of the foregoing, we find ourselves unable to

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recognize any ground upon which we might have been legally authorized to reverse the judgment dismissing this case. We, therefore, affirm it with costs against the appellants. Affirmed.

Morris et al v Keita [1999] LRSC 37; 39 LLR 710 (1999) (16 December 1999)

ABRAHAM MORRIS et al., Appellant, v. **MUSA B. KEITA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 3, 1999. Decided: December 16, 1999.

1. In an action of ejectment, the defendant cannot claim title to the premises in a third party and at the same time claim title in himself to the same property by adverse possession.

2. An action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty (20) years.

3. Title to **land** by adverse possession owes its origin to and is predicated upon the statute of limitation, and although the State does not profess to take an estate from one man and give it to

another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant who proves that he has actually occupied the premises under a color of right peaceably and quietly for the period prescribed by law.

4. The statute of limitations in our jurisdiction is a source of title, which is a valid and effectual title as a grant from the Republic.

5. A claim of legal title in a third party and a claim of possessory right or title by a defendant in an action of ejectment are two separate and distinct defenses or claims. However, a claim of legal title in a third party and a claim of title through adverse possession contradicts one another as the proof of one disproves or extinguishes the other.

6. A claim of title in a third party does not vest title in a second party, whose possession of the premises is at the instance of the third party.

7. A plea of adverse possession is an affirmative plea or defense in our jurisdiction. A party pleading an adverse possession must therefore admit that plaintiff has a color of title and a cause of action against the defendant party, but that the plaintiff failed and neglected to take any steps to protect his own interest within twenty (20) years as provided by statute.

8. A party claiming adverse possession of real property cannot also plead that title to the disputed property is vested in a third party.

9. Summary judgment can be granted by a trial court if it is satisfied that there is no genuine issue as to any material fact and the party in whose favor judgment is granted is entitled to it as a matter of law.

Appellee instituted an action of ejectment against the appellant, claiming title to a certain parcel of **land** at Bushrod Island, Monrovia, based on a title deed proferted with his complaint. In their answer, appellants submitted that the parcel of **land** belonged to the Cooper family, who had permitted Abraham Morris, the principal appellant, to occupy same but appellants,

having lived and occupied the property openly and without any molestation for a period of more than twenty (20) years as of the filing of the complaint, they own said property by virtue of adverse possession (the statute of limitation). In addition to filing a reply, appellee moved the court for a summary judgment in his favor and this motion was resisted by appellants, a hearing had, and the trial court's ruling reserved.

Before the trial court rendered its ruling on the motion for summary judgment, the Cooper family moved to intervene as party defendants; but their motion was resisted by appellee. When the motion for intervention was called for hearing, the Cooper family did not appear and so their motion was denied pursuant to the law on default on motions. The Cooper family then filed another motion for reconsideration and relief from the judgment on the motion to intervene; and this new motion was also resisted by appellee. When this motion for reconsideration was called for hearing, again the Cooper family did not appear and so this motion was also denied for the same reason as the motion to intervene.

In the absence of any remedial proceeding to review the interlocutory ruling of the trial court on the motion to intervene, the Supreme Court ruled that that matter was not before it.

As to the motion for summary judgment, it was heard by the trial court and granted. Appellants excepted and announced an appeal to the Supreme Court. Among the several contentions were the reiteration of the claim that the Cooper family originally owned the property and that appellants now own it by adverse possession. Appellants also claimed that appellee is not a citizen of Liberia and so could not acquire fee simple title to real property as the Liberian Constitution provides that only Liberian citizens may own real property in fee simple.

After a review of the records and entertainment of arguments, the Supreme Court held that a party cannot claim title to property by adverse possession and yet aver that a third party owns the property. The Supreme Court also held that since adverse possession is an affirmative plea, the party who asserts it must have admitted color of title in the adversary and relied only on his open, notorious and adverse possession of the property for a period of twenty or more years as the basis for his claim to title. Putting these two laws together, the Supreme Court ruled that summary judgment was properly granted as there was no genuine issue in dispute for the matter to go to trial by a jury and appellee was entitled to judgment as a matter of law.

The Supreme Court also said that as much as it would have wanted to delve into the issue of the citizenship of appellee, it was precluded from doing so because appellants had already admitted

that the Cooper family own the title to the **land** and appellants did not produce any evidence to show how they acquire any title or right of possession in the property. So the issue of the citizenship of appellee as a determinant of title to the property as between appellee and appellants did not arise.

In confirming the judgment of the trial court, the Supreme Court specifically said that its judgment decided the matter only as between appellants and appellee and not the Cooper family. The Supreme Court noted that if the Cooper family believe that the **land** belongs to them; they have adequate remedy at law against appellee.

As to the claim of damages, the Supreme Court said that the issue is one of fact which must be decided by a jury trial, not summary judgment proceeding; and so if appellee thinks that he is entitled to damages, he may present a new case and prove it before a trial jury.

The Supreme Court therefore *affirmed* the trial court's judgment with the *modification* that damages should not be recovered.

Moses K Yangbe appeared for Appellants. *George S. B. Tulay* appeared for Appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This case is before us on an appeal from the ruling of His Honour Wynston O. Henries, Resident Circuit Judge of the Sixth Judicial Circuit Court for Montserrado County, granting a motion for summary judgment in favor of Musa B. Keita, appellee, in an action of ejectment instituted by appellee, as plaintiff, against Abraham Morris and others, appellants herein, as defendants, during the September 1998 Term of that court.

The facts, as gathered from the records in this case, reveal that Musa B. Keita, appellee, instituted an action of ejectment on July 24, 1998, against Abraham Morris and all those under his control in the Civil Law Court of the Sixth Judicial Circuit Court, Montserrado County. In his four-count complaint, appellee claimed ownership of a piece of **land** located and lying on

Randall Street, near the Mesurado River, containing three (3) lots, which property he allegedly purchased from one Bangalee Keita on the 6th day of February, A. D. 1963 for a consideration of $300.00 (Three Hundred Dollars). Appellee attached a copy of his deed to the complaint to substantiate his claim of title to the aforesaid property. Appellee also alleged that appellants illegally, unlawfully and wrongly entered and occupied the premises without his consent. Appellee therefore prayed the trial court to evict, eject and oust appellants from the premises, place him in possession thereof, and award unto him the sum of US$150,000.00 (One Hundred Fifty Thousand United States Dollars) as general damages for appellants' unlawful, illegal and wrongful withholding of his property and for the injury, damages, embarrassment and inconveniences sustained by him at the instance of appellants.

Appellants were duly summoned and returned served. Appellants filed a twelve-count answer on the 3r d day of August, A. D. 1998, denying that appellee had any right to the property. Appellants alleged in count 2 of their answer that the premises occupied by them were owned by the legitimate heirs and grandchildren of the late Jesse F. Cooper. In count 6 of the answer, they claimed title to the subject property by adverse possession, contending that the appellee was barred by the statute of limitations on ground that they lived openly, notoriously and continuously on the premises over and above the period of twenty (20) years as at the date of the complaint. Appellee filed a reply and pleadings in this case rested.

On the 29thday of August, A. D. 1998, appellee filed a six-count motion for summary judgment, contending that appellants did not profert any deed or lease agreement to their answer. As such, according to appellee, there was no title in issue on ground that appellants cannot claim title in the Cooper family and at the same time claim title to the premises by adverse possession.

This motion for summary judgment was resisted by appellants on the 11thday of September, A. D. 1998. This Court deems count 6 of the resistance relevant for the determination of this case. In this count, appellants contended that the appellee's title deed was void *ab initio* on ground that he is not a born or naturalized citizen of the Republic of Liberia to own **land** as required by the Liberian Constitution.

The trial judge heard the motion for summary judgment and reserved ruling.

The certified records in this case also indicate that the heirs of the late James Francis Cooper, Jesse R. Cooper, Augustus W. Cooper and Edward Cooper, represented by Henry Reed Cooper, filed a five-count motion to intervene as party defendants in the ejectment suit. The intervenors

claimed ownership of the subject property, and alleged that Abraham M Morris, the main defendant in the ejectment suit, was a "watch dog" or care-taker of the intervenors, whose representation was insufficient to protect their interests and rights to the property in litigation. This motion to intervene was resisted. However, the intervenors defaulted by not appearing for the hearing of the motion to intervene and so their motion was denied. They then filed a motion for reconsideration and for relief from judgment; which latter motion was also resisted. The intervenors again defaulted, and their motion for reconsideration and for relief was denied by the trial judge.

On the 3rdday of November A. D. 1998, the trial judge, His Honour Wynston O. Henries, granted appellee's motion for summary judgment and ordered the issuance of a writ of possession to place appellee in possession of the premises. appellants excepted to this ruling and announced an appeal to this Court.

Appellants contended before this Court that the Cooper family is the legitimate original owner of the subject property, and that Co-appellant Morris was placed in possession thereof by the Cooper family. Appellants also claimed the premises by adverse possession on the ground that they openly, notoriously and adversely lived on the said premises for more than twenty years without any molestation. It is contended by the appellants that the trial judge erred in granting the motion for summary judgment notwithstanding that they had alleged fraud in their answer, as well as the resistance to the motion for summary judgment. Further, appellants contended that the trial judge erred when he ruled that appellants did not affirmatively plead the statute of limitations, in that, they admitted the apparent truth of the appellee's title in their answer, as a color of title may be expressed or implied. Moreover, appellants argued that the trial judge erred when he ignored their plea in bar and that appellee, Musa Keita, is not qualified to own title to **land** in fee simple absolute in the Republic of Liberia for reason that he is not a Liberian citizen.

Based on the foregoing, appellants prayed this Honourable Court to reverse the judgment of the trial court.

In response, appellee contended that even though appellants claim that they were placed in possession of the premises by the Cooper family, they failed to exhibit any power of attorney from the Cooper family or a lease agreement executed by and between them and the Cooper family. Besides, appellee also contended that the Cooper family filed a motion to intervene but defaulted by not appearing for hearing thereof, thereby bringing their right to the disputed property to a close in this litigation.

It was strenuously argued by the appellee that appellants publicly admitted appellee's title deed for the premises when they claimed title to the disputed property by adverse possession. Appellee maintained that based on this admission there was no disputed factual issues in this case to warrant a trial by jury . Appellee also submitted that in their resistance to the motion for summary judgment, appellants failed to show that there was any genuine issue of fact for trial by a jury. Appellee concluded that therefore the trial judge did not err in granting a motion for summary judgment; the trial court properly determined that there was no genuine issue of facts to warrant the case being submitted to a jury trial and that appellee was entitled to judgment as a matter of law.

Appellee therefore prayed this Honourable Court to confirm and affirm the judgment of the lower court.

The facts and circumstances in this case present one germane issue for the determination; and that is:

Whether or not the ruling of the trial judge granting a motion for summary judgment was proper and lawful.

A recourse to the certified records in this case reveals that after pleadings in the ejectment suit rested, a motion for summary judgment was filed by appellee, resisted by appellants, and the trial court entertained argument *pro et con* and reserved ruling. Thereafter, the Cooper family filed a motion to intervene as party defendant and this was resisted by appellants. While appellants and appellee were still awaiting the trial judge's ruling on the motion for summary judgment, the trial judge assigned the hearing of the motion for intervention. However, the Cooper family defaulted by not appearing for hearing of the motion; and pursuant to the law on default on motions, the motion to intervene was denied and dismissed. Civil Procedure Law, Rev. Code 1:10.7. The Cooper family subsequently filed a motion for reconsideration and for relief from judgment; but again the Cooper family defaulted on this second motion by not appearing for its hearing as assigned. The trial judge therefore denied the motion for intervention because of their default.

At this juncture, the intervenors failed and neglected to seek the aid of a remedial process from this Court as the law directs for a party aggrieved by an interlocutory ruling of a trial court. Hence the ruling of the trial judge denying the motion for intervention is not before this Court.

This Court also observes from the records in this case that co-appellant, Abraham Morris, did not show any power of attorney from the Cooper family authorizing him to defend the rights and interests of the Cooper family with regards to the disputed property in litigation. As much as this Court would like to pass upon the issue of fraud and the citizenship of appellee, which is necessary hold title to property in fee in Liberia, this Court firstly declines to decide these issues on the ground that co-appellant Morris does not have the legal capacity to raise any defenses for and on behalf of the Cooper family. Secondly, this Court observes the absence of any lease agreement between the Cooper family, as lessor, and coappellant Abraham Morris, as lessee, as evidence of a color of possessory rights to the premises.

We shall now decide the issue of whether or not the ruling of the trial judge granting the motion for summary judgment was proper and lawful.

Appellants claimed that title to this property is vested in the Cooper family and at the same time they claim title to said property by adverse possession. This Court holds that the appellants cannot claim title to the premises in a third party and at the same time claim title to the same property by adverse possession. The rationale is that a claim of legal title in a third party and a claim of possessory right or title by a defendant in an action of ejectment are two separate and distinct defenses or claims. A claim of title in a third party does not vest title in a second party, whose possession of the premises is at the instance of the third party. In other words, the claim to title of premises in the Cooper family does not vest any title in the appellants in the absence of any documentary evidence. The Cooper family, under our law, procedure and practice in this jurisdiction, is the proper party defendant to protect the rights and interests of its property. The Cooper family therefore has adequate remedy at law against appellee Keita if said Cooper family so desires.

The statute provides that "an action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty (20) years." For reliance, see: Civil Procedure Law, Rev. Code 1:2.12(2). A party, therefore, can claim adverse possession of a real property wherein such party is in possession of a premises overtly and continuously for the period of twenty (20) years.

A plea of adverse possession is an affirmative plea or defense in our jurisdiction. A party pleading an adverse possession must therefore admit that plaintiff has a color of title and a cause of action against the defendant party, but that the plaintiff failed and neglected to take any steps to protect his own interest within twenty (20) years as provided by statute. In this regard, a party

claiming adverse possession of real property cannot also plead that a title to the disputed property is vested in a third party, as in the instant case.

In the case *Thorne et al. v. Thomson[1930] LRSC 8;* , 3 LLR 193, 197 (1930), this Court, speaking through Mr. Chief Justice Johnson, held that "title to **land** by adverse enjoyment owes its origin to and is predicated upon the statute of limitation, and although the State does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant who proves that he has actually occupied the premises under a color of right peaceably and quietly for the period prescribed by law. The statute of limitations thereupon may be properly referred to as a source of title and is really and truly as valid and effectual a title as a grant from the Sovereign Power of the State."

Thus, the statute of limitations in our jurisdiction is a source of title, which is a valid and effectual title as a grant from the Republic. It follows therefore that the statute of limitation cannot be invoked by a defendant, who at the same is claiming title of the real property in a third party, as in the case under review.

Our revised Civil Procedure Law provides that a motion for summary judgment can be granted by a trial court if it is satisfied that there is no genuine issue as to any material fact and if the party in whose favor judgment is granted is entitled to it as a matter of law. For reliance, see: Civil Procedure Law, Rev. Code 1:11.3(3). In the case at bar, the trial judge ruled granting a motion for summary judgment on grounds that there was no genuine issue of material fact for trial. In *Dennis et al. v. Philips, et al.[1973] LRSC 14;* , 21 LLR 506, 513 (1973), this Court held that: "Summary judgment can only be granted when no justiciable material issue of fact is presented to the court." We uphold the holding in the *Dennis et al.* case and hereby rule that the trial judge properly and legally granted the motion for summary judgment since there was no genuine issue as to any material fact, and that the appellant, Musa B. Keita, in whose favor judgment was granted, is indeed entitled to it as a matter of law.

We, however, hold that this case is between Musa B. Keita and Abraham Morris and other persons occupying the **land** in question; and as such, the judgment rendered against Abraham Morris and these other persons is not binding on the heirs of the late James Francis Cooper, Jesse R. Cooper, Augustus W. Cooper and Edward Cooper, who were never made a party due to their default.

Wherefore, and in view of the foregoing, it is the considered opinion of this Honourable Court that the judgment of the trial judge should be, and the same is hereby affirmed and confirmed with modification that appellee Musa B. Keita is not entitled to any general damages in the absence of any proof of such damages. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction and enforce its judgment. Costs against the appellants. And it is hereby so ordered.

Judgment affirmed with modification.

Ansumana et al v Donzo [1977] LRSC 62; 26 LLR 483 (1977) (25 November 1977)

ANSUMANA KEITA, et al., Appellants, v. SAMUKA DONZON, Appellee.
JUDGMENT WITHOUT OPINION.

Decided November 25, 1977.

When this
case was called, no one appeared for the appellants, and Counsellors James T. Kandakai and T. Edwin Swen appeared for the appellee.
Since no brief was filed for appellants, it was necessary to determine if notice of assignment had been served on both parties. The
marshal's return to the notice of assignment shows that the appellants were duly served with notice but failed to file a brief or
appear for hearing. In keeping with Rule IV of the Supreme Court Rules, part 6 (Failure of Counsel to Appear), the Court proceeded
to hear argument of the appellee's brief. After studying the records and hearing the arguments, it is adjudged that the judgment
of the trial court awarding possession of the **land** in dispute to the appellee who was plaintiff in the court below was sound, since
the defendant/appellant could not benefit in ejectment without a title deed. The building of four huts on the **land** while the matter
was under investigation by an administrative office in the Executive Branch of Government did not give the defendant any right to
ownership in face of plaintiff's title deed regularly executed. An unsigned public **land** sale deed cannot convey title from the State
to a prospective purchaser of the **land ; and a Land Commissioner's certificate is not a deed and cannot affect land** passed by title
deed signed by the President. The judgment of the trial court is therefore affirmed with costs against the appellant. The Clerk of
this Court is ordered to send a mandate to the court below, commanding the judge presiding therein to resume jurisdiction over the
cause and enforce the judgment. And it is so ordered.
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Jackson et al v Trinity [1966] LRSC 80; 17 LLR 631 (1966) (16 December 1966)

ELIZA JACKSON, EDITH HERRON, and REGINALD JACKSON, Administrators of the Estate of Z. A. JACKSON, Deceased, Appellants, v. J. B. TRINITY, SR., Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 14, 1966.
Decided December 16, 1966. 1. 2. Points not raised in the bill of exceptions will not be considered on appeal to the Supreme Court.
A demand that an opposing party produce documentary evidence must be made on reasonable notice in a special application to the trial
court for a subpoena duces tecum and cannot properly be made in an ex parte pleading. Irrelevant evidence is generally inadmissible.
A court of equity will not countenance or lend itself to the perpetration of fraud.

3. 4.

On appeal from a decree on a bill in
equity to quiet title to real property, the decree was affirmed as modified.
Richard A. Diggs for appellants. Joseph W. Garber

for
appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court. In an age of rapid development, progress, and advancement, civilization
continues its prospective coexistence with both the good and the evil, which are all interrelated factors found in the characteristic
of Man that constitutes component parts of his peculiarity, and it is those characteristics which often move him to do the wrong
in performance of the right; otherwise our society and the courts would hold the place of mere nominal institutions. Because of this
growth of disagreement in understanding, the desire to impose the will of one upon the rights of
another without regard for the engendering
consequences,
631

makes the court the forum of grave responsibility to determine the rights and wrongs
of the parties concerned in litigations regardless of what the standard of one may be above the weakness of the other. To do this,
judges are admonished to be poised in the interpretation of the law so that the strong may not prevail against the weak, whose rights
are all regarded to be equal in the sight of the law. Suits of this kind are very frequently liable to be introduced in our courts,
and many times from a fraudulent desire of one party with hopes to deprive the other of his property rights, and these rights the
law must safeguard ; otherwise the margin between human activities and the rapidity of a developing age would soon widen beyond grasp
of the law. And for that matter this Court, sitting as the Court of last resort in this country, must always be awake to a sense
of deep concentration on the issues presented before us so that our conclusions may demonstrate the virtue of sound judgment on the
facts in any given case and a sound and clear interpretation of the law controlling, holding as our guideline the principle that
the rights of all parties are equal in the sight of the law. This is a bill in equity to quiet title and remove cloud ; and because
of good reasons, we have felt it right and timely to make the preface we have thus made in the premises. One J. B. Trinity of Monrovia,
Liberia, filed his bill in the June 1964 term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, equity division,
against Eliza Jackson, Edith Herron, and Reginald Jackson, administrators of the estate of the late Z. A. Jackson, praying to have
cloud removed, and his title quieted to a 36-acre tract of land known as Block No. 2 and Block No. 3, situated in an area formerly
known as Jacksonville, Old Field, now a part of the settlement of Paynesville, Montserrado County. This land he got by purchase on
November 1 1943, from one Mary B. Merrian of the City of
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Monrovia. He said grantor had bought the
same tract on the 7th day of August, 193o, from one T. G. Norfleet, who acquired title thereto from one B. W. Payne on the same date
by purchase, and who was the original buyer of said 36-acre tract of land on April z, 1923, from one C. H. Jackson and Benjamin J.
K. Anderson, then serving in the capacity of administrators of the intestate estate of the late Z. A. Jackson, which sale was made upon an order given by the
probate division of the Circuit Court of the First Judicial Circuit, Montserrado County. The bill was filed in consequence of the
fact that notwithstanding plaintiff was in possession of his chain of title, even including the title deed of the late Z. A. Jackson
from which the aforesaid tract of land was sold and had paid all of the taxes due thereon from the time of the purchase, yet defendants
Eliza Jackson and Reginald Jackson, subsequent administrators over the identical intestate estate of the late Z. A. Jackson that

had already been administered and closed, undertook to include the very 36-acre tract of land in an inventory which they filed in the Monthly and Probate Court of Montserrado County on the 25th day of November, 1961, and prayed the court to grant permission for them to offer same to the public for sale, claiming the same to be their property, and had a portion thereof surveyed and sold to third parties. The defendants averred the following in Count 4 of their answer : "And also because defendants submit as to Count 3 of the complaint that it is a fact that when they were appointed administrators of the estate of the late Z. A. Jackson, they did submit an inventory to the probate court of said estate, in which was included 96 acres of land situated in Paynesville, Montserrado County, because they did come across a deed in favor of said estate for 96 acres of land, and they did not know nor was it recorded on said deed that 36 acres thereof had

been sold to the plaintiff who laid claim to said 36 acres of land ; they have not insisted in including same in the estate." Pleadings in the case rested as far as the rejoinder, and his Honor A. Lorenzo Weeks, disposed of the issues of law and ruled the facts to trial. At the March 1966 term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, His Honor James W. Hunter, presiding, heard the facts and rendered the decree from which this appeal has been taken. The bill of exceptions which presents the grounds of the appeal is composed of five counts, and we quote them as follows. "1. Because His Honor, Alfred L. Weeks, then circuit judge, presiding, in passing on the issues of law raised by the appellants in their pleadings, on the 3rd day of February, 1966, overruled several salient law issues raised by them in said pleadings. "2. And also because appellants submit that on the 26th day of January, 1966, being the loth day's session, counsel of respondent on the cross-examination, put the following question to J. B. Trinity, plaintiff, a witness on his own behalf, as follows, to wit: 'In the answer of the defendants, they have requested you to produce the originals of certain letters addressed to you by them, dated January 11 1962, and August 2, 1962. Have you brought these documents and if so, please produce them to the court.' To this question, counsel for plaintiff interposed an objection on the ground of irrelevancy, 'in that the only means prescribed by law for one party to have his opponent produce written evidence in court is by a writ of duces tecum.' Which objection Your Honor sustained ; to which defendant then and there excepted. "3. And also because on Monday, February 7, 1966, being the 27th day's session, counsel for defendants on

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the cross-examination put the following question to Lawrence Sawyer, witness for the plaintiff, to wit:

`Prior to your survey of the property in question, were you made to know by the petitioner herein that
this matter was in court?' To this question, counsel for plaintiff objected on the ground of irrelevancy, which objection Your Honor
sustained. "4. And also because defendants submit that on Monday, February 7, 1966, being the 27th day's session, at the conclusion
of the evidence of the plaintiff herein, he offered into evidence a document marked by court R/ 1, to which counsel for defendant objected, but which objection Your Honor overruled and
submitted said document into evidence. To which defendant then and there excepted. "5. And also because defendants submit that on
the 11th day of March, 1966, Your Honor rendered a final decree, to which ruling defendant excepted and prayed an appeal to the Honorable
Supreme Court of Liberia at its October 1966 term." Our minds have been placed in a state of wonder to understand why the appellants
decided to burden this Court with an appeal if they were conscious of the fact that there appeared no cogent grounds in equity for
a review. Ever and anon this Court has said that only matters or grounds made a part of the bill of exceptions in an appeal case
will claim the attention of the Court and that all other exceptions, even if apparent on the records in the case and precluded from
the bill of exceptions, are presumed to be waived. It does not concern us what arguments may be presented ; if they are not in harmony
with the grounds of the bill, they cannot be traversed by this Court. Now here is a bill of exceptions which embraces no substantial
issues at all, very unscientifically prepared and void of any material matter ; however, we shall proceed to consider it as it is.
In Count 1 of the bill, appellants have not averred the salient law issues raised by theirs and overruled by the trial judge, hence
we are not able to presume that which
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they intend for us to traverse therein. Count t, therefore,
not having presented any issue for consideration by this Court, is hereby dismissed. With respect to Count 2 of the bill of exceptions,
our Civil Procedure Law makes this requirement: "If a party desires to give in evidence any document in the possession of his adversary,
he shall give him reasonable notice to produce it; and the court shall have authority to decide whether the notice is reasonable."
1956 CODE 6:734. A subpoena duces tecum is a writ which furnishes notice to bring documents to court. This writ was not prayed for
and served on the plantiff so as to require him to bring documents under date of January i t, 1962, and August 2, 1962, respectively,
to court. Moreover, the law makes it discretionary for the court to decide whether or not the notice served is reasonable; and the
court in the exercise of that discretion sustained objections against the questions on the ground that all evidence must be relevant
to the issues involved and that copies of letters concerning a survey were not relevant to the right of plaintiff with respect to

land to which he claims title since these two documents had no tendency to prove or disprove the facts at issue in the case. (See Section 698 of the Civil Procedure Law, 1956 CODE 6:698.) It goes without further saying that this Court sustains the trial court's ruling given on Count 4 of defendant's answer declaring it to be insufficient. Count 2 of the bill of exceptions therefore is not sustained. Counts 3 and 4 of the bill of exceptions, being vague in substance are also dismissed. Count 5, being a question of formula, induces no comment thereon. This is a case in chancery. This is a case in which the plaintiff would have the court remove a cloud and quiet his title. Mr. Chief Justice Johnson, speaking for this Court in Thorne v. Thomson, [1930] LRSC 8; 3 L.L.R. 193 (93o) , said at 3 L.L.R. 196 :

"Lord John Freeman-Mitford Redesdale, in his treatise on the pleadings in suits in the Court of Chancery by English Bill, remarks that the jurisdiction of a court of equity assumes that a power of decision should be exercised when the principles of law by which the ordinary courts of law are guided, give a right, but the powers of those courts are not sufficient to afford a complete remedy or the modes of proceedings are inadequate to the purpose. Courts of Equity administer to the ends of justice (r) by restraining the assertion of doubtful rights in a manner productive of irreparable damage ; (2) by preventing injury to a third person by all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed and are injurious to others, or by which an undue and unconscientious advantage is taken of another. REDESDALE, PLEADINGS AND PRACTICE IN EQUITY (Am. ed. 189o), 207, 208." A close study of the records in this case brings our minds to the conclusion that the surviving heirs of the late Z. A. Jackson's estate are inclined to perpetrate fraud on persons who lawfully bought property from said estate when it was under legal administration more than 4o years ago. Hence in countering Count 2 of plaintiff's complaint in their answer, they strongly maintained that "a bill to remove cloud and quiet title was not the proper form of action chosen." Appellants were fully aware that Z. A. Jackson's estate had been administered and closed as an intestate estate. They were aware of the fact from the records before us that plaintiff possessed title to the 36-acre tract of **land** in Block No. 2 and Block No. 3, because they had seen his title deed to the property and read the description of the **land** ; yet in their blind effort to dispose of property that was no longer that of their ancestor, they persisted in claiming a right thereto. In their answer, they admitted plaintiff's title

to be genuine; yet they refused to yield to him the right to possess the property according to his metes and bounds, which practice equity frowns upon and lends aid against the fraud. The decree from which this appeal has been taken removes

the cloud and vests the plaintiff in fee simple title of the property which is therein described by its metes and bounds in his title deed; but since this is the Court of last resort, and equity does not give aid by halves, we hereby affirm the same with the following amendment : The plaintiff is not to be further molested in the free enjoyment of his vested right in the property by any person whomsoever ; and the court below in the enforcement of its decree will send a public land surveyor to the spot for a double checking of the metes and bounds according to plaintiff's deed; the expense for such services to be borne by the plaintiff. Costs in these proceedings are hereby ruled against the appellants. And it is hereby so ordered. Decree affirmed as modified.

Washington et al v Sackey [1988] LRSC 23; 34 LLR 824 (1988) (25 February 1988)

WILLIAM H. WASHINGTON and **JAMES WASHINGTON**, Appellants, v. **PHILIP S.C. SACKEY**, for his wife, ELFRIDA SACKEY, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard November 18, 1987. Decided February 25, 1988.

1. To recover real property by means of an action of ejectment, the plaintiff must have either title to the property with a present right of continued possession, or must have had actual bona fide possession of the property with a right to maintain a continued possession when ousted by the defendant and a present right to possession when the action began.

2. A plaintiff in an action of ejectment can recover only on the strength of his own title as being good either against all the world or as against the defendant by estoppel, and not on the weakness of his adversary; and if that title fails, it is immaterial what wrong the defendant may have committed.

3. A plaintiff in an action of ejectment cannot recover against one without a title unless the plaintiff proves title or prior possession in himself.

4. Where a plaintiff recovers by virtue of a prior possession, he may be said to have recovered as much upon the strength of his own title as if he had shown good title to the property.

5. The pleas of the statute of limitations is an affirmative defense and the principle of adverse possession being involved, the party making such a plea must clearly aver that he has been in open and notorious possession of the property for twenty or more years without hindrance or molestation from the party claiming ownership or from anyone else.

6. Every defense in law or fact to a claim for relief, whether it be a claim or counterclaim, shall be asserted in the responsive pleading if a responsive pleading is required.

7. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading; but averments in a pleading to which not responsive pleading is required shall be taken as denied or avoided.

8. A plea specifically pleading the statute of limitations in bar to a suit is a question purely of law and by statute must be determined by the court, independent of a jury.

9. The statute of limitations constitutes an affirmative defense which must be pleaded affirmatively and not hypothetically.

10. An affirmative defense must be specifically pleaded in the answer or the defendant will not usually be permitted to take proof, or if proof is taken, he cannot have the benefit of it.

11. Where a defendant fails to set forth in his answer constituting an affirmative defense, he must, at the hearing, if not sooner, seek and obtain leave of court to file a supplementary or amended answer; and this concession can be granted only upon payment of costs.

12. The failure to pay accrued costs before filing of an amended answer renders the amended answer dismissible.

13. Any statement that is a narration of a past event of a person who is not a witness in a case is hearsay, and therefore is inadmissible unless it comes under some exception to the hearsay rule.

14. The court will not ordinarily review the testimony of a witness as to what some other person told him, as evidence of the existence of the fact asserted; nor will a witness be permitted to testify to facts where his knowledge thereof is derived, in whole or in part, from the unsworn statements of others.

15. Hearsay evidence, as a general rule, is not admissible to establish any specific facts which in its nature is capable of being proved by witnesses who speak from their own knowledge.

Appellee Elfrida Sackey, daughter and legal heir of the late Daniel Cooper Barclay, acting through her husband Philip S. C. Sackey, instituted an action of ejectment against William and James Washington to have them ejected from a parcel of **land** to which her late father was said to have died seized. The defendants, who had filed a one-count answer of denial, withdrew the said answer, with reservations to file an amended answer. However, only co-defendant/appellant filed an amended answer, in which the only defense set forth was the statute of limitations. The trial court dismissed the amended answer on the ground that the returned costs had not been paid by the defend-ant and that the statute of limitations had not been pleaded squarely. The defendant was therefore ruled to a bare denial.

At the trial, the defendant did not testify in his own defense. Instead, William Washington, who had withdrawn his answer without filing an amended answer, took the witness stand and testified. At the close of the evidence, a judgment was returned in favour of the plaintiff. A motion for a new trial having been denied, judgment was entered confirming the verdict.

In an appeal to the Supreme Court, the Court affirmed the judgment of the trial court, holding that the evidence introduced by the appellant was hearsay, and therefore insufficient to refute the plaintiffs claim and evidence. The Court agreed with the dismissal of the appellant's answer because of the failure by the appellant to pay the returned costs as required by law. The Court also upheld the further ground used by the trial court for dismissing the answer, noting that as the defense of the statute of limitations was an affirmative defense, the defendant should have clearly averred affirmatively that he had been in open and notorious possession of the property for twenty or more years without hindrance or molestation, rather than raise the plea hypothetically. The Court observed that the defense of the statute of limitations, being one in bar to a suit, was a question purely of law to be determined by the court independent of a jury, the

trial court did not err in ruling as it did. Accordingly, the Court affirmed the judgment of the trial court.

Moses Abadge appeared for the appellants. *S. Raymond Horace, Sr.* appeared for the appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

The records before us reveal that on the 7 th day of May, A. D. 1979, plaintiff/appellee instituted the above entitled cause of action against defendant/appellant alleging:

1. That plaintiffs wife, Elfrida Sackey, was the daughter and legal heir of the late Daniel Cooper Barclay who died possessed of a ten (10) acres block of **land**, situated, lying and being in the Township of Virginia, Montserrado County, Republic of Liberia bought from one C. H. Christopher, legal heir of the late William E. Christopher.

2. That William E. Christopher, during his life time, bought from one Paul **H.** Bailey, legal heir of one George R. Bailey, twenty-five (25) acres block of **land** on the 16th day of May, A. **D.** 1908, evidenced by photocopy of the title deed executed to him hereto annexed and marked Exhibit "B" to form part of his complaint. That it was from this twenty-five (25) acres of **land** the late Daniel Cooper Barclay bought the aforesaid ten (10) acres of **land** on the 27th day of September, A. D. 1937.

3. That his wife, Elfrida Sackey aforesaid, was the lawful owner of the said ten (10) acres of **land** by descent, that is to say, acquired the property by right of representation as heir of the late Daniel Cooper Barclay upon his death, through whom it was derived, she being the daughter and legal heir of the late Daniel Cooper Barclay, which piece of property defendants encroached upon and had been withholding notwithstanding plaintiffs demands of them to vacate and surrender said property.

As it is a well established principle of law that to recover possession of real property by means of an action of ejectment, the plaintiff must have either a title to the property with a present right of

continued possession, or has had actual bona fide possession of the property with a right to maintain a continued possession when ousted by the defendant and a present right to the possession when the action was begun, and that the plaintiff in ejectment can recover only on the strength of his own title, and not on the weakness of his adversary's as being good either against all the world or as against the defendant by estoppel and if that title fails, it is immaterial what wrong the defendant may have committed; that in any case a plaintiff in ejectment cannot recover as against one without a title unless he proves title or prior possession in himself, and if he recovers by virtue of prior possession, he may be said to recover as much upon the strength of his own title as if he had shown a good title to the premises. 18 AM. JUR., *Ejectment, §* 20. Plaintiff elected to support his allegations by making profert of the following instruments:

1. WARRANTY DEED FROM PAUL B. BAILEY, legal heir of George H. Bailey to William E. Christopher both of the Settlement of Virginia, Montserrado County, Republic of Liberia, recorded in volume 35, page 441, of the records of Montserrado County, filed in the archives of the Department of State (now Ministry of Foreign Affairs).

2. WARRANTY DEED FROM C. H. CHRISTOPHER to Daniel Cooper Barclay, probated and registered on the 24th day of January, A. D. 1938 and recorded in Volume 69, pages 692-694, Montserrado County, Republic of Liberia.

3. WARRANTY DEED FROM PAUL H. BAILEY legal heir of George H. Bailey to William E. Christopher probated on the 3rd day of June, A. D. 1912 and registered on June 4, 1912.

4. ADMINISTRATOR'S DEED FROM MAGDELANE COOPER of the City of Monrovia, Montserrado County to Elfrida Cooper Sackey.

Defendants William H. Washington and James Washington appeared and denied the right of plaintiff to recover against them by filing a one count answer, stating that:

1. Because defendants deny all the singular the allegations of both law and facts as are set forth and contained in the plaintiffs complaint but not made subject of special traverse.

On the 28th day of May, A.D. 1979, plaintiff filed a reply in which she denied the legal sufficiency of defendants' answer on the ground that said answer was a sham plea, intended only to delay and baffle justice; in that said answer raised no traversable issue in law or in fact and therefore was untenable hence should be dismissed and defendants ruled to bare denial with cost against defendants.

On the 28th day of June, A. D. 1979, defendants entered a Notice of withdrawal of their answer with the right of re-filing. And on the very same day June, 1979, Co-defendant James Washington filed an amended answer averring that:

"1. Because, co-defendant says that whilst it is true that the plaintiffs title is genuine as made in the complaint, yet plaintiff is barred and estopped because of laches. That is to say, in keeping with law, the plaintiffs should have filed their action within twenty years since the year, 1937, being the year which they acquired title as appears from their deeds exhibits "A" and "B" attached to the complaint. Plaintiff and their privy not having instituted this action within statutory time, they are forever barred by the statute of limitations."

2. In view of the fact that Co-defendant James Washington, and his mother and uncle had lived on the premises in question openly without any disturbance from the plaintiff and their privy the action should be dismissed with cost against plaintiff'.

To this, co-defendant James Washington's amended answer, plaintiff filed an amended reply in which he averred that the said answer should be dismissed and be ruled to trial on the bare denial of the facts on the following grounds:

"1. That Co-defendant James Washington's amended answer should be dismissed because he, as a prerequisite had failed to pay plaintiff s cost incurred in filing_ and serving pleadings subsequent to the withdrawn pleadings. Because of this legal blunder, plaintiff prayed for the dismissal of the entire amended answer.

2. That co-defendant, James Washington's amended answer strived to plead *"statute of limitations"* but failed to state the year he entered upon plaintiffs said piece of realty and how many years he occupied and possessed the same, which constituted the statute of limitations

according to him. Hence, said plea was indistinct, hypothetical and lacked the notice required by such plea; and so, should be dismissed.

3. That to plead *"statute of limitations,* the party so pleading said statute must first set out squarely the time, date and the year of his entering upon, occupying and possessing said realty to cover a period of twenty (2) calendar years or more with certainty and proof. But not in the evasive, hypothetical and illegal manner as was done by the defendant herein.

4. That as to that part of count one (1) of defendant's answer which said that plaintiff is barred and estopped because of laches; that is to say, in keeping with law, the plaintiff should have filed their complaint within twenty (20) years, since the year 1937, being the year which they acquired title as appears from their deeds exhibits "A" and "B" attached to the complaint". Continuing said count one, defendant says that plaintiffs and her privy not having instituted this suit within statutory time, they are forever barred by statute of limitations". Plaintiff maintains that in the year 1937, at which time plaintiff acquired title to the subject property, defendants had not then encroached upon said piece of property; at the time when they encroached, plaintiff immediately demanded them to vacate and surrender said property to plaintiff, but said defendants failed, refused and neglected to vacate from plaintiffs said property. Hence this suit.

After resting of pleadings, law issues were heard and disposed of by His Honour E.S. Koroma then presiding over the March 1980 Term of the Civil Law Court for the Sixth Judicial Circuit Court who dismissed the amended answer and ruled defendants to a bare denial because the Plea of statute of limitations, being an affirmative plea or defense, had not been made in keeping with the law controlling; that is to say it had not been raised fairly and squarely, as well as in violation of the statute on refiling. During the hearing of the law issues, Codefendant William Washington in the court below, who had with Co-defendant James Washington, withdrawn their answer on the 2nd day of July A. D. 1979, and had not joined in filing the amended answer, sought to participate further in the case when there was no basis for his further participation. The trial judge rightly considered him a stranger to the action in face of his withdrawal of his answer and not refiling.

As aforesaid, law issues having been disposed of, the case came up for trial at the December 1980 Term of the Civil Law Court with His Honour Frank W. Smith presiding on the 15th day of January, A. D. 1981.

The facts as brought out during the trial may be succinctly stated as follows: That in 1908, one Paul H. Bailey sold a twenty five (25) acre parcel of **land** in Virginia, Montserrado County, to one William E. Christopher. Apparently after the death of William Christopher, one Charles H. Christopher, as heir of William E. Christopher, sold ten (10) acres of **land** out of the twenty-five (25) acre block to Daniel Cooper Barclay, father of Elfrida Cooper Sackey, wife of plaintiff in 1937. After Daniel Cooper Barclay died, his intestate estate was administered by the late Magdalene Cooper who executed an administratrix deed to Elfrida Cooper Sackey. At this time one Serena Washington, mother of appellees was living on the subject property. When Philip J. Sackey on behalf of his wife asserted the right to the property and Serena Washington refused to vacate same, the appellee instituted an action for recovery, but according to the records before the Court, Mrs. Magdalene Cooper and her sister, Anna E. Cooper, intervened and told appellees that they had given permission to Serena Washington because she was a poor woman. After the death of Serena Washington, appellee again asserted her right to the property to appellants who were living thereon but they refused to vacate same. The result of their refusal resulted in the present action.

Further, according to the records of the trial, even though James Washington was the one person then before the court by virtue of his amended answer, he did not appear during the trial to testify in his own behalf. Rather, William H. Washington who had withdrawn his defense, as stated *supra*, and one William Christopher undertook to testify to affirmative matter which they never pleaded in their answer in keeping with the principle of a notice.

They only undertook in the first place to plead a general denial in the first answer and in the second place the statute of limitations in the amended answer.

It is amazing that in all the testimonies of the defense witnesses no effort was made to show title, especially so when defendants' witness William Christopher attempted to show that defendants were occupying the property at the instance of one Jacob Christopher, purported son of William Christopher who was the original owner of a 25 acre parcel of **land** from which appellee's 10-acre block was carved.

After both sides had rested evidence and argued, the Court made its charge to the empanelled jury which after due deliberation brought into a verdict in favour of appellee on the 19th day of January, A. D. 1981. (See Verdict). A motion for new trial was filed and resisted and the court after denying the motion for new trial on the 27th day of January, A. D. 1981, rendered final judgment in the case. It is from that final judgment that appellants are before us on a four-count bill of exceptions. This in brief is the history of the case

In count one (1) of the bill of exceptions, although ascribed for William Washington and James Washington as appellants but is intended for James Washington who filed the amended answer, he contends that the trial jury was influenced by the trial judge's charge which was based on the erroneous ruling on the law issues to the effect that: "the defendant, in the case in pleading the statute of limitations, did not say that he had gone on the place and was in possession for twenty (20) years or more, but he simply said that the plaintiff should have brought the suit before twenty (20) years passed and since he did not do it , he is guilty of laches so the court ruled out the answer, because it did not comply with the law and therefore defendants rested on bare denial of the fact. Therefore in this case the question of being on that place for twenty (20 years or more, is not before you". We hold the view that the trial judge did not err in the instructions do the jury on the issue of the statute of limitations because his instructions were strictly in keeping both with the amended answer of co-defendant James Washington, the ruling of His Honour E. S. Koroma on the law issues. In that, the plea of statute of limitations is an affirmative defense and the principle of adverse possession being involved, the party making such plea must clearly aver that he has been—in open and notorious possession of said property for twenty years or more without hindrance or molestation from the party claiming ownership or anyone else. This the appellant failed to clearly state in the amended answer; and therefore was fatal to the doctrine of the statute of limitations. Consequently neither the judge who ruled on the law issues nor the trial judge who instructed the trial jury on the principle erred. Every defense in law or fact to claim for relief in any pleadings whether a claim or counterclaim, shall be asserted in the responsive pleading thereto if one is required.... Civil Procedure Law, Rev. Code 1:9.8 (presentation of defense in responsive pleading). Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

Moreover, this Court has held that a plea specially pleading the statute of limitations in bar to a suit is a question purely of law and by statute must be determined by the Court, independent of a jury. *Cassell v. Richardson,* 1 LLR 89 (1876). That the statue of limitations constitutes an affirmative defense which must be pleaded affirmatively and cannot be pleaded hypothetically. That is, "if a bill states a good cause of action and the defendant finds that he cannot safely rely on the certainty of disproving its allegations, his only recourse is to set up an affirmative defense; and it is when he is confronted by this necessity that the problem of framing the answer as a pleading assumes its greatest importance". Among the affirmative defenses available to a defendant when specially set forth in the answer are such as these, fraud, account stated, payment, release, reward, statute of limitations, rescission, innocent purchaser, usury, infancy and former judgment. These and all other affirmative defense, must be specially pleaded in the answer. Otherwise, the defendant cannot usually take proof in reference to them or, if the proof is taken, he cannot have the benefit of it. It is not an uncommon thing for a defendant to suffer from his failure to set forth in his answer facts constituting an affirmative defense. One who finds himself in this predicament must, at the hearing, if not sooner, get leave to file a supplement or amended answer, and this con-cession will of course be granted only on the payment of costs.

The appellant's amended answer, without specifically pleading the statute of limitations and then state other facts, sufficient if true, has defeated his case, more especially when he failed to pay plaintiffs costs, after withdrawal, before refiling. In other words, the trial judge in disposing of the law issues, did not err when he ruled that defendants' failure to pay accrued costs before filing of the amended answer rendered said amended answer dismissible and was therefore right to assign this act of the failure of defendants to pay the accrued costs before refiling as one of the grounds for dismissing the amended answer.

Count two (2) of appellant's bill of exceptions asserts that defendant's parents first entered on the premises in question in the year 1937 which was testified to by witness William Washington and William Christopher under oath. Appellant states that this testimony thereby established the plea of statute of limitation as interposed by the defendant's amended answer, and therefore the verdict of the jury was contrary to the evidence adduced at the trial and the law controlling action of ejectment since title for real property may be obtained by prescription defendants and their ancestors having had opened notorious possession of the premises in question for over thirty (30) years. The plaintiff must recover on the strength of his title, plaintiff could not recover in this action, since the law and the fact have vested defendants legal title of prescription or adverse possession.

Recourse to the records show that the averments therein contained to the effect that defendant' parents first entered the premises in 1937 aside from seeking to assert affirmative matter which under the principle of bare denial, they could not do, the testimony of William Washington was mere hearsay. This was his testimony in that respect. "We would like to spread on the record of this Honourable Court an information to that of the jurors that as far as we can explain when we reached the age of maturity our late mother, Serena Washington told us that in the year 1937, she and my late uncle. Jacob Christopher and my late mother. Serena Washington removed and occupied a twenty five acres block of **land**."

The testimony of William Washington, should be compared with the positive testimony of the plaintiff and his wife that when Mrs. Sackey came into ownership of the **land** in question, they attempted to oust defendant's mother but were prevented from doing so upon advice of the late Magdalene L. Cooper, who has issued the administratrix deed to Mrs. Sackey, that it was she who has permitted defendant's mother to reside on the property because she was a poor woman. According to records, the testimony stands uncontradicted. The testimony of William Washington and William Christopher was the defendants are occupying the property by inheritance, which is quite contrary to the plea of statute of limitations raised in the amended answer. We maintain that the testimony of William Washington is hearsay. Because the evidence does not derive its value solely from the credit to be given to the witness, William Washington

himself, but also in part of the veracity and competence of his parents in general and particularly his mother. It is rather hearsay evidence because it is evidence of what someone else said. It is not proof of the truth of what is claimed to have been said. The essential right of cross examination is absent. The evidence is supposedly oral evidence of a supposedly extra-judicial narration to a witness judicially delivered viva voce to the judicially deposing witness. It has been established by law that:

"Any statement that is a narration of a past event 'of a person who is not a witness in a case is hearsay, and inadmissible, unless it comes under some exception of the rule.

The Courts will not ordinarily receive the testimony of a witness as to what some other person told him, as evidence of the existence of the fact asserted, nor will a witness be permitted to testify to facts where his knowledge thereof is derived, in whole or in part, from the unsworn statements of other.

It is a general rule that hearsay evidence is not admissible to establish any specific fact which in its nature, is capable of being proved by witnesses who speak from their own knowledge; or, in other words, that evidence whether written or spoken, which does not derive its credibility solely from the credit due to the witness himself, but rests in part upon the veracity and competency of some other person from whom the witness received the information, is not admissible to establish a substantive fact. And this is the rule, although the matter sought to be proved was at the time it was made against the interest of the person making it and although no other evidence can possibly be obtained, as where it is the declaration of a person who was the only eyewitness, and who keeps out of the way to avoid being subpoenaed. The reason of the rule is that such evidence requires credit to be given to the statement of a person who is not under the obligation of an oath, or any of the ordinary tests for ascertaining the truth of the statement". 1 WHARTON'S CRIMINAL EVIDENCE 671 -674, fn. 1, 2, and 3.

Under the prevailing law, facts and circumstances, the jurors were therefore justified not to have given fait and credit to the testimony of William Washington and James Washington to dispose appellee Philip J. Sackey for his wife, Elfrida Sackey of their property. The testimonies of James and William Washington not being admissible, the trial judge did not err.

In counts three and four of appellant's bill of exception, they have contended that in spite of their clear, cogent and legally sound ground in their motion for new trial yet the trial judge adversely overruled and denied said motion, and rendered final judgment confirming and affirming the

erroneous verdict of the trial jury which was contrary to the weight of evidence adduced thereby adjudging defendants liable in the cause of action.

We hold that recourse to the records having revealed that the verdict of the trial jury was in conformity with the evidence produced at the trial, the final judgment affirming and confirming said verdict was not erroneous and same should not be disturbed, especially so when the said trial was fair and regular.

Therefore, in view of the foregoing facts, circumstances and the law controlling, it is our considered opinion that the trial being regular, clear and cogent, the final judgment confirming and affirming the verdict of the empanelled jury unanimously agreeing that after careful consideration of the evidence adduced at the trial of the case, the plaintiff is entitled to recover her **land** and to an award of general damages in the amount of one thousand ($1,000.00) dollars be and the same is hereby upheld to all intents and purposes. And it is hereby so ordered.

The Clerk of this Court is ordered to send a mandate to the court below informing it of this judgment. Cost against appellants.

Judgment affirmed.

Duobob et al v Davies [2003] LRSC 2; 41 LLR 339 (2003) (9 May 2003)

SAMUEL COOPER DUOBO, DOE SAYDEE DUOBO, and THOMAS SAYTUE DUOBO, et al., Appellants/Respondents, *v.* SAMUEL DAVIES, Appellee/Informant.

APPEAL FROM THE JUDGMENT OF THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: April 7, 2003. Decided: May 9, 2003.

1. A creditor or other persons interested, persons acting on behalf of an infant or surety to a bond may petition a probate court to suspend, modify or revoke the letters of administration and to cite the fiduciary to show cause why the petition should not be granted where the grant was obtained by false suggestion of a material fact.
2. There is a prescribed procedure for change of name which must be followed in order to render the change valid.
3. Where the court revokes the letters of administration *de bonis non* granted an administrator based on misrepresentation, all actions taken by the administrator based on the appointment, including the sale or other disposition of properties of the estate are in turn rendered null and void.

The appellants appealed to the Supreme Court from a ruling of the Monthly and Probate Court for Montserrado County granting the appellee's bill of information filed with that court and revoking, as prayed for in the said bill of information, the letters of administration *de bonis non* which the court had previously issued to the appellants. The lower court had determined that as the letters of administration had been issued to the appellants based on fraud, deception and misrepresentation, including the fact that the appellants' names were not what they purported to be and that one of the administrators whom they had alleged had died was still alive, a proper legal basis was presented to revoke the letters of administration issued to the appellants.

The Supreme Court affirmed the trial court's ruling, holding that sufficient evidence had in fact been presented to show that the appellants had deceived the trial court regarding their true identity, the relationship they bore to the decedent, and the alleged death of the original administrators of the estate. The Court noted further that as the change of name made by the appellants to have their names conform to that of the decedent was not in conformity with the requirements of the law, the same was of no legal effect. Accordingly, the Court declared as void all transactions done by the appellants in their capacity as administrators *de bonis non* of the decedent estate.

Joseph H. Constance of Greene and Associates Law Firm appeared for the appellants. *C. Alexander B. Zoe* of Providence Law Associates and *Sylvester S. Kpaka* of the J. D. Gordon Law Firm appeared for the appellee.

MR JUSTICE WRIGHT delivered the opinion of the Court.

Mr. Druma Duobo died intestate and at the time of his death was seized of several acres of **land** situated and lying at the St. Paul Bridge area of Bushrod Island, Monrovia. Messrs. T. Tula Duobo and Wesseh Sackor Duobo were appointed administrators of the decedent's intestate

estate on June 27, 1988, after the Monthly and Probate Court for Montserrado County had granted their petition duly filed with the said court.
In their capacity as administrators, the said individuals, on April 20, 1990, sold a piece of the **land** of the Estate, containing 0.5 lot, to Informant Samuel Davies for $600.00. The informant had earlier developed the property and had built two houses on thereon.

The respondents, who had allegedly changed their names by adding "Duobo" to their original names, filed a bill of information before the Monthly and Probate Court alleging that the administrators, T. Tula Duobo and Wesseh Sackor Duobo, had died and that therefore they, being the next of kin, should be appointed by the Court as administrators *de bonis non.* The Probate Court granted the information and appointed the respondents as per their prayers.
Upon their appointment as administrators *de bonis non*, the respondents herein executed on April 5, 1994 a deed in favor of Beatrice Suah, a former wife of the informant. The inform-ant, Samuel Davies, upon hearing that the respondents had been appointed administrators *de bonis non*, filed a bill of information informing the Probate Court that its appointment of respondents was based on deceptive and false information that the original administrators, T. Tula Duobo and Wesseh Sackor Duobo had died. The informant therefore prayed the Probate Court to revoke the letters of administration *de bonis non* issued in favor of the respondents.
The respondents, in their returns filed to the bill of information, contended that T. Tula Duobo and Wesseh Sackor Duobo had died before the informant obtained his deed and that the signatures on said deed, purported to be those of T. Tula Duobo and Wesseh Sackor Duobo, were forged signatures.
Pleadings rested, the law issues were disposed of, and a regular trial was held. Thereafter, the court entered final judgment in favor of the informant revoking the letters of administration *de bonis non* issued to the respondents on the grounds of fraud, deception and misinformation. The respondents have appealed to this Honourable Court for a review of that judgment.
The only question for this Court's consideration is whether or not information upon which the court relies to appoint one as administrator, when found to be false and misleading, constitutes sufficient basis in law for the court to revoke its letters of appointment.
We answer this question in the affirmative, and expound further thereon by quoting hereunder the final ruling of the trial court:

"Court's Final Ruling on the Bill of Information:

The Informant Samuel Davies, on the 17th day of April, A. D. 1995, filed a six (6) count bill of informa-tion in which he alleged that he was issued a deed on April 20, 1990 by T. Tula Duobo and Wesseh Sackor Duobo, the then administrators of the St. Paul Bridge Community, both of whom this Court was made to believe had died, and based on such information, this court decreed that letters of administration *de bonis non* be issued to respondents on February 24, 1993; that the petition upon which said letters were issued is false, misleading and pleaded in bad faith and the administra-tors who were alleged to have died are not dead and one of them is a police officer; that the names of Doe Saydee Duobo and Samuel Cooper Duobo, two (2) of the appointed administrators, are fictitious in that they both deceived this court by giving names other than their own, claiming to be Duobos, when in fact they are Doe Saydee and Samuel D. Cooper. Doe Saydee Duobo on January 5, 1983 issued a receipt to one Miss Beatrice Suah as Doe Saydee, Assistant Secretary of the said Community and it was also approved by Samuel D.

Cooper, who is now claiming to be Samuel Duobo; that those men overnight become Duobos and went to the extent of claiming the death of a man who is still alive and works as a captain in the Liberian National Police Force; that the man, Wesseh Sackor Duobo, because of fear of being harmed by those men, remained quiet as they had threatened to harm him if he should ever appear in court to testify to the truth; that Messrs. Doe Saydee and Samuel D. Cooper illegally and without any color of right issued a deed to one Miss Beatrice Suah on April 5, 1994 for the very parcel of **land** which was sold to the informant by the former administrators; that the deed was presented for probation and was probated without meeting the standard set by the Ministry of Lands, Mines and Energy requiring that before any deed is submitted for probation it should meet the approval of said Ministry. Informant then prayed this court to summon the respondents to show cause why they should not be held in criminal contempt for their *alleged* behavior."

The respondents also filed a six (6) count returns to informant's bill of information, alleging therein that as to the deed allegedly issued by T. Tula Duobo and Wesseh Sackor Duobo, said deed is a fraudulent instrument in that both T. Tula Duobo and Wesseh Sackor Duobo had died before the purported deed was made and that their signatures were clearly forged on it as grantors while Samuel D. Cooper's signature was also forged on it as a witness. The respondents stated that they did not mislead this court to obtain the letters of administration *de bonis non* and that they stand by everything that was contained in said petition. Co-respondents Samuel Cooper Duobo and Doe Saydee Duobo also contended that Samuel Cooper Duobo was reared by one James Cooper of Harper City, Cape Palmas, who provided education for him and gave him the Cooper name in place of his own father's name of Duobo; that in order not to lose his own Duobo name, which is his real name, he maintained it as a middle name represented by the letter "D"; hence he was known by friends as Samuel Duobo Cooper. But in actuality, he is Samuel Cooper Duobo. As to Co-respondent Doe Saydee Duobo, he has denied that said name is fictitious as alleged by informant, in that the late Druma Duobo was his natural father and it was Co-respondent's Uncle Doe Wleh Saydee, a former Revenue Collector, who not having a child, reared and educated the co-respondent and gave him his name (Saydee), a name which the co-respondent felt was depriving him of his family name (Duobo) and hence he therefore changed same to Doe Saydee Duobo; that the deed which was issued to Miss Beatrice Suah on April 5, 1994 was for a parcel of **land for which they had and still have the original deed and said parcel of land** had not been deeded to anyone prior to its sale to Beatrice Suah. The respondents contended also that the informant's deed, which he relied on, has not met the requirements of the Ministry of Lands, Mines and Energy, and therefore he cannot use that require-ment/standard to attack the deed issued to Miss Beatrice Suah by them (he that comes to equity must come with clean hands).

This Court, under the gavel of Judge Gloria Musu- Scott, now Chief Justice, passed on the law issues on the 26th day of February, A. D. 1996, suspended the said letters of administration, and ruled to trial the issue of whether or not respondents misled this court in obtaining the letters of administration *de bonis non* and whether the said letters are therefore null and void *ab initio* (Decedent Estates Law, chapter 107, Section 107.10 (d)."

Trial commenced on Thursday, May 15, 1997 with Informant Samuel Davies taking the stand as the first witness for informant. He testified to exactly what is contained in the said bill of

information to the effect that he bought a parcel of **land** in 1990 from T. Tula Duobo and Wesseh Sackor Duobo, the administrators of the St. Paul Bridge Community and built houses on said **land**, but that the respondents deceived this Court when they petitioned it for letters of administration *de bonis non* alleging that the administrators had died, and same was granted. They proceeded to sell to one Beatrice Suah, his former traditional wife, the very **land** he had purchased and built houses on; that Wesseh Sackor Duobo is not dead, but alive and works for the Liberian National Police. Then came the testimony of Captain Gibson K. Sackor who testified that he did not know if Samuel Davies owned any **land** at the St. Paul Bridge Community, and that he did not know any Wesseh Sackor Duobo and was not Wesseh Sackor Duobo. Peter N. Blama, the surveyor, testified that he had met Informant Davies in 1994 and that he was asked to insert a figure/amount of $600.00 into a deed he had; that when he questioned the authenticity of said deed, the informant led him to the cafeteria (Temple of Justice) and introduced him to a police officer called Wesseh Sackor Duobo who confirmed the genuineness of said trans-action. Inspector A. B. Blamo, Jr. identified Captain Gibson Sackor as being Wesseh Sackor Duobo. William D. Ware, Sr., Director of Personnel of the Judiciary identified Co-respondent Saydee as Doe N. Saydee, an employee of the Judiciary assigned to the Temple of Justice, Criminal Court "A", as clerk/typist. Informant offered into evidence, which was admitted by this court, his deed and tax receipts for the properties, as well as photographs taken in his alleged homes build on said parcel of **land**.

The respondents witnesses took the stand, in the persons of Samuel D. Duobo, Thomas Saydee Duobo and Doe Saydee Duobo, and reiterated what was contained in their returns to the bill of information as filed before this court on the 17th day of April, A. D. 1995. They asked for the admission into evidence the deed to Beatrice Suah, which was duly admitted.

The question/issue this court is left to decide is the same as before: whether or not the respondents did mis-lead this court in obtaining their letters of administration *de bonis non* as contemplated by the New Decedents Estates Law, Chapter 107, section 107.10(d), which renders it revokable. This court will now quote the appropriate law for the benefit of both parties. Section 107.10(d), New Decedent Estate Law, SUSPENSION, MODIFICATION, OR REVOCATION FOR DISQUALIFICATION OR MISCONDUCT, states:

"In any of the following cases a creditor or person interested, any person in behalf of an infant or any surety on bond of a fiduciary, may present to the court having jurisdiction a petition praying for a decree suspending, modifying or revoking those letters and that the fiduciary may be cited to show cause why a decree should not be made accordingly: ... (d) where the grant of his letters was obtained by a false suggestion of a material fact."

The informant alleged in his bill of information that the respondents changed their names and misrepresented to this court that Wesseh Sackor Duobo was dead which enabled them to obtain a decree from this court granting them letters of administration *de bonis non.*

This Court says from a review of the evidence in this matter, especially the testimony of the informant, which was corroborated by Inspector A. B. Blamo, Jr. and Peter N. Blamo, the surveyor, circumstantial evidence, shows that indeed Captain Gibson Sackor of the Liberian National police is Wesseh Sackor Duobo of the St. Paul Bridge Community and is not dead

although Captain Gibson Sackor denied same. As to the issue of the change of name, there is a procedure for the change of name in our jurisdiction which we note was not followed by the respondents in this matter. See chapter 67, sections 67.1 and 67.2, pages 284 and 285, 1 LCL Revised.

As to the matter of the deeds in question, this involves the question of title and fraud, which this court has no jurisdiction over, and hereby advises the informant to proceed to the appropriate forum for redress.

WHEREFORE, and in view of the above, the letters of administration *de bonis non* given to respondents are hereby cancelled and revoked, thereby making them null and void as same are violative of the New Decedents Estates Law of Liberia, chapter 107, section 107.10 (d). Further, the respondents are hereby held in contempt of this court and are to pay the sum of US$20.00 each, including Captain Gibson Sackor, alias Wesseh Sackor Duobo, to be paid into the revenues of this country and the original receipts filed with the clerk of this court within 72 hours or face imprisonment in keeping with law."
We find the final ruling of the trial court just above quoted to be adequate, comprehensive and thorough on the subject, and therefore hereby accordingly incorporate and adopt same by reference as part of this opinion, for which we hold that said final ruling of the trial court ought not to be disturbed. The said final ruling of the trial court is hereby confirmed and affirmed.

Having confirmed the action of the trial judge in cancelling and revoking the letters of administration *de bonis non* given to the respondents, we at this time also declare that any and all actions taken by the respondents in their capacity as administrators *de bonis non* based on their appointment, which has now been revoked, including the sale or other disposition of properties of the estate, are also in turn declared null and void as their capacity to act was based on misrepresentation.
Pursuant to the above, all properties disposed of by the respondents, if any, are hereby ordered returned to the Duobo Estate for proper distribution in keeping with law.
WHEREFORE, and in view of the foregoing, it is the considered opinion of this Honourable Court that the appeal be and the same is ordered denied and dismissed, and that the final ruling of the trial court appealed from be and the same is hereby affirmed and confirmed.
Accordingly, the Clerk of this Court is hereby ordered to send a mandate to the Monthly and Probate Court for Montserrado County ordering the judge therein presiding to resume jurisdiction over the case and enforce its judgment. Costs are ruled against the appellants/respondents. And it is hereby so ordered.

Judgment affirmed.

Miller v McClain [1954] LRSC 12; 12 LLR 3 (1954) (28 May 1954)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

MARCH TERM, 1954.

L. P. MILLER, Appellant, v. SAMUEL B. McCLAIN,
Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 22, 1954. Decided May 28,
1954. 1. Where an agent is authorized to sell real property the sale must be executed in the name of the principal. 2. In ejectment
the plaintiff must allege and prove his own title, and cannot recover on the defectiveness of the defendant's title.

On appeal from
judgment for plaintiff in ejectment action, judgment reversed. Richard /I. Henries for appellant. Momolu S. Cooper for appellee.
K. S. Tamba and

MR. JUSTICE HARRIS delivered the opinion of the Court.
Samuel B. McClain, appellee, instituted an action of ejectment
against L. P. Miller, appellant, in the court below. The complaint alleged that: ". . . the plaintiff, is entitled to the possession
of and is the owner in fee simple of one-eighth acre of land, or half a town lot, in the City

of Monrovia,
Montserrado County, by virtue of a warranty deed from one J. C. Hansford."
The defendant's answer did not assert title to the said
land, but, in substance, alleged as follows : r. That J. G. Hansford had no legal right to sell the property to the plaintiff. 2.
That the said property was owned by one William 0. Taylor, now deceased, who had departed from Liberia in 1929; and that the property
had not been conveyed by the said William 0. Taylor. 3. That in 193o the defendant approached the aforesaid late William 0. Taylor
for the purchase of the said property when he had no intention of returning to Liberia; and that, with the consent of Mr. Taylor,
the defendant began to operate upon the said half lot in July, 193o, more than twenty-one years prior to the filing of this suit
of ejectment; and that, from the time of the commencement of defendant's operation on the said half lot, he occupied it continuously
up to the present time. 4. That the aforesaid owner of the property was at the time ofhis death a British subject domiciled in Sierra
Leone; hence plaintiff lacked legal right to bring an action of ejectment based upon a deed which did not form a perfect chain of
title. Plaintiff's reply did not traverse the allegation contained in Count "1" of the defendant's answer, to the effect that J.
G. Hansford, who was alleged to have sold the property to the plaintiff, had no legal right to sell it. The above are the salient

issues. The records certified to this Court reveal that, on the trial in the lower court, a written power of attorney from William 0. Taylor empowering J. G. Hansford to sell the property was introduced into evidence without objection. The defendant did not interpose any claim respecting said land by virtue of title deed or adverse possession; but, having been permitted to enter, operate upon, and care for said land by

William 0. Taylor, the defendant contested the right of J. G. Hansford to sell the land, although not claiming title in himself. The trial court held in favor of the plaintiff. Defendant filed a motion for a new trial, which was denied, and judgment was entered accordingly. Defendant took exceptions and prayed an appeal to this Court.
We shall now proceed to re-examine the evidence adduced on the trial of the case with a view to answering the following questions : T. Did J. G. Hansford execute the deed for the land in question in his own name as grantor to plaintiff ; and, if so, was title legally vested in him? 2. Was the plaintiff the duly authorized agent of William 0. Taylor? On direct examination the plaintiff was asked: "You ,Lave instituted an action of ejectment against L. P. Miller, defendant, alleging title to a portion of Lot Number 85, alleging at the same time that the defendant wrongfully detained said property from you. You will please state all facts and circumstances within your possession in support of your complaint." The plaintiff answered, inter alia, as follows : "On the ninth day of April, D95 r, Mr. J. G. Hansford went to me and offered me a deed to purchase a portion of the property I am contending for. He gave me a power of attorney from William 0. Taylor with the original deed to show that he was the right man to sell this place. . . ." From this it is obvious that J. G. Hansford was an agent of William 0. Taylor, the owner of the land, but was not himself the owner. The deed discloses on its face that Hansford executed it in his own name as grantor and not as the authorized agent of Taylor. Moreover the fact that Hansford possessed a power of attorney from Taylor to convey Taylor's property demonstrates conclusively that title was not vested in Hansford. We are of

the opinion that Hansford, as the agent of Taylor, should have executed the deed transferring the property to the plaintiff in Taylor's name as well as in his own. This would have given the plaintiff title in and to said land. In support thereof we quote the following from Judge Bouvier : "As to the form to be observed in the execution of an authority, where an agent is authorized to make a contract for his principal in writing, it must, in general, be personally signed by him; but in the name of the principal and not merely in the attorney's name, though the latter be described as attorney in the instrument; . . . But it matters not in

what words this is done, if it sufficiently appears to be in the name of the principal. Tor AB' (the principal), 'CD' (the attorney) has been held to be sufficient. . . ." 3 BOUVIER, LAW DICTIONARY 2691 (Rawle's 3d rev. 1914). Since this was not done, there is a missing link in the plaintiff's chain of title which renders such title patently defective. "In actions of ejectment it has been laid down as a rule, both by ancient and modern law writers, that it is necessary in ejectment for the plaintiff to show in himself legal proof, i.e., a good and sufficient title to the land in dispute, against the whole world. He must not only have a. title, but he must be clothed with the legal title to such lands; an equitable title, as a general rule, will not answer; he must recover, if at all, on the strength of his own title and not on the defects in that of his adversary's." Birch v. Quinn, I L.L.R. 309, 310 (1897). As the agent of Taylor, Hansford had no title in himself and could not convey the property except as agent. Count "2" of defendant's answer alleged the decease of W. 0. Taylor. Defendant testified that Taylor had died in 1944, and thereby attempted to show that, even if

Hansford did possess a power of attorney from Taylor to sell the property, the sale in April, r95i, was illegal, since death cancels such an agency. Defendant's witness corroborated the testimony as to the death of Taylor, but failed to corroborate the date of death, which must therefore be deemed uncertain. Although the defendant also alleged that Taylor was a British subject, domiciled in Sierra Leone at the time of his death, this allegation was not proved on the trial. We are therefore of the opinion that the judgment of the lower court should be reversed and the parties restored to their status quo, as of before the commencement of the present action. The appellee is to pay all costs ; and it is hereby so ordered. Reversed.

Weeks et al v Weeks et al [1981] LRSC 33; 29 LLR 332 (1981) (31 July 1981)

F. SAWEE WEEKS et al., Appellants, v. **MARY MONAH WEEKS**, **et. al.**, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: June 15, 1981. Decided: July 31, 1981.

1. Issues not raised in the pleadings, even though made a part of the bill of exceptions, shall not be given consideration by the appellate court.

2. Only such matters as were interposed in the lower court and appear in the bill of exceptions as of record can be taken cognizance of in the appellate tribunal.

3. A homestead constitutes the home, the house, and the adjoining **land** where the head of the family dwells, or the fixed residence of the head of a family with the **land** and building surrounding the main house.

4. It is not necessary that only males be heads of families. Females or women can also be head of the family.

5. Real estate does not include only a building, but together with the **land** on which the building is constructed or situated.

6. The destruction of a dwelling house does not terminate the homestead.

7. The only evidence as proof of posting any legal document to a judge or any officer of court or counsel is the registered receipt, and when this evidence is not shown, the court will consider the letter or document not posted and therefore will disregard it.

8. To establish fraud, it is not necessary to prove by direct or positive evidence. Circumstances altogether inclusive, if separately considered, may by their number and joint operation, be sufficient to constitute conclusive proof.

9. In order to constitute fraud, there must be proof of some artifice, deception or cheat.

10. Courts of equity possess the inherent right and power to grant relief either through rescission, cancellation or reformation of a contract.

11. Cancellation or reformation of contracts are among those suits in equity over which courts of equity exercise exclusive jurisdiction and are not dependent upon the nature of the right, title, interest, or estate in controversy for their jurisdiction.

12. For a court of equity to grant relief on grounds of fraud, the applicant must establish that he did not participate in the conduct constituting the fraudulent act, and that he did not benefit therefrom.

Juah Weeks Wolo during her lifetime, set apart and designated her dwelling house and lot No. 200 situated on Carey Street, Monrovia, as a homestead pursuant to the Act of Legislature passed 1888/89. Upon her death without a will, the administrators *pendente lite* appointed by the court to administer her estate, included the homestead in the inventory of the intestate estate, to which the heirs of Juah Weeks objected. The Supreme Court sustained the objection, and held that the homestead should be turned over to the heirs of the late Juah Weeks Wolo. *See Weeks v. Ketter and Gurley*, 13 LLR 546 (1960).

Subsequently, F. Sawee Weeks, Swedee Weeks-Johnson, and Potea Nanow, positioning themselves as owners, in their individual capacities, leased the homestead to a Lebanese national,

Nazine Said, without the knowledge and consent of the heirs of Juah Weeks Wolo, the legal owners of the homestead. The lease was subsequently assigned to another Lebanese national. Appellees, Mary Monah Weeks et al., thereafter instituted a bill in equity to cancel the aforesaid lease agreement, naming F. Sawee Weeks, the lessor, the lessee and the assignee; as respondents. Both F. Sawee Weeks, lessor and Nazine Said, the original lessee failed to file an answer. Upon a final decree of the court canceling, and making null and void the lease agreement and the assignment thereto, appellants excepted and perfected an appeal to the Supreme Court. Appellants in their bill of exceptions, contended that by the destruction of the dwelling house, the homestead status of lot No. 200 terminated; that the judge erred in proceeding with the trial in the face of the letter written to him requesting for a postponement due to the illness of their counsel, and his absence from Monsterrado County; and that there was no legal justification for the cancellation of the lease in that appellants failed to prove their entitlement.

The Supreme Court embracing the common law definition of homestead, and taking recourse to the documents designating lot 200 as homestead, held that the destruction of the dwelling house did not terminate the homestead. On the question of the alleged letter requesting for the postponement of the trial, the court overruled the appellants' contentions and opined that the judge did not err in overruling the information in that there was no evidence of proof that appellants posted any letter to the judge. On the question of legal justification for the cancellation of the lease, the Supreme Court held that the appellants, by their own conduct, admitted that appellees are the heirs, beneficiaries and legatees of the late Juah Weeks Wolo, in that they did not deny, contend or challenge in their answer, the appellees' allegation in their complaint that they are the heirs, beneficiaries and legatees of the late Juah Weeks Wolo. The Court also held that since the appellants had not participated in the trial, due to their own negligence, they could not legally raise this issue in the bill of exceptions.

Finally, the Court opined that appellants, by their conduct, have practiced deceit, artifice and cheat on the appellees, and that appellees not having participated in the execution of the lease and not having received any benefits therefrom, are entitled to the relief. Accordingly, the final decree appealed from was *affirmed and confirmed*

Philip A. Z. Banks, III, appeared for appellants. *M Fahnbulleh Jones* appeared for appellees.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

As culled from the records in this case, Juah Weeks-Wolo, during her life time, acquired real properties within the City of Monrovia. Among them is Lot No. 200, situated on Carey Street, City of Monrovia, containing 1/8 acre of **land**, which she bought from Cassius Ernest in the year 1921. The records further reveal that pursuant to the provisions of the Act of Legislature passed 1888/89, the said Juah Weeks-Wolo did on July 15, 1949 set apart and designate said Lot No. 200 as a Homestead. For the benefit of this opinion we quote the Homestead Exemption document verbatim:

"REPUBLIC OF LIBERIA HOMESTEAD EXEMPTION "

"Notice is hereby given in accordance with law that my dwelling house and lot No. 200, situated, lying and being on Carey Street, City of Monrovia, Montserrado County and Republic of Liberia, are hereby set apart and designated as a Homestead to be exempt from sale by virtue of an exemption, for the exclusive benefit and my material relatives only.

IN WITNESS whereof, I have hereunto affixed my name this 15th day of July, A. D. 1949.

Sgd: Juah Weeks, her x cross.

OWNER In The presence of:

Joseph Graham

Kollie Tamba

Rufus Simpson

ENDORSEMENT

Homestead Exemption Notice; Entered by Juah Weeks, City of Monrovia for lot and house No. 200, Carey Street, Monrovia, 'let this be registered'. J. A. Gittens, Sr. Commissioner of Probate, Mo. Co. probated this 15th day of July, A. D. 1949, J. Everett Bull, Clerk of the aforesaid court, Mo. Co. Registered according to law, Vol 63, page 209, Reuben S. Logan, Registrar Mo. Co. 7/22/49."

Certified, true and correct copy of the original.

Charlie L. Hoffman

In sum, the late Juah Weeks-Wolo died without making a Will; hence, her real and personal properties became an intestate estate. See *Weeks and Williams v. Dennis and Dennis, [1951] LRSC 19; 11* LLR 82 (1951). Administrators *pendente lite* were appointed to administer the affairs in keeping with law and, in furtherance thereof, the administrators elected to include in the inventory of the estate lot no. 200, the homestead. To this the heirs of the late Juah Weeks-Wolo objected and the case traveled to this Court and this Court held that said homestead should be turned over to the heirs and/or relatives of the late Juah Weeks-Wolo. See *Weeks v. Ketter and Gurley*, 13 LLR 546 (1960).

Subsequently, co-respondents, F. Sawee Weeks et. al., decided on the 15th day of November, A. D. 1957 to enter into a lease agreement for the said lot no. 200, not as heirs of the late Juah Weeks-Wolo, but as individuals owning said property, with one Nazine Said el Ali, a Lebanese national, for a period of 20 years certain, with an optional period of 10 years. Recourse to the records reveals that the petitioners, appellees in these proceedings, were not informed of the lease, and that they did not give the co-respondents any authority to execute any document including lease agreement affecting the said Lot No. 200. The purported notice of assignment of lease approved by the corespondents, F. Sawee Weeks et al., from Nazine Said el Ali to Yahya

Said Abouhadir and Salim Ajaj Grarzeddine also Lebanese nationals, does not show on its face that the corespondents named above approved this notice of assignment as heirs of the late Juah Weeks-Wolo, or that this document was also approved and/or signed by the appellees in this case. The records further discloses that the receipts of November 15, 1978, issued by the said co-respondents showed no indication that they are the heirs of the late Juah Weeks-Wolo nor did the appellees sign said receipts, the exhibits proferted with the appellants' answer.

Twelve (12) years following the execution of the lease agreement referred to, the appellees herein instituted a bill in equity for cancellation of lease agreement and relief against fraud. The original lessee Nazine el Ali, the assignees Yahya Said Abouhadir and Salim Ajaj Grarzeddine together with F. Sawee Weeks et al., were made respondents. Co-respondents F. Sawee Weeks et al., did not file an answer nor did Nazine Said el Ali, the lessee; only the two assignees filed an answer. The pleadings rested at a reply. The issues of law were disposed of, and because appellants and their counsel failed to appear on the day on which the case was assigned for the trial, even though they had signed the notice of assignment three days prior to the appointed date, the appellees' counsel invoked Rule 7 of the Circuit court Rules, which was sustained by the trial judge. Thereupon, the appellees testified, identified and caused the confirmation of written instruments, which were admitted into evidence and final judgment reserved. During the pendency of the final decree to be handed down, the appellants filed a bill of information alleging that they had written a letter to trial judge Obey dated July 28,

1980 requesting for postponement of the hearing of the issues of facts ruled to trial. The petitioners/ appellees resisted the information, and same was overruled and denied. Subsequently, the trial judge rendered a final decree, canceling and making null and void, both in law and equity, and to all intents and purposes, the lease agreement and the assignment thereof, to which final judgment, the appellants excepted and announced an appeal to this court of last resort for review.

The appellants in their 12 counts bill of exceptions and brief have requested for our review and attention trial processes and rulings of the lower court. Counts 1, 2 and 3 of the bill of exceptions have attempted to inject issues of law which were not raised in the pleadings but taken out of context from the judge's ruling on the law issues. This Court has held, in numerous opinions, that issues not raised in the pleadings, even though made part of the bill of exceptions, shall not be given consideration by the appellate court. Only such matters as were interposed in the lower court and appear in the bill of exceptions as of record, may be taken cognizance of in the appellate tribunal, *Bryant v. African Produce Company,* [1940] LRSC 4; 7 LLR 93 (1940).

The appellants in their bill of exceptions and in the argument before this Bench, strongly contended that by the destruction of the dwelling house on lot no. 200 the homestead terminated. We cannot agree with this contention of the appellants. In the documents designating lot no. 200 as a homestead, it is expressly stated "my dwelling house and lot no. 200", thereby meaning to all intents and purposes, that Juah Weeks-Wolo intended to have the dwelling house and the lot a homestead and exempted. Besides, BLACK'S LAW DICTIONARY 660 (5t h ed.) defines homestead as: "the home, the house and the adjoining **land**, where the head of the family dwells; the home farm. The fixed residence of the head of a family with the **land** and building surrounding the main house."

In this country, it is not necessary that only males of families be head of families. Females or women can also be head of the family, especially under our native customary laws which are accepted as part of our laws where they do not conflict with the statutes; *Karpeh v. Manning,* [1936] LRSC 14; 5 LLR 162(1936). So then Juah Weeks-Wolo could and was legally clothed to have a homestead dwelling house and Lot No. 200 on which the house was situated, being head of her family.

Besides being head of a family, Juah Weeks-Wolo owned Lot no. 200 in fee simple, as is evidenced by the deed which was submitted into evidence and forms a part of the records in this case. Real estate does not include only a building but together with the **land** on which the building is constructed or situated.

Therefore, the homestead must include the **land**. From the laws cited herein, it is our opinion that by the destruction of the house by whatever means did not terminate the homestead. This Court therefore overrules counts 1, 2 and 3 of the bill of exceptions.

Coming to count 4 of the bill of exceptions, we concur with the trial judge in ruling this issue of facts to trial that the appellees are specifically requested to prove at the trial that they have not given their consent to any transaction affecting the property in question. In our opinion this is one of the grounds on which the appellees relied when they sought cancellation of the lease agreement and therefore it was encumbent on them to prove these factual issues. Hence count 4 is overruled.

As to counts 5 and 6 of the bill of exceptions, respondents/ appellants contended that their counsel wrote a letter to Judge Obey, the trial judge, requesting him to postpone trial of the case for the fourth day's session due to illness, and his absence from Montserrado County. In substantiation of this letter, the appellants filed an information to court setting up in substance what the counsel had written in the letter referred to. The information was resisted by the appellees' counsel and ruled upon by the trial judge. It is this ruling of the trial judge that the appellants consider prejudicial to their interest and reversible error. In order to legally pass on this issue, we will revert to the records in this case. Sheets 7 and 8 of the 14t h day's session, Wednesday, July 2, 1980 show that the case was assigned for trial on the 2nd day of July, 1980, and at the instance of the appellants, it was postponed and reassigned for the 8th day of July 1980, at 10:00 a. m.

The case was not heard on the 8th day of July, 1980 and was re-assigned for the 29th day of July 1980. The notice of assignment, assigning the case for hearing an the 29th day of July, A. D. 1980 at the hour of 3:45 p.m., was issued on the 21st day of July, A. D. 1980 and served on counsel for both parties on the 23rd day of July, A. D. 1980. Both counsels received the notice of assignment, signed the same and it was returned served on the 23rd day of July, 1980.

Counsel for appellants did not appear. After forty-five (45) minutes of waiting, the case was called and appellees' counsel invoked Rule 7 of the Circuit Court Rules which was sustained and the case was proceeded with. Witnesses for the appellees testified and the written instruments, which they had identified and confirmed, were admitted into evidence. The appellees rested evidence, argued their side of the case and submitted the case to the court for its final decree.

Five days thereafter, the appellants filed their information which was resisted by the appellees and the court ruled denying the information. The judge in his ruling on the information stated that "because this court is not convinced that a letter was _written and, which even if written, was never received by this court " This Court has, over and again, opined that the only evidence recognized as proof of the posting of any legal documents to a judge, an officer of court, or a counsel, is the registered receipt. When this receipt or evidence is not shown, the court will consider the letter or document not posted and therefore will disregard the same. It is therefore our opinion that the trial judge correctly ruled denying the information, and sustaining the resistance of appellees. Counts 5 and 6 of the bill of exceptions are therefore overruled.

In counts 7, 8 and 9 of the bill of exceptions appellants contended there is no legal justification for the court's decree canceling the lease agreement because appellees failed to prove their entitlement and, hence, the decree is not in conformity with the evidence.

The appellees in their petition alleged that they are heirs, beneficiaries and legatees of the late Juah Weeks Wolo and that by the law of inheritance, Lot No. 200 came to them. The appellants in their answer did not deny, contend or challenge those issues contained in appellee's petition. By not denying the allegations in appellee's petition, appellants admitted that the appellees are heirs, beneficiaries and legatees of the late Juah Weeks Wolo; and that lot no. 200 was a homestead for her maternal heirs and, that by the law of inheritance, the appellees and co-respondents, F. Sawee Weeks et al., held and enjoyed the said property share and share alike. *Bank of Monrovia, Inc. v. Enemy Property Liqui dation Commission[1945] LRSC 48;* , 16 LLR 324, 339 (1945); and *Tucker v. Brownell*, [1975] LRSC 28; 24 LLR 333 (1975). Further, the two witnesses of appellees, in testifying for themselves, expressly stated that the late Juah Weeks Wolo was their aunt. They identified the instruments which were admitted into evidence; that is to say, the warranty deed from Cassius Ernest to Juah Weeks Wolo, the homestead exemption, and the lease agreement. We wonder how appellants could contend that the decree had no justification because there is no evidence as to the entitlement of the appellees to the property, when they did not deny that the appellees are the heirs, beneficiaries and legatees of Juah Weeks Wolo and hence entitled to the equal enjoyment of said Lot No. 200 with co-respondents, F. Sawee Weeks et al. Again we wonder how appellants could make this a part of a bill of exceptions when by their negligence they did not participate in the trial, cross examine the witnesses or produce evidence in rebuttal of the evidence adduced at the trial by the appellees. Let us go to the two receipts proferted with appellants' answer. Exhibit "1" is signed by F. Sawee Weeks, Swedee Weeks-Johnson and Potea Nanon in their individual capacities just as they signed the lease agreement and the assignment of lease, but they did not sign as representatives of the maternal relatives of Juah Weeks Wolo nor as maternal relatives of Juah Weeks. Besides, there is no reference made in the lease agreement to the property being a homestead property but the receipt referred to the said property as a homestead. In the second receipt, Exhibit "2", these co-respondents signed the receipt for the Togba Teewlopah family when there is no reference of such a family in the lease agreement. To establish fraud it is not necessary to prove by direct or positive evidence. Circumstances altogether inclusive; if separately considered, may by their number and joint operation be sufficient to constitute conclusive proof. *Watson v. Ware, [1949] LRSC 14; 10* LLR 158 (1949). The receipts, the lease agreement, and the assignment of lease show from the circumstances and their executions that fraud was perpetuated by the respondents herein on the appellees.

In order to constitute fraud there must be proof of some artifice, deception or cheat. The documents proferted with the petition and the answer, and the evidence adduced at the trial indicates to the honest mind that the respondents/appellants practiced deceit, artifices and cheat on the appellees. And because of this, appellees have come to equity to cancel the instrument; that is to say, the lease agreement and the assignment of lease. But in order to do so they must show a clear right to the remedy sought and this the appellees have done by establishing that they are heirs of the late Juah Weeks Wolo and are entitled to equal enjoyment of the subject property with Co-respondents, F. Sawee Weeks et al. They have also established that they did not participate in the execution of the two instruments affecting the property in question and did not receive any benefits therefrom. Hence, the appellees have not participated in any fraud with the appellants.

Courts of equity possess the inherent right and power to grant relief either through recission, cancellation or reformation of a contract. Cancellation or reformation of contracts is among those suits in equity over which courts of equity exercise exclusive jurisdiction and are not dependent upon the nature of the right, title, interest or estate in controversy for their jurisdiction. This class of equity suit seeks protection and preventive justice. The appellees are seeking to protect their rights to the property in equity and they have proven that they have rights to the property in equity. *Nassre and Saleby Brothers v. Elias Brothers,* 5 LLR 108 (1936). Therefore, said counts 7, 8 and 9 are overruled.

After a scrutiny of the records, and a careful consideration of the principal issues involved, we are fully satisfied that counts 10, 11 and 12 of the bill of exceptions, do not merit our attention, as the law and evidence are too clear on them. Besides, these counts have no legal consequences, even if given due consideration by US.

It is therefore our consideration from the facts and the law controlling and cited herein that the final decree be and the same is hereby affirmed and confirmed. The Clerk of this Court is hereby ordered to send a mandate to the trial court in conformity with this opinion. Costs against the appellants. And it is hereby so ordered.

Judgment affirmed.

Perry et al v Knight et al [1938] LRSC 1; 6 LLR 154 (1938) (14 January 1938)

ANGIE R. PERRY, SARAH F. PERRY, and ANTHONY A. PERRY, Appellants, v. J. EMERY KNIGHT, W. FRED GIBSON, ISAAC E. PERRY and A. DASH WILSON, JR., Executors, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued December 10, 14, 1937. Decided January 14, 1938. One who has availed himself of the privilege of homesteading his property may not devise

same without first raising the homestead.

Appellants objected to the validity of the will of Samuel W. Perry when respondents offered
it for probate. Judgment was rendered for the proponents of the will in the Circuit Court of the Fourth Judicial Circuit, and respondents
appeal to this Court on a bill of exceptions. Judgment reversed.
Daubeney Cooper for appellants. for appellees.
MR. JUSTICE RUSSELL

Abayomi Cassell

delivered the opinion of the

Court. This is a case from the Circuit Court for the Fourth Judicial Circuit appealed
to this Court upon a bill of exceptions containing nineteen counts. The history of the case reveals the fact that one Samuel W. Perry
on the twenty-eighth day of November, 1932, executed his last will and testament. After his death, when this instrument was presented
for probate, appellants offered objections. Issue was joined by the respondents and the several law issues raised in the pleadings
were decided by the trial judge who ruled that the will should be admitted to a jury to be tried upon its merits or in other words
"the genuineness of the signature only."

On the 4th day of August, 1935, the case was called for trial
and the jury brought in a verdict to the effect that the will was valid, whereupon the trial judge, after hearing and overruling
the motion for new trial filed by the objectors, proceeded to render final judgment, to which judgment the objectors excepted and
brought the case to this Court for review and final determination. While several very important questions of law have been ably raised
by both parties in this case, it is our opinion that the most vital question around which the entire case revolves and to which we
must direct our attention is whether or not the late Samuel W. Perry had the legal right to devise property set apart under and by
virtue of the "Homestead and Household Exemption Act" of this Republic, without first raising the exemption. Our analysis of and
answer to this all-important question is confirmation of the opinion handed down by this Court during its January term, 1904, in
the case Wiles v. Wiles, L.L.R. 423, the relevant portion of which reads as follows: "Before going further we would remark that the
law of homestead exemption is of comparatively recent origin. Anterior to the last century this species of real estate was unknown
to the law. It is one of the two great doctrines which have been introduced into the law during the nineteenth century and which
have marked the development of the legal science in the United States. This species of real property was first brought forward under
the constitution and statutory enactments of Texas, when it existed as a separate and distinct Republic. A doctrine founded upon
such a sound and judicious basis, instituted not for the purpose of encouraging and stimulating a tendency to fraud, but, on the

contrary, with a view to protecting the honest and upright land-holder against failures in the ordinary affairs of life,--failures which may at any moment dispossess the honest but un-

fortunate land-holder and his family of a home,-- could not fail to commend itself, and hence we find that in the United States of America the doctrine was readily taken up and state after state passed statutes adopting it, with such modifications as were deemed suitable to their respective conditions. "In 1889, the Legislature of Liberia passed an Act entitled, 'The Homestead and Household Exemption Act.' Section 1 of said act reads as follows : 'That from and after the passage of this act all householders and heads of families, owning real estate, shall have so much of that real estate exempt from the writs of their creditors, that is to say, one town lot or one acre of farm land upon which the house is situated, with all the appurtenances and out-dwellings of same, which exemption shall mean the homestead of the family, and this exemption shall last as long as any of the heirs of the family so occupying it shall live.' (Act Leg. Lib. 1889.) This is practically the law controlling this cause. The language of the above cited Act conveys to the mind of the court the idea that property set aside by the head of a family as a homestead for himself and family creates an estate in which all parties connected with and forming a part of said family, within the meaning and purview of said act, acquire an interest and a share therein. "The object of the lawmakers in passing this statute, which enables a householder to take out of market a limited portion of his real and personal property, and to have the same secured against the claims of his creditors, appears to be not only for the purpose that the head of the family shall have secured unto him an unassailable estate, but also that the wife and children, forming a part of said family, shall likewise take an estate therein, which cannot be set aside or destroyed, either by their own acts or by the acts of him Who first 104 an absolute fee therein, or by the claims

of third parties against any of the tenants thereto. And this view is upheld by the terms of a subsequent statute, which makes it a misdemeanor for either the clerk of court to issue, or the sheriff to serve, any writ upon a homestead estate. (Act of Leg. Lib. 1897.) Undoubtedly this statute was not passed to screen property held in fee by debtors against the writs of their creditors. But it is because the putting an estate under the Homestead and Household Exemption Act creates an estate in coparcenary among all the parties constituting and forming the family, within the meaning of the original act, that this statute forbids all interference with it by the officers of the law. To hold to the contrary, we think, would be to declare this statute

fraudulent and pernicious. "The Statute contemplates a lapse of a homestead estate only after the heirs of the original 'head' and occupant have become extinct. "We are aware that the statutes of some of the American States enunciate a somewhat different principle, but in this case it is the lex scripta of the country and not the statutes of foreign states which is the controlling law. "We have already shown that a homestead under the laws of Liberia is an estate in which the wife and children constituting the family, hold an undivided interest therein. Such an estate could not be regarded as an estate in joint tenancy, as was suggested by one of the counsel, for an estate in joint tenancy is one acquired by purchase and is not subjected in all respects to the rule of descent. This species of tenancy is governed by the subtle principle of survivorship, which does not apply to homestead estates. Equally so, nor would the law regard it an estate in common, because the title thereto is not distinct and several; nor an estate in fee tail, because in homestead

estates the wife acquires and holds an equal interest therein· with the heirs of the original householder, whereas in fee tail the title is reserved to the 'heirs of the body' only of him last seized. By analogy of the law of real property we find that a homestead under the laws of Liberia answers to an estate in coparcenary. The three units [sic] which the law demands to establish such estate, namely, time, title, and possession, are to be found in this species of property. "We have already endeavored to show what kind of an estate a homestead estate is, and who the parties are that acquire an interest therein, by force of the law of the country. If our conclusions are supported by the law of real property and the Homestead and Household Exemption Act of Liberia, and we do not hesitate to say that we feel that they are, then it follows as a legal consequence, that the property in question cannot be disposed of by will. If James T. Wiles and his family held the property in question as a homestead, it could not afterwards be devised, as long as the heirs existed, without setting aside an inflexible rule of the law of real property. 'A man cannot dispose of the rights of other parties.' He who would be generous must first be just.' " (pp. 425-429.) From the principles outlined in the foregoing excerpts, we have come to the conclusion, that the judgment of the court below should be reversed with costs against the appellees; and it is hereby so ordered.
Reversed.

dissenting. Whenever application is made to have a will probated, the issue presented for the consideration of the court is : Did the testator indeed make a last will and testament while of sound mind and disposing memory? The evMR. CHIEF JUSTICE GRIMES

idence adduced in support of this simple issue must prove to the satisfaction of the
court having authority to admit said will to probate that said will was duly signed by the testator himself, or by some other person
upon his authority, and that two or more competent persons witnessed his signature, or his acknowledgment of his signature either
signed by himself or by someone else delegated by him to so do. They should all be present at the time of his having signed or having
acknowledged or adopted said signature, and in his presence and in the presence of each other should sign their names as attesting
witnesses. This is a succinct statement of the law as I have paraphrased it from z Greenleaf on Evidence, sections 673, 674 and 676;
3 Washburn on Real Property, sections 2423, 2424, 2425; 40 Cyc. to1-11o9; and Brown v. Brown, i L.L.R. 14-15 0860. In order to better
clarify the point, and obviate any complaint that the digest of the law above made is my own ipse dixit, I will now proceed to quote
as follows : First from Greenleaf : "Nor is it deemed necessary that the witnesses should actually see the testator sign his name.
The statute does not in terms require this, but only directs that the will be 'attested and subscribed in the presence of the testator
by three or four credible witnesses.' They are witnesses of the entire transaction; and therefore it is held that an acknowledgment
of the instrument, by the testator, in the presence of the witnesses whom he requests to attest it, will suffice ; and that this
acknowledgment need not be made simultaneously to all the witnesses, but is sufficient if made separately to each one, and at different
times. Nor is it necessary that the acknowledgment be made in express terms ; it may be implied from circumstances, such as requesting
the persons to sign their names as witnesses. But in such cases, it must appear that the instrument

had previously been signed by the testator." 2 Greenleaf, Evidence § 676. Now from Washburn : "The witnesses to a will are, in the
theory of the law, placed around the testator when executing it, as judges of his capacity to make it; and when called to testify
in respect to this capacity, they are, unlike all other witnesses who do not come within the class of `experts,' at liberty to express
an opinion upon the subject, which is to be taken as competent though not conclusive evidence by the court or jury. (C . . . It is
not necessary for the witness to see the testator sign, if he requests the witness to attest it, and he does so in the testator's
presence. But it does not matter upon what part of the instrument the witnesses subscribe their names, nor need they sign in each
other's presence : if done in that of the testator, it is sufficient. The attestation clause appended to a will is no part of the
instrument; nor is it important that it should recite the details of its execution, though useful, if the witness is dead, to show why he subscribed it. It may be by mark,

instead of writing the name. It will be sufficient if there are three genuine names attested to the will, although none of the witnesses recollects the act of signing his name. But it is essential that the attestation should be made after the testator has signed the will. It will not be sufficient that the witness subscribes his name first, though the testator knows and intends to adopt his signature as an attestation. But if the court are [sic] satisfied that the testator's signature was upon the paper when he asked the witnesses to attest it, though they did not see the signature, nor see him sign it, it will be sufficient." 3 Washburn, Real Property (6th ed., 1902) §§ 2423, 2424. Lastly from Cyc.: "The signature is not rendered invalid by the fact that another guided the hand of the testator when he

signed the will. Such act is the testator's own, performed with the assistance of another, and not the act of another done under the authority of the testator; and in order to uphold the validity of such signature it is not necessary that an express request for the assistance be given. It may be inferred from the circumstances of the case. lf The signing of a will in an assumed or fictitious name has been held sufficient if the testator intended it as his signature. (I . . . Where the statute relating to signing requires no more than the statute of frauds--merely that the will shall be in writing and be signed, it is immaterial where the testator's signature was placed, if it was placed there with the intention of authenticating the instrument. It is essential, however, that the signature, whatever its local position, must have been made with the design of authenticating the instrument and that he should have contemplated no further signing. LC . . . The statutes of England and of some of the United States provide that a will shall be signed or subscribed at the end thereof. These statutory requirements have been emphatically indorsed and approved by the courts as a wholesome safeguard against fraud, not to be frittered away by lax interpretation or by the ingrafting of exceptions, and are construed by endeavoring to ascertain the intention of the legislature, rather than the intention of the testator. . . . ti . . . A signature imperfect or illegible may be valid as testator's mark where there is no doubt of testamentary intent, but not where he intends to complete the signature and is prevented from doing so." 40 Cyc. 1104, pars. d, e, f. These principles so incorporated in the common law are based upon the provisions of the statute 29 Cara II, c. 3, p. S; but note, our Supreme Court, in the case Brown . . .

v. Brown, decided in January 1861, and reported r L.L.R.

4., adopted the more modern rule laid down in I Vict. c. 26, pp. 9, which requires but two competent witnesses. In my opinion all of the requisites necessary to make the will valid and probatable were met in full, even to the testimony of three rather than two, attesting witnesses to whose testimony I shall have cause to more specifically refer later on. But I wish first of all to connect what has preceded with this most important principle I shall now proceed to cite--that a will having been once proved may only be rebutted, to quote the language of Mr. Greenleaf, by evidence that : l(. . it was obtained by fraud and imposition practised upon the testator; or, by duress; or, that the testator was not of competent age; or, was a feme covert; or, was not of sound and disposing mind and memory; or, that it was obtained by undue influence. But it is said that undue influence is not that which is obtained by modest persuasion, or by arguments addressed to the understanding, or by mere appeals to the affections; it must be an influence obtained either by flattery, excessive importunity, or threats, or in some other mode by which a dominion is acquired over the will of the testator, destroying his free agency, and constraining him to do, against his free will, what he is unable to refuse." 2 Greenleaf, Evidence, § 688. The first anomaly that strikes one upon reading the record in this case is that, when the will was offered for probate, the trial court, instead of first hearing the attesting witnesses thereto, heard first witnesses called to impeach same, the gist of whose testimony, taken en bloc, was that the signature of said will did not appear to them to correspond with undoubted writings of testator's which they produced, written when he was well and about his usual business in Cape Palmas; while, on the other hand, the evidence is clear beyond any doubt that the will was

signed and attested but three days before his death in Monrovia where he had been resident for some time suffering from an illness that appears to have been rather protracted. For example, Miss Selena Langley, one of the attesting witnesses, testifying on this point stated that when Mr. Samuel Watkins arrived in Monrovia on November z8th, 1933, three days before the death of said testator, news of testator's death had already been circulated in Cape Palmas before he, said Watkins, had left said port for Monrovia. (See page 8 of record.) And the witness Watkins himself testifying as recorded on page 5, said that testator had been ill even before he had left Cape Palmas. Two, and two only, of the witnesses who testified for contestants now appellants, appear to me to have had any correct appreciation of the conditions that actually existed when said will was executed. These were one Frederick Frey and one Henry Renken. The former testifying on page 1 of the record was requested to

compare the will under contest with sundry other undoubted writings of testator's, and state whether or not the signature on the will appeared to him genuine. After comparison he said inter alia: "One is his usual signature; on the other one the complete name as written appears to have been written by someone who was sick; there is no hesitation in the usual signature, S. W. Perry,--one can see that the man's hand was trembling when he wrote that; viz.: the signature on the will." He was asked on cross-examination whether he could swear that the signature on the will was not that of the late Samuel W. Perry; and he answered that he could not swear that it was not his. The other witness, Mr. Renken, testifying on direct examination, said he had known the deceased, Samuel W. Perry, when Collector of Customs at Cape Palmas, and had had official and other relations with him, at which

time he became acquainted with his signature. On crossexamination he said that that was the first time (on the will) that he had seen testator's name written out in full ; that it looked as if Mr. Perry was very ill when he signed it; and that he could not swear that testator did not sign said will. Each of the three attesting witnesses, on the other hand, testified most unequivocally that they, being present together, were asked by the late Samuel W. Perry to sign the document which, exhibited to them at the trial, they recognized as his last will and testament, and which they, and each of them, testified that in his presence, and in the presence of each other they had signed as attesting witnesses. Said testimony of the attesting witnesses was not impeached. An effort made to discredit one of them, in my opinion, miserably failed. But even supposing contestants had succeeded in discrediting one of the attesting witnesses, even then the unimpeached testimony of two subscribing witnesses in support of the will, in my opinion backed by that of this Court in the case Brown v. Brown above cited, would have been sufficient to admit said will to probate. Nevertheless an issue so simple and so clearly proven appears to me to have been so distorted and embedded in irrelevant matter during the trial in the court below that when the record was read in this Court it required not a little skill and patience to dig through the rubbish thus piled upon the kernel down to the pith of this controversy; and that was the second anomaly that this case presents. However, I am happy to be able to say that it does not appear to me that my learned colleagues, with whom I find my views at variance in this case, have been oblivious to the principles of law above cited, but have rather been much more influenced by that part of appellants' contention based on an adjudicated case on the law of homestead,--that of Wiles v. Wiles, decided in

1904 and reported on page 423 of volume 1 of the Liberian Law Reports; but the conclusions therein reached are based on premises so patently unsound that in my opinion said decision of this Court should long ago have been recalled. Let us now take time to examine said case more carefully, and see upon what erroneous premises it is based. The legislative enactment, upon which said decision was based, was passed and approved January 4,1889. It provides that: Ct . . . from and after the passage of this Act, all Householders and heads of families owning real estates, shall have so much of that real estate, exempt from the writs of their Creditors; that is to say, One Town lot or one acre of farm land upon which the House is situated with all the appurtenances and outdwellings of the same, which exemption shall . . . last as long as any of the heirs of the family so occupying it shall live." (L. 1888-89, p. to.) (Italics

added by the Court.) The Court so construed this enactment as to make the heirs of the homesteader coparceners with the original holder in fee simple, or other estate. This leads us to the further inquiry, what is an estate in coparcenary? "An estate held in coparcenary is where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law or by particular custom. By common law : as where a person seised in fee simple or in fee tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, female cousins, or their representatives; in this case they shall all inherit, as will be more fully shown when we treat of descents hereafter; and these co-heirs are then called coparceners, or for brevity, parceners only; though in some points of view the law considers them as together making only one heir. Parceners by particular custom are where lands descend, as in

gavelkind, to all the males in equal degree, as sons, brothers, uncles, etc. "An estate in coparcenary resembles, in some respects, that in joint-tenancy, there being the same unity But in the followof title and similarity of interest. Parceners ing respects they materially differ always claim by descent, whereas joint-tenants always claim by the act of parties. Therefore, if two sisters purchase lands, to hold to them and their heirs, they are not parceners, but joint-tenants ; and hence it likewise follows, that no lands can be held in coparcenary but estates of inheritance, which are of a descendible nature; whereas not only estates in fee and in tail, but for life or years, may be held in joint-tenancy." I Stephen's Commentaries (12th ed., 1895) 335-336. Thus it will be seen that an estate in coparcenary presupposes two essential requisites : ( ) It must be created by descent; and (2) It must consist of three

unities, viz.: unity of title, possession, and interest. According to .38 Cyc. 5, "An estate in coparcenary is an estate acquired by two or more persons, usually females, by descent from the same ancestor; parceners or coparceners being defined as 'several persons taking lands, or any undivided share of lands held for an estate of inheritance by descent,' all the coparceners, whatever their number, constituting but one heir and having but one estate among them. The estate arose according to the course of common law in the case of descent of realty to female heirs, and according to particular custom, as for instance the gavelkind custom of the county of Kent, to male heirs, being in the latter instance an exception to the rule of primogeniture. The. estate resembles joint tenancy more closely than tenancy in common, having the same three unities of title, possession, and interest as the former, and in addition generally the unity of time. But there is no survivor-

ship, in which respect the estate partakes more of a tenancy in common. The estate never arose by purchase, but only by descent, therein differing from the other cotenancies. While joint tenancies refer to persons, coparcenary refers to the estate, their right of possession is in common, each may alien her share and the alienees will hold as tenants in common; their respective shares descend severally to their respective heirs." To take but one ex a mple in a homestead exemption there is no unity of title; for the title must have previously vested in the homesteader, and his notice of exemption neither divested him thereof nor was it capable of antedating that of the beneficiaries to the time when title originally vested in him. And it appears to me clear that to destroy any one of these unities would as effectually defeat an estate in coparcenary as would a quadrilateral of equal sides fail to be any longer a square if any angle in the figure were not also rectangular. Were this a mathematical problem I would now write quod erat demonstrandum, and my task would be ended. But, inasmuch as it is a legal and not a mathematical problem, I am compelled, even at the risk of being considered rather prolix, to continue my examination of the principles a little further so as to be the better able to elucidate the fallacies in the decision I am now endeavoring to expose. But, before proceeding further, I must digress for a moment to point out that supposing a property homesteaded did in fact become an estate in coparcenary, is there anything in the decision of this Court in the case of Wiles v. Wiles that would lead to the invalidating of the will of the late Samuel W. Perry? The answer in my opinion is emphatically "no." It was conceded during the arguments at this bar that there was no issue of the marriage of Mr. Perry, the deceased, and Mrs. Perry, the principal devisee under the will. Nor had they any children by adoption or other minors under

their care. Contestants were not members of the household. And what is most unique is that testator and his wife, who jointly signed the notice of homestead exemption, were the only members of the family occupying the home; and admitting that the decision under consideration was correct, the part emphasized by underscoring on page 426 reads, "shall last as long as any heirs of the family so occupying it shall live." In view of the premises, what was there to prevent testator from devising said property to Lulu B. Perry as was done in clause 4 of said will, the only point upon which the objections were based, and upon which devise alone the majority opinion has invalidated said will? But, to return to my main theme, property homesteaded does not become a new or separate estate, but is only what it professes to be, viz.: an exemption, in other words a protection from the writs of creditors, a guarantee of a permanent home for the unfortunate householder who has fallen upon evil times, and a shelter for his wife and children. The object of the lawmakers was obviously to prevent them, because of any adverse circumstances which had overtaken them, from being turned out of doors and thrown upon the street; hence, a prerequisite to the property's being homesteaded was that whether town lot or an acre of farm **land, that portion of land** so exempted must have a house thereon. "The policy which dictates provision for the support of the family immediately after the death of its natural provider and protector also requires the homestead to be secured to the surviving husband, widow and minor children. Since there is no such provision at common law, the homestead rights exist only as provided in the constitution or statutes of the States. The obvious intent of homestead laws is no less to secure a home and shelter to the family, when bereft of its father or mother, beyond the reach of financial

misfortune, which even the most prudent and sagacious cannot always avoid, than to protect citizens and their families from the miseries and dangers of destitution by protecting the wife and children against the neglect and improvidence of the father and husband. The homestead exemption would be divested of its most essential and characteristic feature, if by and upon the death of the head of the family, it should be withdrawn from the widow and children; hence nearly all the statutes upon this subject provide for its continuance to the surviving constituents of the family. It has been held that the exemption is not to the debtor, as such, but to the head of a family. The Subject of the protection is the family,--the head of the family being referred to as its representative. It would be an unreasonable and unnatural conclusion to hold that this provision was not intended for the security of families deprived of their natural protector. That the head of the family must be the debtor, in order to secure such protection, is neither within the letter

nor within the spirit in the United States of America where Homestead Exemption originated." My last point it that one can hardly read the decision in the case Wiles v. Wiles without reaching the conclusion that said decision tends to create an estate in perpetuity. For example the opinion on page 426 reads inter alia, that same "appears to be not only for the purpose that the head of the family shall have secured unto him an unassailable estate, but also that the wife and children, forming a part of said family, shall likewise take an estate therein, which cannot be set aside or destroyed, either by their own acts or by the acts of him who first held an absolute fee therein, or by the claims of third parties against any of the tenants thereto." The effect of this is to create by interpretation what the law

prohibits a feoffor or devisor himself to create with his property either by testament after his death, or by deed during his lifetime. The question next arising is what is the rule against an estate in perpetuity? "This rule operates to prevent the undue postponement of the vesting of future interests, while certain subsidiary rules are recognized by the courts and enforced as a means of preventing the unreasonable accumulation of property, the imposition of unreasonable restraints on alienation, and to prevent undue restrictions on the enjoyment of property. . . . By reason of the rule against perpetuities and these related rules the efforts of the owner of property to alienate it may prove abortive because he has inserted illegal conditions concerning the time when his gift is to take effect in the future, or because he has tried to impose illegal restrictions on the future disposition of the property by the recipient. . . . Ct . . . The rule against perpetuities is usually stated as prohibiting the creation of future interests or estates which by possibility may not become vested within a life or lives in being and twenty-one years, together with the period of gestation when the inclusion of the latter is necessary to cover cases of posthumous birth. Less accurately the period is sometimes stated as being one which covers a life or lives in being and twenty-one years and ten months or nine months thereafter, on the theory that the period of gestation is necessarily covered by the words `within a life or lives in being,' and that a child en ventre sa mere is a life in being. Still another method of stating the rule is by describing it as prohibiting future interests which may not vest within twenty-one years after some life in being at the testator's death or the execution of the instrument creating the future interests." 21 R.C.L. 281-2, §§ 1, 2.

The writer proceeds further to point out that said rule against perpetuities may perhaps best be defined as a grant of property in which the vesting of future interests may be postponed

beyond the period of time allowed by law for the creation of future estates, and in which the future grant cannot be destroyed by those having the immediate estate without the concurrence of those entitled to the future grant. Another definition is that a perpetuity is a limitation which takes property subject to it out of trade and commerce for a longer period of time than a life or lives in being and twenty-one years thereafter, and when necessary the period of gestation. The artificial use of the word has been explained by saying that such grants of property are called perpetuities, not because the grant as written would actually make them perpetual, but because they transgress the limits which the law has set in restraint of grants that tend to a perpetual suspense of the title, or of its vesting." Id., at p. 287, § 9. It appears to me that the opinion of the majority of my brethren of this Bench just read has ignored the principles of law I have herein endeavored to explain; hence, I have withheld my signature from their judgment invalidating the will under consideration, and have with the utmost satisfaction prepared and filed these my reasons for dissenting from their opinion.
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Tarr v Smith et al [1979] LRSC 51; 28 LLR 305 (1979) (20 December 1979)

DANIEL TARR, Informant, *v.* HIS HONOUR **FRANK W. SMITH**, Assigned Judge, December Term, A. D. 1978, of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, and GEORGE KORPEH et al., Respondents.

JUDGMENT WITHOUT OPINION

Decided: December 20, 1979.

When this case was called, Counsellor J. Emmanuel R. Berry appeared for informant, and Counsellor Lewis K. Free appeared for the respondents. The informant's information asserted briefly as follows:

> 1. That on the 29th of June, 1978, the Supreme Court ordered the judge of the Civil Law Court to have the sheriff for Montserrado County proceed to the property in dispute in the ejectment case, and have on-the-spot surveyors designate the 90 acres sued for by the plaintiff, and put the plaintiff in possession of the said 90 acres which he sued for.

2. That in obedience to the mandate of the Supreme Court, His Honour Frank W. Smith ordered the sheriff to proceed to Johnsonville, and with the aid of the original surveyor put plaintiff in possession of the property in keeping with plaintiff's deed upon which the ejectment suit was instituted.

3. That in keeping with the metes and bounds of plaintiff's said deed, plaintiff's **land** commences at a corner of J. Samuel Melton's **land** in Johnsonville, and contains 90 acres.

4. That informant also states, and we quote word for word count four of the bill of information.

In spite of the foregoing, the surveyors, in violation of Your Honours' order as contained in the mandate from this Honourable Court, attempted to commence the survey of the plaintiff's 90 acres of **land** from no particular point, for the reason that J. Samuel Melton had indicated that he had no **land** in Johnsonville, nor had he or any of his relatives ever had any there. And plaintiff not being able to locate the corners for the reason indicated herein, instructed the surveyors to set their compass at any convenient point so long as their 90 acres of **land** were surveyed. To which informant strongly objected as being in gross disregard of Your Honour's mandate, and being a wilful attempt to deprive the informant of the residue of his property especially so as the mandate of this Honourable Court had not instructed any party to commence the survey at the point of his choice, but rather in keeping with the plaintiff's deed."

The respondents filed returns to the bill of information in which they denied count four of the bill of information. Since there would seem to be no way in which to prove or disprove the issue, it is therefore adjudged that the judge in the Civil Law Court will invite three surveyors - one to be appointed by the plaintiff in ejectment; one by the defendant, and a third by the court, and instruct them to proceed to Johnsonville where the **land** is alleged to be located after having been qualified by Court to act faithfully. These three surveyors and the sheriff of Montserrado County shall go to the site together with the plaintiff and the defendant in ejectment, who should each of them take along the deeds proffered with their complaint and answer.

On the spot, the sheriff should have the surveyors find the **land, first using the plaintiff's deed to locate the land** he sued for, according to strict adherence to the metes and bounds contained in the deed he made profert with his complaint.

Should it be impossible to locate the plaintiff's **land** according to his deed, the surveyors will then use the defendant's deed, and locate on the ground the property claimed by the defendant, according to the metes and bounds of his deed, which he annexed to his answer in the ejectment suit. Should they be able to find the plaintiff's **land**, in keeping with the metes and bounds of his deed, the sheriff should proceed to put him in possession, as previously commanded by this Court.

However, if it is true that the metes and bounds as found in the plaintiff's deed are false and untrue, the surveyors should make a written report to that effect to the judge presiding in the Civil Law Court, who will within sixty days from date make returns to the Supreme Court. Until then this bill of information with the returns are suspended for decision until after the report is received.

This is the third time this matter is coming before the Supreme Court, so any attempt to hereafter either obstruct the enforcement of our orders, or delay carrying out such orders as had happened before will be dealt with severely. And it is so ordered.

Dennis et al v Russell et al [1969] LRSC 12; 19 LLR 189 (1969) (6 February 1969)

JOHN AFRICANUS DENNIS and WILLIETTE V. RUSSELL, Executor and Executrix of the last will and testament of MARTIN NEMLE RUSSELL, Appellants,
v. CHRISTIANA BROWNE-PHILIPS and ELIZABETH BROWNE-DOSSEN, grantors to OSCAR S. NORMAN, grantee, Appellees.
APPEAL FROM THE MONTHLY
AND PROBATE COURT, MONTSERRADO COUNTY.

Argued October 15, 17, 1968. Decided February 6, 1969. 1. When a proceeding has been dismissed
by the court, other than for lack of jurisdiction or improper venue, those proceedings, or any part of them, such as the pleadings,
may not be invoked by one party against the other in subsequent proceedings. 2. When a document may be offered in evidence without
need to prove its validity, such as an official record, or, as in the instant case, a copy of a filed will, the party proffering
the document cannot be denied the 'right to prove some aspect of the document which he considers necessary for his case, as in the
instant case to prove a fee simple devised under the will.

Objectors filed a caveat to a sale of land by the greatgrandchildren of testator whose devise by will to their principal's immediate grantor was challenged by respondents as having constituted only
a life estate and not the fee. At the first hearing, due to clerical error in the court, the petition was dismissed, with the right
allowed to objectors to refile. At the subsequent hearing, portions of the dismissed pleadings were accepted by the court as admissions
against interest of the objectors, nor were they permitted to offer evidence proving the devise under the will proferted by them
was in fee §imple absolute and not merely a life tenancy. The court ruled against the petitioners, from which judgment an appeal
was taken. The judgment was reversed, the objections to probate and registration of the deed made by the respondents were sustained.
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G. P. Conger-Thompson and John A. Dennis, pro se, for appellants. M. K. Yangbe for appellees.

MR.
JUSTICE the court.

WARDSWORTH

delivered the opinion of

In passing upon this appeal, we observe from the record filed by the parties

herein that the bone of contention centers around the attempted transfer of title by appellees to some other parties of a parcel of land, which appellants have contested. It is alleged that appellees are legally incompetent to transfer the property described in the deed offered for probation and objected to by the appellants, because said parcel of land is the bona fide property of the late former Chief Justice Martin Nemle Russell, who purchased it February 1, 1948, acquiring four acres of land situated and lying on the southwest corner of one Walter W. Holt's adjoining eastern block, Oldest Congo Town, from Messrs. C. F. Browne and P. A. Davies, after he had paid to them the amount of $400.00. The payment was acknowledged by the execution of a warranty deed, duly registered and probated on February 27, 1948. It is alleged that nineteen years later, the greatgrandchildren of Thomas Browne, respondents herein, commenced conveying this tract of land to several persons by warranty deed, without first having been put in possession thereof by any court. Among these persons are co-respondent Oscar S. Norman. This transaction came to the attention of the objectors, who filed in the office of the Probate Clerk of the Monthly and Probate Court, Montserrado County, a caveat, on November 17, 1956, against the admissibility to probate and registration of any and all such deeds from the respondents herein to any person or persons. Accordingly, on December 8, 1965, objectors received formal notification from the Probate Clerk of the

Monthly and Probate Court, Montserrado County, of a warranty deed from respondents to co-respondent Oscar S. Norman, for lot no. 5, situated and lying at Oldest Congo Town, Monrovia, Liberia, and that the necessary objections were to be filed within the period of time allowed by statute. On December 16, 1965, objections were duly filed and the pleadings progressed as far as the rejoinder filed by the respondents. The legal issues raised by the pleadings came on for trial before Hon. J. Gvalfen Davies, Judge of the Monthly and Probate Court, Montserrado County, on June io, 1966, whereupon the entire pleadings were dismissed due to certain irregularities attributable to the negligence of the clerk of court, and objectors granted the right to refile. Respondents excepted thereto and announced an appeal therefrom. The appeal thus announced by the respondents against this judgment of the Probate Judge was formally withdrawn on June 17, 1966, by the respondents.

In consequence of the withdrawal of the appeal by the respondents, objectors renewed their objections on June 27, 1966, alleging that the said piece of realty was conveyed to the late Martin Nemle Russell by the ancestors of forebears of respondents Browne-Philips and BrowneDossen, and proferted their title deed, which would ordinarily bar re-conveyance of the identical parcel. The renewed, or amended pleadings, progressed as far as the filing of objectors' surrejoinder. On October 28, 1966, after arguments pro et con were heard by the court and the case submitted, the court proceded to rule on the issues of law raised by the pleadings, which ruling was adverse to the objectors, whereupon, objectors excepted thereto and announced an appeal to the Supreme Court, which was granted.

The necessary appeal steps having been taken, they are before this Court for the adjudication of said appeal

based upon a bill of exceptions containing six counts, of which we deem two and four worthy of consideration. "a. Objectors-appellants further submit, that the trial judge erred in sustaining count 4 of the rejoinder of the respondents over and against count 5 of the surrejoinder and one of the reply, in that a misstatement of fact or law of a party is not legally tantamount to an admission, which, when made by a party in a previous pleading, cannot be corrected in a subsequent or renewed or amended pleading, the primary purpose for renewal and amendment of a pleading. A party is only legally barred from changing his form of action; in such a latter circumstance, the party loses the benefit of the bar. The court erred in overruling count 3 of the surrejoinder and count r of the reply, and by sustaining count i of the answer and count 4 of the rejoinder. Objectors-appellants submit, by the dismissal in the former action of objections and the written pleadings, the court can exercise no further jurisdiction over same by invoking issues for consideration and adjudication therein raised and employ the same to the prejudice of a party. In this respect, and in this ruling, the trial judge erred." From the contention of the objectors-appellants in count two of their bill of exceptions, it is obvious that they are contesting the validity of the trial judge's ruling with respect to the alleged admission made in the pleadings by the said objectors-appellants which were dismissed by the trial judge because of certain irregularities committed by the clerk of court in those proceedings. Hence, according to their contention, it is improper for the trial judge to inject into these proceedings matters contained in the pleadings which he dismissed, granting them an opportunity to refile. In such a circumstance the statute provides, inter alia: "Unless the court in its order for dismissal otherwise specifies, a dismissal under this section or any

other dismissal not provided for in section 596 above, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication on the merits." Civil Procedure Law, 1956 Code 6:597 (in part). Further implementing this statute is a vital principle enunciated by common law authority. "A judgment rendered by a court of competent jurisdiction on the merits is a bar to any further suit between the same parties or their privies, upon the same cause of action, in the same or another court, so long as it remains unreversed and not in any way vacated or annulled. This rule rests upon fundamental legal principles, and cannot be abrogated or waived at the will or discretion of any judge. Nor can the rule be abrogated or waived by the consent of the parties themselves." Accordingly,

since the dismissal of the case under review was not for lack of jurisdiction or for improper venue, the dismissal operated as an adjudication on the merits. Therefore, it was illegal and legally improper for the judge to have considered any portion of the previous pleadings and thereon based his opinion overruling the objections and ordering the deed probated and registered, vacating the caveat filed by objectors. Therefore, count two of the bill of exceptions is sustained. Count four of the bill of exceptions reads : "And also because objectors-appellants further submit that the trial judge erred in overruling count 8 of the surrejoinder, respecting the failure of the court to hear evidence, this being a mixed issue of law and fact; for whefe a party may aver an official document, without proferting same in his complaint or pleading, the burden of proving the existence thereof, especially when attacked, rests on that party. Objectors-appellants deny objecting to the proving of the will, but denied that their late grantor was a life tenant accord-

ing to the said last wills and testaments of Tom Browne and Thomas Browne, but one to whom the property was devised in fee simple, which does not legally create a life estate." The appellants-objectors in this count of their bill of exceptions are complaining that the trial judge erred in failing to hear evidence, for the reason that where a party is permitted to offer an official document, without need to offer proof of authenticity, the burden of proving the existence thereof, especially when attacked, rests on the party. "Other proof of official record.--The provisions of sections 721-723 above do not preclude proof of official records or of entries or lack of entries therein by any method authorized by any applicable statute or by the rules of evidence at common law." Civil Procedure Law, 1956 Code 6:724. Objectors-appellants contend further in this count that their grantor was not a life tenant according to the said last will and testament of Tom Browne, but one to whom the property was devised in fee simple. In the last will and testament of Tom Browne, under clause "C," the testator made this declaration: "I also declare that after the death of the said Tom Browne, my son, if in case that he should have any heir or heirs, the above-named parcel of land shall become their (his or her) property, and not to be sold by the said Thomas Browne. And, this shall also be in the case from me, and known to be the estate property to my generation unborn. As time permits, my great-grandchildren shall have the right to determine what they want to be done with the said parcels of land as they may see fit. But my son, Thomas Browne, shall not dispose of the same." The will was executed on June 17, 1917. In the son's will, Thomas Browne declared : "After my burial expense and just debts shall have

been paid, I give and bequeath the following to my son Chancy F. Browne, and my daughter
Sarah Browne, ten (io) acres of land on the Old-Road on both sides of the road commonly known as the John Lewis-Morris Road, to
them and their heirs and assigns forever." It can be readily seen and understood that neither the will of the late Tom Browne nor
that of his son, the late Thomas Browne, created life estates in the legatees. Judge Bouvier defines "fee simple" as : "An estate
of inheritance. The word simple adds no meaning to the word fee standing by 'itself. But it excludes all qualification or restriction
as to the persons who may inherit it as heirs, thus distinguishing it from a fee-tail, as well as from an estate which, though inheritable, is subject to conditions or collateral
determination. In modern estates the terms fee, feesimple, and fee-simple absolute, are substantially synonymous ; "The word 'heirs'
is necessary, in a conveyance, to the creation of a fee-simple, and no expression of intention, in substituted terms, will have an
equivalent effect." Further, in Watson v. Ware, io L.L.R. 158 (1949), the Court stated, at p. 162: "Ruling Case Law states the following:
A tenant in fee simple is one who has lands or tenements to hold to him and his heirs forever. A fee, in general, signifies an estate
of inheritance, and a fee simple is an absolute inheritance, clear of any condition, limitation, or restriction to particular heirs.
It is the highest estate known to the law, and necessarily implies absolute dominion over the land. . . ." Therefore, count four
of the bill of exceptions is sustained. The excerpts quoted from the wills of Tom Browne and his son, Thomas Browne, indicate unequivocally
that

the estate herein devised in said instruments vested title to said property in Thomas Browne and
from him to his heirs, and his heirs absolutely. It is obvious that C. F. Browne, son of the late Thomas Browne, objectors' grantor,
was legally clothed with the right to convey title thereto. In view of the foregoing, it is the considered opinion of the Court that
the ruling of the trial judge should be reversed, and objections to the probation and registration of the deed in question sustained,
with costs against appellees. And it is hereby so ordered. Reversed; objections to probate sustained.

Barclay-Dunbar v Peabody [1969] LRSC 6; 19 LLR 158 (1969) (6 February 1969)

MAI BARCLAY-DUNBAR, by and through her husband, STEPHEN B. DUNBAR, and SIATA BARCLAY, Appellants, v. DAVIDETTA DEAN PEABODY, by and through her husband, ALBERT D. PEABODY, and ALBERT D. PEABODY, attorneyin-fact for EMMA DEAN COX, by and through her husband, JOHN D. COX, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 21, 1968. Decided February 6, 1969. 1. A party who fails to fulfill his obligations under a contract for the transference of real property to him, may not, nor may his heirs, obtain specific performance of the terms of the agreement, or recover the property in an action of ejectment, for legal title never vested in him under the terms of the contract which he breached. 2. In an action of ejectment, plaintiff must show a legal title to the property in dispute. 3. A plaintiff in an ejectment suit may recover property to which legal title has vested in him by descent.

An action of ejectment was brought by the heirs of a party to an agreement providing for the transference to him of real property upon his fulfillment of various obligations, subsequently breached by him. It appears there was also a subsequent agreement between the widow of the obligor and the heirs of the owner of the realty who contracted with him. The action of ejectment was dismissed in the trial court, from whose judgment an appeal was taken. Judgment affirmed.
Dunbar and Horace for appellants. Albert D. Peabody and Peter Amos George for appellees.

MR. JUSTICE ROBERTS delivered the opinion of the cou rt.
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Emma Crump-Porter, of Monrovia, died in the year 1936. About a decade prior to her decline, cognizant of her indigent state, and sensitive to the frailty of life and inevitability of death, she approached a notable gentleman and statesman, Mr. Edwin Barclay, also of Monrovia, for succor during the destitute and feeble days she contemplated living, and to occasion her human remains a suitable interment. This request of Mrs. Porter having met with a favorable response by Mr. Barclay, a memorandum of agreement was concluded between the two on July 9, 1926, the cogent portion of which we quote : That the party of the first part for and in consideration of the stipulations hereinafter made to be faithfully kept and performed by the party of the second part, doth hereby give, grant, bargain, sell and convey unto the said party of the second part, his heirs, executors and assigns, all that lot or parcel of land with the buildings thereon and all the privileges and appurtenances to the same belonging, situated, lying and being in the City of Monrovia aforesaid. . . . 2. And the party of the second part, for himself, his heirs, executors, administrators and assigns doth hereby agree to take the said lands hereinbefore granted and demised with the buildings thereon and the appurtenances thereunto appertaining,

and in consideration thereof and the premises aforesaid, doth further agree: "a) to pay monthly and every month from the first day of August, 1926, unto the party of the first part during the term of her natural life, the sum of $12.00. "b) to permit the party of the first part to reside in the house during her natural life, and "c) upon her death to give her a decent burial." Seemingly, Mrs. Porter was formed of extra strong human fabric and survived longer than was calculated by both parties and so the party of the second part after two
"

years' compliance with part two (a) and (b) of the agreement, without any notice, discontinued fulfilling these obligations, and eight years thereafter failed to comply with (c) thereof. The averment of these facts made by appellees have not been denied nor rebutted by appellant. For proof of breach of subdivision (c) by appellant, appellees made profert the following document: "Exhibit C, Certificate "This is to certify that when Mrs. Emma CrumpPorter, deceased, of the City of Monrovia, died in 1936, the casket in which she was buried was made by me at the request and at the expense of Mrs. Robertetta Crump who retained my services as a carpenter. (Sgd.) WILLIAM T. JOHNSON "December 28, 1961." It is important to note that in the will of Mr. Barclay, proferted by appellees, the property above-mentioned was not provided for. Whether this was an inadvertence, or deliberate on his part, since he was an able lawyer, and, hence, is recognition of his breach of the agreement, we cannot say with certainty. According to the record certified to us, despite Mr. Barclay's omission to fulfill his contractual obligation, he continued in full possession of the property after the death of Mrs. Porter, even though he did not dispose of it in his will. Because of this adverse possession the heirs of Mrs. Porter filed cancellation proceedings, after the death of Mr. Barclay, against his widow and sole executrix. Before the proceedings could be resolved by court, a compromise was effected and the following agreement signed. "Stipulation relating to a memorandum of agreement executed between Edwin J. Barclay and Emma Porter, dated July 9, 1926. "The parties hereto have agreed that in view of negotiations between them, the following shall constitute
"

their stipulation in respect to the said memorandum of agreement: i. There did exist a valid memorandum of agreement entered into between E. J. Barclay and Emma Porter. "2. In accordance with the aforesaid memorandum, certain obligations were imposed upon both of the parties thereto, which obligations were partially executed. "3. That the parties herein have reconsidered the entire transaction in the light of their legal relationship to the parties in said memorandum of agreement, and have decided that same be canceled premised upon certain provisions

herein contained. "4. That the legal heirs of Emma Porter shall pay over to the successors-in-interest of the late Edwin J. Barclay the sum of $250.00 upon the signing hereof, same to constitute a refund of the sums expended by Edwin J. Barclay on the late Emma Porter in partial compliance with the terms of the aforesaid memorandum of agreement. "5. That effective as of the date hereof, the aforesaid successors-in-interest of the late Edwin J. Barclay shall be granted a period of sixty days in which to vacate the subject premises. "6. That the heirs of the late Emma Porter shall also pay to the attorneys of Mrs. Euphemia Barclay all costs incident to the prosecution of her interest up to and including the time of the withdrawal of the case instituted by the said heirs of Emma Porter for recovery of this property. "7. That the successors-in-interest of the late Edwin J. Barclay shall relinquish, effective hereof, all rights and interests that they may have in said property by virtue of the aforesaid memorandum of agreement.
"

 "In witness whereof the parties hereto have hereunto affixed their signatures to this instrument this 29th day of March, 1962. [Sgd.] "EUPHEMIA BARCLAY [Sgd.] "DAVIDETTA DEAN-PEABODY (for herself) [Sgd.] "ALBERT D. PEABODY, attorney-in-fact for EMMA DEAN COX

Witnesses:

[Sgd.] "EUPHEMIA BRUMSKINE [Sgd.] "E. WINFRED SMALLWOOD [Sgd.] "P. Amos GEORGE" Following the death of Mrs. Barclay, appellants filed an action of ejectment against appellees in the Sixth Judicial Circuit, during its June 1967 Term, contending the following: That plaintiffs are the only surviving lineal heirs of the late Edwin Barclay of the City of Monrovia, who died seized in fee simple of lot No. 55, situated, lying and being on Gurley Street, City of Monrovia, and containing one-fourth of an acre of land, as will more clearly be seen from a copy of an agreement between Emma Porter and Edwin Barclay, herewith made profert and marked exhibit 'A' to form a cogent part of this complaint, as well as a copy of a warranty deed from Joseph S. Dennis to Emma Porter, herewith made profert and marked exhibit 'B' to form part of this complaint. "2. And plaintiffs further complain that by virtue of the fact that they are the only lineal surviving heirs of the late Edwin Barclay, their father, they are entitled, under the law of descent, to the ownership, possession and title of the property described in count one hereof. "3. And plaintiffs further complain that notwithstanding that defendants are fully aware of plaintiffs'

title and ownership of said parcel of land, subject of this action, the defendants did illegally enter, trespass upon and occupy the said parcel of land, and the said defendants are now wrongfully, illegally

and prejudicially withholding possession thereof from plaintiffs who are the only legal owners of said parcel of land." To this complaint, appellees answered, and the pleadings progressed as far as surrebutter. Count one of the answer reads : "1. Because defendants aver that plaintiffs' action should be dismissed for choosing the wrong form of action ; in that, according to the complaint and exhibit `A,' this action arises out of a contract, and according to our statutes, it should have been an action in equity for specific performance ; defendants submit that according to plaintiffs' exhibit 'A,' there existed a contract between the late Emma Porter and Edwin Barclay to the effect that the late Edwin Barclay would pay $12.00 to the said Emma Porter monthly, commencing August r, 1926, for the duration of her natural life, and that 'upon her death to give her a decent burial.' According to plaintiffs' complaint the terms and conditions on the part of the heirs of the late Emma Porter have not been carried out and the alleged wrongful withholding cannot therefore be the proper action; specific performance would be the proper action." After pleadings had rested on August 16, 1967, the trial judge disposed of the issues of law, dismissing the action in the following ruling: "In view of the foregoing, counts one and two of the answer, with the supporting pleas to them as contained in the amended rejoinder and reaffirmed in the defendants' rebutter are sustained, the complaint, with its subsequent supporting pleas in respect to these counts of the answer, abated and overruled, and the action dismissed, with costs against plaintiffs. Our

opinion is that plaintiffs' better writ would be specific performance, according to the facts stated in the complaint; and it is hereby so ordered." The pleadings in this case raised many issues of law; nevertheless, we will confine ourselves to the following: i. Did this memorandum vest title in appellant? 2. Were the terms and conditions of the agreement met? 3. Is ejectment the right or correct form of action? 4. Does the contention of appellants that they are the only surviving heirs of the late Edwin Barclay as contained in counts one and two, as well as the latter part of count three, of the complaint, vest title in appellants? Starting in reverse order, this Court has held that the essential issue in ejectment actions is not the tie of blood, but title. A plaintiff in ejectment may recover property which descended to him, if the title legally vests in him. In this case, legal title would have vested in appellants since there is no question of sole survivorship, nor has this been challenged, but there seems to have been no legal title vested in Edwin Barclay, whose heirs they claim to be. It is a basic principle in ejectment proceedings that title to real property is a requisite issue. There is no issue that they are, or are not, the heirs of Mr. Barclay. But there is contention that Mr. Barclay never legally acquired the land. It is peculiar that Mr. Barclay assumed possession of the property, enjoyed the benefits thereof for more than i8 years in consequence of a small payment of $250.00 and in the devisement of his property ignored it. In passing it is touching to note even this small sum was returned and gladly accepted. As to the third question posed, reference is here made to Kamara v. Kamara, [1954]

LRSC 17; 12 L.L.R. 28 (1954), where it was held that a written receipt which satisfies the requisites of a binding contract of sale of real property may be specifi-

cally enforced by a court of equity. In Horace v. Harris, [1947] LRSC 14; 9 L.L.R. 372 (1947), the Court held that in ejectment the plaintiff must show a legal and not merely an equitable title to real property in dispute.
As to the second question, a look at the record certified to us shows the terms of the agreement which the party of the second part obligated himself to, and the legal significance of his signature affixed to the document. We partially dealt with this question hereinabove. It is clear that this memorandum did not vest title in Mr. Barclay. There is a distinction between a contract to transfer **land, and transference of land. A contract to transfer an interest in land** may be valid as a contract, but inoperative as an actual transfer as in this case. In our jurisdiction, a contract for the sale or transfer of **land** is enforceable by specific performance.
We would like to here stress that if Mr. Barclay had kept his side of the contract as agreed upon, appellees would be compelled to effectuate its intentions. In view of the foregoing facts, and the law as cited above, the Court has no alternative but to affirm the judgment of the lower court, and order it to resume jurisdiction over this case and enforce its judgment. Costs in these proceedings are ruled against the appellants. And it is hereby so ordered.
Affirmed

Caine et al v Freeman et al [1968] LRSC 5; 18 LLR 238 (1968) (18 January 1968)

GEORGE B. CAINE, VARNEY MANOBALLAH, LUSINI MANOBALLAH, et al., Appellants, v. A. KINI FREEMAN, et al., Appellee.
APPEAL FROM THE
CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Argued October 18, 1967. Decided January 18, 1968. 1. Where a caveat has been served, indicating intention to object to probate of a written instrument, other than a will, as in the instant case, a deed to real property, ten days must be allowed by the court, from the time of offering to probate of the instrument, for formal objections to be interposed by the caveator, before the probate court can validly accept the instrument for probation and subsequent registration. 2. A caveat may consist of a radiogram, as in the instant case, and can be addressed to the judge of the probate court, as well as to the clerk of that court.

A public **land** sale deed was offered for probate the day following receipt by the judge of a radiogram from the caveator, requesting him to record objection to the probate. The caveator then applied for cancellation

of the probate. On appeal from denial of the application, the judgment was reversed and the statutory time ordered allowed to the caveator to file objections to probate.
George Caine for appellants. Nete Sie Brownell for appellees. Jacob H. Willis and

MR. Court.

JUSTICE

SIMPSON delivered the opinion of the

The appellants herein have laid claim to an area of land containing two thousand three hundred and twentyfive (2,325) acres situated in the Garula Chiefdom of Grand Cape Mount County. Apparently, the parties herein have been in controversy for a protracted period of time in an endeavor to establish the fee simple ownership to the above-referred-to tract of land. It is further

shown that, predicated upon certain documentary representations, the President of Liberia signed in behalf of appellees a public land sale deed covering the property. Subsequent to execution of this indenture, the named grantees returned to Grand Cape Mount County, and at Robertsport, the county seat, prepared to offer for admission into probate the aforenamed public land sale deed. The facts of the case show that on August i 1, 1965, a cablegram was dispatched from Monrovia to Robertsport by Attorney George B. Caine and addressed to the assigned Circuit Judge, Lewis K. Free, then presiding over the Fifth Judicial Circuit. Due to the brevity of this radio message, we shall herein quote it. "His Honor Judge Lewis K. Free Assigned Judge 5th Jud. Cir. Court Cape Mount. If any deed is offered for probation and registration in this present session of court in favor of a Kini Freeman et al of Mani please record my objections to said deed. Kind Regards." The records further show that on the following day, meaning thereby August 12, 1965, a public land sale deed for lot No. 1, from the Republic of Liberia to A. Kini Freeman, et al., was offered for probation by attorney Frank A. Skinner. Upon the recordation of this offer for admission into probate, the court ordered the clerk to placard notices for three days, inviting objections to the probation and registration of the said deed, and after the expiration of that time, if there were no such objections, then the deed would be admitted into probate and thereafter ordered registered. The records at this juncture are not completely clear, however, for it is shown that on August 18, 1965, an application entitled, "Application for the withdrawal and cancellation of deed, granted unto A. Kini Freeman, et al., offered for probation and registration" was filed by George B. Caine for himself and members of Kiazolu and Manoballah. At the outset, we

should like to note that the counts of the application and the prayer at the end of same vary in substance from the title
as quoted, supra. In the petition, it was substantially alleged that a radiogram expressing intention to object to the probation
and registration of the above-referred-to deed had been sent to the judge on August II, 1965. Additionally, that the deed was offered for probation and registration
in the absence of petitioners, in disregard of the notice of intent to object to the probation of the same, and, furthermore, allowing
the said petitioners no time within which to file objections, regardless of the fact that they were momentarily without the country.
This, the petition contended, contravened Rule 5 of the Probate Court Rule, obviously to the prejudice of the said petitioners. Predicated
upon the above-recited facts, the petition prayed that the probate and registration of the said public land sale deed be canceled
and set aside. We want particularly to observe here that the application did not request a cancellation of the deed but, instead,
of the act of probation and subsequent registration. To this application an answer was filed by the appellees herein, containing
five counts, wherein it was contended that petitioners had waived their rights in that the probation and registration of the deed
had occurred prior to the filing of the application for "the withdrawal and cancellation of said deed." It was additionally contended
that the petitioners' radiogram which served as a caveat should have been directed to the clerk of court and not the judge himself,
for in so doing the petitioners constituted the judge their agent, thereby disqualifying him from presiding over the case. Continuing
their answer, count three thereof held that the deed in question, having been granted by the Government over the signature of the
President of Liberia, can only be canceled by the Government through the Attorney General, or the County Attorney for Grand Cape
Mount County. The last two

counts made mention of certain administrative procedures that had culminated in a final judgment rendered by the President of Liberia on February 15, 1963, handed down in Robertsport in March 1964. Ruling was
made by the judge on August 3o, 1965. In this ruling the judge, first of all, held that the issues involved concerned our property
law and savored of a controversy in respect of title rights. It was his further belief that the petition should have been venued
in the Equity Division of the court but, instead, the proceedings had been commenced by addressing a radiogram to him containing
objections to the probation of any deed offered by A. Kini Freeman, et al., during the said August Term of court. The judge continued
by saying that the Civil Procedure Law, 1956 Code, tit. 6, § 254, requires that pleadings be addressed to the clerk and since this
was not done, count one of the petition was to be overruled. With respect to count two of the petitiOn, the judge held that the contention

of petitioners to the effect that no time was allowed them . to file objections, contradicted their further contention that they were without the jurisdiction. This point was stressed, upon the reasoning that no one can serve notice to file objections and at the same time be out of the jurisdiction of the court. Thereafter, the judge proceeded to cite scanty portions of Rule 5 of the Probate Court Rules. In addition to this, he proceeded to make an array of legal citations which were not germane to the issues. The Court feels that it is unnecessary to have to concern itself with all of the sham issues that have been raised and were purportedly passed upon. In our view, there are but two main issues here, the first being whether or not the radiogram addressed to the judge constituted a sufficient caveat in the eyes of the law and the second, if such a caveat is legally sufficient, were legal requirements of Rule 5 of the Probate Court Rules complied with in respect to the filing of objections?

LIBERIAN LAW REPORTS Did the radiogram constitute a sufficient caveat? In order to effect a proper resolution of this issue, let us first examine the meaning of "caveat," and then determine to whom notice should be addressed. The word "caveat" is of Latin origin, and is defined literally as "let him beware." In BLACK'S LAW DICTIONARY, the following legal definition is given : "A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration, or to arrest the enrollment of a decree in chancery when the party intends to take an appeal, to prevent the grant of letters patent, etc. It is also used, in the American practice, as a kind of equitable process, to stay the granting of a patent for lands." From this quotation it can be seen that the caveat is not a pleading, but constitutes an intimation to file more formal pleadings by way of objections at some subsequent time. The notice to the court of an intention to object may be either oral or in writing, and irrespective of the mode of this notice the rule requires that time should be allowed for written objections to be filed. The relevant Rule of court reads as follows : "Rule 5. All instruments, documents and other papers other than Wills, necessary to be probated, shall be offered in open Court and recorded by the clerk in the minutes for the day's sitting; after which it shall be bulletined for at least three (3) days, before being cried by the Sheriff. This order shall only be given in the absence of objections interposed to probation of the document. In case of objections given orally, time will be allowed as in the case of caveats for written objections to be filed. Bulletin of these matters shall be placarded on the door of the Court House for the

required three days, to give public notice of the prof ferer's

intention." In accordance with existing statutes and the above-cited rule, in the event a caveat is filed in respect to intention to object to the probation of a particular legal instrument, the caveator is, upon presentation of the relevant instrument for probation, apprised of the presentation and given ten days within which to file objections. In the circumstances, the Probate Court is not authorized to admit into probate, or place into operation the machinery to effect probation of an instrument, until the caveator has been allowed the prescribed period for filing objections. The records in the present case show that less than six days elapsed between the offering of the deed for admission into probate and its subsequent admission in disregard of the prior filing of the caveat. This constituted an erroneous act on the part of the judge. The fact that the radiogram from George Caine was addressed to him in his official capacity and not to the clerk, is of no legal consequence, since the same violates no known law. The reference made by the judge to our Civil Procedure Law, as quoted above, is inapplicable since nowhere in the section is any mention made of the fact that the caveat to be valid must be filed with the clerk of the court and not the judge. Lastly, we must state that the ruling in respect to averments that the relief sought was for the cancellation of the public land sale deed, is completely without merit. A recourse to the substantive portion of the petition as above recited clearly indicates that the application in effect was for the cancellation of the act of probation and subsequent registration and was not intended to nullify the deed itself, for obviously this could not be effected by a petition in probate. In view of the foregoing, this Court must hold that the acts of the judge were without legal foundation, and

where an application was timely made to him for appropriate relief, his failure to grant it constituted reversible error. Therefore, a mandate is ordered directed to the judge presiding over the Fifth Judicial Circuit Court, Grand Cape Mount County, declaring the ruling of Judge Free null and void, and ordering that ten days be afforded the caveator to file objections in consonance with the law. Costs in these proceedings are ruled against the appellee. And it is hereby so ordered. Reversed.

Griffiths v Wariebi [1988] LRSC 42; 35 LLR 110 (1988) (29 July 1988)

SAMUEL B. GRIFFITHS, Appellant, v. **JONES J. WARIEBI**, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 26, 1988. Decided: July 29 , 1988.

1. An appeal bond is sufficient when it is in excess of the amount of the judgment, although it has often been held that an appeal bond should be one and one-half times the amount of the judgment.

2. When persons who elect to be sureties offer to the court and post their properties as securities, they thereby enter into a contract and they cannot unilaterally breach or withdraw from said contract.

3. An appeal bond is a statutory bond given to a public official (the sheriff of the trial court) and the seal of the court and the signature of the judge placed on such bond import a solemnity greater than that present in simple contracts. The Court therefore looks with great disfavour upon any person withdrawing his name from the bond issued by any court officer or court of law as security for a legal undertaking or performance of a legal obligation under the control and supervision of the court officer. Such person will be held in contempt.

4. Fraud vitiates every transaction, including contracts. Therefore, one cannot be held liable on a bond to which his signature has been forged.

5. Exceptions to the surety to a bond may be made within three days after the receipt of the notice of the filing of the bond; and, within three days after the service of the notice of exceptions, the surety excepted to or the person on whose behalf the bond was given shall move to justify, upon notice to the adverse party.

6. The Supreme Court cannot take nor hear evidence anew and can review only the records of the trial court as transcribed and forwarded to it.

7. Where a surety whose name is said to have been forged on an appeal bond does not personally move the court to have his name stricken from the appeal bond after he becomes aware of his name being there, the Court cannot accept the affidavit of one justice of the peace against

another justice of the peace which are in contradiction with each other. The party himself must make the effort to extricate himself from the obligation of the contract.

8. An affidavit of sureties shall contain: (a) a statement that one or more of the sureties are the owners of the real property offered as security for the bond; (b) a description of the property sufficiently identified to establish the lien on the bond; (c) a statement of the total amount of the liens, unpaid taxes, and other encumbrances against each of the property offered; and (d) a statement of the assessed value of each property offered.

9. When there are no liens, unpaid taxes or other encumbrances on the property offered as security for a bond, there need not be a statement to that effect in the affidavit of sureties since the law requires a statement only regarding the total amount of the liens, unpaid taxes and other encumbrances.

10. A statement of property valuation is a part of the appeal bond and such official statement of a public agency has more credence than the self-serving statement in the affidavit of sureties. The intent of the statute is therefore satisfied when the appellee has notice of what the value of each property is and the statement of property valuation is incorporated into the affidavit of sureties by the reference to it in the affidavit of sureties.

11. The law merely requires that a statement of the total amount of liens, unpaid taxes and other encumbrances be stated in the affidavit of sureties. Therefore, when the affidavit of sureties shows liens and encumbrances or unpaid taxes on the property, the value of the liens, encumbrances or unpaid taxes are to be deducted from the value of the real property and the balance applied to the bond as security.

12. The general rule accepted in the Liberian jurisdiction is that an appellant is not himself a competent surety on an appeal bond or undertaking, and therefore cannot be surety to his own appeal bond, although one who is a nominal party to the appeal may act as surety. On such appeal bond, the sureties must be two natural persons (other than the appellant) who own in fee simple the properties posted as security or an insurance company authorized by law to issue surety bond.

13. Generally, there are only two essential parties to a bond: the obligor and the obligee. Therefore, in the absence of an absolute statutory requirement, a surety on a bond is unnecessary, especially where the appellant, as obligor to the appeal bond, offers cash, a bank certificate, a bank's manager's check, or a bank certified check as security to his bond.

14. Also, where the appellant, as obligor to an appeal bond, offers his own unencumbered real properties on which taxes have been paid or offers his own valuables which are easily convertible into money, he needs no surety. His unencumbered real property and/or his valuables are the only necessary security for his bond.

15. Surety on a bond, whether bail bond, appeal bond, attachment bond, or any other bond, is an absolute requirement under the Liberian statute where the bond is posted upon the recognizance of two natural persons other than the defendant or appellant or where the bond is posted upon the recognizance of an insurance company authorized to issue surety bond in Liberia. Furthermore, where the bond is posted upon the recognizance of two natural persons other than the defendant or appellant, it must be further secured by real property owned in fee by one or both or said natural persons and the unpaid taxes and other liens, when deducted, should leave a balance sufficient in the amount of the penalty or indemnity of the bond.

16. While an appellant may use his own property to secure an appeal bond upon his personal recognizance, the deeds for such real property must be delivered to the court; and where a cashier or manager's check, or a bank certified check, or other valuables convertible into cash, are used as security for an appeal bond posted by the personal recognizance of the appellant, same should also be delivered to the court. In all such instances, there is no need for an affidavit of sureties.

17. The affidavit of sureties must contain a description of the real property, sufficiently identified, to establish the lien on the bond, so that locating the property on the ground becomes an easy exercise. Therefore, in order to make the appeal valid, the property must be described by the number of the plot or lot and the metes and bounds, and must carry the quantity of **land** as a prerequisite to establishing the lien on the bond. A failure to do so makes the bond materially defective.

Appellee instituted an action of damages in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against the appellee. At the close of the evidence, the jury returned a verdict of liable against the appellant, wherein it assessed special damages at $500,000.00 and

general damages at $250,000.00. Following the denial of a motion for new trial, judgment was rendered confirming the verdict. From this judgment, exceptions were noted and an appeal announced to the Supreme Court.

However, prior to the call of the case, the appellee filed a motion to dismiss, noting as the ground therefor that the appellant' s appeal bond was fatally defective. The motion stated as the defects the following: (a) that the appellant was a surety to the bond and that property to the value of $451,700.00 belonged to him; (b) that the properties used as surety to the bond were not sufficiently described; (c) that while the judge had set the appeal bond at $1,125,000.00, the value of the bond posted by the appellant was only $102,800.00; (d) that the affidavit of sureties failed to state the value of the properties, the liens and encumbrances, and the unpaid taxes; (e) that taxes on the properties had been paid only up to June 30, 1987, creating thereby a lien on the properties; and (f) that one of the sureties had withdrawn from the bond, while the signature of a second surety had been forged.

The appellant countered the motion as follows: (a) that under the law, he could stand his own bond; (b) that the real properties offered as security to the bond were sufficiently described in the affidavit of sureties and could be easily located or identified; (c) that no fraud was perpetuated by appellant in processing the signature of one of the sureties; (d) that real property taxes had been paid for the taxable year; and (e) that only statutory grounds for dismissal of an appeal should be entertained by the court; forgery not being one of them, the same should not be considered by the court.

The Supreme Court agreed with the principal contentions of the appellee relative to the defects in the appeal bond. The Court observed that the value of the bond sufficiently covered the judgment, noting the that even if the property offered by the surety who withdrew from the bond and that of the surety whose signature was allegedly forged were removed from the bond, the value of the bond would still be sufficient to cover the judgment since the law did not require that the bond be one and one-half times the judgment. The Court opined, however, that the bond was fatally defective because (a) the appellant had stood as his own surety which he could not legally do; that the taxes had not been paid to cover the period when the bond was executed, thereby creating a lien on the property; that the appellant could not be both principal and surety to his own appeal bond when the bond was secured by real property, the proper course being for the appellant to have two natural persons who are fee simple owners of unencumbered real property post such property as security for the bond; and that the affidavit of sureties had failed to conform to the statute, in that it did not carry the quantity of **land** or the lot number for the property offered, noting that it interpreted the appeal statute regarding the description of property used to secure an appeal bond to mean that the affidavit of sureties should state the lot number, the metes and bounds of the property, and the quantity of **land**, such that the property can be easily located and the judgment be made enforceable.

Given the enumerated defects in the bond, the Court declared the appeal defective and accordingly dismissed the same.

M Fahnbulleh Jones, John A. Dennis and *Stephen B. Dunbar* Sr. appeared for the appellant. *Joseph Williamson* and *H. Varney G. Sherman* of Maxwell and Maxwell Law Offices appeared for the appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

The facts of this case are that Jones J. Wariebi, appellee before this Court, filed in the Civil Law Court for the Sixth Judicial Circuit an action of damages against Samuel B. Griffiths, appellant. At the end of the trial, the appellant was adjudged liable in special and general damages to the appellee in the amount of $500,000.00 (Five Hundred Thousand Dollars) and $250,000.00 (Two Hundred Fifty Thousand Dollars), respectively, the total amount of the damages aggregating $750,000.00 (Seven Hundred Fifty Thousand Dollars).

Appellant excepted to the judgment, announced an appeal, filed his bill of exceptions, filed an appeal bond, and filed and served a notice of completion of appeal to confer jurisdiction on this Court to review the merits of the case. However, on March 30, 1988, appellee filed a motion to dismiss the appeal alleging as follows:

1) that the appeal bond was materially defective in that appellant was also one of the sureties to the appeal and has posted real property to the value of $451,700.00;

2) that the real properties posted as security to the appeal bond were not sufficiently described so as to place the lien of the bond thereon, and the metes and bounds of some of the properties offered were incomplete to the extent that they did not form a closed polygon, while for others there were no lot numbers, and still for others there were no acreage (quantity of **land**);

3) that the trial court fixed the amount of the bond at $1,125,000.00 (One Million One Hundred Twenty-Five Thousand Dollars) while the appeal bond posted by appellant was $102,800;00 less than that fixed by the trial court;

4) that the affidavit of sureties did not state or carry the value of the properties, the liens, encumbrances and the statement of unpaid taxes;

5) that taxes on the properties had been paid only up to June 30, 1987, as evidenced by the statement of property valuation, and therefore the lien of the government taxes was on the properties at the time of the filing of the bond; and

6) that Frank V. Smith, one of the sureties, had withdrawn his suretyship as evidenced by his letter, thereby decreasing the amount on the bond by $25,000.00, while the signature of Benjamin Byrd, another of the sureties, was forged.

For these various reasons, appellee contended that the appeal bond was both materially defective and insufficient to indemnify appellee and assure this Court of compliance with its judgment.

In response to the motion to dismiss, appellant filed a nine-count resistance in which he traversed the averment of the motion by contending that:

1) Appellant Samuel B. Griffiths under the law, could stand his own appeal bond and be surety to such bond;

2) the real properties posted as security to the bond did carry sufficient description and that in extrinsic factors, said real properties could be located or identified for the purpose of the lien of the bond;

3) the real properties posted as security for the bond were fully and adequately described in the affidavit of sureties and that this was the only instrument in which the law requires that the real properties be described by their metes and bounds;

4) the technical appraisal of the descriptions of the properties posted as security for the appeal bond dehors the records of the trial court and so this Court should not give cognizance to said technical appraisal report;

5) no fraud was perpetrated by appellant in procuring the signature of Benjamin Byrd;

6) real property taxes were due from July 31 of each year to June 30 of the next year and so Government taxes from July 1, 1987 to December 31, 1987 were not due and payable when appellant obtained the certificate from the Bureau of Revenues; and

7) only statutory grounds for dismissal of appeal should be entertained and the alleged forgery of Benjamin Byrd's signature as well as the withdrawal of Frank W. Smith as surety are no such grounds for the dismissal of an appeal.

In passing on the various issues raised by the motion, the resistance and the arguments, it should first be noted that while it is true that the statute provides that the amount of the appeal bond should be fixed by the court, yet the same statute provides further that the purpose of the appeal bond is to indemnify the appellee from all costs and injury and to ensure compliance with the judgment of this Court. Civil Procedure Law, Rev. Code 1:51.8. In the *case The Management of Intrusco Corporation v. Duo,* [1983] LRSC 12; 30 LLR 537 (1983), decided February, 1983, at the October Term 1982, we held that an appeal bond is sufficient when it is in excess of the amount of the judgment. We do note, however, that more often than not an appeal bond is fixed at one and one-half (1Y2) times the amount of the judgment even though this is not a rule of thumb. *West Africa Trading Corporation v. Alraine (Liberia) Limited,* [1975] LRSC 16; 24 LLR 224 (1975).

In the case at bar, the total amount of the judgment at the trial court was $750,000.00 and the appeal bond filed by the appellant carries the total amount of $1,175,252.00 (One Million One Hundred Seventy-Five Thousand Two Hundred Fifty-Two Dollars, which is more than sufficient on its face to indemnify the appellee and to assure this Court of compliance with its final

judgment. Obviously, the trial judge made a simple mathematical mistake in the number of zeros he wrote, since he could not definitely have intended that the appellant post a bond of 1.5 times the amount of the judgment.

On the issue of the withdrawal of the name of Frank W. Smith from the list of sureties to the appellant's appeal bond, we are in agreement with appellant's argument that even were the said name deleted and the corresponding amount of $25,000.00 (Twenty-Five Thousand Dollars) deducted from the total face value of the appeal bond, a balance of $1,150,252.00 (One Million One Hundred Fifty Thousand Two Hundred Fifty-Two Dollars) on the face of the appeal would still be more than enough to indemnify the appellee and to assure this Court of compliance with its final judgment. What is important though is the fact that when persons who elect to be sureties to a bond offer to the court and post their properties as securities, they have entered into a contract and therefore cannot unilaterally breach or with-draw from said contract.

But more than this, an appeal bond is a statutory bond given to a public official (the sheriff of the trial court), and the seal of the court and the signature of the judge placed on such bond import a solemnity greater than that present in simple contracts. 12 AM JUR 2d., *Bonds, §§* 1 and 2. This Court therefore looks with great disfavour upon any person withdrawing his name from a bond issued to any court officer or court of law as security for a legal undertaking or performance of a legal obligation under the control and supervision of a court officer. The public is therefore hereby warned to beware of the obligations which they voluntarily undertake when they stand as surety to a bond. This Court will not hesitate to call such persons to answer in contempt when they conduct themselves in any manner similar to that of Mr. Frank W. Smith who withdrew his signature from the appeal bond as a surety.

Another reason advanced by the appellee to dismiss the appeal is that Mr. Benjamin Byrd's signature was forged. We accept appellee's contention that fraud vitiates every transaction, including contracts, 37 AM JUR. 2d, *Fraud and Deceit, §* 8, and, therefore, one cannot be held liable on a bond to which his signature has been forged. 12 AM JUR 2d., *Bonds, §* 21. In this respect, the bond here is defective. In this jurisdiction, the proof of fraud requires the taking of evidence, *Kontar v. Mouwaffak,* [1966] LRSC 52; 17 LLR 446 (1966), and this Court of last resort does not take evidence. This is why our Civil Procedure Law, Rev. Code 1:63.5 and 63.6 provide that exceptions to a surety to a bond may be made within three (3) days after the receipt of the notice of the filing of the bond, and that within three days after service of the notice of exceptions, the surety excepted to or the person on whose behalf the bond was given shall move to justify, upon notice to the adverse party. We have heretofore held that the failure of an appellee to except in the trial court to an appeal bond constitutes a waiver of his objections and his motion to dismiss the appeal will be denied. *Kerpai v. Kpene,* [1977] LRSC 4; 25 LLR 422 (1977). It is clear from this holding that while the statutes on appeals do not specifically provide within what period of the sixty days after judgment an appeal bond should be filed as it is

provided for the bill of exceptions, yet this Court favours the filing of the appeal bonds and the service of the completion of the appeal bind in sufficient time to allow for any exceptions before the expiry of the sixty days after judgment, when the trial court loses jurisdiction over any and all aspects of the case.

The records certified to this Court show that the appeal bond was approved on December 30, 1987, and the notice of completion of appeal was filed on the same day and served. There is no evidence that the appeal bond was served on appellee, and even if it had been served on appellee, there was no time available for appellee to file exceptions in the trial court. Hence, while this Court does not hear evidence, the appellant, who by his conduct of filing the appeal bond and the notice of completion of appeal on the same day deprived the appellee of the opportunity of filing exceptions to the appeal bond in the trial court, cannot benefit from said conduct. Yet, we cannot depart from the cardinal rule of this Court that it shall neither take nor hear evidence anew and that it shall review only the records of the trial court as transcribed and forwarded to it. *Gallina Blanca S. A. v. Nestle Products, Ltd.*, [1976] LRSC 33; 25 LLR 116 (1976). One precedent we find analogous to the case at bar is where a surety to an appeal bond whose consent thereto was not obtained personally moved this Court of *denier resort* to have his name stricken from the bond for reasons that he did not give his consent to being a surety and did not sign or authorize anybody to sign the affidavit of sureties for and on his behalf. However, in that case this Court did not have to take evidence to prove fraud but merely had the surety's name stricken out. In the case at bar, appellee brought in an affidavit of the surety. Yet, the surety himself made no effort to have his name stricken from the bond when the circumstances were such that any reasonable man would not only have disavowed the contract before a justice of the peace but would have moved the court to absolve himself of any obligation thereunder. Since Benjamin Byrd did not personally move this Court to have his name stricken from the appeal bond after he became aware of his name being there, we cannot accept the affidavit of one justice of the peace against the affidavit of another justice of the peace, when the party himself made no effort to extricate himself from the obligations of a solemn contract such as a statutory bond.

With reference to the issue of the contents of the affidavit of sureties, we note that appellee contends that the affidavit of sureties must state the value of the properties, the liens and encumbrances, and the unpaid taxes. We do not deny that the Civil Procedure Law, Rev. Code 1:63.2(3) provides that the affidavit of sureties should contain: (a) a statement that one or more of the sureties are the owners of the real property offered as security to the bond; (b) a description of the property sufficiently identified to establish a lien on the bond; (c) a statement of the total amount of the liens, unpaid taxes and other encumbrances against each property offered; and (d) a statement of the assessed value of each property offered. Civil Procedure Law, Rev. Code 1:63.2(3).

Indeed, from the language of the statute, it is clear that when there are no liens, unpaid taxes or other encumbrances on the property offered as security for the bond, there need not be a statement to that effect in the affidavit of sureties. This is true because the law requires a statement only regarding the total amount of the liens, unpaid taxes and other encumbrances. However, in the instant case, the affidavit of sureties submitted by appellant stated in count 4 that there are no unpaid taxes or liens on the property offered. This statement is more than is required by the statute. The affidavit of sureties also stated in count 5 that the assessed value of the properties is in the amount specified in the statement of the property valuation from the Ministry of Finance. The statement of property valuation is a part of the appeal bond and said official statement of a public agency has more credence than the self-serving statement in the affidavit of sureties. The intent of the statute is therefore satisfied in that appellee had notice of what the value of each property was and since the statement of property valuation was incorporated into the affidavit of sureties by the reference to it in count 5 of the affidavit of sureties. The contention of the appellee on the contents of the affidavit of sureties with respect to the value of the properties offered as security and the unpaid taxes and liens are untenable and therefore overruled.

The next issue is whether or not taxes were due on the property at the time of the filing of the appeal bond. While it is true that the fiscal operations of the Government of Liberia are to be recorded, accounted and reported for the period beginning on July 1 of one year and ending on June 30, of the second year, as contended by appellant, yet it was the law at the time this bond was filed that taxes for real property become due on July 1 of each year and covers the period January 1 to and including December 31. Revenue and Finance Law, Rev. Code 36:36.8 (4) and 36.13 (3). Therefore, real property taxes for the year January 1, 1987 to December 31, 1987 became due and payable on July 1, 1987, and said taxes, when not paid, became a lien on the property as of July 1, 1987. *Ibid., §* 36:13.8. Hence, when the statement of property valuation states that taxes have been paid up to June 30, 1987, it is clear that taxes which became due on July 1, 1987 for the year January 1, 1987 to December 31, 1987 had not been paid when the appeal bond was approved on December 30, 1987. The Civil Procedure Law provides that where real property is used as security for a bond, the real property should be unencumbered, taxes thereon must have been paid and must be held in fee by the person furnishing the bond. Civil Procedure Law, Rev. Code 1:63.1(b). It was plain therefore, that for all those properties which the person furnishing the bond posted as security for the bond, the taxes must have been paid up to and including December 30, 1987, and that for failure to show such payment of taxes, the appeal bond was rendered defective to the value of $451,700.00, same being the properties offered by appellant himself. As for the other properties offered by the other sureties, the law merely requires that a statement of the total amount of liens, unpaid taxes and other encumbrances be stated in the affidavit of sureties. *Ibid.*, 63.2 (3)(c). And when the affidavit of sureties shows liens and encumbrances or unpaid taxes on the property, the value of the liens, encumbrances or unpaid taxes are to be deducted from the value of the real property and the balance applied to the bond as security. Civil Procedure Law, Rev. Code 1: 63.2(2).

This brings us to the next issue which is whether or not an appellant can stand his own bond. Appellee has urged upon us that an appellant cannot be a surety to his own appeal bond, while the appellant on the other hand, has contended and argued that an appellant can be his own surety to his appeal bond. In the case *Cavalla River Company v. Fazzah,* 7 LLR 13 (1939), this Court held that an appellant could not be a surety to his own appeal bond. That holding was confirmed as recently as 1983 in the case *The Management of the International Trust Company (ITC) v. Wiah et al. and the Board of General Appeals[1983] LRSC 32; ,* 30 LLR 751 (1982), decided February 4, 1983, during the October 1982 Term of the Court. Appellant has also contended that we recall this holding but keep the principle of *The Management of the International Trust Company* case in tack for reasons that the Civil Procedure Law provides that the person furnishing the bond may post unencumbered property on which taxes have been paid and which is held in fee by him. Civil Procedure Law, Rev. Code 1:63.1 (b). This, according to appellant, means that he can be his own surety to the appeal bond. On the other hand, appellee argued that the holding and principle of *The Management of International Trust Company* case should be adhered to, that is, that appellant not be allowed to be his own surety on his appeal bond. Appellee asserted that to hold otherwise would mean that the law would be discriminating against banks and other financial institutions by refusing their manager's or certified check or bank certificates but at the same time be accepting a natural person's own property as security for his appeal bond. We agree with the appellee and note that if we hold as advocated by the appellant, we would definitely be inconsistent, to say the least.

The general rule is that an appellant is not himself a competent surety on an appeal bond or undertaking, although one who is a nominal party to the appeal may act as surety. 4A C.J.S. *Appeal and Error,* §536(a). Under the practice in most jurisdictions in the United States, one of the sources of our own laws, an appellant or plaintiff in error is not a competent surety although an otherwise valid appeal bond is not insufficient merely because it is also signed by a party bound by the judgment. 4 AM. JUR. 2d, *Appeal and Error, §* 341.1. The obvious rationale for this general rule is that a surety is one in a contract under which one undertakes to pay money or to do any other act in the event that his principal fails therein. BLACK'S LAW DICTIONARY (5th ed. 1979). Hence, whenever there is a surety to an appeal bond, there must be a principal who is the appellant. Accordingly, we reaffirm that the holding in the cases of *Cavalla River Company* and *The Management of The International Trust Company* that an appellant cannot be his own surety on his appeal bond is in conformity with the law extent. Apparently however, the appropriate supplication of this law is what has brought about the state of misunderstanding.

In clearing up this state of confusion, we must emphatically state that it is one thing for appellant to stand his own , bond by his personal recognizance, secured by his own property, but it is another thing for an appellant to have the recognizance of other natural persons as his bondsmen, secured by properties posted by said natural persons. It is the latter situation that creates the relationship of the natural persons standing the bond for the appellant to the appellee and which constitutes the suretyship. Put another way, the sureties undertake to perform for the appellant in the event of his default, and they secure said undertaking by their real properties. In the former

situation, the appellant himself secures his bond by personal recognizance by providing (a) cash, (b) cash to the value of the bond as evidenced by a bank certificate, a bank manger's check or a bank certified check, (c) valuables easily convertible into cash, or (d) unencumbered real property upon which taxes have been paid and which is held in fee by the one (appellant) furnishing the bond.

In 1940, the Legislature passed an Act regarding appeal and appeal bonds and provided therein four means by which an appellee might be legally indemnified in matters of appeal. They are: (1) two sureties who must be freeholders or householders possessed of unencumbered real property sufficient to cover the penalty; (2) tender of cash; (3) tender of checks, bonds or other negotiable securities capable of being readily converted into cash; and (4) surrender of deeds for unencumbered real property. Our 1956 Civil Procedure Law, at 6:462 and 6:468, provided that in all civil actions requiring bail bond or other bonds, the persons shall enter into a recognizance or bond, which recognizance or bond shall be secured by any of the following: (a) two or more legally qualified sureties, (b) tender of the amount required as bail in cash, checks, stocks, or other negotiable securities capable of being readily converted into money; or (c) offer of unencumbered real property which is held in fee by the defendant. Our 1972 Civil Procedure Law, Rev. Code 1:63.1., provides that any bond given under the Civil Procedure Law shall be secured by one or more of the following: (a) cash to the value of the bond or cash deposited in the bank to the value of the bond as evidenced by a bank certificate; (b) unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond; (c) valuables to the amount of the bond which are easily converted into cash; or (d) sureties who met the requirements cf section 63.2 (two natural persons who hold in fee the real property offered as security or an insurance company authorized to execute surety bonds in Liberia).Civil Procedure Law, Rev. Code 1:63.1. (Emphasis ours).

Generally, there are only two essential parties to a bond, the obligor and obligee, 11 C.J.S., *Bonds, §* 9 (a), and in the absence of absolute statutory requirements, a surety on a bond is unnecessary. *Ibid., §* 9(b). Certainly where an appellant, as obligor on an appeal bond, offers cash, a bank certificate, bank manager's check or bank certified check as security for his bond, he needs no surety. And where the appellant, as obligor on an appeal bond, offers sureties, cash or bank certificate cannot be demanded of him. *Hassen v. Krakue*, [1971] LRSC 81; 20 LLR 653 (1971). Also, where an appellant, as obligor to an appeal bond, offers his own unencumbered real properties on which taxes have been paid or offers his own valuables which are easily convertible into money, he needs no surety. His unencumbered real property and/or his valuables are the only necessary security for his bond.

Surety on a bond, whether bail bond, appeal bond, attachment bond or any other bond, is an absolute requirement under our statute laws only where the bond is posted upon the recognizance of two natural persons other than the defendant or appellant or where the bond is posted upon the

recognizance of an insurance company authorized to issue surety bond in Liberia. And where the bond is posted upon the recognizance of two natural persons other than the defendant or appellant, it must be further secured by real property owned in fee by one or both of said natural persons, and the unpaid taxes and other liens, when deducted, should leave a balance sufficient in the amount of the penalty or indemnity of the bond.

We therefore hold that an appellant may post his own bond upon his personal recognizance, secured by his unencumbered real property on which taxes have been paid or by valuables easily convertible into cash or by bank certificate, bank manager's check or bank certified check, the latter two being always equivalent to cash. We confirm that as a general rule an appellant cannot be a surety on his own appeal bond and that sureties on the appeal bond must be two natural persons who own in fee the properties posted as security or an insurance company authorized by law to issue surety bonds.

We also held that while the appellant may use his own real property to secure an appeal bond upon his personal recognizance, the deeds for such real property should however be delivered to the court. *Koffah v. Republic*, 13 LLR 232 (1958). Where a cashier or manager's check, *Stubblefield v. Nasseh*, [1977] LRSC 7; 25 LLR 443 (1977), or bank certified check, *Wilson v. Wilson*, [1976] LRSC 13; 24 LLR 534 (1976), or valuables easily convertible into cash, are used as security for an appeal bond posted by the personal recognizance of the appellant, same should also be delivered to the court. In all such instances, there is no need for an affidavit of sureties. *Intrusco Corporation v. Fantastic Store*, [1984] LRSC 33; 32 LLR 215. However, in the case of financial institutions who are themselves appellants and who wish to secure the appeal bonds with cashier or manager's checks, or bank certified checks, such instruments must be drawn on a bank or financial institution other than upon the appellant involved. The reason for this requirement should not be difficult to perceive or comprehend; the appellant should part with the possession and control of the funds or proceeds of the instrument.

Appellant in this case, Samuel B. Griffiths committed the same error which the appellee in *The Management of International Trust Company* case, *supra*, relied upon. In the case at bar, instead of Appellant Griffiths offering his own unencumbered real property on which taxes had been paid, upon his own personal recognizance, he offered said real property as a surety to his bond. In the *Management of International Trust Company* case, Appellant International Trust Company, instead of offering a bank certificate drawn upon another financial institution, offered a bank certificate drawn upon itself as guarantor, when such guarantee, being a collateral undertaking, required a principal obligor. In both instances, the appellants could not be their own sureties or their own guarantors. This was the fundamental basis for the dismissal of the appeal in *The Management of International Trust Company* case and is also the basis for the dismissal of the appeal in this case.

The final issue in the motion to dismiss concerns the description of the properties by their metes and bounds and by their lot numbers. The relevant statute specifically provides that the affidavit of sureties must contain a description of the real property, sufficiently identified, to establish the lien of the bond. Civil Procedure Law, Rev. Code 1:63.2(3)(b). We have interpreted this provision of the law to mean that the description should be sufficient so that locating the property on the ground becomes an easy exercise. *West Africa Trading Corporation v. Alraine (Liberia) Limited,* [1975] LRSC 16; 24 LLR 224 (1975). We have also decided that in order to make the property easy to find on the ground and render the appeal valid, the property must be described by the number of the plot or lot of **land** and the metes and bounds. *Lamco J V. Operating Company v. Verdier,* [1977] LRSC 34; 26 LLR 180 (1977).

It is common knowledge that all deeds for real property has invariably included therein the quantity of **land** either expressed in acres or lots. Under the Revenue and Finance Law, city lands are divided into lots and the determination of the value as well as the assessment of the tax rate is based, among other considerations, on the quantity of **land**. Moreover, even where the **land** is outside the city limit or has not yet been divided into city lots, the determination of value and the assessment for tax purpose is by number of acres.

We therefore hold that in addition to the lot number and the metes and bounds of the property, all properties posted as security for a bond should carry the quantity of **land** as a prerequisite to establishing the lien of the bond. Failure to do so makes the bond materially defective. Considering that appellant's appeal bond does not carry the quantity of **land** or lot number for most of the properties posted as security for the appeal bond, said appeal is rendered materially defective and incapable of enforcement.

In view of the foregoing, the motion to dismiss the appeal is hereby granted with costs against the appellant. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over the case and enforce its judgment.

Motion granted.

Bryant et al v Harmon et al [1956] LRSC 18; 12 LLR 330 1956 (29 June 1956)

WILHELMINA A. BRYANT, ELIZABETH H. BRYANT-DIGGS, by and through her Husband, J. WINFRED DIGGS, and JAMES J. BRYANT, Heirs of WILLIAM A. BRYANT, Deceased, Appellants, v. EMMET HARMON, a Son and Heir of, and substituting for H. LAFAYETTE HARMON, Deceased, and OOST AFRIKAANSCHE COMPAGNIE, a Dutch Firm doing Mercantile Business in Liberia, by and through its General Agent, J. D. KOPPELAAR, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 19, 23, 24, 25, 1956. Decided June 29, 1956. 1. An action to redeem the equity of a mortgagor upon foreclosure of a mortgage of real property is subject to a twenty-year statute of limitations. 2. The statute of limitations constitutes an affirmative defense which must be pleaded affirmatively and cannot be pleaded hypothetically. 3. The defense of !aches will not be sustained with respect to a period of time wherein the plaintiff was justifiably ignorant of facts constituting the gravamen of the suit. 4. Where real property was conveyed for consideration corresponding to a loan and incommensurate with the value of the property, the transaction is presumed to have been in the nature of a mortgage rather than a sale. 5. A mortgage of real property is distinguished from a conditional sale by the fact that the former is merely security for the payment of a debt, or for the performance of some other condition, while the latter is a purchase of the land for a price paid or to be paid, to become absolute on the occurrence of a particular event, or is a purchase of the property accompanied by an agreement to resell to the grantor in a given time, and for a stipulated price. 6. Whether a deed of land executed with an agreement to reconvey on stipulated terms shall be construed as a sale or as a mortgage depends on the actual intention of the parties at the time, and this intention is to be gathered from the facts and circumstances attending such transaction and the situation of the parties, as well as from the written evidences of the contract between them.

Appellants sued in the court below for enforcement of a right to redeem an equitable interest in real property allegedly acquired by one of the appellees as security

for a loan to another appellee. Appellees raised the statute of limitations, and laches, as defenses. Dismissal of these defenses by the court below was affirmed by this Court, which also, on the merits, granted appellants the right of equity of redemption and ordered the deed under which appellees held the property cancelled. Momolu S. Cooper for appellants. R. F. D. Smallwood and Richard Henries for respondents.
MR. JUSTICE PIERRE delivered the opinion of the Court.

Those whose duty it is to burrow into voluminous records, and who sift the testimony of numerous witnesses in search of facts, and who apply established principles of law and equity to those facts in an effort to bring order out of confusion : those men by their labor and toil serve the best ends of justice. Those men serve the nation and litigants in peculiar respects-- they at once right the wrongs of parties, and at the same time guarantee to them the enjoyment of constitutional and other legal rights and benefits. Here is a case which for almost ten years has been equalled in importance by very few other civil cases handled by our courts. It has travelled from the Circuit Court of the Sixth Judicial Circuit, Montserrado County, to this tribunal of highest resort, upon appeals taken from rulings and decisions given by judges in the court below. It has occupied a place of interest on the docket, as well as on the motion calendar of the Supreme Court, since the March, 1949, term. Its hearings have covered hundreds of pages of records, and involved thousands of words, spoken and written. H. Lafayette Harmon, one of the appellees in this case, died in October, 1952, before this final hearing could be had. Counsel representing the appellants, desiring to have the case heard and determined during the present

term of Court, prepared and filed a petition, in which they prayed for the appointment of someone to be named to substitute the said late appellee, H. Lafayette Harmon. A copy of this petition having been served on the appellees, Emmet Harmon, a son and one of the heirs of the aforesaid appellee, made the following record in the minutes during the hearing before us : "Emmet Harmon as surviving senior heir of the late H. Lafayette Harmon, and by virtue of the fact that I now serve as special administrator of the said H. Lafayette Harmon's estate, which appointment grew out of a petition filed in the Probate Court in 1953 by the legal heirs of the said H. Lafayette Harmon, I have no objection to being substituted for the late H. Lafayette Harmon, co-appellee in these proceedings." The Court so ruled, and he was appointed, and is now substituting for appellee H. Lafayette Harmon in the final determination of this case. According to the records, the late Counsellor William A. Bryant bought of one Titus Potter, in March, 1934, one-fourth of an acre of land in two parcels, each containing one-eighth of an acre, situated in the City of Monrovia, and bearing the number 5o. Purchase price or consideration for the property is shown to have been $1,5oo, or $750 for each of the said two parcels according to deeds for same probated on July 31, 1934, and registered on pages 589-90 in Volume 48 of the Public Records of Montserrado County. The records show that Mr. Bryant, desiring to make some renovations on the old building standing on the property at the time of purchase, approached the then agent of the Oost Afrikaansche Compagnie, a Dutch firm operating in Monrovia, for a loan of another $750. The loan was granted, and Mr. Bryant is supposed to have used this money to purchase material for the renovation.

Later in this opinion we will quote a letter wherein reference is made to building material found on the property. On October 7, 1935, Bryant having failed to repay the loan, Counsellor H. Lafayette Harmon, who had been retained by Oost Afrikaansche Compagnie, wrote Mr. Bryant the following letter : "DEAR MR. BRYANT, "I have had a talk with Mr. Boss, Agent for the Oost Afrikaansche Compagnie, concerning the matter of your indebtedness, and I explained to him your desire to give the company a lien on your property here in Monrovia for the amount owed in order to avoid a law suit for the time being. "I have been instructed to enter into negotiations with you for the necessary mortgage, in which case I am to withdraw the action tomorrow. Will you therefore please call at my office this afternoon at two o'clock with the necessary title deed, in order that we may conclude the matter. "Yours faithfully "[Sgd.] H. LAFAYETTE HARMON." Three days after this letter was written to Mr. Bryant, that is to say on October io, 1935, another letter, this time written by the company's General Agent, was sent to Mr. Bryant in connection with the aforesaid loan. That letter reads as follows: "HON. WILLIAM A. BRYANT, "MONROVIA. "DEAR SIR, "We beg to inform you, that we have requested and authorized Mr. H. L. Harmon of this City to accept the property, Lot Number 5o in Monrovia, offered by you as security for the amount of $750 advanced you, and that upon payment of same by you to us, within the time specified in the agreement, we guarantee that Mr. Harmon will re-convey to you, your

heirs, administrators or executors, the aforesaid property which has been transferred to him. "Yours faithfully, "Oost Afrikaansche Compagnie "[Sgd.] K. J. Boss." Up to this point, as can be clearly seen from the above related facts and circumstances culled from the records certified to this Court, there isn't the shadow of a doubt as to the mutual understanding and known intentions of the parties on both sides respecting the conditions upon which the loan was to be retired by Mr. Bryant. But let us go a step further and see what we shall find. In agreement with everything that had been done up to that point, and also in harmony with the letters received by Mr. Bryant from the company's lawyer and their General Agent, an agreement was drawn up and signed by the parties on both sides. We would like to mention right here in passing that both sides at this time understood that this agreement was to secure the payment of the loan within one calendar year of its execution. We think it necessary for the purpose of this opinion, to quote the agreement word for word as follows : "AGREEMENT.

"This AGREEMENT made and entered into on October To, 1935, between William A. Bryant, presently residing in Monrovia, in the County of Montserrado, Republic of Liberia, of the one part, hereinafter referred to as the Grantor, and H. Lafayette Harmon, a Solicitor and Counsellor at Law, of the City, County and Republic aforesaid, of the other part, hereinafter referred to as the Grantee, hereby "WITNESSETH : "That, whereas the said Grantor has this loth day of October, 1935, executed to the Grantee a Warranty

Transfer Deed for Lot Number so, situated in the City of Monrovia, in the County and Republic aforesaid, for value received ; and "Whereas it is the desire of the Grantee to afford the Grantor an opportunity to repurchase the said lot of land within a certain given period should he so desire : "IT IS HEREBY MUTUALLY AGREED: "i . That should the said Grantor pay or cause to be paid to Messrs. the Oost Afrikaansche Compagnie, foreign merchants of Holland, transacting business in Monrovia, the full sum of £156.5.o (One Hundred and Fifty-six Pounds Five Shillings and no Pence) , being equal to $7so, within twelve calendar months from date hereof, that is to say on or before the loth day of October, 1936, then and in that case, the Grantee hereby promises and agrees to re-convey the said property to the Grantor without any further consideration. "2. Nevertheless, should the said Grantor fail to pay the amount above stipulated, or any portion thereof, within the time herein specified, then and in that case, the right to purchase and reconveyance shall become quieted in said Grantee without the intervention of any court, and Grantor hereby waives all rights under this agreement on and after the said loth day of October, 1936, as aforesaid. "In witness whereof the parties hereto have signed and sealed this agreement on the day and date first above written. "[Sgd.] WM. A. BRYANT "Of the one part, Grantor "[Sgd.] H. LAFAYETTE HARMON "Of the other part, Grantee."

"Signed, sealed and delivered in the presence of us Witnesses : "[Sgd.] JAMES A. RAILEY, "To the signature of William A. Bryant. "[Sgd.] R. A. BREWER, "To the signature of H. Lafayette Harmon."
In consonance with the provisions of the agreement quoted above, Mr. Bryant, on October 12, 1935, executed the necessary transfer deed to H. Lafayette Harmon. It is to be noted that this deed was executed two days after the signing of the agreement. In this connection we would like to call attention, at this point, to what appears to be very peculiar. In his brief, H. Lafayette Harmon alleged that, after the agreement had been signed between Bryant and himself, the transaction came to an end, since no deed in keeping with the terms of the agreement was issued on that day; and that, "subsequently, after matured consideration of the transaction by William A. Bryant, an experienced business man and a lawyer of no mean repute," he, Bryant, decided to make an outright sale of the property;

hence the transfer deed was executed two days after the date of the agreement. He also contended that, based upon a long-standing friendship, he and Bryant had entered into a verbal gentleman's agreement for Bryant to repurchase the property within one year of the execution date of the deed. We have wondered why was it necessary for a verbal agreement to replace the written one. According to this reasoning, and if it is true that Mr. Bryant was an experienced business man as is alleged, then it is very strange that he would have parted with fee simple title to a piece of property for exactly one half its cash value at the time of the sale, his only alleged reason for doing so being the supposed long-standing friendship between himself and Harmon. Incidentally he was part-

ing with title to the premises for the exact sum he owed the Oost Afrikaansche Compagnie, and to secure the payment of which the company had agreed to accept his mortgage of Lot Number 5o. How very coincidental ! But if it is also true, as alleged in the appellee's brief, that Mr. Bryant was a lawyer of no mean repute, then it is also strange that he would have signed an agreement to redeem a piece of property within twelve months from the date of signatures, only to make a verbal agreement two days later, the terms of which said verbal agreement were in sharp contradiction to the understanding reached between the agent of the company, the company's lawyer, and himself. It is to be remembered that this understanding between them actuated the preparation and signing of the existing written agreement. Of course there is nothing in the records to support this strange behavior of an alleged lawyer, so we have only mentioned it in passing. The one year within which Mr. Bryant should have redeemed the property expired, and Mr. Harmon wrote him the following letter on October 14., 1936: "DEAR MR. BRYANT, "In accordance with Warranty Transfer Deed executed to me by you on the 12th of October last year for Lot Number so, situated on Carey Street, Monrovia, I have been over and formally taken over the premises. "I note that you have a few pieces of sawed timber on the premises ; if you desire to sell them I will buy them, if not, please send and have them removed. "Yours faithfully, "[Sgd.] H. LAFAYETTE HARMON." Just here, there seems to be a document missing; since, on October 22, 1936, nine days after the above letter to Bryant, appellee Harmon wrote another letter, this time to Mr. Bryant's lawyers. It is quoted word for word as

follows:

"MESSRS. S. DAVID COLEMAN
AND ANTHONY BARCOUNSELLORS AT LAW FOR WILLIAM A. BRYANT, MONROVIA.
"GENTLEMEN,

"I have for acknowledgement your letter of the t9th

instant and nothing is more surprising to me than the contents and tenor of same. "Your client, Mr. Bryant, has misled you if your letter is predicated upon his representation of the facts in connection with this transaction for Lot Number so, situated on Carey Street, Monrovia. "Your client voluntarily assigned his right, title and interest in said property over to me more than a year ago, by means of a Warranty Transfer Deed in fee simple, in consideration of certain cash payment of an amount in full settlement of an account which he owed the Oost Afrikaansche Compagnie. Your client made no mortgage of the property to the company nor to the writer. I advanced the cash to pay his account with the company, and he sold me the property in consideration thereof, and the transaction was closed at that time. Your client would have had the opportunity of repurchasing the property from me within a certain period had he been prepared and wished to do so ; that period has now expired. "This is therefore to advise you, that the property in question is mine, bona fide, by title deed voluntarily executed by your client himself. I shall therefore ignore your said letter forbidding my entrance upon my own premises. "Yours faithfully, "[Sgd.] H. LAFAYETTE HARMON." Why would a reputable lawyer, such as Mr. Bryant was alleged to be, make an outright sale of a piece of property, and then some time later forbid the purchaser to enter upon the said property? We think it is safe to

say that it is clear, from the tenor of this letter, that Mr. Bryant's lawyers acting upon his instructions, must have reminded Counsellor Harmon that the property in question was the security for the payment of Oost Afrikaansche Compagnie's debt, their long-standing friendship notwithstanding. In the light of this last letter we have wondered why wasn't the receipt produced, showing payment of the amount borrowed by Bryant. But then, in that connection, and in view of the General Agent's letter accepting a lien on Lot Number so to secure payment of the $750, why and how did Bryant's loan account completely disappear from the company's books? Thus matters stood when, in July of 1937, William A. Bryant passed into the great beyond, leaving matters in respect to the agreement he had signed with Counsellor H. Lafayette Harmon unchanged ; in fact leaving his attitude toward it which Mr. Harmon's letter of October 22, quoted above, indicated also unchanged. So, up to Mr. Bryant's death, the agreement signed for Lot Number so, together with all of the documents connected with it, remained uncancelled, unchanged, and therefore enforceable upon a basis of the original understanding between the parties. After the death of Mr. Bryant, his heirs, petitioners in the court below, inquired of the Oost Afrikaansche Compagnie as to the status of their late father's loan. The then agent of the company wrote the following letter, in answer to their said queries : "COUNSELLOR NETE SIE BROWNELL, ATTORNEY FOR HEIRS OF WM. A. BRYANT, LAW OFFICE, MONROVIA. "DEAR SIR : "According to your request at the interview we had on last Thursday, we have made an extensive search through the records of our office and we find no account of the late Mr. William A. Bryant with our Company, nor is there any trace whatever of any mort-

gage
from Mr. Bryant to the 0. A. Cie. A further interview on this subject is
therefore unnecessary unless you have some writing in connection
with the matter which would give us better light on the information you
desire. "Yours faithfully, Oost Afrikaansche Compagnie "[Sgd.]
J. D. KOPPELAAR." We have wondered : Why the crude "brush-off" on the part of
appellee company's General Agent, just because inquiries
were made touching the loan made to Mr. Bryant, and the suggestion was made
that there might have been a mortgage. It would seem
that the word, "mortgage," had begun to become very obnoxious in certain
quarters. What writing did the General Agent want from an
outsider to enlighten him on a transaction which should have been recorded in
his books? We wish to call attention to the fact that,
although the General Agent had, less than ten years before, written a letter
to Mr. Bryant accepting Lot Number so as security against
the payment of the amount the Company had lent him, yet, just nine years
later, such a big business house of outstanding respect
and reputation could not find any trace of such a large and important
financial transaction on its books; nor could they even find
traces of any correspondence in connection with the said transaction. The
strange and unusual things which abound in this case are
too numerous to mention; and significantly, the stranger the happenings, the
more peculiarly do those happenings coincide with unusual
circumstances appearing in the records. However, it was at this stage that
the appellants filed a petition in the Circuit Court of
the Sixth Judicial Circuit, Montserrado County, for the right of equity of
redemption in the foreclosure of the mortgage for Lot
Number so, the subject of these proceedings. Appellees, respondents below,
appeared and filed an answer in which they raised several
points ; the most

important, and those which we deem necessary to the proper determination of
this case
being, in substance, as follows: 1. That if petitioners had any right of
action the same is barred by the statutes of limitations,
since respondent H. Lafayette Harmon had taken possession, occupied and
improved said property over a period of ten years previous to the institution
of the suit ; with full knowledge of the petitioners. The suit which they
brought in 194.6 should therefore have been brought ten
years earlier, that is to say in 1936. And since they had waited for ten
years to elapse before filing the said suit they were guilty
of laches and were forever barred. That the deed which the late Mr. Bryant
executed 2. to the late H. Lafayette Harmon had no relation
to the agreement which he had signed with Mr. Bryant because the said deed
was executed two days after the signing of the said agreement.
The transaction of the execution of the warranty deed by Mr. Bryant therefore
constituted an outright sale of the aforesaid Lot Number
so; and for this reason the suit should be dismissed for want of equitable
foundation. These two points constitute the strength of

the respondents' contention, and they stand against the one point on the other side, which in substance is that: "The loan of $75o made by the Oost Afrikaansche Compagnie to the late Mr. Bryant, the payment of which Lot Number so in Monrovia was given to secure, in keeping with the understanding had with the Company and their lawyer, as is evidenced by the agreement signed by Bryant and Harmon, who was acting upon authority of the Company, evidenced by his letter, and that of the General Agent, written to Mr. Bryant; the Company's acceptance of Lot Number so as security for the payment of the debt within

one year; and their guarantee to Mr. Bryant that his property would be returned within the time specified, conditioned upon the payment of the loan which the said property secured : these transactions and documents, when taken together in the light of the existing circumstances, amounted to a mortgage of the aforesaid Lot Number 5o; and therefore Harmon had no right to take possession of the property without first foreclosing the mortgage and affording them opportunity to redeem." The entire case may be said to be embodied in the above points. In other words it is a question of whether the circumstances related hereinabove in respect to the loan and its relationship to Lot Number so and the several documents connected therewith amount to a mortgage or to an outright sale of the said Lot Number so. But before we proceed to this main point in the case we would like to pass upon the question of laches, as raised in the first count of respondents' answer. It is to be observed that the respondents filed a motion to dismiss the petition which the present appellants had filed in the court below for want of legal jurisdiction; and the main issue raised in the said motion was the question of laches; and it was raised as fully in the motion as it had been raised in the answer before. A resistance to the motion was filed by the petitioners, and the trial Judge handed down a ruling, disposing of the issues. Because we are in such complete agreement with the position taken by the trial Judge on the points raised we quote his ruling word for word and allow it to control the disposition of the question of laches raised again in the brief before us. The ruling is as follows: "The respondents in Count `I' of their motion to dismiss for want of legal jurisdiction charge the petitioners with laches in that, if they had a right and cause of action, it should have been exercised within three years from the year 1936, and they having failed

to do so without any legal disability are guilty of laches and are forever barred by the statute of limitations, one of the respondents, H. Lafayette Harmon aforesaid, having taken possession, occupied and improved said property, the subject of this suit, more than ten years ago,

with full knowledge and acquiescence of the petitioners and their privy, William A. Bryant. 184.1 Digest, pt. II, tit. II, ch. I, sec. 18; 2 Hub. 1526. "Petitoners, in Count `I' of their resistance to said motion, attack Count `I' of respondents' motion to dismiss as being fatally defective and bad because of it being hypothetical, and submit that the statute of limitations is an affirmative plea which, when hypothetically pleaded, as in this case, is defective and subject to dismissal. Count 4 2 3 of the resistance, further attacking Count `I' of respondents' motion to dismiss, sets up that the statute of limitations is not applicable to equities flowing from or analogous to real actions, and quote Bouvier under limitations: `The general if not universal limitation of the right to bring an action or to make entry, is to twenty or twenty-one years after the right to enter or to bring the action accrues, i.e., to twenty or twenty-one years after the cause of action accrues.' "In Count '3' of the resistance, and with reference to Count `I' and Count 4 2 1 of respondents' motion to dismiss for want of jurisdiction, petitioners set up that, besides the absence of Wilheli -nina A. BryantJones, one of the petitioners, from the Republic of Liberia, attending school in the City of Freetown, Sierra Leone, from April, 1935, to July, 1944, she and the other petitioners were ignorant of what had transpired in relation to their father's property ; and that laches cannot in good conscience be equitably imputed to them. "Petitioners further in their resistance to said motion of respondents to dismiss for want of jurisdiction,

maintain that laches could not be imputed to them, because their ignorance of material facts supporting their claims, even after the return to Liberia of copetitioner Wilhelmina Bryant-Jones, was considerably due to the well designed fraud practiced by the respondents in their frantic effort to conceal and destroy and suppress most of the available clues and indexfacts and documents, until, in the month of June, 1946, when they came across the letter of K. J. Boss to petitioners' father ; in Count '5' of petitioners' resistance, which said count further attacks Count of the motion to dismiss, petitioners maintain that equity will hold the right of the equity of redemption barred only after the lapse of the period during which suits may be brought to recover land. "Respondents, in arguing their motion to dismiss, contended that the statute of limitations, when pleaded, is not an affirmative plea which must be specially and not hypothetically pleaded in order to bar an action. `If a bill states a good cause of action, and the defendant finds that he cannot safely rely on the certainty of disproving its allegations, his only recourse is to set up an affirmative defense ; and it is when he is confronted by this necessity that the problem of framing the answer as a pleading assumes its greatest importance. Among the affirmative defenses available to a defendant when specially set forth in the answer are such as these : fraud, account stated, payment, release, reward, statute of limitations, rescission, innocent purchaser, usury, infancy and former judgment. These and all other affirmative defenses must be specially pleased in the answer. Otherwise the defendant cannot

usually take proof in reference to them or, if the proof is taken, he cannot have the benefit of it. It is not an uncommon thing for a defendant to suffer from his failure to set forth in his answer facts constituting

an affirmative defense. One who finds himself in this predicament must, at the hearing, if not sooner, get leave to file a supplemental or amended answer, and this concession will of course be granted only on the payment of costs.' io R.C.L. 44.6-47 Equity § 211.

"The statute of limitations being an affirmative plea, which when specially pleaded and proved bars an action, must admit that the allegations sought to be avoided are true, and then state Other facts, sufficient, if true, to defeat the action. "Count `I' of the respondents' motion to dismiss for want of jurisdiction, without admitting the allegations in petitioners' petition, seeks to avoid the same. This is not permissible because the fundamental principle upon which all complaints, answers or replies are to be constructed, is that of giving notice to the other party of all facts which it is intended to prove, whether they are consistent with facts already stated to the court, or being inconsistent with the present existence of such facts, admit or imply their former existence, or show that, existing, they can have no legal effect. "Count '2' of petitioners' resistance to respondents' motion to dismiss, submits that the statute of limitations is not applicable to equities flowing from or analogous to real actions. This Court is of the opinion, on this score, that, since the action or suit out of which this motion has grown is a petition for the right of equity of redemption in the foreclosure of a mortgage for Lot Number so, Monrovia, which is real property, and since, in keeping with law, the equity of redemption is inseparably connected with a mortgage, the statute of limitations which applies to real property should apply to the right of equity of redemption. "Count '3' of petitioners' resistance sets up as excuse for not bringing their suit before the year 1946 that,

besides the minority and absence of Wilhelmina A. Bryant-Jones from the Republic, attending school in the City of Freetown from the year 1935 to 1944, she, together with the other petitioners, were, until June, 1946, wholly ignorant of what had transpired in relation to their father's property, and hence laches could not in good conscience be equitably imputed to them. "We quote hereunder the following from Ruling Case Law:

`Since laches is an equitable. defense, it will not bar

a recovery where there is a reasonable excuse for the nonaction of a party in making inquiry as to his rights or in asserting them.
In the first place it may be stated that a person cannot be said to have been guilty of laches prior to the establishment of his
right to sue. And on similar grounds the lapse of time may be excused where the plaintiff was unable, under obscurity of the transaction,
to obtain full information in regard to his rights.' to R.C.L. 402 Equity § 149. `Laches signifies not only an undue lapse of time,
but also negligence in failing to act more promptly. It is therefore of the essence of laches that the party whose delay is in question
shall have been blamable therefor in the contemplation of equity, and accordingly it must appear that he had knowledge, actual or
imputable, of the facts, which should have prompted a choice either diligently to seek equitable relief, or thereafter to be content
with such remedies as a court of law might afford; or, if there was actual ignorance, that it must have been without just excuse.
Laches cannot be imputed to one who is innocently ignorant of his rights.' to R.C.L. 4o5 Equity j 153. "Count `4' of the petitioners'
resistance being a repetition of Count `3,' the law quoted above is also applicable thereto.

"Count
'5' of the petitioners' resistance attacking Count ' of the respondents' motion to dismiss, maintains that equity will hold the right
of equity of redemption barred only 'after the lapse of the period during which suits may be brought to recover land. But the applicable
principle has been stated as follows : `By analogy to the statute of limitations at law barring an action for the recovery of lands
after the lapse of a specified period from the accrual of the right of action, the lapse of the same period is unusually a bar in
equity to the recovery of an equitable estate, or for the enforcement of a right cognizable only in equity.' 25 CYc. 1024-25 Limitations
of Actions. "That time, in keeping with our law, is twenty (20) years. And further, in Liberia the rule still obtains that in case
of default an action of foreclosure must be first prosecuted, and the court must decree the equity of redemption barred. "The motion of respondents to dismiss the petition
of the petitioners for the right of equity of redemption in the foreclosure of a mortgage for Lot Number 5o, Monrovia, for want of
legal jurisdiction is therefore denied. And it is so ordered." Having settled the first of three important points in the case we
come now to consider the main issue; that is to say, whether the transactions in connection with Lot Number so, as they relate to
the lien granted by Oost Afrikaansche Compagnie to Mr. Bryant, and appellee Harmon's connection therewith, could be regarded as an
outright sale, or should it be construed as a mortgage; and, if it is a mortgage, whether the right to redeem should be extended.
Trial of the cause was had during the December, 1948 term, and a final decree was given by the Resident Judge of the Circuit Court
of the Sixth Judicial Circuit. We do not think it necessary to the fair and impartial admin-

istration
of justice in this case that we make any comments on the said decree. It is sufficient for us to state that exceptions were taken
and appeals perfected by the parties on both sides, an anomaly very rare, if it has ever before occurred, in the judicial trial of
causes. It is upon these appeals perfected by the parties that this case is now before us for final determination. This case is similar
to two others already decided by this court. In Saunders v. Gant, [1930] LRSC 2; 3 L.L.R. 152 (193o) , Mr. Chief Justice Johnson in speaking for this Court held, as summarized in Syllabus "t," that: "Whenever a conveyance, assignment or other instrument transferring an estate is originally intended between the parties as a security for money, whether
this intention appears from the same instrument or any other, it is held as a mortgage and consequently is redeemable upon performance
of the conditions." This principle was upheld by Mr. Chief Justice Grimes in Brown v. Settro, [1944] LRSC 41; 8 L.L.R. 284 (1 94) · In both of those cases, as in this, a conveyance of property was made to secure the payment of a debt within a specified
time ; in both of those cases, as in this, agreements were drawn in which the grahtees stipulated to re-convey the assigned property
upon performance of the condition stipulated. In Saunders v. Gant, supra, as in this case, the period within which to perform the
condition was stipulated at one year. In Brown v. Settro, supra, it was four months. In both of those cases, as in this, the grantees,
after the expiration of the time specified in the agreements, proceeded to assume valid and titled ownership of the premises in litigation
without first barring the redemption by foreclosure proceedings. The agreement signed by Bryant and Harmon, predicated upon the acceptance
by Oost Afrikaansche Compagnie through their General Agent, and their lawyer, of the property as security for the payment of the
debt, would seem to be sufficient proof of the original intentions of the

parties insofar as the execution
of the deed was concerned. We are of opinion that, inasmuch as either or both of the contracting parties decided later to abandon
the original intentions contained in the documents quoted, supra, some measure should have been taken, or some indication made in
the proper manner of such subsequent intentions. The weight of oral testimony cannot, in our opinion, overbalance or outweigh positive
undertakings or obligations contained in written documents. "The English courts of equity begin at an early day to look with great
disfavor upon the strict commonlaw doctrine of the absolute forfeiture of the estate upon non-payment of the mortgage debt. Accordingly
they established the rule that in equity the debtor should still have a right to redeem after breach of the condition at law. This
right to save the estate in equity after the forfeiture at law was called the equity of redemption, and the same designation came
to be applied to the interest or estate retained by the debtor after conveying the legal title to the mortgagee by the mortgage deed.

In equity a mortgage of lands is regarded as a mere lien or security for a debt, the debt being considered as the principal thing and the mortgage as accessory thereto. Until foreclosure the mortgagor continues to be the real owner of the fee. His equity of redemption may be granted, devised, taken in execution, or give rise to estates in dower or by the curtesy; and it is therefore regarded as the real and beneficial estate tantamount to the fee at law." 27 CYC. 958-59 Mortgages.

"It may be accepted as axiomatic that a conveyance cannot be a mortgage unless given to secure the performance of an obligation. Conversely, if intended to secure an obligation, it will be construed in equity as a mortgage and as nothing else. It follows that the form or letter of an instrument of conveyance is not conclusive of its character when the question is raised

whether it is enforceable as a mortgage. On the contrary, its purpose is the decisive factor ; and if that be security, then the instrument, irrespective of its form, must be construed to be a mortgage. The question is one of intention to be decided from a consideration of the whole transaction and not from any particular feature of it. On this ground, therefore, the characterization of the transaction by the parties in the instrument may be fairly disregarded, and in some instances it has been by statute especially so provided. The rule here laid down is embodied in the maxim of equity once a mortgage, always a mortgage, by which is meant in this connection that the character of a transaction involving the conveyance of property is fixed at its inception, and if at that time the conveyance is intended to operate by way of security and as a mortgage, a mortgage it must remain with all the incidents thereof despite express stipulations to the contrary in the instrument of conveyance looking to the abrogation of the mortgagor's equity of redemption. This is a doctrine from which a court of equity never deviates ; for its maintenance is deemed essential to the protection of the debtor, who, under pressing necessities, will submit to ruinous conditions, waiving the equity of redemption allowed him on breach of his obligation, in the expectation and hope of repaying the loan at the stipulated time and thus preventing forfeiture." 19 R.C.L. 244 Mortgages § 7. We have already called attention to the fact, that the consideration in the deed which Mr. Bryant executed to secure the payment of the debt, was so percent lower than the amount for which the property had been purchased by him. In applying such a circumstance to the question of whether the transaction amounted to a mortgage, this is the common-law view on the point : "If the grantor was severely pressed for money at the time of the transfer, so as not to be able to exercise a perfectly free choice as to the disposition of his prop-

erty, and raised the sum needed by conveying the property in fee with a right of repurchase, his necessitous condition, especially in connection with the inadequacy of the price, will go far to show that a mortgage was intended." 41 C.J. 288-89 Mortgages § 24.

There have been strong and heated contentions on both sides as to whether the transaction in connection with the execution of the warranty deed to Harmon, was a sale or a mortgage. We have cited different authorities, including dpinions of this Court, to support the position we have taken in this case; but just before we conclude this opinion we will read some law on the distinction between a mortgage and a conditional sale. "As regards their legal incidents, there is all the difference in the world between a mortgage and a sale with a right of repurchase. If the contract is one of the former description, the right of redemption subsists until it has been cut off by a foreclosure sale. If of the latter description, there is no right of redemption in the transferor after the expiration of the time fixed for the payment of the stipulated price. But in practice the line of demarcation between the two is shadowy, and it is frequently a matter of great difficulty to determine to which category a given transaction belongs. However, there is a test generally accepted as decisive, and this is the mutuality and reciprocity of the remedies of the parties--that is to say, if the grantee enjoys a right, reciprocal to that of the grantor to demand reconveyance, personally to compel the latter to pay the consideration named in the stipulation for reconveyance, the transaction is a mortgage; while if he has no such right to compel payment, the transaction is a conditional sale." 19 R.C.L. 266 Mortgages § 35. "A mortgage of real property is distinguished from a conditional sale by the fact that the former is merely security for the payment of a debt, or for the performance of some other condition, while the latter is a purchase of the land for a price paid or to be paid,

to become absolute on the occurrence of a particular event, or is a purchase of the property accompanied by an agreement to resell to the grantor in a given time, and for a stipulated price. "Whether a deed of land executed with an agreement to reconvey on stipulated terms shall be construed as a sale or as a mortgage depends on the actual intention of the parties at the time, and this intention is to be gathered from the facts and circumstances attending such transaction and the situation of the parties, as well as from the written evidences of the contract between them." 41 C.J. 286 Mortgages §§ 18, 19. In view of the facts appearing in the records in this case and the circumstances surrounding those facts, and also in view of the law cited and quoted herein, we are of the considered opinion that transfer of Lot number so by the warranty deed executed by Mr. Bryant was intended by him to secure the payment of the debt he owed Oost Afrikaansche Compagnie, and that the

transaction was a mortgage. That being so, under the law controlling he was entitled to assert the equity right to redeem the property upon satisfaction of the condition provided by the agreement. It is therefore the opinion of this Court that the judgment upon which this case was appealed be and the same is hereby ordered set aside and the petitioners in the court below granted the right of equity of redemption. The warranty deed executed by Mr. Bryant to respondent H. Lafayette Harmon, as security for the payment of the loan of $750 from the Oost Afrikaansche Compagnie is ordered cancelled, and the petitioners will pay, or cause to be paid to the respondents, the aforesaid sum loaned by Oost Afrikaansche Compagnie to the late William A. Bryant. The respondents are ruled to pay all costs of these proceedings. And it is so ordered. Reversed.

Freeman v Fuller [1982] LRSC 1; 29 LLR 431 (1982) (4 December 1982)

MAIMA FREEMAN, Appellant, v. **ROBERT FULLER**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRAOO COUNTY.

Heard: October 21-22, 1981. Decided: February 4, 1982.

1. Where a verdict is uncertain or indefinite, it is the duty of the judge or either litigant to request the court to demand clarity from the jury.

2. A general verdict which does not specify the metes and bounds of a parcel of **land** does not render it unenforceable for lack of certainty; metes and bounds are for the office of an expert.

3. A jury comprises judges of facts presented for their deliberation and the verdict should state mainly in whose favor the pendulum of justice swings.

4. There are three categories of evidence, one or all of which may be produced at a trial. They are affirmative, negative and general evidence.

5. A plea of general denial constitutes an averment that a party is not liable; therefore, a party, when ruled to a general denial, is legally entitled to introduce any and all evidence at the trial to the extent in support of his/her denial. He/She, cannot, however, introduce by general or other forms of testimony, an affirmative defense or evidence in support of any claim or right.

6. The ruling on the law issues is the foundation of any jury trial; and any gross irregularity affecting the foundation of a trial may render it unfair and partial.

7. Every successor judge is bound by his predecessor's ruling which he can neither review nor set aside without injuriously damaging judicial ethics and consistency.

Appellee filed an action of ejectment and in response thereto, appellant filed an answer asserting title to the disputed **land**. In addition thereto, appellant pleaded res judicata and statute of limitations. In his reply, appellee challenged the legality of the answer on the grounds that it was time barred. Appellant also contended that the decision, which is the basis of the plea of res judicata in the answer, did not decide the merits of the case. In ruling on law issues, the trial judge dismissed the answer and ruled appellant to a bare denial. At the trial, appellant's application for subpoena ad testificandum on witnesses to testify on her behalf was denied; appellant's offer of documentary evidence was also denied. A verdict, which did not specify the property by its metes and bounds, was returned for the appellee and judgment entered thereon.

On appeal, the Supreme Court held that notwithstanding the bare denial, appellant was entitled to present evidence, both oral and documentary, in support of her denial. The Supreme Court also ruled that a jury's verdict in ejectment need not state the metes and bounds of the property; this is left to the province of experts. The Supreme Court reversed the judgment and remanded the case for a new trial.

Raymond A. Haggard appeared for the appellant. Daniel Draper appeared for the appellee.

MR. JUSTICE MABANDE delivered the opinion of the Court.

In May 1979, Robert Fuller, appellee, instituted an action of ejectment in the Sixth Judicial Circuit Court, Montserrado County, against Maima Freeman, appellant.

A writ of summons was served on appellant and, in reply thereto, she addressed a letter to the Resident Circuit Court Judge asserting her ownership to the disputed **land**. Her letter referred to an earlier Supreme Court judgment relative to a dispute between the grantors of both parties. Later, appellant filed an answer pleading res judicata and the statute of limitations. The reply challenged the legality of the answer for being filed beyond the time required by law and that the Supreme Court decision referred to did not decide the merits of the case.

In ruling on the issues of law, the trial judge only referred to the letter overruled the plea of statute of limitations and res judicata. The answer was dismissed and plaintiff ruled on general denial.

At the trial, appellant requested the court for the issuance and service of a subpoena on a witness to testify on her behalf, but the court denied the application. The court also denied her the right to produce documentary evidence; hence, she rested evidence. A verdict was brought in favor of the appellee and judgment was rendered accordingly. It is from this judgment that she has appealed to this Court.

Although the trial record presents many salient points to have been decided by this Court if they had been raised by either party, they were not raised. We shall, however, comment on some of them in passing.

The most important issues raised by the bill of exceptions and necessary for determination by this Court in order to conclude this controversy are whether a verdict that is uncertain renders a judgment unenforceable; and whether a party ruled to the general denial is not entitled to produce evidence.

The appellant's counsel argued that though the verdict carried the regular heading of the case, it did not specify the **land** referred to by metes and bounds or by incorporating the deed of the party in whose favor judgment was rendered, as only such document may have definitely described with certainty what property was awarded Appellant relied on the cases *Duncan v. Perry*, 13LLR 510 (1960) and *Aidoo v. Jackson*, [1975] LRSC 25; 24 LLR 306 (1975).

Appellee's counsel contended that a general verdict should be simple in form and that the text should also be according to the understanding of ordinary people. He contended that the verdict was strictly according to the form used by our courts and that no legal technicality should be used to deny a party of his substantive rights.

In the Duncan case, supra, plaintiff sued out an ejectment action by virtue of a deed he had acquired in 1948 which had a different lot number from defendant's deed that was executed in 1931. The two deeds or separate lands as per lot numbers were in issue. Although the properties were described by lot numbers and the verdict so described the **land** to have been recovered by the party, this Court construed it as an inconclusive verdict, reversed and remanded the case without awarding a new trial. It commanded that arbitration be held by the parties.

In the Aidoo case, the question for this Court was whether a plaintiff in an ejectment suit who possesses a forty-year old deed to a parcel of **land** but without trace to the Republic may recover against a defendant who obtained title from the State after the inception of the suit. This Court indirectly answered in the affirmative but ruled that the parties arbitrate the issues.

At all stages of a trial, the jury is under the complete control of the court. Where a verdict is uncertain or indefinite, it is the duty of the judge or either litigant to request the court to demand clarity from the jury. It is only when no satisfactory action is taken by the judge or the jury fails to act, may a party reasonably be held to complain that the verdict is uncertain. Any rigid qualification of a general verdict may tend to destroy the system and substitute it with a group of experts, legal or otherwise. The verdict in this case is reasonably certain and the judgment is not impossible of enforcement.

A jury is not bound without the specific aid of court to decide what legal procedure a court is to pursue in enforcing its judgment. They are judges of facts presented for their deliberation. A verdict may not necessarily have to set out the metes and bounds of a parcel of **land** in order to be good; that is the office of an expert. A verdict should state mainly in whose favor the pendulum of justice weighs.

A verdict is the determination of the jury after fully deliberating on the evidence. It informs the parties what the conclusion of the jury on the subject matter is. It must tell the parties specifically what is to be or should not be done. When it is uncertain, the court and the parties remain doubtful of what the result of the hearing is. In such doubtful circumstance, this Court has no positive direction to pursue but to set the verdict aside and award new trial. The verdict in issue is in accordance with the form used by our courts and it is certain.

While this Court has often held that legal technicality should not be adopted in denying any just right, if the verdict is based upon gross irregularities at the trial, the judgment will not be upheld. *Page et al. v. Jackson,* 2 LLR 47 (1911).

Appellant argued that the trial was irregular in that two separate rulings on the issues of law by different judges were before the trial court which did not determine on which of the rulings the trial was to have proceeded when it undertook to submit the case to jury trial. Apelles counsel conceded that there were two rulings by two judges before the trial court, but he argued that the two rulings were similar, that both rulings disposed of the same issues, and that the decisions were consistent with each other. However, because this issue was not raised in the bill of exceptions, we shall not consider it at length.

The ruling on the law issues is the foundation of a jury trial, Any gross irregularity affecting the foundation of a trial may render it unfair and partial. Every successor judge is bound by his predecessor's ruling which he can neither review nor set aside without contravening judicial ethics and consistency. *Kanawaty et al. v. King[1960] LRSC 66; ,* 14 LLR 241 (1960).

Appellant's counsel argued that the refusal of the trial judge to permit her plea of general denial is an unwarranted denial of her right to fair trial. The counsel argued that the entry of a plea of general denial is an assertion of claim of right which a party is legally entitled to prove at the trial. Appellee's counsel defended that the ruling of the trial judge denying appellant's right to produce evidence at the trial is supported by law, in that the dismissal of an answer and the ruling of a party's pleading to a general denial evidently shows that party has no pleading before court and that where there is no pleading before court a party cannot testify in support of allegations that do not exist. The counsel further contended that without a pleading there can be no supporting testimony.

We are of the opinion that a plea of general denial is a pleading. A general denial constitutes an averment that a party is not liable. Therefore, when ruled on a general denial, a party is legally entitled to introduce any and all evidence at the trial to the extent in support of his denial. He cannot, however, introduce by general testimony or any affirmative defense, evidence in support of any claim of right. The denial of appellant’s right to prove her general denial constituted an unfair and a partial trial. *Massaquoi v. Lowndes,* [1935] LRSC 5; 4 LLR 260 (1935).

At every trial there are three categories of evidence one or all of which may be produced. They are affirmative, negative and general evidence. The productions of any or all of these depend upon the party's pleading that is ruled to trial.

In passing, we should like to comment that the letter referred to in the ruling on the law issues being part of the records of the case may have been a pleading of the party but neither did the court pass upon it, nor did the pleader preserve any right by an objection for this Court to decide.

In view of the several procedural irregularities that rendered the judgment unsupported by the rudiments of a fair and impartial trial, the verdict is hereby set aside, the judgment reversed with right of the parties to plead anew. Costs to abide final determination of this case. And it is so ordered.

Judgment reversed; case remanded.

Everyday v Due [1978] LRSC 53; 27 LLR 291 (1978) (14 December 1978)

REBECCA EVERYDAY, Appellant, v. MARY DUE, Appellee.

APPEAL FROM THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,

GRAND GEDEH COUNTY.

Argued October 25, 1978. Decided December 14, 1978.

1. A motion to dismiss an appeal should be granted where the appeal bond is incurably defective.
2. The proper procedure to be followed by an indigent person seeking legal representation in a lawsuit is set forth in the statute, Rev. Code 1:65.1, 65.2, and requires a motion to obtain a court-appointed attorney.
3. In an action for trespass to real property, it is not error for the trial judge to *admit evidence* of title.

This was an action to recover damages for trespass to **land**. The plaintiff prevailed on the trial before the Stipendiary Magistrate, and defendant appealed to the Circuit Court. A motion by the plaintiff to dismiss the appeal because of a defective appeal bond was denied, and the case proceeded to a trial de novo which led to a reversal of the judgment of the Stipendiary Magistrate. The plaintiff as appellant before the Supreme Court, argued that the motion to dismiss should have been granted, and also that the issue of title had been improperly entertained by the trial judge. The Court agreed with the appellant that the motion to dismiss should have been granted, but held that title might be a proper issue in an action of trespass. The Court held also that the defendant as an indigent party had not had counsel assigned to her in accordance

with the procedure required by statute. The judgments of both lower courts were set aside, and the *case remanded* for a new trial in the Magistrate's Court.
Harper Bailey for appellant. Frances Doe Appellee.

MR. JUSTICE TULAY delivered the opinion of the Court.
On October 15, 1976, Rebecca Everyday sued out an action of damages for trespass against Mary Due before Benson V. Tarlue, Stipendiary Magistrate for the City of Zwedru, Grand Gedeh County. The complaint averred that as a result of defendant's trespass on plaintiff's **land, a tenant occupying the land** had moved away, causing plaintiff to lose the rental of $250, which she claimed in damages. Three days after filing of the complaint and service of summons, the parties appeared before the trial magistrate with Counsellor Harper Bailey appearing for plaintiff and defendant representing herself. The trial ended in a judgment for plaintiff in the amount of $250. Defendant appealed from the judgment entered against her and had the case venue before the Seventh Judicial Circuit, Grand Gedeh County.
On March 8, 1977, plaintiff as appellee filed a motion to dismiss the appeal in two counts as follows:

That the two sureties who signed the appeal bond and undertake to indemnify appellee in the event appellant fails to process her appeal at the appellate court, are not householders nor freeholders within the Republic of Liberia, in contravention of the appeal statute; neither did the appellant file any sworn affidavit to the legal qualification of said two sureties.

"2. And also because appellee says further that appellant failed to proceed, in filing her appeal bond, according to our appeal statute with respect to filing with the appeal bond a revenue certificate duly verified by a sworn affidavit as to the qualification of said sureties." Rev. Code 1:63.2.
When the case was called for trial on March 16, 1977, with Counsellor Francis Doe representing the defendant, then appellant, he stated in resistance to appellee's motion to dismiss the appeal "that in the court below she being an indigent party was not represented by counsel and that she managed to get in touch with Counsellor Doe after she had filed her appeal to this Court." He cited section 65.2 of the Civil Procedure Law, Rev. Code, Title 1.

The trial judge heard arguments on the motion to dismiss the appeal and ruled the case to trial de novo. Of course the movant excepted to this ruling. The de novo trial was not heard during that term time. In the succeeding term the case once more came up before Judge Faikai Gardiner on the same motion, and the learned judge ruled that he could not set aside the ruling of his colleague and predecessor. Judge Galima Baysay who followed Judge Gardiner made a similar ruling on the motion and the de novo trial, in which he reversed the judgment of the stipendiary magistrate and entered judgment for the defendant then before him as appellant. The plaintiff, then appellee, appealed from that judgment and has brought the case before the Court for review on a five count bill of exceptions. Count 1 of the bill of exceptions reads:

"

1. Because appellant says that the trial judge should have granted her motion which was filed on jurisdictional grounds but same was arbitrarily denied upon the vague and unfounded purported

resistance of the appellee, to which ruling appellant excepted." This count of the bill of exceptions is well taken. Plaintiff, as appellee below, filed a two-count motion to dismiss defendant's appeal because of a defective appeal bond, as hereinabove stated. The appeal bond approved by Magistrate Tarlue was incurably defective. Rev. Code

: 52.3; *Musah v. Belor*, [1971] LRSC 15; 20 LLR 237 (1971); *Karnga* V. *Williams[1952] LRSC 28;* , *11*LLR 299 (1952) ; *Koffah v. Republic*, [1939] LRSC 2; 6 LLR 336 (1939)

The resistance entered on the record of the trial by Counsellor Doe relied on section 65.2 of the Civil Procedure

Law, Rev. Code, Title I. Under this law a person involved in litigation who considers himself an indigent person must file a formal or regular motion before the trial court or the appellate court, and upon being satisfied, the court may grant the motion and permit the movant to proceed as an indigent person, assigning him an attorney. In short he is afforded a complete free trial, and in case he appeals from a judgment entered against him he pays no fees for the transcription of the record. This statutory procedure was not followed by the defendant, Mary Due, the appellant below. She filed no such motion either before the
Magisterial Court or the Seventh Judicial Circuit, and no judge assigned Counsellor Francis Doe to her. Rather, she engaged Counsellor Doe privately. We hold that the law relied on by both Counsellor Doe and the trial court was improperly applied. Courts are not moved by sympathy in determining suits before them.
Counts 2 through 5 of the bill of exceptions on appeal before this Court raised the issue of title entertained by the trial judge when the cause is not ejectment action but damages for trespass. We refuse to support these counts for two reasons.
Firstly, it was plaintiff who introduced the issue of title into the trial. The following questions were put to plaintiff then appellee before the Circuit Court:

"Q. Madam Witness, please refresh your memory and explain to the court how you and your husband Robert Everyday became in possession of the area now in question, that is to say, if there was any document given by the authority concerned. Please make it known to the court in a brief statement?

"A. The place I sued the defendant for, I have paper for the place and I have deed, and here it is.

"Q. Madam Witness, you mentioned a public **land**

sale deed; if I were to show you the same would you be able to recognize it?

"A. Yes.

"Q. I now hand you this document; you will please look thereon and please tell the court what you recognize it to be?

"A. Yes, this is the deed."
Upon application made by counsel for the plaintiff, the court had the instrument, a deed, marked "P/ 1." After the mark of identification was attached, this question, still under direction, was put to the plaintiff.

"Q. Madam Witness, upon your oath that you have taken before God and man do you affirm that the piece of instrument that you have just identified and was marked by the court is the public **land** sale deed? The answer given after defendant's objection was overruled, was "Yes." After other witnesses for the plaintiff had testified, her counsel requested that the document marked "P/ 1," a public **land** sale deed, be admitted into evidence. Though an objection was interposed to the admission of the deed for want of sufficient identification, the court admitted it into evidence.
The defendant below also introduced into evidence paper title for the disputed area. The records before us in no way show that the parties' paper titles were displayed before the Magistrate's Court, but as they were testified to, introduced, and admitted into evidence before the Seventh Judicial Circuit and as the trial was a de novo one, the trial judge had an unqualified authority to pass on them in his final judgment. Counts 2 through 5 of the appellant's bill of exceptions are not sustained.
Secondly, we find ourselves unconvinced by appellant's contention that the trial judge erred when he passed upon the issue of title to the tract of **land** in dispute; one or the other had to establish better or superior ownership. Otherwise how could damages for trespass to a piece of **land** be awarded to a party when such a one is not lawful owner of the **land** upon which the trespass complained of occurred?
Concluding, we hold that the Circuit Court erred in denying the motion to dismiss the appeal, for the plaintiff, then appellee, correctly contended that there was no proper appeal before it. We further hold that the defendant, the appellant below, was inadequately represented both by herself before the Magisterial Court and by her counsel before the Seventh Judicial Circuit Court, and that she should be afforded an opportunity to properly defend her cause. The judgments of the Circuit and the Magisterial Courts are hereby set aside and the case ruled to trial de novo by the Magistrate of the City of Zwedru, where defendant must see that she is properly represented.
The Clerk of this Court is hereby instructed to send a mandate to the court below accordingly. Costs to abide final determination. And it is hereby so ordered.

Judgment set aside; case remanded.

Wright et al v Wright [1936] LRSC 19; 5 LLR 208 (1936) (15 May 1936)

JOSEPH J. WRIGHT, E. D. 'WRIGHT, and E. J. E. WRIGHT, Appellants, v. ALICE L. WRIGHT, Widow of the late Z. F. WRIGHT, Appellee.
APPEAL
FROM THE PROBATE DIVISION OF THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 29, 30, 1936. Decided
May 15, 1936. 1. One of several owners of an estate may not be dispossessed of his share except by his own voluntary deed, or by a judgment of his peers, or the law of the land. 2. Either party to an award may file written objections thereto at any time before judgment. 3. The objections may be based upon corruption in the arbitrators, gross partiality, want of notice of time and place, or error in law. 4. A widow is entitled to one-third of all the real estate of her deceased husband during her natural life. 5. Whenever any such objection is filed, the court is legally compelled to hear and determine same. 6. If the objections be sustained, the court may either set aside the award, send it back to the same or other arbitrators with or without instructions, or order the case tried by a jury ; but if the objections be not sustained the award should be confirmed. But the court has no power sue spout(' to modify an award. 7. Should a widow consent to receive less in fee simple there should be sufficient evidence adduced that she had waived her right to a larger portion of the realty in consideration of the title in fee simple; and that the heirs agreeing thereto had waived their reversionary interest to that part of the estate.

On appeal from a judgment of the Circuit Court modifying an arbitrator's award upon a petition for admeasurement of a widow's dower, judgment reversed and case remanded for new trial with instructions.
S. David Coleman for appellants. A. B. Ricks for appellee.

MR. JUSTICE Court.

GRIGSBY

delivered the opinion of the

This case originated in the Probate Division of the Circuit Court of the First Judicial Circuit for Montserrado

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County, upon a petition from Alice L. Wright, widow of the late Z. F. Wright, for properties accruing to him as one of the heirs of the late Martha A. Wright, his grandmother, and the late James B. Wright, his father. The petition was taken up by His Honor Nete-Sie Brownell on the 9th day of October, 1934., who appointed Thomas J. R. Faulkner as arbitrator. On the 23rd day of January, 1935, said arbitrator filed an award (q.v.) to which appellants, objectors in the court below, filed objections. It appears that the position taken by objectors, now appellants, was to show that the arbitrator had not acted in keeping with law, neither had he made a careful, thorough and impartial investigation of all the facts in connection therewith. Into said objections as filed, embodying matters of both law and fact, appellant's counsel requested that, in keeping with law, the court below should make a summary investigation; but the court refused to go into the matter and proceeded to render final judgment upon said award after having modified same. The Court will now address itself to the salient points embodied in appellants' bill of exceptions. Count 1 complains that: "The late Z. F. Wright at the time of his death was not entitled to any further portions of the property from the estate of the late Martha A. Wright, their grandmother, and James B. Wright, their late father, as he had disposed of, and enjoyed the best of, what properties there were belonging to those estates ; consequently his widow would not be legally entitled to recover dower from the remaining of the property belonging to the said estates." From a careful perusal of the records of the case at bar It was strongly contended by appellants that during several investigations had of the case in the court below, Z. F. Wright, the late husband of the widow, and elder

brother of appellees, had disposed of certain properties belonging to the estate in question, and had received exclusive benefits therefrom prior to his death ; the position taken by appellants seems to be predicated upon information contained in a letter which reads: "WHITE PLAINS, MONROVIA, May 2, 1930. "Before HIS HONOUR W. 0. D. BRIGHT. Judge of the Monthly and Probate Court Mo. Co. "Sm, "In keeping with a mandate sent down by your court, to us G. A. Johnson and P. T. Barker of the settlement of White Plains, to go to the residence of the late Z. F. Wright of the said settlement to take an inventory of both personal and real property, we have done so and we can't find anything. We are told that the widow of Z. F. Wright has taken away everything from the house before she left White Plains, therefore we have not found anything to place on the inventory, and we are sure that Z. F. Wright did not have any real property, because his father James B. Wright gave him his portion before his demise, as the place, or land, Mr. J. 0. Cassell is now on was sold to him by the late Z. F. Wright, therefore we have not found anything to place on the inventory. "We have the honour to be,

Your Honour's Obedient Servants, [Sgd.] P. T. BARKER & GEO. A. JOHNSON, Officers of the Estate of the late Z.

F. Wright."

The aforesaid letter addressed to His Honour the Judge of the court in its Probate Division, assumes to make statements of fact which lie peculiarly within their knowledge unsupported by a scintilla of proof, which facts if true should have been proven in addition to making the mere allegations. Persons to whom an estate descend jointly, or who may acquire it by honest pur-

chase, cannot be deprived or dispossessed thereof unless by judgment of his peers or the laws of the land. Nowhere in the records is it shown by appellants that the husband of appellee relinquished his rights and interests in the said property under litigation, which was an indispensable duty to establish the truthfulness of appellants' position. In count 2 of appellants' bill of exceptions it is contended that on the 23rd day of January, 1935, the arbitrator appointed to arbitrate in said matter made an award in favor of the widow now appellee which was duly objected to by the respondents in this case, now appellants, which objections were not sustained. Appellants submit that the objection filed embodying important issues of law and facts could not legally be disposed of as was done by the judge of the court below without a hearing of the issues involved. As to the said count above referred to, the minutes of September 16, 1935, disclose the fact that prior to the rendition of final judgment, respondents' counsel gave notice to the court that they had filed objections to the court's sustaining said award. His Honor the Judge after inspection of the objections, and without hearing the points of law and fact raised, proceeded to give final judgment, before passing upon the objections. Our statute reads: "Either party to an award, may file his objection in writing, at any time before a judgment is rendered thereon. "The objection may be, either corruption in the arbitrators, gross partiality, want of notice of the time and place of proceeding, or error in law, apparent on the face of the award. In all cases except in the last, the objection must be verified by affidavit. "The court shall appoint an early day for hearing such objections, giving reasonable notice to the parties ; they shall be heard in a summary way, without a

jury, and decided by the court upon the evidence adduced. The court may either confirm the

award, or set it aside, as they may deem just; and, if they set it aside, may send it back to the same or other arbitrators, with
or without instructions; or may cause the case to be tried by a jury."
Liberian Statutes (Old Blue Book), ch. XV, p. 65, § 9, to,
This Court is of opinion that the judge of the trial court erred in failing to pass upon the objections duly submitted by counsel
for appellants as the Statute controlling the issue does not leave it discretionary with the Judge to hear such objections, but makes it mandatory.
"Appellants say that as to count
3 of their Bill of Exceptions which excepts to the final judgment as rendered on said award, the Judge of the court below was evidently
misled when he stated in count i of his final judgment that proposal was made by the heirs, now appellants to Alice L. Wright and
James B. Wright, now appellee offering her ten acres of farm land and one town lot in fee, in the settlement of all of her interests
in the Real estate descending to her late husband as one of the heirs of the late Martha A. Wright and James B. Wright, since nothing
of the kind appears in the record of said case in support of any such proposal or offer; and it is a gross error on part of said
Judge to order in his said final judgment the heirs, appellants aforesaid to execute deeds in fee simple to appellee contrary to
the principles of admeasuring dower. "Referring to the said final judgment, appellants further submit that the said Judge could not
legally modify the aforesaid award and his act in so doing vitiated and rendered void said award ; his judgment based thereon was
in consequence thereof also illegal and void. "In further resisting the said final judgment appellants further contend that a widow's
dower in the late

husband's being only to the extent of a life interest, it is irregular and illegal
for the judge to order the execution of deeds in fee simple to her as heir of an estate in satisfaction of dower as has· been done
in this case. 17 Reverting to count 3 as mentioned above, this Court says that from a careful study of the records in the case, there
is a lack of sufficient proof to support the allegations contained therein, and if by preponderance of evidence it was conclusively
proven that proposals were made by appellants to Alice L. Wright, now appellee, offering her ten acres of farm land and one town
lot in "fee simple," in settlement of all her interests in the real estate descending to her late husband, this would be in derogation
of the Constitution which provides that even in cases of an insolvent estate a widow shall be entitled to one-third of the real estate
during her natural life, and satisfactory evidence that the heirs had waived their reversionary rights vested in them by the Constitution
after the death of the widow should have been placed before the court to warrant such a decision. This Court says that to enjoy these
Constitutional privileges marriage must not only be presumed, but proof should be put in evidence to entitle her thereto, which is
wanting in these proceedings, and to lend aid to such a procedure, would pave the way to a miscarriage of justice; and it was gross
error in the said judge to order, in his said judgment, the heirs, appellants aforesaid, to execute deeds in "fee simple" to appellee.

Lib. Const., Art. 5, sec. I i ; i B.L.D. 932, "Dower"; 2 B.L.D. 1199, "Feesimple"; 2 Rev. Stat. § 1386, Admeasurement of dower; Birch V. Quinn, 1 L.L.R. 3o9, 311, 312 (1897). Dealing with the last two counts of appellants' bill of exceptions, this Court says that it fails to see the evidence upon which the said arbitrator predicated his award, because from the records, one J. J. Edward Wright and Mrs. Alice Wright were requested to meet the said arbi-

trator, and it appears that the said J. J. Edward Wright was the only one to depose before the said arbitrator, and in connection with the said deposition was a voluntary statement of one Mrs. Mattie Barker consisting of what she heard in connection with the matter in dispute, and her said statement recorded from which the said arbitrator made his award dated 23rd January, 1935 to which objections were filed by appellants to the court sustaining said award which objections were ignored by His Honor the Judge, and he proceeded to render judgment thereon. It is the opinion of the Court that the moment the said award was contested the statute made it imperative on the judge to appoint a day for the hearing of such objections in a summary way without a jury, to be decided by the court upon the evidence adduced, the judge's failure to pass upon said objections was erroneous. Liberian Statutes (Old Blue Book), ch. XV, p. 65, § i r. This Court further says that it is within the competency of the trial court to confirm an award or set it aside, if the evidence is insufficient to support it; but under no circumstances is it clothed with legal authority to modify the same, as the said award is in the nature of a verdict, and will have to be remanded to the same or another arbitrator, or to a jury for modification, and the acts of His Honor the Judge of the trial court to modify the said award to the extent of ordering the execution of deeds in "fee simple" to appellee by the heirs of the said estate in satisfaction of dower, vitiated and rendered void said award as well as the judgment based thereon as the court has no power to alter or amend an award. Liberian Statutes (Old Blue Book), ch. XV, p. 65, §§ 3-11. Birch v. Quinn, t L.L.R. 309 (1897).

In view of the aforementioned irregularities existing during the course of the trial, this Court is of the opinion that the judgment of the court below should be reversed ; and the cause remanded to the trial court with instructions (i) To ascertain the date of the alleged marriage

of Z. F. Wright and Alice Wright; (2) Which, if any, of the lands of the inheritance the said Z. F. -Wright is alleged to have sold, were sold before the coverture, and which were sold during the coverture; (3) Whether or not the widow expressly relinquished her dower in and to the lands of the estate, if any, sold during her marriage, and, if so,

what tracts of lands and their approximate value; (4) Whether or not those having the right to the reversion had consented to compromise with the widow by giving her two tracts of land in fee-simple and had evidenced said intent by deed. And upon ascertaining said facts to have the widow's dower properly assigned according to law; and it is so ordered.
Reversed
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Raynes-Frederick v George et al [1961] LRSC 41; 14 LLR 593 (1961) (15 December 1961)

SARAH R AYNE S-FREDERICK, Appellant, v. GEORGE, FODAY, ASSUMANS, ABDULAI, HAWA, BOYEH, KAMA, JASSA, Heirs of the Late FAHN KAI KORA, E. SENESSEE FREEMAN, and B. J. K. ANDERSON, Public Land Surveyor, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 20, 1961. Decided December 15, 1961. 1. Dissolution of an injunction on the initiative of the court without a hearing is an abuse of discretion. 1956 Code, tit. 6, § 1084. 2. An injunction may not properly be dissolved without a showing of grounds for such dissolution.

On appeal from an order dissolving an injunction restraining appellees from conducting a survey of lands to which title was in controversy, reversed and remanded. J. C. N. Howard for appellant. appellees. MR. JUSTICE Court. MITCHELL

Michael Johnson for

delivered the opinion of the

The records before us show that this case has travelled for review on appeal from the December, 1959, term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, to the October, 1961, term of this Court. It is a suit of injunction sued out by Sarah RaynesFrederick, as plaintiff, against the above-named appellees, defendants below seeking to restrain them from conducting a survey of lands situated in Blocks Number 5 and 6, and alleging that she is the rightful owner and possessor thereof.

As far as the records in the case show, the pleadings in the case below progressed as far as the rebutter in the year 1953 and rested ; and the case remained on the docket of the court

unheard for six years. The defendants did not avail themselves of their right under our statutes by filing a motion to dissolve the writ at the proper time; nor did they make any effort to advance a hearing during these six long years; but at the December, 1959, term of the court below, when the case was assigned for hearing, they filed an application to the court purporting the same to be a motion to dissolve the injunction, which document is hereunder quoted as follows : "And now come the respondents and respectfully apply to this court for a dissolution of the injunction hereinbefore granted against them on the following grounds, to wit: "1. That respondents have filed herein a verified answer already before court and made a part hereof, and therein show that they are entitled to the relief prayed for upon this application, and hereby pray the court to take notice of it. "2. And also because respondents further pray that the parties traversed pleadings in the aboveentitled cause up to surrebutter and that, since the institution of said action, they have, in absolute obedience to said writ and the authority of this court, d6ne nothing contrary to said injunction in any shape or form even though they have been really embarrassed and distressed from using their own realty. "3. And also because respondents further pray this court that, since the institution of this suit, the plaintiff has repeatedly done everything on the property, the subject of these proceedings, to the prejudice of defendants, in utter violation of the spirit and intent of the law.
"Wherefore, and in view of the above premises laid,

595 respondents further most respectfully pray that this court dissolve the said injunction, and that the clerk be authorized to issue out an order of court to be placed in the hand of the sheriff to enforce its judgment against the said petitioner, or as seems proper in the discretion of equity." To this application of defendants below, the plaintiff tendered resistance alleging among other less important points, substantially as follows : T. That the application is bad in law because it does not show on its face what sort of pleading it is intended to be--an application or a motion--since it is void of legal denomination. z. That it does not carry the title of the parties to the proceeding. 3. That the document is drawn contrary to the rules of pleadings, in that it both seeks dissolution of the injunction and at the same time seeks to apprise the court that plaintiff violated the said injunction.
Although, the defendants' application quoted above, referred to matters of fact which should have been heard by the trial court before proceeding to enter judgment thereon, it does not appear from the records that any hearing was conducted by the court before entering judgment. Yet the court proceeded to dissolve the injunction, and assessed costs against the plaintiff. The said judgment certifies that the court below, sua sponte, considered matters of law that had not even been raised in defendants' application or pleadings.
We quote hereunder from the ruling of the trial court: "After pleadings progressed in these proceedings to the answer, the defendants filed a motion for the dissolution of the injunction, which is in keeping with the statutes. "The defendants complain in their answer that the action of injunction is oppressive and should be dissolved. Perusing the records the court discovers that

there has been no main suit filed in this case on the part of the plaintiff; neither is there any document to support the claim of title upon which she relies. On the other hand, the defendants filed an answer, and with it made profert of their deed upon the basis of which they claim title to the land in question. The court is of the opinion that the action of injunction, being an action to restrain an act complained of, and not being a promissory action or an action to determine the rightful owner of the piece of property involved, should be dissolved ; and this court hereby dissolves the said injunction with costs against the plaintiff." This Court has often found it necessary to emphasize that the law requires those who are charged with the duty of dispensing justice to do so in a spirit of cold neutrality. But the more this note is sounded, the more it seems to be disregarded by the very characters who are aware that their work is always subject to review by this Court. We have not been convinced that the trial judge entered this ruling with a mind void of partiality; nor are we of the opinion that it was the outgrowth of ignorance of the law ; but, rather, we are of the opinion that it was intended to be biased and unfair. A suit of injunction is not a suit in ejectment where better title prevails. Nor had the defendants in their pleadings raised the issue of a main suit. Besides, it is nowhere seen where the court heard evidence to determine the grounds laid in defendants' said application. Granting that it was a legal requirement for the plaintiff to have filed a main suit, it still was not within the province of the trial court to raise the issue and make it a ground for dissolution of the injunction. The controlling statute provides : "Upon reasonable notice to the plaintiff, the defendant may file a motion to dissolve or modify the writ; and the court shall hear the motion as expeditiously as the ends of justice permit. The court may dissolve the writ outright at such hearing or may condition dis-

solution of the writ pending final hearing of the issues. . . ." See 1956 Code, tit. 6, § 1084. But in the instant case, quite strangely, the judge proceeded to dissolve the writ without an effort to hear evidence, although the motion of the defendants involved issues of fact. Counts "2," "3," and "4" of the bill of exceptions on which this appeal is founded being germane to the issues involved, we shall hereunder quote them as follows : "2. And also because plaintiff says that nowhere in defendants' paper did they state that the injunction suit was oppressive and that there was no main suit filed against them; yet, Your Honor gave a ruling setting out facts that were not brought out in the paper filed by the defendants. "3 And also because plaintiff says that defendants showed no grounds for dissolution of said injunction, nor did they point out any cause for dissolution; yet Your Honor dissolved said injunction. "4. And also because plaintiff

says that the facts in the case should have been gone into so as to give both parties an opportunity to present the two sides of the matter, since there was no legal ground to dissolve said injunction." As we have said before, it does seem strange and irregular for the court to have invoked of its own accord the issues upon which the injunction was dissolved. This Court has repeatedly declared that courts do not do for parties that which the law requires them to do for themselves. In substance, this means that courts do not raise issues. Having cited our own law on the point, let us now refer to some common law theory: "It is usual where the title itself comes into controversy, to grant a temporary injunction to await the event of an action at law to be prosecuted by the plaintiff. But where plaintiff is in actual possession, and has been for many years, he is not in a position nor has

he any occasion to sue. Defendant is the proper party to bring an action and test the rights of the respective parties at law, and if he neglects to do so this injunction will be made permanent." 22 CYC. 753 fn. Injunctions.

Count "2" of plaintiff's bill of exceptions is therefore sustained. Since it was clearly incumbent upon the trial court to hear the motion to dissolve, upon the facts presented therein, to the extent of satisfying itself that there was sufficient ground to warrant the dissolution, the trial court's failure to do so constituted an error of law. "The hearing to determine whether an injunction shall issue shall be held on the date set therefor in the writ of injunction or on such other date as may be set by the court upon motions for an extension or dissolution of the writ, as set forth in section io84 above. The decision to grant or deny an injunction at such hearing shall be made on the basis of the evidence and points of law raised in the complaint and the answer and in such accompanying affidavits and exhibits as the parties then submit." 1956 Code, tit. 6, § 1985. Under the foregoing, we have no alternative than to sustain Counts "3" and "4" of the plaintiff's bill. An injunction such as the one under our consideration should not have been dissolved except upon cogent legal reasons being shown both in law and fact. Therefore, because it is our opinion that His Honor, the trial judge in the court below, was not guided by the law controlling when he ordered the injunction suit dissolved, his ruling made therein is hereby reversed and the case remanded to the lower court to be heard anew on the facts and law issues raised in the pleadings. Costs in this suit to abide the final determination thereof. And it is hereby so ordered.
Reversed and remanded.

King-Gibson et al v Carter [1972] LRSC 72; 20 LLR 618 (1972) (18 February 1972)

CERUE KING-GIBSON, by and through her husband HORACE GIBSON, Appellant, v. BETTY J. CARTER, Appellee.
APPEAL FROM THE CIRCUIT COURT,
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY. Argued February 9, 1972. Decided February 18, 1972. r. Specific performance of a contract will not be decreed unless the terms are sufficiently clear so that the court can determine the rights and obligations of the parties.
2. Where a parol contract for the sale of realty fails to establish the identity of the property to be conveyed, specific performance will be refused, though the full purchase price tendered back by the seller has been paid.

Appellee sought specific performance of an oral contract for the sale of two parcels of realty for which she had paid in full. The appellant alleged that the two parcels sought were not the ones she had agreed to sell and tendered payment back to appellee. The lower court decreed specific performance and an appeal was taken therefrom. On the basis of the uncertainty of the parcels sold by virtue of the oral contract, the Supreme Court reversed the judgment.
Joseph Findley for appellant. J. Dossen Richards for

appellee. MR. JUSTICE WARDSWORTH delivered the opinion of the Court. Based upon her assumption that it was agreed by and between the parties herein for appellant to sell two specified lots or parcels of land situated and lying on the corner of Tubman Boulevard on the left side of the Airfield Road (Sinkor, Montserrado County), appellee instituted an action of specific performance in chancery
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to compel appellee to fulfill her part of the contract. In her complaint the appellant alleges the agreement made in 1966 and full payment of $1,800.00, the purchase price, which appellant accepted on May 24, 1966, as evidenced by receipt, the check in payment being cashed one week thereafter by the seller. In searching through the record in this case, we felt that appellee failed to establish her contention by corroborative evidence, for, besides her lone testimony, the evidence advanced by her in her own behalf was contradictory and did not prove any certain contract between the parties. "Specific enforcement will not be decreed unless the terms of the contract are so expressed that the Court can determine with reasonable certainty what is the duty of each party and the conditions under which performance is due." Restatement of Contracts, § 370 (1932). As in Gibson v. Johnson, 16 LLR 612 (1964) , where the court held that an agreement which lacks certainty is not legally binding and will not be specifically enforced by a court of equity. The Court continued in the same vein, at page 625 thereof : "Uncertain agreements are unenforcible as contracts ; they have no legal or equitable effect; in other words, the certainty of the terms of an agreement is a condition of its enforcebility."
In this case, the appellee contracted with appellant for the purchase of two lots of land in Sinkor, Monrovia, for the purchase price

of $1,800.00. This was an oral contract. The stated price for the land was paid to appellant by appellee, as is shown by a copy of the receipt executed by appellant to appellee. Previous to the agreement for appellant to sell the two lots to appellee, the latter, as a member of a company known as B & D Enterprises, Incorporated, had arranged to lease two specifically designated lots in Sinkor from

appellant, for the purpose of carrying on certain business. Appellant, in her answer in the court below, denied that the agreement at issue herein extended to the two lots leased from her by the company. There is nothing in the record to support this contention of the appellee. On the contrary, the receipt which is written evidence of payment of the purchase price for two lots of land, does not show that the payment was for two particular lots, nor does it show that payment was for the two lots which were previously leased to the company. There is evidence that appellant did not agree to sell the two lots which she had previously leased as indicated by her testimony under cross-examination. "Q. Did I understand you to say you executed a deed in favor of the petitioner for two lots of land in Sinkor? "A. Yes, I said it. "Q. And that she refused to accept the land? "A. Yes. "Q. Before executing the deed for the land for which you have been paid $r,800.00 by the petitioner, did you as usual and proper take her to the site and show her the land you wanted to sell her? "A. Yes, I did so. "Q. And she refused? "A. Yes. "Q. And notwithstanding her refusal, you issued the deeds? "A.. Yes. "Q. Who was present when you took petitioner to the site and showed her the land you intended to sell her? "A. She knew of my plots in Sinkor, and I showed her the lots I proposed to sell her in the presence of the surveyor, Robert Gozsi. "Q. I presume you still have that deed ?

"A. Yes, I have it. "Q. I presume also that upon the petitioner's refusal of the land which you say you wanted to sell her, you offered to refund the money which she had paid you. Am I correct? "A. Yes, if she did not want the lots then I would refund the money." In view of the uncertainty as to the terms of the oral contract, with respect to the two lots intended to be sold for the $i,800.00 paid, we find it difficult to decree performance of this oral contract. Judgment of the court below is, therefore, reversed, with costs against appellee.
Reversed.

Outland et al v Pritchard [1969] LRSC 36; 19 LLR 362 (1969) (13 June 1969)

GEORGE V. OUTLAND, LEONARD DESHIELD, CHARLES A. TUBMAN, JONATHAN NEBBLETT, and CHARLES SNETTER, Appellants, v. PRISCILLA PRITCHARD, FLORENCE PRITCHARD-BRANDY, by and through her husband, JOHN N. BRANDY, and HENRY PRITCHARD, surviving heirs of JACOB F. ROBERTS, Appellees.
AN APPEAL FROM THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 20, 24, 25, 1969. Decided June 13, 1969.
1. Where evidence offered goes to the very essence of the case, a trial court ought not refuse its admission on mere technical grounds.
2. It is the sentiment of the Supreme Court that although the doors of the courts are open for redress of wrongs and to secure justice, they will not be permitted to be used as devices to obtain questionable property rights at the expense of innocent persons. 3. Issues of law are all to be determined before the evidence is presented to the jury for its consideration of the facts.

Plaintiffs brought an action of ejectment against the defendants, claiming title by virtue of descent. In the pleadings the name of the intestate was misstated and the location of the property erroneously fixed. The defendants, in addition to other proof, submitted a statement signed by the aged surviving sister of the intestate who categorically denied all the claims made by plaintiffs against defendants. At the trial the statement was not allowed in evidence, and before trial the presiding judge refused to rule on all the issues of law prior to trial by jury. A verdict was returned for plaintiffs, and defendants appealed from the judgment entered against them. The judgment was reversed and the case preferentially remanded for trial of law and fact.

Richard A. Diggs and Philip Brumskine, for appellants.
The Simpson law firm, by G. P. Conger-Thompson and Momo F. Jones, of counsel, for appellees.
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MR. JUSTICE MITCHELL delivered the opinion of the

court. George V. Outland, Leonard DeShield, Charles A. Tubman, Jonathan Nebblett, and Charles Snetter, all of Monrovia, own in fee simple and are possessed of several tracts of land individually, in the Township of Paynesville, Montserrado County. They claim these respective tracts are a portion of a sixty-acre tract that was owned by one Jacob F. Roberts, of whom they allege themselves to be heirs. While the defendants were enjoying their property rights, they were sued and brought into court by the plaintiffs, who alleged that the defendants were unlawfully occupying the land they claimed as

theirs through inheritance from Jacob F. Roberts. The defendants variously denied the allegations, and further contended that the name of the deceased through whom plaintiffs claimed title was incorrect, as was the location of the property. They also set forth the name of the devisee through whom they took title and proferted deeds to their property. After the resting of pleadings, former Judge James W. Hunter, presiding over the December 1968 Term of the Sixth Judicial Circuit Court, called the case for a hearing on the issues of law and ruled thereon, but it seems clear from his ruling that he failed to pass upon many, citing Reeves v. Hyder, 1 L.L.R. 271 (1895), as authority therefor. However, all issues of law are to be disposed of prior to the jury's consideration of the facts. Dayrell v. Dayrell, is L.L.R. 304. (1963) ; Johnson v. Dorsla, 13 L.L.R. 378 (1959)· The ruling of Judge Hunter appears to be irregular and replete with error. It is upon this ruling that the case went to trial before a jury, during the June 1966 Term, Judge Stephen Dunbar presiding. At the trial other errors were committed because of the ruling of Judge Hunter, by which the trial court felt itself bound.

Another aspect of the case which presents itself, is that Priscilla Pritchard, one of the plaintiffs, in her testimony said that they did not know where this sixty-acre tract was located, because J. F. Roberts died before they were born and that it was Josephus Howard who took her to the spot in Paynesville in his convertible and indicated where it was. But when Josephus Howard took the witness stand he testified that he had never done so, but rather it was the plaintiffs who had done so after making a survey. He thereafter found Martha Baker-Rose, an octogenarian, who gave him detailed information concerning the sixty acres of land that her brother, J. F. Roberts, once owned and that she had sold as the only surviving kin of this brother. The certificate Howard obtained from her we have set forth : "This is to certify that I'm Martha Baker Rose, of the Settlement of White Plains, St. Paul River, Montserrado County ; am an octogenarian, daughter of the late Wm. Smith Adam Baker and sister of the late F. J. Roberts, who up to the time of his (F. J. Robert's) death owned and possessed sixty (6o) acres of land in the Settlement of Governor's Farm, Township of Crozierville, Montserrado County. "I. That my late father, William Smith Adam Baker, performed 3o days military service as a volunteer in the Campaign against the Gollahs under the command of the late Colonel J. D. Jones, in the year 1890 and a Bounty Land Certificate was issued in his favor for said service, which certificate was transferred to my late brother, F. J. Roberts, and a deed was executed by the late President H. R. W. Johnson in favor of my late brother, F. J. Roberts, for sixty (6o) acres of land in Montserrado County as recorded in said settlement, the No. r ; trees planted for the corners as described in said Bounty Land Grant from

Republic of Liberia
to F. J. Roberts recorded in Volume 22B, Pages 474-475. "2. That I, the undersigned, being the only surviving next of kin and/or collateral heir of my late brother, F. J. Roberts, have sold said sixty (6o) acres of land to Mr. John Goodridge of Crozierville, where he is presently operating a farm. "3. That for the past 82 years that I have lived, I have never heard nor do I know for a fact that my late brother, F. J. Roberts, ever owned any land in the Settlement of Paynesville, or that he was related to the Pritchards in Oldest Congotown, or anywhere else in Liberia. That the sixty (6o) acres of land owned and possessed by my late brother, F. J. Roberts, up to the time of his death, which he got by virtue of a Bounty Land Certificate from the late Wm. Smith Adam Baker, my late father, is situated, lying, and being in the Settlement of Governor's Farms, Township of Crozierville, Montserrado County. "In witness whereof I, the undersigned have subscribed my name this iith day of May, 196+. "[Sgd.] MARTHA BAKER-ROSE (her x cross, witnessed)." This document, notwithstanding it was written prior to the institution of this suit, Judge Hunter maintained had no legal worth because no court commission had obtained it. And Judge Dunbar, feeling bound, ruled it inadmissible. This certificate should have been admitted into evidence, to be passed upon by the jury, for it goes to the essence of the case, and its exclusion upon mere technical grounds served only to defeat the ends of justice. Before concluding this opinion, we want it to be properly understood that although the doors of our courts remain open for the redress of wrongs and the punish-

ment of crime : yet we will not permit them to be converted into springboards for acquiring property not justly and legally entitled to by persons, in outright disregard for the rights of other persons. Therefore, in view of the foregoing, the judgment of the court below is reversed and the case remanded for trial of both law and fact, and the clerk of this Court is hereby ordered to send a mandate to the court below to this effect and order it to give this case priority at its June 1969 Term. Costs in this case to abide the final determination. And it is hereby so ordered. Reversed and remanded.

Bracewell et al v Coleman et al [1938] LRSC 3; 6 LLR 176 (1938) (14 January 1938)

P. J. BRACEWELL, Sheriff for Montserrado County, and DOUGBA CARMO CARANDA, Appellants, v. S. DAVID COLEMAN, MARIA A. CHESSON, WM.

PRESLEY COLEMAN, and THOMAS C. COLEMAN, Heirs of the late WILLIAM DAVID COLEMAN, deceased, of the City of Clay-Ashland, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided January 14, 1938. 1. It is the duty of a sheriff before seizing property under a writ of execution to ascertain that the property to be seized is that of the judgment debtor. 2. A judge before whom a writ of execution is returned should satisfy himself that the seizure of property made by the sheriff or other ministerial officer is legally that of the person against whom the writ issued, and in the absence of this satisfaction, the judge should refuse to issue a writ of sale. 3. A judge presiding in the probate division of a court has jurisdiction to determine objections to the probation of a deed, nor is he precluded from so doing because a colleague of his had granted the writ of sale upon which a sheriff had sold the premises to respondent. 4. If a writ of execution directs a sheriff to seize property of a judgment debtor until a certain sum of money can be realized unless the judgment debtor offers him certain property to sell, and the judgment debtor does in fact offer to the sheriff certain property to be sold sufficient to pay the amount specified in the writ of execution, the sheriff has not literally executed the writ. 5. If a sheriff neglects his duty under a writ of execution or sale, an action of damages may be maintained against him.

The appellant P. J. Bracewell, respondent in the court below, as sheriff of Montserrado County, under a writ of execution seized land belonging to appellee Coleman, judgment debtor, and sold it to appellant Caranda, the other respondent in the court below. Appellees objected to the probation of a sheriff's memorandum showing the sale of the property. The objections were sustained by the trial court, and appellants appealed to this Court. Judgment affirmed.

Anthony Barclay for appellants. for appellees.

S. David Coleman

MR. JUSTICE TUBMAN delivered the opinion of the Court. For the benefit of review and for the corrections of alleged errors, appellants have brought up to this Court the cause now before us in the form of an appeal under the appeal statutes. The bill of exceptions contains two counts, constituting the exceptions which appellants submit for the consideration of this Court against the trial had in the lower court. In the first count they complain : r. Because when on the 7th day of June A.D. 1937 respondent Poleman J. Bracewell, Sheriff for Montserrado County, through his counsel requested the court to postpone the case until the return from the interior of the other and principal respondent Dougba Carmo Caranda, especially with reference to the question propounded by the court as to the evidence to show that S. David Coleman owned said property solely

in fee simple, as the controlling and principal issue to be settled before going into the law issues as to irregularities and other questions raised in the pleadings, Your Honour refused and denied the request of said counsel and proceeded to rule, to which respondent excepts." Having set out in this opinion the first exception, we shall before dealing with it, give a synopsis of the cause of the objections so that we may more intelligently pass upon the merits of the controversy. From the records which we have before us sent up from the trial court, certified in keeping with law, it appears that a writ of execution was issued out of the Circuit Court of the First Judicial Circuit, Montserrado County, against S. David Coleman, to enforce satisfaction of a judgment by payment of principal and costs adjudged
"

against him by this Court in a cause between Matilda A. Richards and himself in an action of debt, and that the Sheriff in whose hands the writ of execution was placed for official service, seized and exposed for sale a certain piece of property, the western half of lot #2 situated in the City of Monrovia of Montserrado County and the property of S. David Coleman. S. David Coleman, Maria Chesson, Wm. R. Coleman and Thomas C. Coleman, heirs of the late William David Coleman, hearing of the levy made by the Sheriff on the said piece of property on the 16th day of September, 1936, filed a caveat as notice and warning against the sale and purchase of the said piece of property; and it is interesting to note that this was done before the sale of the property was made ; but the Sheriff persevered with making the sale and co-respondent Dougba Carmo Caranda proceeded to purchase same. When the sheriff's deed was made out and offered for probate, appellees objected to its probate, which objections were sustained by the trial judge; and appellants, excepting to the decision of said trial court, brought the case here. Going back now to the first objection against the trial as laid in the bill of exceptions, it appears that appellants' counsel requested a postponement of the hearing of the cause until the return of co-appellant Dougba Carmo Caranda from the interior, as he said he believed that the said Mr. Caranda was in possession of some facts that might clear the court's mind as to the ownership of said piece of property. The appellees' counsel objected to the postponment because, as they alleged, the request was for an indefinite postponement; and also because the pleadings filed made no definite refutation of the allegations of objectors as to the ownership of the property being vested in them. The court sustained the objections of the appellees and added that the said Mr. Caranda could give no better

evidence
of the ownership of the property than the records of the court would, that the question was as to whether the said piece of property
had been apportioned to the said S. David Coleman in his own fee or not, and also further because it would be a violation of the
rule of practice to grant the postponement in the manner and form asked for, and denied the request. To this ruling of the trial
judge, the appellants took no exceptions, but they have made it a point in their bill of exceptions. His Honor the trial judge having
approved the bill of exceptions without disallowing it, we shall therefore consider the merits of the contention set up therein.
In the first place, we fail to see how Mr. Caranda could have known more about the ownership of the property, than the Sheriff who
levied upon it, and seized it, and sold it; for the execution upon which he acted commanded him to seize and expose to sale the lands,
goods and chattels of S. David Coleman, and it was his solemn duty to have diligently and vigilantly satisfied himself with legal
certainty that the piece of property that he had seized was the bona fide property in severalty of S. David Coleman before he seized
upon it, and more especially so when the appellees, before he, the said Sheriff, effected the sale, had filed in court a caveat giving
warning against the sale and purchase of said piece of property. Our opinion in this respect is borne out by the Act of the Legislature,
approved March 8, 1936, entitled, "An Act amending the Act granting time for payment of debts or damages in courts of record, passed
and approved January 19th, 1934." "Section 2. That immediately upon receipt of the writ of execution by any sheriff of the County
for service, he shall forthwith proceed to execute same in the following manner : To vigilantly ascertain and seize the prima facie
property of the defendant, both real and personal, make a schedule thereof, report the

same to the court
or judge, and forthwith proceed to sell the same to the highest bidder to satisfy the judgment of the court with interest thereon."
We consider it necessary for the benefit of the sheriffs and other officers of courts in executing writs of execution and similar processes of court to enter
here upon a treatment of their rights, powers, duties and liabilities, for there seems to be a growing disposition on the part of
such officers to ignore and disregard, either wantonly or unthinkingly, private as well as public rights in executing such processes.
We must in a degree concede the contention of appellants when they set up in their brief that His Honor the Judge for the First Judicial
Circuit Court ordered issued the writ of sale for said piece of property, and that the Sheriff was compelled to carry out his orders.
We quote that portion of the brief : "(a) That the Sheriff being the ministerial officer of the court was compelled to carry out

the orders of His Honour Judge Brownell, and it was therefore illegal and unjust for His Honour Judge Shannon to order him to pay costs for carrying out instructions of his colleague." We concede this connection to the extent that we are of opinion that a judge before whom a writ of execution is returned should satisfy himself that the seizure of property made by the sheriff or other ministerial officer is legally that of the person against whom the writ issued, and in the absence of this satisfaction, should refuse to issue a writ of sale, especially where a caveat is filed against said sale. In any case, it is the duty of the court to inquire into all such matters in a summary way before placing the purchaser in possession. Liberia Statute (Old Blue Book), ch. XVIII, § is. "The purchaser of lands or goods at sheriff's sale, may have a writ of possession, requiring the sheriff to deliver such lands or goods to him, upon showing suf-

ficient evidence of his title, and that the lands or goods were in possession of the sheriff or of the party, as whose property they were sold. All of which matters the court may inquire into in a summary way, without a jury, giving such notice as it may deem reasonable to the parties in possession." As no summary investigation was held by him concerning the property as to whose it was, the record of neither the probate court nor any other public office where deeds are recorded seems from the record before us to have been consulted with a view of ascertaining whether or not the piece of property had been rightly seized. This the records in the case show that the court failed to do; but the Sheriff had legal warning prior to his executing the sale and deed to co-appellant Caranda by appellees' caveat filed in court, which Judge Bouvier defines to be: "A notice not to do an act, given to some officer, ministerial or judicial, by a party having an interest in the matter. It is a formal caution or warning not to do the act mentioned, and is addressed frequently to prevent the admission of wills to probate, the granting of letters of administration, etc." The appellants contended further at the bar of this Court that His Honor Judge Brownell, resident Judge of the Circuit Court for the First Judicial Circuit, having ordered the sale, His Honor Judge Shannon could not refuse probate of the deed. It seems strange indeed that appellants should have raised such a contention; for while it is a recognized and well settled principle of law that one Circuit Judge cannot review and revise the action of another Circuit Judge, it is easily discernible that in this case this principle of law is inapplicable, for Judge Brownell gave his order for a writ of sale of the property in the Law Division of the Circuit Court, and as we have observed in a previous part of this opiniQn, hg did so

without investigating the fact in whom was vested the right of said piece of property. The deed was offered for probate in the probate jurisdiction of the Circuit Court, an entirely different and exclusive jurisdiction of the Court, and the question of the legality of title to said piece of property had not been passed upon by Judge Brownell in the Law Division of the Court. The Probate Division of the Circuit Court is the proper division of the Court in which all deeds, mortgages and other conveyances are by statute required to be offered for probate, and in which all objections are required to be filed. The said Judge Shannon sitting and presiding over the Probate Division of the Circuit Court had full power, and was legally correct in hearing and determining the objections against the probation of said deed, for he had jurisdiction over the cause. "Jurisdiction of the cause is the power over the subject-matter given by the laws of the sovereignty in which the tribunal exists." B.L.D., "Jurisdiction," p. 1761. Speaking of their rights, powers and duties generally, we have the following given in Cyc., a standard American treatise on the common law of that country insofar as is applicable to the laws of this country : "Although the sheriffs and constables are commonlaw officers with common-law powers and duties, which are inherent in the office, their powers and duties are, at the present time, to a very large extent regulated by statute, and the sheriff is obligated to perform such duties as may be constitutionally imposed upon him in his capacity as a county officer. . . . A sheriff, while in the discharge of his official duties, cannot divest himself of his official character and do as an individual that which he cannot do as a public officer." 35 Cyc. 1527. Specifically regarding the rights, powers and duties of the Sheriff in matters of writs of execution, the statutes

of Liberia, Old Blue Book, Chapter XVIII, sections and 13, lay down the following : "The sheriff shall literally execute the commands of the writ of execution, and shall cause an appraisement and schedule of all property seized by him, to be made, as in the case of attachment, and annexed to the writ." "Every sheriff, to whom a writ of execution or sale has been directed, shall have authority, and it shall be his duty to put the purchaser or purchasers of any property moveable or fixed, sold by virtue of such writ, in possession of such property; if the sheriff himself or the person against whom the writ was issued, is in possession of the same. It shall also be his duty and he shall have authority to execute all instruments of writing or other evidence of title, which may be necessary or proper for the security of such purchaser or purchasers." So that the sheriff had the right and power, and it is his duty, to execute literally the commands of the execution. The main point of command in the execution under attack in the case before us is that the execution ordered the seizure of the lands, goods and chattels of

Samuel David Coleman until the said Sheriff had realized a certain sum of money, unless he, the said S. David Coleman, would show him lands, goods or chattels to seize and sell to realize said amount. It was then the right, power and duty of the said sheriff to have seized the lands, goods and chattels of S. David Coleman and of no one else; but if S. David Coleman showed him lands, goods or chattels other than that which he was about to seize or had seized, to sell and realize the amount named in the execution, or paid him the said amount, then in that case he, the sheriff, was not authorized to continue seizing. The record shows that S. David Coleman showed the

Sheriff a piece of land for which he paid five hundred dollars and handed him a bona fide title deed for same to be sold for meeting the demand of the execution ; but the Sheriff without having a writ of sale issued or endeavoring in any legal way to dispose of the piece of property so handed him, the value of which according to the purchase price paid for same was in excess of the demand of the writ of execution, returned said deed to co-appellee S. David Coleman and seized and levied upon the said piece of property, which turned out to be that of the heirs of the late W. D. Coleman. The said Sheriff co-appellant therefore did not literally execute said writ of execution. We must turn our attention to their liability. Because a sheriff has great powers in serving writs of execution, much responsibility attaches to him and he is liable for any misuse or neglect in the exercise of these powers. If he should seize property under a writ which belongs to a person other than defendant, he is liable for the resulting damages. If he seizes property of another person of the same name as defendant, he is liable in damages to such person, and we desire by these references to settle the question raised by appellants in their brief that the judge erred when he ruled the Sheriff to cost. Cyc., volume 35, pages 165z, 1653, reads thus : "Where a sheriff or constable, acting under a writ which specifies no particular property to be levied on thereunder, levies on property belonging to a person other than defendant in the writ, he is liable to the owner of the property for the resulting damage; and the sheriff's liability for such a wrongful seizure is not dependent upon his selling the property. The officer is liable for taking property in which the execution debtor has no interest, although he assumes to levy only on the interest of the execution debtor therein. But where property levied on belongs to the execution debtor, the sheriff, levying execution thereon, is not

liable to a third person claiming the same, although there is an agreement, unknown to the sheriff, between such person and the execution creditor, whereby the creditor is estopped to question such person's

ownership of the property. ``. . . Although two persons or corporations have the same name, the sheriff is liable for executing against one of them a writ directed against the other." IC . . . One who, during the pendency of an action of replevin and with notice thereof, purchases the property from defendant, does so at his peril, and must abide the result of the action, and the sheriff incurs no liability by taking the property from his possession." Co-appellee Caranda, having had notice together with the Sheriff of appellees' claim to said piece of property, should have taken warning, but they having failed to do so and sold and purchased the said piece of property one from the other did so at their peril. In chapter XVIII, section iz of the statute, Old Blue Book, it is provided also that a sheriff who neglects his duty is liable in an action of damages. "If a sheriff neglects his duty under a writ of execution or sale, an action of damages may be maintained against him." Co-appellee Caranda filed a submission in this Court after the records had been read and the case submitted which contained matters not raised in the lower court nor in the bill of exceptions. With the exception of these, which we cannot legally pass upon in this opinion as they are not properly before us, the rest of his points have been fully covered by this opinion. In view of the circumstances attending this cause and the law controlling it we are of opinion that the judgment of the trial court should be affirmed; and it is hereby so ordered.
Affirmed.

Johns v Morris et al [1957] LRSC 22; 13 LRSC 101 (1957) (20 December 1957)

HABID ABI RACHED, a Lebanese Merchant Transacting Business in the Republic of Liberia, Appellant, v. K. A. A. KNOWLDEN, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO 'COUNTY.

Argued October 30, 1957. Decided December 20, 1957. 1. Ejectment will not lie to redress a breach of contract. 2. A complaint alleging the wrong form of action will be dismissed. 3. Ambiguous language of a written agreement will be construed against a party by whom the agreement was drawn.

On appeal from a judgment of the court below in an action of ejectment, judgment reversed.
Lawrence A. Morgan body for appellee.

for appellant.

Albert

D. Pea-

MR. Court.

JUSTICE MITCHELL

delivered the opinion of the

In the Law Division of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, and in its November, 1954, term, one K. A. A. Knowlden sued out an action of ejectment against one Habid Abi Rached, a Lebanese merchant transacting business in the City of Monrovia. The said action was predicated upon the grounds that the defendant had violated terms contained in a leasehold agreement entered into between the aforesaid plaintiff and defendant, in which the former was the lessor, and the latter the lessee. The facts from which this suit arose were, in substance, as follows : On December 2, 1953, a lease agreement was instituted between the above-named lessor and lessee for a certain parcel of land, that is, a portion of Lot Number "18" with

a store thereon, situated on Water Street in the City of Monrovia, Montserrado County, for a term of four calendar years certain, and with an optional renewal period. For this lease, the lessee, defendant below, paid at the signing of the agreement the sum of five thousand dollars for two years in advance, which sum the plaintiff, lessor, received in the presence of witnesses. A few months after this transaction was completed, plaintiff contended that defendant, as lessee, had violated the following terms of the said agreement : "Provided, always, nevertheless, that if the rent above reserved, or any part thereof, shall be in arrears or unpaid after the expiration of ten days, whereas the same ought to be paid as aforesaid, or if any default shall be made in any of the covenants herein contained on the part or behalf of the lessee to be paid, kept or performed, then and thenceforth it shall and may be lawful for the said lessor to enter into and upon the said premises and every part thereof, wholly to reenter and the same to have again, repossess and enjoy as in his or their former estate, hereinbefore contained to the contrary thereof in any wise notwithstanding. "It is mutually understood between the contracting parties hereto that the lessee does not have right to sublet the above demised premises without obtaining the prior approval of the lessor." Thereafter plaintiff instituted an action of ejectment against the lessee defendant, alleging, inter alia, as follows : "That the said lease agreement contained a covenant on part of the defendant in Clause 5 of said agreement of lease that defendant, who is the lessee, does not have the right to sublet the above demised premises without obtaining the prior approval of the lessor; but, on the contrary, defendant has sublet a portion of the said demised premises to one Edmond Ghosn, another Lebanese merchant of the City of Monrovia, without obtaining the prior approval of plaintiff.

"And the plaintiff further complains of defendant that, although

Clause 2 of the said agreement provides that upon the breach of any of the covenants of the lease, plaintiff should re-enter and repossess his property as in his former estate, yet upon demand made for vacating of said premises by defendant, by virtue of the breach of the agreement of lease aforementioned, defendant has refused to surrender said premises to plaintiff, and still withholds the possession of said premises from plaintiff, the lawful owner thereof." To this complaint, the defendant, now appellant, filed the following answer on November 29, 1954 "1. Plaintiff's complaint is defective and bad in that plaintiff has failed to therein aver that plaintiff was possessor of the **land sought to be recovered, or that any other person was possessed of it, and that defendant detains said land** ; or that title of possession in whom possession is vested hath come to plaintiff as required by our statutes. "2. Plaintiff has fatally legally blundered in that his complaint fails to aver that defendant detains the **land** of plaintiff to which he is entitled under a grant from the Republic or other authority having power, according to law, to grant **land** in the first instance, or from the defendant himself to the plaintiff as required by law. "3. Plaintiff's complaint has failed to state that a judgment was obtained against the defendant, and that, by sale of said **land, title had come to the plaintiff, and that defendant detains said land** as required by law in suits of ejectment. "4. And also there exists a regular lease agreement between plaintiff and defendant, the tenure of which has not expired, and by which plaintiff has benefited, having drawn five thousand dollars in advance. Plaintiff is therefore estopped from instituting ejectment against defendant.

"5. And also plaintiff is estopped from ejecting defendant from the **land** duly leased him by plaintiff himself. On the contrary, it is plaintiff's duty to warrant and defend defendant against all persons whomsoever claiming through plaintiff. Plaintiff's action in attempting to eject defendant is fraudulent and should not be tolerated. "6. And also defendant has not violated any of the terms of the agreement of lease made and entered between himself and plaintiff as alleged by plaintiff in his complaint, in that, although the contract provided that the lessee does not have right to sublet the leased premises without obtaining the prior approval of the lessor, and the lessee did sublet a portion of said leased premises, this sublease was made by and with the consent of the lessor. That is to say, after the lease agreement was drawn up between plaintiff and defendant, and before it was signed by defendant, the defendant duly informed plaintiff that he desired to sublease a portion of the premises to one Edmond Ghosn ; since the defendant did not have the money to pay the advance lease required by plaintiff, and Ghosn had only agreed to advance defendant the money if plaintiff agreed to allow defendant to sublet a portion of the premises to him. Defendant submits that plaintiff in the presence of both defendant and Ghosn gave his approval, whereupon Ghosn paid the plaintiff the sum of five thousand dollars. as advance lease and the sublease was executed." The records reveal that the pleadings

continued as far as the rejoinder, and issues of law were disposed of. On March zo, 1956, this case came on trial before a jury at the March term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County. The records further substantiate that Edmond Ghosn did accompany his friend, Habid Abi Rached, to the plaintiff for negotiation on the

premises, and that every transaction was done in his presence, up to and including the signing of the said lease agreement; and that, besides this, it was Edmond Ghosn who advanced the five thousand dollars payment on the lease after the defendant had obtained the plaintiff's verbal approval for a portion of the store situated on the premises, to be subleased to him--plaintiff having previously assured them before the signing of the agreement in question that, his only object in inserting Count "5" in the agreement was to prevent a sublease to anybody whom he did not know; but that since he knew him personally, he registered his approval for the sublease to him. These pertinent facts have not been contradicted by any of the witnesses who testified in the case, the plaintiff, not excepted. On the contrary, plaintiff benefited under the agreement by the five thousand dollars which he received from the hands of Ghosn, based upon his approval for the said Ghosn to benefit under a sublease from the defendant. Shortly after this transaction, the lessee, now appellant, was called upon for the violation of the terms of the agreement by executing a sublease without his prior approval--an artifice that the law frowns upon, because he was seeking to have the five thousand dollars already received forfeited in so short a period of time. A judgment was rendered in the court below against the defendant on a verdict of the petty jury. This necessitated the instant appeal before us on a bill of exceptions containing six counts. Counts "1" and "6" being the crux of the appeal to this Court, we quote them hereunder for the benefit of this opinion : "i. Because His Honor, the Judge, overruled the several issues of law raised in defendant's answer and subsequent pleadings and ruled the case to trial on the following grounds : " 'The court, in ruling on the law issues, says that, since the party defendant has placed on record that he does not contest the right nor hold adverse title to the plaintiff to the land, Counts "r,"

"2," and "3" of this answer as to the form of bringing an action of ejectment be and they are hereby overruled ; also the matters of law raised are overruled, as well as the matter of fact relied upon to traverse the complaint and the matters of fact contained in defendant's subsequent pleadings. And it is so ordered.' "6. And also because Your Honor, on April 1, 1956, gave final judgment adjudging, inter alia, that defendant release and surrender the premises subject to the ejectment suit to the

plaintiff and pay all costs incidental to this action." This is a case in which the plaintiff elected to sue out an action of ejectment on what purports to be the violation of the terms and conditions of a contract, because, as he says, the said contract provides on its face that, where there occurred a violation on the part of the lessee, the right would be vested in the lessor to reenter and repossess himself of the premises so demised. Although it is fundamental that an action for breach of contract grows out of the violation of the terms and conditions of any agreement regularly subscribed to by the parties concerned, yet, let us see how far and to what extent this view does carry legal sanction and support. In Syllabus "2" of Tubman v. Westphal, Stavenow & Co., I L.L.R. 367 (r9oo) this Court found that: "In an action of ejectment brought by the landlord against his tenant for the violation of the covenants and agreements of the lease, in which he sought to eject the lessee, it was held that an action for the violation of contract was the proper action, and an injunction on the ejectment suit was sustained." This Court has also held in Syllabus "I" of Jantzen v. Coleman, 2 L.L.R. 208 (1915) that: "When the action set forth in the complaint of plaintiff is not suited to the form of action chosen, the action should be dismissed." From the premises laid above, it follows that appellant

in this case has chosen the wrong cause of action within the scope of his form of action. Besides that, it would be interesting for us to know how the appellant expected to benefit in law under a contract drawn by himself, and on which he gave parol approval to the lessee for, the privilege to sublet, even before its terms and conditions were subscribed to by the parties concerned. Plaintiff, when on the witness stand, said that, since the contract was written, all commitments thereon should have been written, and therefore he never gave approval to the lessee for the premises or any portion thereof to be subleased. To clarify this view, we quote the following: "A written agreement should, in case of doubt, be interpreted most strongly against the party who has drawn it. Sometimes the rule is stated to be that where doubt exists as to the interpretation of an instrument prepared by one party thereto, upon the faith of which the other has incurred an obligation, that interpretation will be adopted which will be favorable to the latter." 12 AM. JUR. 795 Contracts § 252. The arguments made before this Court by counsel engaged in the case were interesting, but we are reminded of the 26th and 27th verses of the 7th chapter of St. Matthew's Gospel, when Jesus said : "And everyone that heareth these sayings of mine, and doeth them not, shall be likened unto a foolish man, which built his house upon the sand : "And the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell : and great was the fall of it." It is therefore our opinion that the appellee, plaintiff below, was not entitled to recover against the defendant, since an action of ejectment will not lie for the breach of a contract. The judgment of the court below is reversed, and the appellee is hereby ruled to all costs in this suit. And it is so ordered.

Reversed.

In re Flaawgaa Richard McFarland [1987] LRSC 14; 34 LLR 439 (1987) (23 January 1987)

In re: FLAAWGAA RICHARD McFarland

CONTEMPT PROCEEDINGS

Heard October 29, 1986. Decided January 23, 1987.

1.To constitute contempt, there must be improper conduct in the presence of the court, or so near thereto as to interrupt or interfere with its proceedings; or some act must be done not necessarily in the presence of the court, which tends to adversely affect the administration of justice.

2. A constructive contempt is an act done not in the presence of the court, but at a distance, which tends to belittle, degrade, obstruct, interrupt, prevent or embarrass the administration of justice.

3. Any act or conduct is contempt which obstructs or is calculated to lessen the court's authority or its dignity, or which brings the administration of the law into disrespect or disregard, or which affronts the majesty of the court, or which challenges the authority of the court, or any conduct which in law constitutes an offense against the authority and dignity of a court or judicial officer in the performance of his judicial functions.

4. The definition of contempt of court applies in a special manner to lawyers and the offense is deemed much more grave than when committed by laymen.

5. A lawyer who attempts to create conflict between the Executive and Judicial Branches of government by seeking a review by the Chief executive of a decision by the Supreme Court in civil cases is subject to disbarment.

6. An unfounded charge of corruption against the Justices of the Supreme Court, contained in a letter written by a lawyer to the President of Liberia tends to impair the dignity of the Court and undermine confidence in the judiciary, and accordingly is ground for disbarment.

7. Counsellors-at-law who, after losing a case, writes to the President of Liberia, falsely charging that the case was decided without copies of the records being transmitted from the trial court and that they had been denied their day in court may be held in contempt.

8. A person who acts to obtain the intervention of an official of the Executive or Legislative branch of government in a case pending in the Judicial Branch is guilty of contempt.

9.A lawyer who represents one party in a proceeding and who thereafter represents the opposite party in the same proceeding, acts unethically and not representative of a counsellor of the Supreme Court.

10.The procedure for a reargument requires that it be requested by the petition to the Court, that the petition state the basis for the request, that a copy be served on the opposite party, that at least one justice who concurred in the judgment to be reargued orders the reargument, and that the petition be filed within three days after the rendition of judgment.

11.A petition for reargument will only be granted where there is evidence of some palpable mistake made by the Court by its inadvertently overlooking some fact or point of law.

12. A counsellor is supposed to be conversant with the precedents of the Supreme Court and conduct himself accordingly.

13. The Supreme Court is the final forum for adjudication of disputes in Liberia, and an appeal of its decision to another branch of government is unconstitutional.

The respondent, Flaawgaa R. McFarland, a counsellor-at-law of the Supreme Court of Liberia, was cited by the Court for contempt of court after he and the residents of the Fallah Varney Bridge Community petitioned the Legislature for the impeachment of the members of the Supreme Court. The grounds stated in the petition for the impeachment request were corruption by and incompetence of the members of the Court. The petition was submitted to the legislature after the members of the Fallah Varney Community represented by the respondent, has lost a case before the Supreme Court.

In his returns, filed in response to the citation of contempt, and in his arguments before the Court, the respondent reiterated the allegations made in the petition to the Legislature that the members of the Supreme Court were either corrupt or incompetent.

The Supreme Court viewed the petition to the Legislature, the returns to the citation of contempt, and the arguments of the respondent as gross contempt to the Court, and ordered the respondent disbarred from the practice of law in Liberia for his entire life time. The Court held that acts which brought or had the tendency to bring the Court into disrespect, disrepute, and disregard, or conduct which in law constituted an offense against the authority, dignity, majesty, or dignity of the Court or a judicial officer in the performance of his judicial functions constituted contempt of court.

The Court opined that the definition or act of contempt included acts by a person to obtain the intervention of an official of the Executive or Legislative Branch in a civil matter pending before or decided by the. Court. These elements of contempt, the Court said, applied equally to lawyers practicing before the Court and it cited a long line of cases in which the Court had held lawyers in contempt of court for conduct similar to those exhibited by the respondent. This, the Court noted, was particularly applicable both in the past and in the instant case where the act or conduct of the lawyer, in appealing to the other Branches of the government, or in falsely accusing the Court, sought to generate a conflict between the Judiciary and one of the other

branches, and to thereby undermine the dignity and confidence in the judiciary. The Court opined that the proper course for the respondent to have pursued, having lost the case decided by the Court, was to file a petition for reargument, and not to seek redress through the Legislature and thereby bring the Court into ridicule.

The Court observed that under the Constitution, it was the highest and final forum for the adjudication of cases and noted that an appeal of its decision by the respondent was not only unconstitutional but a violation of the ethical and professional conduct expected of the respondent. The respondent, it said, remained uncompromising and impenitent, and that for such behavior he be *adjudged* in contempt and disbarred from the practice of law in Liberia for the remainder of his life.

Flaawgaa R. McFarland of the Flaawgaa R. McFarland Legal Services, appeared for the movant. *Joseph Andrew, Julius Adighibe* and *M Fahnbulleh Jones* appeared as *Amici Curiae*

MR JUSTICE JANGABA delivered the opinion of the Court.

On August 18, 1986, this Court issued a citation for contempt of the Court against one of its practicing counsellors, respondent herein, Flaawgaa Richard McFarland, counsellorat-law. Considering, for the sake of duplication, that the said citation gives a detailed outline of the history of the circumstances necessitating its issuance, we have thought it convenient to reproduce it here word for word and letter for letter. The citation reads thus:

"IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, OCTOBER TERM, A. D. 1986.

PRESENT: HIS HONOUR: James N. Nagbe, CHIEF JUSTICE

" " Elwood L. Jangaba, ASSOCIATE JUSTICE

" " J. Patrick K. Biddle, ASSOCIATE JUSTICE

" " Frederick K. Tulle, ASSOCIATE JUSTICE

" " John A Dennis, ASSOCIATE JUSTICE

IN RE: COUNSELLOR FLAAWGAA R. McFARLAND OF THE CITY OF MONROVIA, LIBERIA, RESPONDENT

CITATION FOR CONTEMPT REPUBLIC OF LIBERIA TO: BRIG. GENERAL JEHU T. STRYKER, SR. MARSHAL. SUPREME COURT OF THE REPUBLIC OF LIBERIA MONROVIA. GREETINGS:

YOU ARE HEREBY COMMANDED to cite Flaawgaa R. McFarland, Counsellor-At-Law to appear before this Court during its October Term, A. D. 1986 to show cause, if any he may have,

why he should not be attached in Contempt of the Honourable, the Supreme Court of the Republic of Liberia, for reasons as follows, to wit:

1. That the respondent herein was counsel for petitioners in the case:

Nathaniel Lewis, G. Boyee Togba,)

Swen Nippy and others of Monrovia,

Liberia, PETITIONERS) PETITION FOR A WRIT OF CERTIORARI

VERSUS

His Honor Frederick K. Tulay,)

Resident Judge, Sixth Judicial Circuit,)

Montserrado County,)

John G. T. Nagbe and the Ministry of Justice,)

RESPONDENTS GROWING OUT OF THE CASE:)

Nathaniel Lewis, G. Boyee Tagba,)

Swen Nippy and others of Monrovia,)

Liberia) -------INFORMANTS) BILL OF INFORMATION

VERSUS

John G.T. Nagbe and the Ministry of Justice,)

represented by its legal representative,)

Honourable Sie-A-Nyene Youth,)

Assistant Minister, Justice for Legal Affairs,)

Monrovia, Liberia-------)

RESPONDENTS GROWING OUT OF THE CASE :)

John G.T. Nagbe by and thru the)

Ministry of Justice,)

Republic of Liberia------PLAINTIFF)

VERSUS ACTION OF EJECTMENT

Nathaniel Lewis, G. Boyee Tobga,)

Isaac Tugbe Wleh, Swen Nippy,)

Prince--------DEFENDENTS)

In which the Court, sitting *en bane, made* a ruling specifically quoting the relevant portion of the Chambers Justice's ruling as follows:

"The four-count petition for certiorari filed by the petitioners state in substance that petitioners are defendants in an eviction mandate from the Ministry of Justice to His Honour Judge Frederick K. Tulay to have the Petitioners evicted from their **land** and because it is claimed that their **land** falls within the 42.5 acres of **land** granted to the late G. Koffa Nagbe, which had descended to his heir John G. T. Nagbe. The petitioners further claim that they filed information before the respondent judge contending that they have titles to the area occupied by them and that said area is not within the 42.5 acres of **land** belonging to the late Koffa Nagbe. The petitioners therefore requested for an arbitration comprising of surveyors to go and survey Koffa Nagbe's 42.5 acres of **land**, but the judge ignored their request and decided to evict them without due process of law; that is, without filing any legal proceedings as required by the ordinance upon which the respondent judge relied to evict them. After the ruling which the respondent judge denied them the privilege of an appeal and therefore the only alternative opened to them was to come by writ of certiorari to review the ruling. The petitioners are not contending against the existence of the 42.5 acres of **land** to respondent John G. T. Nagbe granted under Executive Order No. 10-A.

Respondents maintain in their amended returns that the petition should be dismissed because the petitioners have woefully violated the statute on certiorari by their failure to pay the accrued costs, in keeping with sec. 16.23 (3) of 1 LCLR. To buttress the violation of this mandatory requirement of our statute, the respondents attached a certificate from the clerk of the trial court, and they therefore ask that the petition be dismissed. The respondents further averred that the petitioners were regularly and duly summoned, but they failed to appear or failed to answer. Therefore, when the case was called for trial on the 4th of February, 1984, the petitioners were called three times at the courtroom door by the sheriff, according to practice and procedure., but they failed to answer: whereupon a plea of not liabre was entered in their favor and an imperfect judgment entered for the co-respondent. John G. T. Nagbe. A trial fury was thereafter duly empaneled, sworn and qualified to try the case. Trial was had according to procedure and ended with a judgment against the petitioners, and a writ of possession was issued in favor of John G. T. Nagbe and served on the petitioners. Respondents further argued that certiorari will not lie either to review a final judgment or against the order of a court for the enforcement of its final judgment, as is in the instant case."

As much as we would like to delve into these legal arguments advanced by the parties, but we are precluded from doing so because of the failure of the petitioners to pay the accrued costs, which is a mandatory requirement of the statute, as found in the Civil Procedure Law, Rev. Code 1: 16.23, under procedure in certiorari, which we quoted hereunder:

2. That the Chambers Justice, former Justice Boima K. Morris of the Honourable Supreme Court of Liberia, after hearing arguments *pro et con* ruled quashing the alternative writ of certiorari and denied the said petition as follows:

"In view of the foregoing, it is our ruling that the mandatory requirement of the statute not having been met and also because the judgment sought to be reviewed is final and certiorari will lie only to review an intermediate order or an interlocutory judgement and not a final judgment, as in the instant case, the petition is hereby denied. The alternative writ is quashed and the peremptory writ denied with costs against the petitioner. The Clerk of this Court is instructed to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and enforce its judgment. Costs against the petitioners. AND IT IS SO ORDERED."
"Given under my hand in open Court
this 31st day of December, A. D. 1985.
/s/ Boimah K. Morris
/t/ Boimah K. Morris
ASSOCIATE JUSTICE PRESIDING IN CHAMBERS"

Whereupon the petitioners, represented by the respondent excepted to the Chambers Justice's ruling and announced an appeal which was granted.

3. That during the sitting of the March Term, A. D. 1986 of the first Supreme Court of Liberia in the Second Republic, constituted in accordance with the provisions of the new Constitution of the Republic of Liberia, the Court heard argument *pro et con* in the case and handed down its opinion on the 1st day of August A. D. 1986. Speaking for the Full Bench, Mr. Justice J. Patrick K. Biddle quoted the ruling of the former Justice, Mr. Justice Morris, as shown in counts 1 and 2 above, and concluded as follows:

"It is therefore our holding that under the circumstances and in view of the appellants' admission that indeed a final judgment was rendered against them by the court below, certiorari cannot lie. Our position is supported by statute and several opinions of this Court. In the case *Republic of Liberia v. Weatuah and Hunter*, appealed from the ruling in Chambers on application for certiorari, decided 1954, as found in [1964] LRSC 17; 16 LLR 122, this Court held: "The corrective competence of the writ of certiorari ends with the determination of the case out of which it grows, as in this case where the writ was applied for after judgment had been rendered." See also *Harris v. Harris and Williamson*, [1947] LRSC 13; 9 LLR 344 (1947); *Ajavon v. Bull et. al.*, 14 LLR 178 (1960). In this jurisdiction, where a party to a suit in a lower court of record feels or has reason to believe that a final judgment was rendered against him and that at the time of the rendition of such judgment he was legally incapacitated to take an appeal therefrom, the proper remedy provided for under our law is not certiorari but a writ of error. Civil Procedure

Law, Rev. Code. 1: 16.21(4), Writ of Error . . . ." The above quoted ruling of the Justice in Chambers having adequately dealt with the other aspects of the office and function of the writ of certiorari is, in the opinion of this Court, in harmony with law and therefore should not be disturbed. Had the learned counsel for the appellants exercised prudence in this case, he would have made some genuine effort to secure time from the court below so as to enable the appellants to vacate the premises instead of resorting to these multifarious and unmeritorious suits simply to thwart the administration of justice and enforcement of the lower court's judgment.

Wherefore, and in view of the foregoing, the ruling of the Chambers Justice is hereby affirmed and confirmed but with this modification: That said judgment be enforced without prejudice to any lawful arrangement made or arrived at with the heirs of the late G. Koffa Nagbe, represented by appellee, for the purchase or lawful occupancy of any portion of the 96.5 acres of **land**, as restored to appellee by Executive Ordinance 10-A or Decree no. 80, if the heirs of Nagbe so desire. Costs against appellants. AND IT IS HEREBY SO ORDERED."

4. That volume 5, number 48 of the newspaper named and styled "THE MIRROR", in its issue of Friday, August 8, 1986, published in Monrovia, Liberia, and under its lead headline "CITIZEN WANTS SUPREME COURT IMPEACHED", expressly stated on page 6 that:

"The Supreme Court in its ruling confirmed that in view of the fact that a jury trial was heard on February 4, 1984 with regards to "action of ejectment" of the petitioners from Fallah Varney Bridge Community, the case could not be reviewed and rendered its ruling in favour of the Nagbe heirs;" and attributed to respondent herein named as the source of its information and as the person who presented the petition to the Speaker of the House of Representative as follows:

"The petition, signed by 10 members on behalf of the `Fallah Varney Bridge Community' on Bushrod Island, through Counsellor Flaawgaa R. McFarland, presented the petition to the Speaker of the House of Representatives yesterday."

5. That the respondent, counsel for the petitioners of the alleged petition to impeach the Supreme Court, knew very well that the statement above quoted was from the Chambers Justice's ruling and not what the Bench *en banc* said in its opinion rendered on August 1, 1986, thereby falsely, recklessly and knowingly imputing that the Bench *en banc* had stated facts which it had no knowledge of, with the intent to castigate, ridicule and impugn the integrity of the Supreme Court of Liberia.

6. That counsel for the petitioners in the certiorari proceedings, Counsellor Flaawgaa R. McFarland, respondent in these contempt proceedings, knowing fully well that in keeping with the statutes controlling certiorari proceedings, it is the writ ordered by the Chambers Justice which directs the respondent judge of the inferior court to forward certified copies of the records of the proceedings pending in the court out of which certiorari is applied for, and from the review of the records that the Chambers Justice makes his decision.

And also respondent is fully aware of the fact and the law that the Supreme Court only reviews the records in the case, whether on regular appeal or on appeal from the Chambers Justice, and that it is restricted to call for the files or records in any given case from the subordinate court,

especially so when the Chambers Justice in his ruling expressly referred to the minutes or records of the subordinate Court. But the respondent elected to support and add his weight to the petition which states that this Court should have obtained the files on an appeal from the Chambers Justice to ascertain whether or not the regular trial was indeed had on the 4th of February, A. D. 1984 at the Civil Law Court, Temple of Justice, as against the Chambers Justice's ruling, quoted in the opinion. Because the Bench *en banc* did not permit this innovation, the petitioners, through the respondent, requested the Legislature to impeach this Court, with the view not only to bring the Supreme Court of Liberia to disrepute, disgrace and ridicule, but also with the intent to disqualify the competence and ability of Justices in the said Court.

7.That after presenting the alleged petition of his clients to the Honourable, the Speaker of the House of Representative, the respondent elected to have the petition published in the newspaper "THE MIRROR", Volume 5, number 48, of Friday, August 8, 1986, thereby accomplishing his planned purposeful design to widely publicize and disseminate the content of the said petition nationally and internationally, and evidencing his deliberate act of not only bringing the Supreme Court of Liberia to public ridicule, and inciting the citizens of Liberia and foreigners in this country to lose confidence in the integrity and ability of this Court, but also painting an ugly and questionable picture of the judicial system of Liberia.

8. That the same newspaper which featured the respondent as the source of information expressly stated on page 6 as follows:

"They also contended that in the absence of the establishment by the Honourable Supreme Court that a case was held on February 4, 1984, the petitioners maintained that in view of the arguments advanced that the full bench of the Honourable Supreme Court was either bribed, or in the alternative, in possession of a degree of inability impairing its ability to function efficiently and effectively as defined under Article 71 of the Liberian Constitution", which tends to imply that the Supreme Court of Liberia is corrupt, susceptible to the influence of bribery or has no legal competence, thereby impugning that the President of Liberia and the Liberian Senate erred in nominating, consenting to and appointing the members of this Court.

"YOU ARE HEREBY COMMANDED TO NOTIFY the said respondent in these CONTEMPT PROCEEDINGS to file his returns in the office of the Clerk of the Honourable the Supreme Court of Liberia, Republic of Liberia on or before the 28th day of August, A. D. 1986; and TO READ TO HIM the original of this citation and furnish him a copy thereof for his full and detailed information; and

YOU ARE FURTHER COMMANDED to make Your official returns into the office of the Clerk of the Honourable the Supreme Court of the Republic of Liberia, Temple of Justice Building, on or before the 28th day of August, A. D. 1986, as to the manner of service of said citation.

AND FOR SO DOING, THIS SHALL CONSTITUTE YOUR SUFFICIENT AND LEGAL AUTHORITY. GIVEN UNDER MY HAND AND SEAL OF THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA THIS 18th DAY OF AUGUST A. D.1986. Emily N. Dunbar ACTING CLERK, SUPREME COURT, R. L. SEAL:

Said Counsellor McFarland's reaction was to file a ten (10) count returns to the foregoing citation for contempt, along with a two-count motion for the entire Bench of this Court to recuse itself from hearing the said contempt proceedings. The said motion for recusal of the full bench was captioned "IN RE: RESPONDENT'S MOTION TO HAVE THE FULL BENCH OF THE HONOURABLE THE SUPREME COURT OF THE REPUBLIC RECUSE ITSELF FROM ADJUDICATION OF THE CONTEMPT PROCEEDINGS UNDER WHICH THIS MOTION BREWS, AS INTERESTED AND LIKELY RESPONDENTS IN THE 1,500 CITIZENS IMPEACHMENT PETITION TO THE NATIONAL LEGISLATURE: GROWING OUT OF: IN RE: COUNSELLOR FLAAWGAAR. McFARLAND OF THE CITY OF MONRO-VIA, LIBERIA---RESPONDENT, CONTEMPT OF COURT."

Count one of said motion, true to its caption, required that the full bench of this court recuse itself from hearing the contempt proceedings because of the contentions raised in the respondent's returns. Count two maintained that such a recusal "is about the fairest and the simplest accommodation this Court can grant under all of the circumstances argued before it". The motion closed with a prayer which reads thus:

"Wherefore and in view of the above, movant/respondent prays this Honourable Court to grant this motion and thereby requiring each member of the Full Bench of the Honourable, the Supreme Court, to recuse himself from the adjudication of the contempt proceedings out of which this motion grows, and submit."

The *amici curiae* countered the motion with reference to the law extant in this jurisdiction, outlining the conditions under which a judge or Justice may recuse himself from the hearing of a case, particularly brought to the attention of the Court the precedent where this Court had denied a similar motion by C. Abayomi Cassell, a counsellor cited in contempt of court in June 1979, on the grounds that a court citing a party in contempt had the authority to hear and determine the contempt proceedings.

The motion was first heard and summarily determined before the actual contempt proceedings was called for hearing. The Court denied the motion on the basis of our laws and the established precedents, both in this jurisdiction and in analogous jurisdictions, but especially on the basis of the precedent set forth in the contempt matter of *In re C. Abayomi Cassell, Counsellor-At-Law,* heard and determined in its March Term, A. D. 1979. *See In Re: C. Abayomi Cassell, Counsellor-At-Law,* [1979] LRSC 9; 28 LLR 107 (1979).

Upon denial of the respondent's motion for recusal, the Court proceeded to hear the actual case of contempt against him. In his entire ten-count brief, the respondent at no instance denied the basic allegations of the citation issued against him by this court. Rather, the brief he filed and argued was in total justification of the acts which the Court had deemed contemptuous and which had necessitated its issuance of the citation of contempt against him. The basic arguments in respondent's brief ran as follows: That the matter out of which the contempt proceedings grew is legislative and not judicial in as much as the 1986 Constitution, at Articles 43 and 71, provided for impeachment which is a legislative and not a judicial prerogative; that based upon Article 3 of the said Constitution, which provides for the separation of powers and checks and balances, the contempt proceedings against him were prohibited and should not be maintained; that the

petition which he and the 1,500 citizens/residents of the Fallah Varney Bridge Community had filed before the Legislature against this court was an exercise of a constitutional right under Article 17 of the 1986 Constitution, which authorizes citizens to petition their representatives and other functionaries of government with their grievances; that the Supreme Court suffered from or labored under a constitutional inability under Article 71 when it confirmed and affirmed the ruling of a Chambers Justice, upon records certified to it by the said Chambers Justice Without reference to the records of the court from which the proceedings had originated and without regards to the Supreme court's practice relative to the diminution of records; and ally, that in stating in its citation that respondent's petition Implied that the President and the Liberian Senate erred when they appointed the present Bench of the Supreme Court, said 3ench was playing politics in judicial matters when in fact heir own act in affirming that a case involving the Fallah Varney Bridge Community was heard on February 4, 1984, when that was not the case, confirmed respondent's allegations n the impeachment petition that this Bench was either bribed r that it was incompetent in the contemplation of Article 71 of the 1986 Constitution. Respondent's brief closed with a prayer for the dismissal of the contempt citation against him, and further that he be granted all other reliefs under the law.

The *amici curiae*, on the other hand, very strongly contended and submitted that the aspersions cast on the Honourable Supreme Court by respondent's petition to the Legislature were unfounded, derogatory, defamatory, scandalous and libelous; and that same were *ipso facto* unwarranted, and had the tendency to create a constitutional, judicial, legal and political friction between the Judiciary and the Legislature on the one hand, and between the Judiciary and the Executive Branches, inconsistent with the constitutional provisions governing the separation of powers and checks and balances, on the other. Specifically, they maintained that the respondent counsellor had three (3) days in which to file a petition for reargument, and that he ought to have made use of that procedure rather than appeal to the Legislature to review a judicial decision; that by Article 3 of the Constitution, the Legislature could not properly review the Judiciary, as that will be in contravention of Articles 3 and 73 of the Constitution; that Article 65 makes the Supreme Court the highest judicial power in the Republic, whose decisions are not subject to appeal or review; that according to established precedent, a counsellor who appeals decisions of the Supreme Court to the other branches of government is guilty of contempt of court; and finally, that the Supreme Court should punish for contempt any deceptive practice which might have the tendency to reflect discreditably upon the Judicial Branch of government, or which tend to belittle it because of its decision, or which might show disrespect to it or its Justices, or which might defy its authority. The friends of the Court closed with a prayer to the Court that, consistent with the provisions of the Constitution, it deter-mines whether or not the respondent's returns justified the charge of gross contempt against him considering that his acts were in utter violation of his professional oath as a lawyer.

From the foregoing detailed analysis of these contempt proceedings, we are of the opinion that the following issues are salient for our determination:

1. What conduct amounts to contempt of this Court?

2. What is the legal position of a practicing lawyer of this Court who appeals its decision to another branch of government?

3. What is the procedure required where one, two, or less than five of the Justices of this Court refuse to grant a re-argument?

4. Whether or not under our laws the acts of the respondent and the brief filed by him are actually sufficient to hold the respondent in contempt of this Court?

We will resolve these issues in the order in which they are resented beginning with the first, which is, what conduct mounts to contempt of this Court? This issue is often disussed in this jurisdiction and every counsellor of this Court should be familiar with it. Our law reports are replete with dilutions of what this Court considers as contempt against its dignity and authority as the highest and final Court of this **land**. Deed, we may not even need any foreign authority on the matter of contempt of court.

This Court has held that "To constitute contempt, there must be improper conduct in the presence of the court, or so near thereto as to interrupt or interfere with its proceedings; or some act must be done not necessarily in the presence of the court, which tends to adversely affect the administration of justice". *King v. Moore,* 2 LLR 35 (1911). Similarly, in defining a constructive contempt, this Court said that "A constructive contempt is an act done not in the presence of the court, but at distance, which tends to belittle, to degrade, or to obstruct, interrupt, prevent, or embarrass the administration of justice". *Liberian Bar Association v. Gittens,* [1941] LRSC 12; 7 LLR 253 (1941). The court has also held in a more recent case that "It is a well settled rule that any act or conduct is contempt which obstructs or is calculated to lessen its authority or the dignity, or to bring e administration of law into disrespect or disregard, or any conduct which in law constitutes an offense against the authority and dignity of a court or judicial officer in the performance of his judicial functions. *Raymond International (Liberia) Ltd., v. Dennis,* [1976] LRSC 35; 25 LLR 131 (1976). And yet another recent case has held that "Generally, acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty, or challenge its authority constitute contempt of court". *Branly v. Damply of Liberia,* [1973] LRSC 83; 22 LLR 337 (1973). In fact, the opinion in that same case continues to hold for the obvious reasons that "The definition of contempt of court applies in a special manner to lawyers and the offense is deemed much more grave than when committed by laymen".

At this juncture, we would like to put an end to an almost inexhaustible definition of contempt as found in the opinions and precedents of this Court, and commence to give an opinion on the second issue which deals with the legal position of those people, especially lawyers, who make it a practice to appeal the decisions of this Court of last resort to another branch of government, and who seek thereby to perpetuate conflicts between the Judiciary and the other branches of government.

We are also amply favored by precedent on that issue. In that light, we shall first consider the case *In re McDonald Acolatse[1977] LRSC 56;* , 26 LLR 456 (1977), where a counsellor of the Supreme Court of Liberia had written a letter to the President of the Republic charging the Chief Justice and Associate Justices of this Court with corruption after they had granted a writ of prohibition against the enforcement of a judgment in a libel suit against a non-party. In that case, this Court held that "A lawyer who attempts to create conflict between the Executive and Judicial Branches of Government by seeking a review by the Chief Executive of a decision by the

Supreme Court in civil cases is subject to disbarment." The Court continued: "An unfounded charge of corruption against Justices of the Supreme Court contained in a letter written by a lawyer to the President of Liberia tends to impair the dignity of the Court and undermine confidence in the Judiciary, and is accordingly ground for disbarment." *In re: MacDonald Acolatse[1977] LRSC 56; ,* 26 LLR 456 (1977). In that case, the honourable Counsellor was disbarred from the practice of law in Liberia for life.

Also in the case *In the matter of P. Amos George and Joseph Findley,* wherein the respondents, counsellors of the Supreme Court had written false charges against this Court to the President of Liberia after losing error proceedings before the Court, the two counsellors were held in contempt of Court. The Court stated that "Counsellors-At-Law who, after an adverse decision in the Supreme Court on writ of error proceedings, write to the President of Liberia, falsely charging that the case was decided without copies of the records transmitted from the trial court and that they had been denied their day in Court may be held in contempt". *In re P. Amos George and Joseph Findley*, [1978] LRSC 8; 26 LLR 435 (1978). In that case the Court fined said counselors$ 1,000.00 each, to be paid as mandated in the opinion, or face suspension until payment was made.

Further, in the *case In re Beatrice Dennis-Webbo and Venus Dennis,* two of the parties to an action for damages which had been appealed to the Supreme Court, wrote the President of Liberia charging the Court with corruption. They were cited and held in contempt of court and fined 200.00 each, to be paid as directed by the opinion, or be imprisoned in the common jail until payment was made. The Court held therein that: "A person who acts to obtain intervention of an official of the Executive or Legislative Branch of Government in a case pending in the Judicial Branch is guilty of contempt". [1978] LRSC 64; 27 LLR 355 (1978).

In the instant case, Counsellor McFarland blamed the Supreme Court for refusing to call for the records from the trial court; an act which he said constituted one of his reasons for appealing to the Legislature. But what difference, may we ask, would it have made in the matter since the whole exercise was essentially a mere formality in carrying out the decree of the People's Redemption Council (PRC) and the terms of Ordinance 10-A, which had in effect already conveyed the **land** in question. What remained to be done was only for the Ministry of Justice to put the Nagbe heirs in possession, procedurally going through the courts to do so. It happened that the contemnor in this case was one of the lawyers for the state representing the Nagbe heirs. The purpose of the court proceedings was to put the heirs in possession and not to determine title. The counsellor then changed colours and began representing the opposite side in the same matter out of which his contempt originated. In this new role, he requested that we determine the title to the property, an act which is unethical and not representative of a counsellor practicing before this Honourable Court.

The third issue concerns the question of reargument and the procedure to be followed in requesting one. The procedure for a reargument requires that it be requested by petition to the court with the petition stating the basis for requesting it, and a copy served on the opposite party. It also requires that one of the Justices concurring in the judgment is to be reargued order the same. The petition for reargument is to be filed within three days after the rendition of judgment, and permission for the requested reargument will only be granted where there is evidence of

some palpable mistake made by the Court by it inadvertently overlooking some fact or point of law. Revised Rules of the Supreme Court, Section IIC, Reargument, Parts 1, 2 and 3.

This brings us to the final issue in this matter, that is, to determine whether or not the acts of the respondent for which he was cited, along with the returns and brief filed with this Court are contemptuous, according to all that has been said in this opinion. We are of the unanimous opinion that the respondent has been grossly contemptuous to this court. The fact is that the respondent, as a counsellor-at-law representing a party, had a right to file a petition for reargument on behalf of his client after losing the matter before this Court, but which he flagrantly failed to pursue. Where one or two or even any number of Justices less than five who concurred in an opinion refuses a reargument, the petitioner must still exhaust all available remedies by seeking the approval of his petition by any of the other Justices who signed the opinion. In this case, the respondent argued that the Chief Justice and Associate Justice Dennis had denied approval of his petition for reargument. However, he admitted that he had failed to try any of the other remaining Justices of the Supreme Court. As a counsellor of this Court, he is supposed to be conversant with the precedents thereof and he should conduct himself accordingly, instead of making a mockery of this Court. He must have known that when he accused this Bench of bribery, corruption and an inability to comprehend our laws, he was at the same time demoralizing the dignity of the Court, in the light of such unfounded charges. He must have comprehended that this Court is the highest and final forum of adjudication of this **land**, and that an appeal of its decisions to another branch of government was unconstitutional, and could lead to certain conflict between this Branch and said other Branches of government. The charges levied against all of the Justices, including those who did not even participate in the hearing were completely false.

Respondent remained uncompromising and impenitent, even in the face of all the evidence against him and he broadly exhibited to every serious mind the lack of the professional spirit of patience, caution, care and diligence, both in his acts and in his arguments. Therefore, this bench has no alternative but to adjudge the said respondent, Flaawgaa Richard McFarland, in gross contempt of the dignity, respect and authority of this Honourable Court, and to view his action as a shame to our legal profession and practice.

Wherefore and in view of the foregoing, the respondent is hereby adjudged guilty of gross contempt and is hereby completely and totally disbarred from the practice of law in any form or manner, directly or indirectly, forever hereafter within the Republic of Liberia. The disbarment shall take effect as of the rendition of this Judgment. And it is hereby so ordered.

Appellant adjudged in contempt.

Zakama v Nassau et al [1988] LRSC 91; 35 LLR 616 (1988) (29 December 1988)

OLDMAN ZAKAMA, Informant, v. **CHARLIE NASSAU et al.**, Respondents.

BILL OF INFORMATION

Heard: (Undated). Decided: December 29, 1988.

1. A person who is not a party to an action has not been brought under the jurisdiction of the court, and cannot be held in contempt for disobeying an injunction issued by the court with respect to the parties to the suit.

Informant in 1963, brought action to restrain several persons from operating on his parcel of **land**. The injunction was granted, which judgment was affirmed by the Supreme Court without opinion in December, 1978. Informant discovered that respondents herein continued to operate on the **land**, despite the injunction. Informant, in 1988, thereupon filed a bill of information before the Supreme Court requesting that respondents be held in contempt, and the lower court ordered to resume jurisdiction and enforce the earlier judgment of the Supreme Court. The Court in considering the information determined that the only issue before it was whether Co-respondent Mulbah Sumo was a party to the initial injunctive action. The Court held that since this co-respondent was not a party to the original injunctive relief, he could not be held in contempt, particularly as he had never been brought under the jurisdiction of the Court. The Court therefore granted the information as to some of the respondents and denied the same as to Mulbah Sumo. The Court, however, held the other respondents in contempt, imposing on each of them a fine of $100.00.

H. Koenig for the informant. M Fahnbulleh Jones for respondent Sumo Mulbah.

MR. JUSTICE AZANGO delivered the opinion of the Court.

The informant, Oldman Zakama, instituted injunction proceedings on September 17,1963 against the respondents, Charlie Nassau et al., to stop them from operating on his parcel of **land**. The said writ was granted by the Sixth Judicial Circuit Court on April 17, 1970, and the Supreme Court on December 29, 1978, rendered a judgment without opinion affirming the judgment of the court below, and mandated the said court to enforce its judgment by perpetrating the injunction, prohibiting and restraining respondents from further operation on the said parcel of **land**.

Informant, Oldman Zakama, in the above entitled cause of action, having observed that despite the Court's mandate, the respondents continued to operate on the said **land**, prayed that the respondents would be held in contempt and the lower court is ordered to resume jurisdiction over the cause and enforce the judgment of the Honourable Supreme Court of Liberia.

In counter argument, the respondent Mulbah Sumo argues:

1. That he was not a party to the injunction suit brought against "Charlie Nassau et al" in the court below and, therefore, there was no writ of summons and injunction served on him personally, directly or indirectly, as evidenced by the bill of information and the writ of summons which reads "Charlie Nassau et al, defendants/ respondents."

2. Respondent further contends that the injunction and bill of information nomination are vague, unintelligible and indistinct because "Charlie Nassau et al."did not specifically name the other party defendants/respondents on whom to serve process. Respondent Sumo Mulbah also says that the defendants/respondents constituting the "et al." in this action are only known to plaintiff/informant, but not to this Court.

3. Respondent, Oldman Mulbah Sumo also maintains that he is presently occupying and enjoying one hundred (100) acres of **land** purchased by his late sister, Mama Howard, from the Republic of Liberia in 1945, as evidenced by an attached deed marked exhibit "5/1" to form part of his returns. Thus he is unable to traverse the issues of both law and facts raised in the bill of information because he is ignorant to the allegation of facts in said bill.

4. Wherefore and in view of the foregoing, the respondent, Mulbah Sumo, prays this Honourable Supreme Court of Liberia to relieve him from answering the bill of information, quash the writ served on him, and estop the plaintiff/ informant from molesting or harassing him for his genuine property with costs against plaintiff/informant.

From a careful review of the records of the instant case, the court has observed that there is only one triable issue which needs to be determined: was respondent Mulbah Sumo a party to the original injunction action? The answer to this question is no, because the informant failed to adduce sufficient evidence to convince this Court that respondent, Mulbah Sumo, was originally a party to the injunction suit from which these proceedings grew.

The facts of the original writ/or bill of information contained the name of two Mulbahs: one whose full name was given, while the other was only referred to as "Mulbah." At this point, the most important issue before this Honourable Court is, should this Court hold any citizen carrying the name "Mulbah" and found living within the vicinity of informants said property liable since, in fact the other Mulbah cannot be easily identified? This, we believe, in our conclusive opinion will not be in the best interest of the citizens of this country, as we will be punishing innocent citizens merely because they bear the name "Mulbah."

Wherefore and in view of the foregoing, this Honourable Court is of the conclusive opinion that respondent Mulbah Sumo was not originally a party to this suit, and thus cannot be held in contempt since, in fact, he has never been brought under the jurisdiction of this Honourable Court. As to the other respondents, Charlie Nassau, Momo Kollie, Varnie Sobo Mulbah, Koneyon, Mulbah Sargulu, Gafrafleh Gbalah, Karkpeh, Sargulu no. 2, Mr. Moses, all of Konola, Bong County, they are hereby held in contempt and fined the sum of One Hundred ($100.00) Dollars each.

The bill of information is hereby granted as to respondents "Charles Nassau et al.," and denied as to respondent Mulbah Sumo.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment with costs against respondents "Charles Nassau et al." And it is hereby so ordered.

Information granted with modification.

Dennis et al v Philips et al [1973] LRSC 14; 21 LLR 506 (1973) (2 February 1973)

SAMUEL FORD DENNIS, JEANETT DENNISPRATT, and ESTELLA LOUISE DENNIS, heirs of WILMOT F. DENNIS, deceased, Appellants, v. JAMES T.
PHILIPS, JR., RUTH PHILIPS, T. ERNEST EASTMAN, PATRICIA GAYE, MARTHA HOLDER, AUGUSTUS MORRIS, AUGUSTA B. TARPA, and JEANETTE HOWARD-KING,
Appellees.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 13, 1972. Decided February

2, 1973. 1. In the absence of special circumstances, it is the plaintiff who must join as parties all those whom he wishes to bind by the judgment. 2. A judgment ordinarily concludes only those persons made parties to the action, or who intervened therein. 3. In the application of rules of court to any precise state of facts they must be taken with a lively sense of their unexpressed qualifications and their purely operational character, for they are designed to administer, and not hinder, justice. 4. A defendant may move for summary judgment at any time, even after the issues of law have been disposed of. 5. Summary judgment can only be granted when no justiciable material issue of fact is presented to the court. 6. A judge cannot review the judicial acts of his peers; therefore, as in the case presented, a circuit court judge cannot grant a motion for summary judgment after the case has been ruled to trial by another circuit court judge.

Appellants had prevailed in cancellation proceedings, but the appellees were not parties to the suit. Thereafter, an action in ejectment was instituted against them. One circuit court judge had ruled the case to trial by jury of the factual issues. Subsequently, another circuit court judge granted a motion for summary judgment brought by the defendants. An appeal was taken from the judgment. The Supreme Court reversed the judgment and remanded the case to the lower court, pointing

out primarily the appellate function asserted by the judge who overruled the finding of a colleague that justiciable issues had been raised which were to be determined by a jury. Samuel Pelham and Joseph Williamson for appellants. Julia Gibson and James Nagbe for appellees. MR. JUSTICE HENRIES delivered the opinion of the Court. In 1953, Angela Dennis-Brown, one of the heirs of Henry W. Dennis, learned that he, who was also an ancestor of the appellants, apparently died seized of zoo acres of land in Paynesville, Montserrado County. She informed the appellants and together they undertook a resurvey. Thereafter, the family issued quitclaim deeds to one another dividing the aforesaid parcel of land among themselves. The quitclaim deed to Angela Dennis-Brown was dated May 7, 196o. During 1962 and 1963, she sold parcels of land to the appellees out of her portion of land, and appellees began to improve their properties. In 1964, appellants filed cancellation proceedings against Angela Dennis-Brown seeking to cancel the quitclaim deed to her as well as the original warranty deed of their common ancestor, Henry W. Dennis, to the two hundred acres of land already apportioned, on the ground that they were induced to sign the quitclaim deeds upon the fraudulent representations of Angela DennisBrown. The appellants alleged that they inherited the two hundred acres of land as a result of a transfer of title executed in 1910 by Georgiana C. Dennis, sole executrix of the estate of Henry W. Dennis, to appellants' father, Wilmot F. Dennis, who died seized of the property, and not to Henry W. Dennis, as claimed by Angela DennisB rown.

The appellees were never joined in the cancellation suit even though their properties formed part of the parcel of land in dispute. On August 7, 1969, the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, entered a decree cancelling the quitclaim deeds that were issued in 196o. Angela Dennis-Brown appealed, but the appeal was dismissed by the Supreme Court because the appellants failed to file an approved appeal bond and notice of completion of appeal within the statutory time. See Dennis-Brown v. Dennis, [1970] LRSC 49; 20 LLR 96 (1970). The appellants, still not in possession of the property despite the cancellation of the quitclaim deeds, instituted an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit against the appellees, who were not parties to the cancellation proceedings. The appellees contend that the conveyances to them were all made for valuable considerations and without notice of any fraud allegedly perpetrated by their grantor, Angela Dennis-Brown, and, consequently, each of them acquired his respective parcel of land as a bona fide purchaser for value. Pleadings ended with the plaintiffs' reply. Judge James M. T. Kandakai disposed of the issues of law raised in the pleadings and ruled the case to trial by jury on the plaintiffs' complaint and the factual issues raised to the answer. At the second quarterly session of the said court, presided over by Judge Emmanuel S. Koroma, the appellees filed a motion for summary judgment resisted by the appellants, and granted by the trial judge. The appellants excepted to this final judgment, and appealed to this Court praying that the case be remanded. At the outset it was argued by appellants that the appellees were guilty of 'aches and had waived their rights because they failed to intervene in the cancellation proceedings which involved their interests. Appellees on the other hand, averred that it was incumbent upon the

appellants to have made appellees parties to the action and, since this was not done, the decree in the cancellation action is not binding upon them. Both parties relied upon the Civil Procedure Law, L. 1963-64, ch. III. Appellants cited section 561 which deals with intervention, and appellees cited sections 551 and 552 which relate to joinder of parties. It is agreed that because of their interest in the res, and in order to afford complete relief, the appellees could have intervened or could have been joined as defendants, but the statutory provision on intervention is silent as to the effect of failure to intervene, and, under section 552, the effect of failure to join is that "the court may dismiss without prejudice or, when justice requires, proceed in the action without making him a party." Each side

has sought to blame the other, but it is our opinion that the onus rested more on appellants who instituted the action to join appellees, for they knew that Angela Dennis-Brown had sold several portions of the **land** quitclaimed to her. According to 9 AM. JuR., Cancellation of Instruments, § 54, "When instituting a suit for the cancellation of a written instrument, the plaintiff or complainant should join as parties, either plaintiff or defendant according to the nature of their interests, all persons whose privileges may be in any way affected by the granting of the relief he seeks to obtain. Thus all parties to the instrument must be made parties. The judgment or decree in such an action operates in personam, and one who is not a party to the suit cannot be compelled to deliver up an instrument for cancellation." The appellants have not shown conclusively that the cancellation proceedings were so widely known as to have afforded the appellees the opportunity to intervene. While trials of cases in our courts are open to the public, it does not necessarily follow that the public knows of every case that is being heard. We have been unable to

find any authority which makes a judgment binding upon one who was not a party to, or who did not intervene in, an action. On the contrary, the general rule is that a judgment concludes only those persons who were made parties to the action, or who intervened. Tubman v. Murdoch, [1934] LRSC 26; 4 LLR 179 (1934) ; 3o AM. JUR., Judgments, § 73. The cases relied upon by appellants, Savage v. Dennis, i LLR 51 (1871) ; Blunt v. Barbour, 1 LLR 58 (1872) ; McAuley v. Madison, i LLR 287 (1896), and Sinoe v. Nimley, [1965] LRSC 2; 16 LLR 152 (1965), must be confined to the peculiar facts and circumstances involved therein. Since appellees did not come under the jurisdiction of the court which rendered the judgment in the cancellation proceedings, either by service or process or by their voluntary appearance, we must hold, in accordance with the general rule, that the judgment in those proceedings was not conclusive as to them. A plaintiff in ejectment must recover upon the strength of his own title and not upon the weakness of his adversary's title. In the first count of the bill of exceptions, appellants contend that it was error for the trial judge to entertain the motion for summary judgment which was filed and served in violation of Rule 8 of the Revised Rules of the Circuit Court. "Notice of all motions filed shall be given to the other party at least four hours before they are called for hearing, or the motion shall not be entertained by the court upon objections properly taken by opposing party." The motion was served on the appellants when the case was called and, hence, contrary to the requirement of Rule 8. Though the trial judge acknowledged this fact, he did not hear the motion until five days later. Since the reason for the rule is to allow the opposing party time to study and 'resist the motion, we do not find, and appellants did not show, that they were prejudiced by the motion being entertained five days after it was served.

Therefore,
we do not find any error on the part of the judge. The appellants' contention reminds us of the physician who preferred that patients
should die by rule than live contrary to it. While it is true that the rules of court have the force and effect of statutory law,
Howard v. Dunbar, [1961] LRSC 31; 14 LLR 515 (1961) , yet, their purpose is to aid the speedy determination of causes, for the courts are established for the higher purpose of
administering justice. Where the strict enforcement of the rule would tend to prevent or jeopardize the administration of justice
the rule must yield to higher purpose. Pratt v. Phillips, [1949] LRSC 13; 10 LLR 147 (1949) · Rules should not be applied mechanically, for this signifies lack of thought or callousness. In their application to any
precise state of facts they must be taken with a lively sense of their unexpressed qualifications and of their purely operational
character. The next count in the bill of exceptions deals with appellants' contention that under the Civil Procedure Law a motion
for summary judgment is a pre-trial motion and should not have been entertained after the issues of law had been passed upon. (I
I. Time for motion; grounds. A party seeking to recover upon a claim or to obtain a declaratory judgment may, at any time after the
expiration of ten days from the commencement of the action or after service of the answer if the answer is served before the expiration
of such period of ten days or after service of a motion for summary judgment by the adverse party, move with or without supporting
affidavits for a summary judgment in his favor upon all or a part thereof. A party against whom a claim or counterclaim is sought
may, at any time, move with or without supporting affidavits for summary judgment in his favor as to all or a part thereof." L. 1963-64,
ch. III, § 1103. The first sentence of the statute just quoted permits a party seeking to recover on a claim (ordinarily the plain-

tiff) to move for a summary judgment in his favor: ( ) after the expiration of ten days from the commencement
of the action ; (2) after service of the answer if the answer is served within the ten-day period ; or (3) after the service of a
motion for summary judgment by the adverse party, if the motion is served within the ten-day period. While the plaintiff's motion
for summary judgment is restricted by the ten-day rule, it is clear that under the last sentence of paragraph one of the statute,
a defendant (appellees in the case at bar) may move "at any time" for summary judgment in his favor. The reason for this disparity
in treatment of plaintiff and defendant, according to the Liberian Codification Project in its comments in 1961 on the prepared Civil

Procedure Law, since enacted, is that "since the plaintiff in drafting his complaint is supposedly familiar with the basic facts of the case, there is no reason to restrict the time of a motion by the defendant. If he makes the motion before answer and it is granted, he may be saved the burden of preparing a pleading." Under the circumstances, since the statutory provision does not specify the time period before a motion for summary judgment may be made, and since it does permit a defendant to make the motion at any time, we must hold that the motion is not limited to the pretrial stage of the action and, therefore, the trial judge did not err in entertaining it at the time that he did. The appellants contended that the granting of the motion for summary judgment was improper because it denied them the right to a jury trial which they were entitled to, because an action of ejectment involves questions of law and facts, and because it tended to reverse and set aside the ruling on the issues of law made by a judge of concurrent jurisdiction. While it is true that in ejectment mixed question of law and fact are usually presented, Harris v. Locket, r LLR 79 (1875), and hence, must be tried by a jury under the direction of the court, yet, where in a case, as in Roberts v. Howard, 2 LLR 226 (1916),

the facts are admitted, leaving only issues of law to be determined, it is not error for the court to hear and determine them, without the intervention of a jury. Judge Kandakai, in his ruling on the issues of law, overruled, or more correctly, ignored all of the legal issues raised in the answer and reply, and ruled the case to trial on the complaint and the factual issues raised in the answer. A careful scrutiny of the pleadings shows that they did raise several questions of fact, particularly those relating to fraud and the plaintiffs' supposed knowledge of the defendants' acquisition of the title to their parcel of land, and whether or not defendants were really bona fled purchasers without notice. According to the Civil Procedure Law, supra, the court must grant summary judgment if it concludes that there is "no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law." §I1o3 (3). Thus, a motion for summary judgment is properly granted only where no bona fide issue of f acts exists. Therefore, the trial judge must exercise extreme care in determining whether or not a motion for summary judgment should be granted. Although the purpose of the procedure is to achieve speedy and economical justice, where the judgment is improvidently granted it is productive of injustice and waste. The fact that the appellants did not specifically demand a jury trial, as required by section 2201 of the Civil Procedure Law, is of little import since the judge in his ruling on the issues of law had already ruled the factual issues to trial by jury. Since genuine issues of fact did exist in the pleadings, we must hold that the granting of the motion for summary judgment did deprive the appellants of their constitutional right to a jury trial. In the light of this holding, the questions of whether the rights of bona fide purchasers for value without notice can be affected by fraud allegedly committed by their grantor, and whether appellants were negligent in making it pos-

sible for appellees to be misled, must be held in abeyance, pending a jury's determination of whether the
alleged fraud and negligence did exist, and whether appellees did purchase without notice. It is obvious that the granting of the
summary judgment by Judge Koroma did have the effect of reviewing Judge Kandakai who, having concurrent jurisdiction with Judge Koroma,
had earlier disposed of the issues of law. Where Judge Kandakai had ruled the questions of fact to trial by jury, Judge Koroma's
granting of the motion had in effect taken the case away from the jury,
despite the presence of genuine issues as to material facts,
and awarded judgment as a matter of law. This Court has consistently held in a long line of cases that because all circuit judges
have concurrent jurisdiction one circuit judge cannot review, modify, or rescind any decision or ruling of another circuit judge.
Bracewell v. Coleman, [1938] LRSC 3; 6 LLR 176 (1938) Gage v. Pratt, [1938] LRSC 11; 6 LLR 246 (1938) ; Republic v. Aggrey, 13 LLR 469 (196o) ; Kanawaty v. King, [1960] LRSC 66; 14 LLR 241 (196o). Under the
circumstances, we also hold that Judge Koroma erred when, by granting the motion for summary judgment, he altered
or interfered with the ruling of Judge Kandakai. In view of the foregoing, the judgment of the court below is hereby reversed and
the case is remanded for a new trial. Costs to abide final determination.
Reversed and remanded.

Horace v Harris [1947] LRSC 14; 9 LLR 372 (1947) (9 May 1947)

SANDY FORD HORACE, Appellant, v. SARAH V. HARRIS, by her Husband S. ALFRED P. HARRIS, Appellee.
APPEAL FROM THE CIRCUIT COURT OF
THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 9, 20, 1947. Decided May 9, 1947. 1. Under our practice the party filing
the last pleading is entitled to move the court first on any legal defect in the pleading of his adversary. 2. A party is not permitted
to move the court with reference to any legal defect in the pleadings of his adversary to which the attention of the court will not
have been previously called by some regular pleading. 3. In ejectment the plaintiff must show a legal and not merely an equitable
title to the property in dispute.

On appeal from decision in favor of plaintiff in action of ejectment, judgment reversed and remanded.
B. G. Freeman for appellant. A. B. Ricks for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court. Upon the hearing

of the records in this case certified to us, there vividly appeared to us so many irregularities and inconsistencies during the trial in the court below and such a gross travesty of justice committed by His Honor Emmanuel W. Williams, the judge resident and presiding in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, that questions were directed to Counsellor A. B. Ricks, counsel for appellee, as to whether or not he considered the judgment resulting from said trial a fit subject for reversal with an order for the remand of the case for a legal and proper trial. It would seem as if said counsel were under the influence of his client for he hesitated taking a definite position in the

matter, notwithstanding his concession of the irregularity of the trial. Practicing lawyers are warned not to allow their clients to lead and direct them in the conduct of cases, since such clients invariably are not specialists in the science of the law and do not know how causes should be properly conducted. The lawyers are to correctly and properly advise their clients as to the true course for adoption and there should be no hesitation at all in doing this. A lawyer should be unwilling to further prosecute or defend a client's cause or interest where such client is unwilling to abide by his suggestions and advice. To adopt a contrary procedure would be lowering the prestige and dignity of the profession.

It is hoped that this warning will be seriously taken. We will now point out some of the irregularities and inconsistencies shown in the records. Sarah V. Harris, through her husband, S. Alfred P. Harris, entered an action of ejectment against Sandy Ford Horace for a parcel of **land in the settlement of Bensonville designated as lot Number 12 containing five acres of land**, which she, the plaintiff, claimed that defendant was in possession of and was unlawfully withholding. Along with her complaint, she made profert of a deed from Nancy Goodridge which she alleged gave her title to said parcel of **land**. The defendant appeared and, answering the complaint of plaintiff, denied being in possession of a parcel of **land** containing five acres of the property of plaintiff and designated as lot Number 12. Defendant submitted that he is truly in possession of a certain parcel of **land** in the same settlement of Bensonville also designated as lot Number 12 and containing ten acres of **land**, but obviously in a different location from the alleged five acres of the plaintiff. Defendant's **land** was alleged to have been bought from Eliza Carver. There were other issues raised in said answer. The pleadings rested with this answer of the defendant. However, when the case came up for trial before Judge

Williams, the plaintiff, who had not made a reply to the answer of the defendant which would have constituted her last pleading, was allowed by the court to interpose a motion to dismiss the defendant's answer upon alleged defects therein. The said motion was

both entertained and sustained over the rigid resistance of the defendant. It is inconceivable how a counsellor practicing in our courts found himself in the position of submitting such a motion in the manner done and with the surrounding circumstances. The judge's ruling sustaining the motion ruled the answer of the defendant out, particularly, "that part of it that refers to the unprobated copy of the deed."

This certainly left the defendant in the unfortunate position of being compelled to rest his defense upon the bare denial of the facts stated in the complaint of the plaintiff. This position of the plaintiff below, now appellee, which was sustained by the trial judge, does not find support in our practice, for the Court has repeatedly held that the party filing the last pleading is entitled to move the court first on any legal defect in the pleadings of his adversary. Gould v. Gould, 1 L.L.R. 389 (1903). It is not contemplated that parties are to be allowed to move the court on any legal defect in the pleadings of their adversaries to which the attention of the court will not have been previously called by some regular pleading. The granting of this motion, by the trial judge especially in face of the strong resistance made, was irregular and erroneous. This erroneous ruling of the trial judge which left the defendant with a bare denial created such an irreparable injury to his defense that it permeated the whole trial.

For, if the answer of the defendant had not been ruled out as it was, said defendant would have been able to stand on the forceful allegation of facts set out in said answer. In such a case, the trial court would have been confronted with a consideration of the issue of whether or not the five acres of land claimed by the plaintiff is a

portion of the ten acres which defendant claimed and which defendant said he bought from Eliza Carver. In this case it seems to this Court that the employment of a surveyor would have been necessary in the determination of the issue. It is, therefore, not clear how the trial judge under these circumstances was able to direct a verdict for the plaintiff as he did ; for whilst it might be conceded that plaintiff is possessed of the five acres of land which she bought from Nancy Goodridge, which statement has not been attacked, yet there is no evidence on record that the defendant was in possession of the identical parcel of land and also was unlawfully withholding it from plaintiff. In ejectment proceedings "plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's title." Bingham v. Oliver, r L.L.R. 47, 49 (187o) ; Savage v. Dennis, r L.L.R. sr (1871). In ejectment the plaintiff must show a legal and not merely an equitable title to the property in dispute; the weakness of the defendant's title alone will not enable plaintiff to recover. Birch v. Quinn, 1 L.L.R. 309 (1897) ; Reeves v. Hyder, 1 L.L.R. 271 (1895). In view of these and many other irregularities and inconsistencies not pointed out, we have no alternative but to reverse the judgment of the lower court as well as its irregular and inconsistent ruling dismissing the answer in the absence of a reply attacking it; and to remand the case for trial de novo. Costs of these proceedings are to abide final determination; and it is hereby

so ordered. Reversed.

Ketter v Jones et al [2002] LRSC 8; 41 LLR 81 (2002) (14 June 2002)

M. ALEXANDER KETTER, by and thru his Attorney-In-Fact, FRANCIS A. DENNIS, JR., Appellant, *v.* MR. and MRS. WILLIE F. JONES, 1st Appellees, MS. ORETHA WHONDAY and MR. QUARIQMAY, 2nd Appellees, and MR. and MRS. MOSES VAH KPANNEH, 3rd Appellees.

APPEAL FROM THE RULING OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 20, 2002. Decided: June 14, 2002.

1. A judge is charged with the responsibility of passing on issues of law and the jury that of passing on issues of fact, except as otherwise provided by law.
2. The disposition of law issues is the sole responsibility of a trial judge but it is the function of the jury, as the triers of the facts, to hear and decide the factual issues upon evidence adduced at the trial.
3. The question of fact, subsequent to the disposition of law issues by the trial judge, ought to be determined by evidence presented by both parties in support of the allegations contained in their pleadings.
4. All documentary evidence which is material to the issues of fact raised in the pleadings should be submitted to the jury.
5. A trial judge must adhere to the well settled principle that all issues of law must be decided before any questions of fact can properly go to a jury for trial.
6. An action of ejectment involved both issues of law and fact, and as such a judge is legally bound to hear evidence in the case to enable him to decide with certainty the matter in dispute.
7. A trial judge invades the province and usurps the functions of the trial jury in determining the factual issues in a case during the disposition of the law issues, and without presenting the question to the jury for determination.
8. It is erroneous for a trial judge, during the disposition of the law issues to base his ruling on the law issues upon documents which have not been formally admitted into evidence by the court to form a cogent part of the records in the case.

The appellant appealed the ruling of the trial judge dis-missing the complaint, the answer, the reply, and the action of ejectment while disposing of the issues of law. The trial judge had used as the basis for the dismissal that the documents relied on by the parties were misleading and ambiguous. The appellant contended that because the action of ejectment contained both issues of law and fact, the trial judge had erred in dismissing the action and relying on documents which had not been testified to, identified, and admitted into evidence as a basis for the dismissal, rather than submitting the case to the jury for trial.
The Supreme Court agreed with the contention of the appellant, holding that the judge had acted in error in dismissing the case on the strength of documentary evidence which had not been passed on or submitted to a jury trial. The Court opined that the responsibility of the judge was to dispose of the law issues and that disposition of issues of fact was for the jury; and that the trial judge had usurped the province of the jury when, in disposing of matters of fact, he had determined that the documents were misleading and doubtful, such determination being strictly for the jury. The Court noted that actions of ejectment contained mixed issues of law and fact and that the trial judge should therefore have forwarded the matter for a jury trial rather than dismissing in on the documents pleaded by the parties. On the basis of the foregoing, the Court *reversed* the ruling of the trial court, rein-stated the pleadings of the parties, and ordered a new hearing.

M Kron Yangbe of Cooper & Togbah appeared for appellant. *Joseph H. Constance* of Greene & Associate appeared for appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court

This case is before us on an appeal from the ruling of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, dismissing appellant's action of ejectment on the disposition of law issues. The single question to be resolved by this Court is whether or not the trial judge erred in dismissing the appellant's action of ejectment on the disposition of law issues without the aid of a jury to hear and determine the factual issues in the case.

The facts, as culled from the certified records transmitted to this Court, are as follow: On the 16th day of November, A. D. 1999, the appellant herein, M. Alexander Ketter, by and thru his attorney-in-fact, Francis Dennis, instituted an action of ejectment against the appellees. In count two of his six-count complaint, the appellant claimed ownership to a parcel of **land** containing two (2) acres, which he acquired from the Republic of Liberia through its Commissioner of Public Lands, J. C. N. Howard. The records show that the public **land sale deed for the mentioned land** was signed by the late President William V.S. Tubman on the 19th day of December, A. D. 1963, probated on the 24th day of January, A. D. 1967, and registered in Volume 88-F, at page 397 of the Registry for Montserrado County. In counts 3,4, and 5 of the complaint, the appellant alleged that the defendants had illegally entered upon his

property, withheld said property from him, and began constructing and planting thereon despite several attempts to resolve the matter. The appellant alleged in count 6 of his complaint that he had suffered embarrassment, inconvenience, and the loss of his property. He prayed the trial court to evict, oust and eject the appellees from the property and to award him general damages for wrongful and illegal occupancy of the premises.

On the 26th day of November, A. D. 1999, the appellees filed a four-count answer which was withdrawn and an eight-count amended answer filed in its stead on the 3rd day of July, A. D. 2000. In count 2 of their amended answer, the appellees contended that J. C. N. Howard only served the Republic of Liberia from 1950-1980 as the third Township Commissioner for Paynesville, but never served as **land** commissioner as would have authorized him to execute the public **land** sale deed signed by the Late President Tubman on December 19, 1963. In counts 3 and 6 of the amended answer, the appellees claimed the property by virtue of their deeds, as well as their mother deed of December 20, 1957. They alleged in count 5 of the amended answer that William Ketter was the **land** commissioner for Montserrado County from 1950-1975, and that it was impossible for J. C. N. Howard to have signed a deed as **land** commissioner. The appellees therefore prayed the trial court to dismiss the appellant's complaint.

On the 13th day of July, A. D. 2000, the appellant filed a twenty-three count reply which also attacked appellees' mother deed as being ambiguous, as well as the failure of the appellees to establish their claim of title to the property.

On the 17th day of August, A. D. 2000, His Honour Emmanuel M. Kollie, assigned circuit judge presiding over the June, A. D. 2000 term of the trial court, disposed of the law issues and dismissed the appellees' answer, the appel-lant's complaint and reply, and his ejectment suit, without prejudice to either party. The judge noted as the reason that the documents were misleading and doubtful. The appellant excepted to the ruling and appealed to this Court upon a three-count bill of exceptions. We deem only count 1 to be relevant for the determination of this case. In that count, the appellant alleged that the trial judge, in disposing of the law issues, had also decided the documentary evidence without the aid of a jury.

In his argument before this Court, the appellant contended that the trail judge passed on the factual issues in his ruling on the law issues, and dismissed his cause without the aid of a jury. The appellees, for their part, argued that the appellant did not establish that title was legally vested in him in order to oust, evict and eject them from the property, since J. C. N. Howard, who allegedly executed appellant's public **land** sale deed, never served the Republic as **Land** Commissioner for Montserrado County at the time the deed was said to have been executed.

This Court observes that the trial judge dismissed the appellees' amended answer, the appellant's complaint and reply, and the entire ejectment proceeding on the ground that the instruments or deeds annexed to the pleadings of both parties were misleading, ambiguous and doubtful, rather than submitting the documentary evidence to the jury to determine their validity and credibility. In *Dagber v. Molley*, [1978] LRSC 6; 26 LLR 422 (1978), text at 427, this Court held that "a judge is charged with the responsibility of passing on issues of law and the jury that of passing on issues of facts ...."

The disposition of law issues is the sole responsibility of a trial judge, but it is the function of a jury, as the trier of facts, to hear and decide the factual issues upon evidence adduced at a trial. It

is improper for a trial judge to constitute himself as the sole judge of factual issues in matters which should properly be determined by a jury. *Lartey v. Corneh*, [1967] LRSC 20; 18 LLR 177 (1967). The questions of fact, which were to be disposed of subsequent to the disposition of law issues by the trial judge, should therefore have been determined by evidence presented to the jury by both parties in support of the allegations contained in their pleadings. *King v. The International Trust Company of Liberia,* 20 LLR438 (1971).

It is an elementary principle of law, practice, and proce-dure in this jurisdiction that all documentary evidence which is material to the issues of fact raised in the pleadings, as in the instant case, should be submitted to the jury. *Walker v, Morris[1963] LRSC 42; ,* 15 LLR 424 (1963). We perceive of no legal reasons upon which the trial judge ignored, failed and neglected to adhere to the well settled principle in this jurisdiction that all issues of law must be decided before any questions of fact can properly go to a jury for trial. *Watson v. Oost Afrikaansche Compagnie,* 13 LLR 94 (1957).

An action of ejectment involves mix issues of law and fact. As such, the trial judge was legally bound to hear evidence in the case to enable him to decide with certainty this matter in dispute. *Pelham v. Pelham,* 4 LLR 56 (1934). We hold that the trial judge invaded the province and usurped the functions of the trial jury when he determined the factual issues in this case during disposition of the law issues without presenting the questions of fact to the jury for its determination. It was also erroneous for the trial judge to base his ruling on law issues upon documents which had not been formally admitted into evidence by the trial court to form a cogent part of the records in the case. *Dauber v. Molley,* supra.

Wherefore, and in view of the foregoing facts which we have narrated, and the laws cited herein, it is our considered opinion that the ruling of the trial judge dismissing the pleadings of the parties and the appellant's action of ejectment is hereby reversed. The pleadings of both parties are hereby re-instated and the case is remanded for a trial on its merits, commencing with the disposition of the law issues. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and to proceed with its hearing in conformity with this opinion. Costs are to abide the final determination of the case. And it is hereby so ordered.

Ruling reversed; case remanded.

Harris-Worjroh v Harris II et al [1954] LRSC 4; 11 LLR 386 (1954) (22 January 1954)

KETURAH FISKE, RACHEL F. WILLIAMS, by her Husband, AARON D. WILLIAMS, SARAH E. LEWIS, by her Husband, CHARLES LEWIS, Surviving Heirs of the Late ELLA VICTORIA FISKE, and JULIU.S CAESAR, Appellants, v. SARAH ANN ARTIS, formerly UREY, J. T. H. ROSE, SAMUEL BROWN, and E. Y. NIMLEY, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued April 14,
15, 1953. Decided May 29, 1953. 1. Where the trial judge in an injunction action, wherein no issue of title was raised by the pleadings, ruled that determination of title to real property constituted the main issue, and dissolved the injunction, it was proper for appellants, plaintiffs below, to except to the ruling and appeal to the Supreme Court. 2. An issue not raised by the pleadings may not properly be adjudicated. 3. The issue of title is foreign to an action of injunction. 4. The respective natures of an injunction action and an ejectment action are so distinct that the two forms of action cannot be combined or blended.

Appellants sought to enjoin appellees from leasing real property to which appellants claimed title pending the outcome of an ejectment action previously instituted in the circuit court. The lower court held that the injunction action involved title to real property, which could not be decided in such a proceeding, and therefore dissolved the injunction, although no issue of title had been raised by the pleadings. Appellants excepted to the ruling and appealed to the Supreme Court. On appeal, ruling reversed and injunction perpetuated.

L. Morgan for appellants.
appellees.

Richard A. Henries for

MR. JUSTICE REEVES delivered the opinion of the Court.

The appellants instituted an injunction proceeding against the appellees, alleging that the appellants owned a tract of land, therein described, situated in the township of Owensgrove, Grand Bassa County, with dwelling houses thereon, and that Sarah Ann Artis, formerly Urey, one of the appellees, intended to lease the said property to J. T. Rose and the other appellees, and to receive from them a yearly lease of three hundred dollars which the said appellees ought not to do since the property aforesaid belonged to the appellants. They therefore prayed that the aforesaid appellees be enjoined therefrom pending determination of an action of ejectment previously instituted in the Circuit Court of the Second Judicial Circuit. In an amended answer the appellees set forth three defenses as follows : r. The complaint was defective for non-joinder of parties-appellees, since one of the appellees, Albert D. Peabody, who held title to three-quarters of an acre of land within the said tract of land was not named as one of the parties-appellees. 2. The complaint did not refer to a piece of land formerly owned by Sarah Ann Artis, an appellee under whom the other appellees held title. 3. The appellants not having held title to land described by appellees, and the same not being the land claimed by appellants, they cannot enjoin and legally restrain the said appellees in the use of this land. The appellants filed a reply to the amended answer, raising

the following issues : 1. The appellees improperly filed an amended answer without withdrawing their first answer, since the document filed, entitled : "Former Withdrawal," was addressed to the August term of Court which had then terminated. 2. Albert D. Peabody was not a necessary party to the injunction action, as he had not participated in the

acts which the injunction was aimed to prevent. 3. The land set out in the answer was the same referred to in the complaint. 4.. Although the said Albert Peabody's deed referred to land in Grand Bassa, it was probated in Marshall for the sole purpose of withholding such notice to the public as the probation of deeds is meant to provide, and the appellees should not be permitted to benefit from this attempted deception. The issues raised by the pleadings were tried before Judge J. Dossen Richards, assigned to the Circuit Court of the Second Judicial Circuit, who deemed it necessary to consider only the following two issues: I. The issue of non-joinder of parties raised by the appellees in their answer. This issue was decided in favor of the appellants. 2. Whether the main issue in the case was one involving real property. In deciding this issue in favor of the appellees, the learned circuit judge wrote : "The main point in the case being an issue involving title to real property, we are of the opinion that the plaintiffs must first have their right or title settled and established at law in order to justify the interposition of a court of equity. There are a few other points raised in the pleadings, but we do not consider them of sufficient legal importance or merit to dilate on here. In view of the foregoing we are of the opinion that the injunction should be dissolved with costs against plaintiffs." From the above-quoted ruling the appellants properly excepted and prayed an appeal to this Court. That the judge of the lower court flagrantly erred in making this ruling is beyond dispute. Since actions involving title to property are possessory actions, and actions of injunction are prohibitive actions, they are distinct in character. The issue of title is foreign to the instant action. More-

over, it is settled law that the courts will decide only such issues as are joined between the parties and set forth in the pleadings. For the purpose of clarifying the issues herein we quote from American Jurisprudence as to the definition and purpose of ejectment : "In a general way, it may be said that ejectment is a form of action in which the right of possession to corporeal hereditaments may be tried and the possession obtained. In some states it is defined by Statute as 'an action to recover the immediate possession of real property.' At common law ejectment is a purely possessory action ; and even as modified by statute, and though based upon title, it is essentially of that nature. The

action may doubtless involve both the right of possession and the right of property, and in at least one jurisdiction it has been said to be the proper, if not the only, mode of trying a title to lands. But the true purpose of the remedy is to obtain the actual physical possession of specific real property, . . ." 18 Am. Jur. 7-8, Ejectment, § 2. From Corpus Juris we quote the following definition of a preliminary injunction, such as the injunction in the present case : "An interlocutory or preliminary injunction is a provisional remedy granted before a hearing on the merits, and its sole object is to preserve the subject in controversy in its then existing condition, and without determining any question of right, merely to prevent a further perpetration of wrong or the doing of any act whereby the fights in controversy may be materially injured or endangered, until a full and deliberate investigation of the case is afforded to the party." 32 C. J. 20, Injunctions, § 32. It follows that the nature of an injunction action is distinct from the nature of an ejectment action. The two actions cannot be combined or blended; and the court be-

low erred in attempting to do so. The ruling of the lower court is therefore reversed, and the injunction as prayed for is perpetuated. Costs are ruled against appellees; and it is hereby so ordered.
Reversed.

Kromah v Hall et al [1996] LRSC 17; 38 LLR 287 (1996) (27 September 1996)

NATHANIEL KROMAH, Plaintiff-In-Error, v. **HIS HONOUR SEBRON HALL**, Assigned Circuit Judge, Sixth Judicial Circuit, September Term, A. D. 1995, and **WILLIAM B. THOMAS**, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR FROM A FINAL JUDGMENT OF THE SIXTH JUDICIAL CIRCUIT COURT, MONTSERRADO COUNTY.

Heard: September 11, 1996. Decided: September 27, 1996.

1. Since appearance in a case may be made by motion and not only by the filing of an answer, once an appearance has been made, the party is entitled to notice of every action to be taken in that case, including notice of assignment for disposition of law issues and notice of assignment for trial.

2. A party who has made an appearance in a case and is not notified by assignment of the day and time of the trial of the case has been denied his day in court and the writ of error will issue to reverse the judgment obtained and grant a new trial in such case.

3. Where a party has made his appearance, he is entitled to notice of assignment for the rendition of final judgment; and even where he is absent from said final judgment, after being duly notified, he is entitled to the appointment of counsel to take the final judgment on his behalf so as to preserve his right of appeal. Failure of the trial court to either notify such party of the rendition of the final judgment or to appoint counsel to take the final judgment is ground for the issuance of a writ of error, reversing the final judgment and granting a new trial.

Plaintiff-in-error was the defendant in an action of ejectment filed by Co-defendant-in-error William B. Thomas in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Plaintiff-in-error did not file an answer but did file a motion to vacate the injunction which defendant-in-error had obtained. Without disposing of that motion or the disposition of the issues of law, the trial court proceeded to try the case. No notice of assignment was served on plaintiff-in-error for the trial. Notwithstanding, his warranty deed for four lots of **land** from the same persons who were grantors for co-defendant-in-error was admitted into evidence. Also at the trial, instead of co-defendant-in-error bringing in some of his grantors as witnesses, since these same grantors were alleged to be plaintiff-in-error's grantors, only co-defendant-in-error and another witness testified. The evidence also showed that a board of surveyors was appointed by the court to investigate the metes and bounds of the two deeds and they made their report; yet, in his final judgment, the judge made no reference to that report.

At the time of rendition of final judgment, no notice of assignment was issued for plaintiff-in-error to appear and no lawyer was appointed by the court to take the final judgment on behalf of plaintiff-in-error.

Plaintiff-in-error therefore petitioned the Supreme Court for a the writ of error, claiming that he had been denied his day in court by not being served with a notice of assignment for the trial of the case; that he had been denied the opportunity of an appeal by not being served with notice of assignment for the rendition of the final judgment or the appointment of counsel to take the judgment in his absence; and that several errors and irregularities had occurred at the trial, especially that allegations of facts were not covered by the final judgment.

The Supreme Court sustained the contention of plaintiff-in-error that he was entitled to a notice of assignment for the trial and that the failure of the trial court to serve him with such notice was tantamount to a denial of his day in court. The Supreme Court also sustained the contention of plaintiff-in-error that he had been denied the opportunity of an appeal by not being served with a notice of assignment for rendition of the final judgment and by the court not appointing counsel to take the judgment for him. For these reasons, the writ of error was granted and the final judgment reversed with instructions that the parties replead.

Wynston O. Henries appeared for plaintiff-in-error. J. D. Baryougar Junius appeared for defendants-in-error.

MR. JUSTICE YANCY delivered the opinion of the Court.

This petition for a writ of error grows out of an action of ejectment instituted in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Republic of Liberia, by William B. Thomas, co-defendant-in-error, against Nathaniel Kromah, plaintiff-in-error in this proceeding. The ejectment suit was instituted on the 11thday of May, A. D. 1995, to recover a parcel of **land** , which defendant-in-error alleged that he purchased from five (5) owners, namely, Henry Gbah, John Clark, Mary J. Gono, Dewey Dennis, and Flamah Saymelay

Up to May 23rd , 1995 plaintiff-in-error, as defendant in the trial court, had not filed an answer. The records, however, contain a motion filed by him, praying for a modification or vacating of an injunction suit, which had been filed by defendant-in-error as an ancillary action to the ejectment suit. The motion was filed on the 1st day of June, A. D. 1995; but there is no record of its disposition by the trial court.

Both counsels being present in court on the 12th day of October, 1995, the trial judge ordered the assignment of the ejectment suit for a hearing on October 19, 1995 at 2:00 o'clock p.m. On the appointed date and at the designated time, counsel for defendant-in-error was present, but neither plaintiff-in-error or his counsel was present. Counsel for defendant-in-error therefore invoked Rule 28 of the Circuit Court Revised Rules (1972), which provides that where a party fails to appear for disposition of law issues, the trial judge may dispose of the law issues in the absence of such party. Since plaintiff-in-error had failed to file an answer and also failed to appear in court in keeping with the assignment, the application of defendant-in-error was granted and the ejectment suit ruled to trial as there was no contentious issue of law to be disposed of in the absence of an answer. Thereafter, the case was assigned for trial by jury on November 17t h, 1995.

On the 17th day of November, A. D. 1995 when the ejectment case was called for trial, plaintiff-in-error and his counsel were absent; and this time, counsel for defendant-in-error invoked Rule 7 of the Circuit Court Revised Rules (1972) and section 42.1 of the Civil Procedure Law, Rev. Code, and requested the trial judge to enter a default judgment against plaintiff-in-error and allow defendant-in-error to perfect the judgment by presenting his evidence to the jury. The application being consistent with law, the trial judge granted it.

Defendant-in-error thereupon complied with the procedure and perfected the default judgment through the presentation of evidence. On the 2 Pt day of November, 1995 a final judgment was rendered by the trial judge in favor of the defendant-in-error.

The records of the trial court reveal that only the defendant-in-error and his witness, Samuel D. Johnson, were qualified and testified. Not one of the five (5) persons, who allegedly sold the **land** to defendant-in-error testified. Furthermore, in the records forwarded to this Court, there is a deed in favour of each of the parties to the ejectment suit; and the grantors on both deeds are the identical five owners, namely, Henry Gbah, John Clark, Mary J. Gbono, Dewey Dennis and Flamah Saymanley.

The deed for the defendant-in-error was executed on the 12th day of October, 1982; but it was not probated until the 24t h day of May, 1989. On the other hand, the deed for plaintiff-in-error was executed on the 20t h day of March, 1989 and was probated on the 2' day of February, 1995. This means that both deeds were probated long after the statutory period of four

(4) months as of the date of execution of each deed.

The deed for defendant-in-error provides for one lot of **land**; the deed for plaintiff-in-error provides for four lots of **land** or one acre.

As was mentioned before, both parties obtained warranty deeds from the identical grantors; yet, defendant-in-error in proving his case at the trial court, failed and neglected to call any of the five grantors to testify.

From the descriptions appearing on the face of the deed for defendant-in-error, the metes and bounds start with the following language:

"Commencing from the Southeastern corner of the adjoining parcel of **land** owned by S. W. Williams then running South 68 degrees 33 minutes and 32 seconds West ..."

From the description appearing on the face of the deed for plaintiff-in-error, the metes and bounds start with the following language:

"Commencing at the Northeastern corner of a parcel. of **land** marked with the initials, M. L., thence running on magnetic bearings North 50 degrees West ..."

The Court observes a disparity in the bearings because the lines differ in degrees and are not parallel. The Court also observes that even if defendant-in-error's one lot of **land** is entirely situated within plaintiff-in-error's four lots, based on the metes and bounds stated in both deed, the surveys seem to be defective.

From the record, there is a memorandum, dated August 7, 1995, containing report of a Survey Board of Arbitration, marked "Exhibit PK 3" and apparently offered in evidence by the defendant-in-error; but the trial judge failed to pass upon this report in his final judgment of November 21, 1995.

Plaintiff-in-error submitted that there was no notice of assignment for the rendition of the final judgment on November 21, 1995; and a thorough review of the record does not show any notice of assignment for the rendition of the final judgment. Further, the plaintiff-in-error alleged, and supported by a certificate and an affidavit issued by Counsellor James Jones, that he, Counsellor James Jones, was never appointed by the trial judge to take the final judgment in the absence of plaintiff-in-error and his counsel, as is required by law; hence there was no exception to and announcement of an appeal from the final judgment.

Since the records of the trial court state that Counsellor James Jones was appointed to take the final judgment and that Counsellor James Jones had issued a certificate and an affidavit contrary

to the records, it was incumbent on defendant-in-error to rebut the allegations or discredit the certificate and the affidavit of Counsellor Jones; but the defendant-in-error did not do so. This leaves this Court with no alternative but to conclude that the allegation of the plaintiff-in-error that no counsel was appointed by the trial court to take the final judgment for him is well founded.

Before proceeding further, let us review the petition, returns, and briefs submitted by counsel of the parties.

Plaintiff-in-error alleged in his petition for the writ of error, as follows:

1. He did not have his day in court because no notice of assignment was served on him or his counsel for the trial; that he was never present for the trial or at the rendition of final judgment; and that notwithstanding his absence at the rendition of final judgment, no counsel was appointed by the trial judge to take the final judgment on his behalf. A certificate of Counsellor James Jones, disclaiming that he was appointed by the trial judge on November 21, 1995 to take said final judgment, was marked Exhibit "C" and made profert to the petition.

2. That a motion to vacate the injunction, which was ancillary to the main ejectment suit, was filed by plaintiff-in-error at the trial court; but that the said motion has not been heard.

3.That the Surveyors' Report was received and passed upon by the trial judge without any notice to plaintiff-in-error; and when he finally obtained a copy thereof after the rendition of the final judgment, several irregularities and errors were discovered.

4. That several allegations of facts in the pleadings were not covered by the final judgment; but as the final judgment was rendered in his absence, without prior notice to him and without the trial court's appointment of counsel to take the final judgment for him, plaintiff-in-error claimed that he was deprived of the opportunity to move the trial court for a retrial in keeping with statutes made and provided.

The defendant-in-error, in his consolidated returns/brief traversing the petition of the plaintiff-in-error, alleged in substance that:

1. He is the bonafide owner of a lot of **land**, described in count one (1) of the returns/brief which the plaintiff-in-error, defendant in the ejectment action, is illegally and wrongfully occupying;

2. All efforts to have plaintiff-in-error meet with defendant-in-error in connection with said **land** matter through a conference have failed;

3. After several notices of assignment, plaintiff-in-error failed to appear; hence application for a default judgment against him was prayed for, granted and made perfect. Upon assignment of the matter for final judgment on 21" November, 1995, plaintiff-in-error again failed to appear.

We will consider the allegations and contentions of the petition and returns in the reverse order. First, there is no notice of assignment in the record before us for the handing down of the final judgment on November 21, 1995. Further, there is an affidavit of service executed by Counsellor Jones on 10thJanuary, 1996, disclaiming ever being in the Civil Law Court on November 21, 1995 and hence he was never designated or appointed by the trial judge, His Honour Sebron Hall, to take that final judgment in the ejectment suit between plaintiff-in-error and defendant-in-error. Defendant-in-error failed to traverse this allegation or deny the validity or truthfulness of the said affidavit of Counsellor Jones in his returns/brief; hence, the Court deems the affidavit to be true.

The Court therefore says that the failure of plaintiff-in-error to have filed a motion for new trial, according to the record, is justified on grounds of lack of notice and the failure and neglect of the trial court to appoint a counsel to take the final judgment on behalf of plaintiff-in-error is a reversible error.

The trial judge, in his final judgment of November 21, 1995, did not pass on the injunction, the bond of the plaintiff-in-error, or the report of the surveyors, all of which seemingly were admitted into evidence as appears from marks of identification (Exhibit "PK/3" in bulk) placed thereon by the clerk of the trial court, confirmed and reconfirmed. Also, the record of the trial court shows two (2) warranty deeds from the identical five (5) grantors, D. Henry Gbah, John Clark, Mary J, Gbono, Dewey Dennis and Flamah Saymanley to each of the parties to this action; and both deeds were identified and confirmed. Yet the record shows that no answer was filed by plaintiff-in-error.

The Court is confused as to how a warranty deed in favor of plaintiff-in-error gained admittance into the records of the trial court and no reference is made to it in the final judgment. More than this, as stated earlier, at the trial, only defendant-in-error and his witness, Samuel D. Johnson, testified. Not a single grantor was brought as a witness to testify even though there were two deeds from the same five grantors to the parties to this suit. (See final judgment, minutes of court, Sixth Judicial Circuit, September Term, A. D. 1995, Thursday, November 21, 1995, sheet eleven, paragraph five).

On the matter of the remedial writ of error, the Civil Procedure Law empowers the Supreme Court to call up for review a judgment of an inferior court of record from which an appeal was not announced on rendition of said judgment. Rev. Code 1: 16.21(4). Section 16.24, subsections 1, 2 and 3 of the Civil Procedure Law also sets forth the requirements for the remedial writ of error and the procedure for obtaining said relief. Civil Procedure Law, Rev. Code 1: 16.24(1)(2)(3). To the mind of this Court, plaintiff-in-error has complied fully with these procedural guidelines.

Moreover, Section 16.24, subsection 4 of the Civil Procedure Law, provides that the Supreme Court, after hearing a matter involving a petition for a writ of error, may grant such judgment as it may grant on an appeal.

Given the errors and irregularities identified above, it is clear that the ejectment suit was not properly tried at the court below. The law is that the writ of error shall be granted when an

inferior tribunal has denied a litigant his day in court. Teewia v. Urey and Sokan, [1978] LRSC 27; 27 LLR 91 (1978). There is ample evidence, already referred to above, showing that plaintiff-in-error was denied his day in court. It is also the law that the writ of error will issue to a party who, for good reason, has failed to take an appeal from a judgment, decree, or order of a trial court or who has lost his right of statutory appeal without laches on his part. Brown Boveri Cie, AG. v. Lewis et al.[1977] LRSC 33; , 26 LLR 170 (1977). Again there is ample evidence that plaintiff-in-error did not take an appeal through no fault of his but because the trial court failed to notify him of the date for rendition of the final judgment and to appoint a counsel to take the final judgment on his behalf.

In addition to these errors and irregularities, this Court observed that there was no record of a ruling on the law issues in the case, even though by both statute and procedure hoary with age, law issues must be disposed of first. Civil Procedure Law, Rev. Code 1: 21.1; Cooper, et al. v. Davis, et al.[1978] LRSC 57; , 27 LLR 310 (1978).

Plaintiff-in-error is entitled to have his day in court; but defendant-in-error is also entitled to a remedy in keeping with the due process of law. More than this, our law provides that in the construction of pleadings and the granting of reliefs based thereon, the pleadings should be construed as to do substantial justice and that every final judgment should grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Civil Procedure Law, Rev. Code 1: 9.12. On the basis of these laws, the only reasonable course of action is to reverse the final judgment and remand this case for a new trial, with the instruction that the parties replead. Indeed this Court has the power to remand and order the parties to replead. Lamco J. V. Operating Co. v. Rogers, [1975] LRSC 26; 24 LLR 314 (1975).

In view of the foregoing, the final judgment is reversed and the case is remanded for a new trial, commencing with the filing of new pleadings. The Clerk or this Court is hereby ordered to send a mandate to the judge of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordering the aforesaid court to resume jurisdiction over the case and allow the parties to replead so that the errors, omissions and other inadvertencies may be corrected in keeping with this opinion. Costs are disallowed. And it is hereby so ordered.

Judgment reversed; case remanded for new trial.

Nuond et al v Harmon [1988] LRSC 99; 35 LLR 665 (1988) (29 December 1988)

ALIMA FOFANA ALFRED NUOND et al., Appellants/Respondents, v. **VICTORIA T. HARMON,** Appellee/Movant.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, SEVENTH JUDICIAL

CIRCUIT, GRAND GEDEH COUNTY
Heard: November 23, 1988. Decided: December 29, 1988.

1. After the filing of the bill of exceptions and appeal bond, on application of appellant, the clerk of court shall issue a notice of completion of appeal, a copy of which the appellant shall serve on appellee.

2. A ministerial officer may also serve a copy of the notice of completion of an appeal.

3. When a notice of completion of appeal is not served within statutory time, an appeal will be dismissed for lack of jurisdiction.

4. Real property offered as security on an appeal bond must be sufficiently described so as to identify it clearly, and thereby establish the lien on the bond.

5. Sufficient description of the realty in the affidavit of sureties means property that is described by the number of the plot of **land**, and by metes and bounds, so as to make finding it on the ground an easy exercise.

6. When an appeal bond is inadequate and defective because the property pledged as security is not so described as to make finding it an easy exercise, a motion to dismiss the appeal it will be granted.

Appellee, movant herein, brought a summary investigation suit against respondents/appellants for recovery of **land**. Judgment was rendered against respondents/appellants to which they excepted and announced an appeal to the Supreme Court. At the call of the case, movant/appellee informed the Court that she had filed a motion to dismiss the appeal because appellants had failed to serve a notice of completion of appeal upon movant and that the appeal bond was materially defective and insufficient. The Supreme Court found that the records showed that a notice of completion of appeal had not been served on movant/appellee and that

appellants' appeal bond failed to meet all statutory prerequisites in order to be considered valid. Consequently, the Court granted the motion and dismissed the appeal.

Ignatius Weh for appellants. Alfred B. Flomo for appellee

MR. JUSTICE AZANGO delivered the opinion of the Court.

This case has its genesis in the circuit court in Zwedru, Grand Gedeh County, where movant/appellee brought a summary investigation suit against respondents/appellants for the recovery of one town lot in the City of Zwedru, Grand Gedeh County, from the Zwedru Marketing Association. On June 15, 1987, judgment was rendered against appellants in the court below to which ruling, the appellants excepted and announced an appeal to the Honourable Supreme Court of Liberia sitting in its October Term, A. D. 1987, for the following factual and legal reasons to wit:

1. On the 10th day of June, A. D. 1987, madam Victoria T. Harmon, petitioner in the court below, instituted this suit against madam Alima Fofana, Alfred Nuond and others, the respondents in the court below for recovery of one town lot of land or property of the Zwedru City Market, Liberian Marketing Association, Inc, which she claimed was leased by her to some Mandingoes, Morris Kamara, Amos Kamara and others, and rented for tailor shop in 1985. The property in dispute is the property which was, due to the construction of Zwedru City Market, retrieved from one Charles Breeze. Although appellee Victoria T. Harmon claimed part of the property from her was replaced by the City Corporation of Zwedru, but she being treasurer of the Marketing Association, Inc. in the county, permission was granted her to build her shop there tentatively in 1982 by the county superintendent Johnny G. Garley and the then city mayor Alutius Tarlue of Grand Gedeh County, respectively.

2. That Judge Cooper while presiding over the May Term of Court, was also retained lawyer for appellee, Victoria Harmon; hence all pleadings in this case were only submitted by the counsels of respondents/appellants. Nothing was filed from the petitioner/appellee besides her formal complaint. Pleadings went over statutory period as required and irregularities filed on June 11, and 12 th , A.D. 1987 respectively. Instead of Judge Cooper passing or disposing of law issues before ruling the case to trial as required by statute and case laws, he proceeded to render final judgment contrary to law thereby committing reversible error. Hence his ruling was partial and illegal.

3. It is worthy to note that the piece of property taken from the petitioner/appellee government was replaced on the other side of the road opposite the said Zwedru market; petitioner/appellee former property or lot was connected with another piece of property and was at the rear now forming part of the Zwedru city market. Because of her former position as treasurer of the Marketing Association, some days she was granted permission to sell on that piece of property until the association was ready to claim the said property. Since indeed the Liberia Marketing Association local branch is ready for the use of the property, where is the bone of contention, especially so when the present city mayoress and the county superintendent of Grand Gedeh County, Honourable Johnny G. Garley have already investigated petitioner's complaint, and in the open counsel directed her to surrender the said property or piece of property to the Liberia Marketing Association, local branch of Zwedru City. With regard to her own property or lot which was taken from her by the city corporation of Zwedru and replaced another town lot opposite the market site, it is about time for the petitioner to develop and improve the property was already given to her by the superintendent of Grand Gedeh County.

4. Consequently, it is clear that the tract of **land** covered in appellee's complaint and leased to the mandingo tailors is altogether different from the survey made in 1982 in the appellant's market area. That instead of remaining on her original tract of **land** given to her in 1982, she wants more than her one lot. Appellee's intention is to defraud and cheat appellants out of their market area.

5. Appellants further submit that the oral testimony of appellee never was allowed by the trial judge, Judge Cooper, to be recorded when made or said in the open court. When the court's attention was called to the fact that petitioner/ appellee statements are not recorded in the minutes of court, the judge said "I am the master of this court and records, your request is hereby overruled; although, appellants and their counsels are not barred, they were not permitted to cross-examine appellee. Therefore, it is the object of the appellants to make it known that advantage was taken of them.

6. And that appellant further submits that appellee's failure to rebut their testimonies to the fact that the present piece of property appellee is already occupying is not for appellee. Appellants therefore strongly contend that the interlocutory ruling of Judge Cooper made and claimed to be his final ruling was not in conformity with the facts and circumstances, as required by law, at the trial of the case.

At the call of the case at bar, movant/appellee's counsel informed the Honourable Supreme Court that they had filed a two-count motion to dismiss the appeal, portion of which we hereunder quote for the benefit of this opinion:

"Because movant submits that this Honourable Court lacks jurisdiction to entertain this appeal and to review the records in these proceedings, in that the respondents/ appellants have failed to issue and serve upon movant a notice of completion of the appeal as required by law, as will more fully appear from the certified copy of the original of the purported notice of completion of appeal which does not indicate any acknowledgment of said notice by movant nor anyone on her behalf. Movant maintains that a return of a ministerial officer to a notice of completion of appeal is not a statutory requirement and the purported returns of sheriff Solo G. Doe are false, malicious and misleading as no such notice was ever served upon movant."

Contrary to count one of the movant's petition, the respondents/appellants contend that:

"The assigned circuit judge whose erroneous ruling is the subject of this appeal, being that the legal counsel for the movant and movant herself left Monrovia for Robertsport where they stayed permanently, the said judge had all legal processes channeled through himself according to the sheriffs returns. Hence, one reason why movant's motion should not be entertained.

As to count one of both the petition and the returns, we have recognized with very great concern that the most important issue presented before this Honourable Court for consideration, based upon the contentions of both parties, is whether or not a ministerial officer is statutorily responsible to serve a notice of completion of an appeal. Before addressing this issue, let us first consider the statutory provision. According to the Civil Procedure Law, Rev. Code 1:51.9 after the filing of the bill of exceptions and the filing of the appeal bond as required by §§51.7 and 51.8, respectively, the clerk of the trial court on application of the appellant shall issue a notice of completion of the appeal, a copy of which shall be served by the appellant on the appellee." (Our emphasis). This provision of the statute is very clear and unambiguous. It has also been held by this Court that a ministerial officer may also serve a copy of the notice of completion of an appeal. However, the issue here is whether or not the notice of completion of an appeal was served on the appellee. Our records have shown that the said notice of the completion of appeal was not served on the appellee; hence the statutory provision as quoted, supra, was not complied with.

Wherefore and in view of the foregoing, this Court is of the conclusive opinion that the contentions of respondents/appellants can not be entertained. We conclude, therefore, that the notice of completion of an appeal was not served on the movant/ appellee as alleged. And even if the said notice of completion was served, we cannot under any circumstances sustain such argument or contention, because it has not been proven to our satisfaction that the said notice of completion was duly served.

The notice of completion of the appeal was not served as required by law, therefore movant/appellee's position here is consistent with the court's determination in the case, Buchanan v. Arrivets, [1945] LRSC 2; 9 LLR 15 (1945) that "neglect to serve a notice of appeal on the appellee and failure to return same by the sheriff is a good cause for the dismissal of an appeal. After the failure of an appellant to serve a notice of appeal has been attacked by motion to dismiss the appeal, the Court may not cure the omission by an order to issue and serve such notice."

Additionally, in the case Karnga v. Williams et al.[1952] LRSC 28; , 11 LLR 299 (1952), we ruled that "proper issuance, service, and return of a notice of appeal by an appellant are indispensable prerequisites to jurisdiction over an appellee, and not mere technicalities." In the case Tuan v. Republic, 13 LLR 3 (1957), we also held that "an appeal will be dismissed for lack of jurisdiction when the notice of completion of appeal was not served within the statutorily prescribed period of time." Based upon the above quoted citations and circumstances, this Court has no jurisdiction over the appellee since the statutorily prerequisites were not met.

Turning to count two of the movant/appellee's motion, the movant contends that:

"The appeal bond tendered by respondents/appellants is fatally and materially defective and insufficient to support the appeal in that Assumana Keita and Esther G. Tarlue, purporting to be sureties to the appeal bond, are legally incompetent to become sureties in this case because both of them are members of the Zwedru Marketing Association and parties to this case. Mrs. Esther G. Tarlue, being the general superintendent of said Marketing Association and Assumana Keita, a member of the board of directors of said Zwedru Marketing Association. Therefore they cannot be sureties in this case. Assumana Keita and Esther G. Tarlue, purported sureties to the appeal bond, are not legally qualified because they do not own any deeded property or **land** in Zwedru City, as is more clearly revealed by the affidavit of sureties to said appeal bond. Moreover, the said bond does not sufficiently describe the property offered as security by metes and bounds, the quantity of **land** owned by each of them, nor any statement as to the encumbrances on or title to said pieces of property.

In counter argument, the respondents contend in counts 2, 3 and 4 of the returns that:

"The movant's motion is considered a waiver and lashes with regard to the statutory period when a bond shall be attacked. Respondents further contend that the entire summary proceeding with regard to the general superintendent of market, Esther G. Tarlue, never mentioned her name in the petitioner's petition. Moreover, the statute does not deny any member of an association of becoming a surety in any given case; hence, petitioner's petition is a fit subject for dismissal". Respondent argued that in as much as the revenue certificates revealed the sureties va-luation with the Ministry of Finance, the entire contention of the movant is baseless and immaterial. Therefore, the entire motion of payment should be dismissed with costs against the movant"

From careful perusal of the contention raised by both the movant/appellee and the respondents/appellants, this Court has apparently recognized another important issue for its consideration. The issue is whether or not respondents/appellants' appeal bond met all statutory prerequisites in order to be considered valid. Our response is a resounding no. According to the Civil Procedure Law, an appeal bond must contain "[a] description of the real property offered as security thereunder sufficiently identified to clearly establish the lien of the bond; the date of such recording. . .." Civil Procedure Law, Rev. Code 1:63.2 (2)(e)(1).

It has also been provided that "sufficient description of the realty in the affidavit of sureties means property so described as to make finding it on the ground an easy exercise; the Court suggested the best means to be the number of the plot of **land** and its description by meets and bounds." West Africa Trading Corporation v. Alraine, [1975] LRSC 16; 24 LLR 224 (1975). Furthermore, it was held that "if property pledged is not so described as to make finding it an easy exercise, it will be deemed inadequate and the appeal will be dismissed on motion by reason of a defective bond". Id.

In view of the above quoted law and the underlying circumstances in the instant case, we are of the opinion that the appeal of appellant should be dismissed since, in fact, the appellants failed to give a very distinct description by which the property can easily be identified as required by law.

Wherefore and in view of the foregoing, this Court is of the conclusive opinion that the bond did not meet all the legal prerequisites and, therefore, is defective. As a result of the above, the

appeal is hereby denied and the motion to dismiss is hereby granted to all its intents and purposes since, in fact, this Court has no jurisdiction over appellee.

The court below is hereby mandated to take jurisdiction and enforce its ruling. The Clerk of this Court is hereby ordered to inform the court below of this judgment. And it is hereby so ordered.

Motion granted.

Johnson et al v Yarkpawolo [1971] LRSC 67; 20 LLR 503 (1971) (22 November 1971)

In the Matter of the Application for Intervention by SAMUEL D. JOHNSON, JOHN Y. ROBERTSON, YECUSUH PIER, JAMES R. WILLIAMS, and M. BROOKS, in the case GENEVA JOHNSON-DUFF, by and through her husband, ADOLPH DUFF, Appellant, v. JOE YARKPAWOLO, Appellee.
APPLICATION
FOR INTERVENTION IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 6, 8, 1971. Decided December 22, 1971. 1. 2. Under the appropriate circumstances, an application for intervention may be initially brought before the Supreme Court. Where one of five applicants for intervention testified at the trial in the lower court, and there is no proof any others testified thereat, the failure of timeliness cannot be attributed to the others.

During the pendency of an appeal by the respondent in a suit for specific performance, an application for intervention was made by other persons who alleged property rights in the same parcel of land which was the subject of the action in equity, in which appellant had been ordered to join in signing a deed to appellee. The applicants argued they would be denied their day in court unless intervention was allowed. The opposition contended the application should have been made in the lower court and not before the Supreme Court after judgment below. The application was granted and the case remanded for trial in which intervenors would be allowed to participate.
M. Fahnbulleh Jones for appellant.
skine for appellee. Philip Brum-

MR. Court.

JUSTICE HORACE

delivered the opinion of the
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This
case arose in the Sixth Judicial Circuit Court, Montserrado County. The
record certified to this Court shows that appellee and five
other persons are occupying a parcel of land situated in the City of
Monrovia, known as Buzzi Quarters, where all of them have built
houses. It seems that a long drawn-out controversy has gone on between the
Johnson heirs and appellee on the one hand, and the other
occupants of said property and appellee, on the other hand. Out of this
controversy, quite intricate and complicated in many respects,
has emerged this case of specific performance in which appellee, petitioner
in the court below, seeks to compel appellant, respondent
in the trial court, to sign a deed for the property, the deed having been
signed by all of the heirs except appellant" and one Victoria
Johnson-Currie. In his petition filed November 26, 1969, appellee states that
appellant gave him permission to erect a house on a
portion of block no. 28, a part of the property in dispute, which appellant
later agreed to sell him for $750.00, for which a receipt
was given to him when he paid her the sum thereafter. Subsequently, he found
out that appellant did not own the land in her own right
and that it was the property of the Johnson heirs, whereupon he, through his
counsel, negotiated with the Johnson heirs, including
appellant, for the purchase of the land for $937.00, exclusive of the
$750.00 he had already paid appellant, and a receipt was issued
to him for this additional amount, a deed was executed and signed by the
other heirs, which appellant refused to sign, resulting
in this action. Appellant in her answer acknowledged issuing a receipt to
appellee for $750.00, but denied receiving the amount.
She contended that after issuing the receipt for $750.00 she took appellee to
Mr. Herbert Brewer, one of the Johnson heirs, who stated
that the amount was too small. She also contended that she was fraudulently
induced to issue the receipt. She further averred that
she

had not received any portion of the $937.00 referred to in appellee's
petition, which would have
obligated her to sign the deed. She also outlined in her answer that the
metes and bounds of the deed appellee is seeking to compel
her to sign encroach on property that others were occupying, a subject of
correspondence between her and Mrs. Rachel Johnson-Massaquoi,
another of the Johnson heirs, whereby they agreed that they would sell house
spots and not lots to the occupants of the land. She made profert of this
correspondence. Appellee,
in his reply, in the main denied the truthfulness of the allegations set
forth in the answer and reaffirmed the facts stated in his
complaint. Here the pleadings rested. Appellant proferted the correspondence
above referred to, as part of her answer, in support
of her position. It might be interesting to note in passing that although the
letters referred to were written in 1969, the deed

made profert with appellee's petition was dated December 22, 1 964. The issues of law having been disposed of, the case came up for trial before Hon. John A. Dennis, at the June Term, 1970. A final decree was entered in favor of appellee, who was the petitioner in the lower court on August 12, 1970. Appellant is before this Court on a six-count bill of exceptions. Both parties filed comprehensive briefs in the case. Before the case was assigned for hearing, however, an application to intervene was filed on December 21, 1971, by five persons, namely, Samuel D. Johnson, John Y. Robertson, Yecusuh Pier, James R. Williams and Mr. Brooks. The application avers, in substance, that the intervenors were squatters and tenants at will of the Johnson heirs and had constructed houses on the property; that in 1965 they solicited Hon. Emmett Harmon to communicate with the Johnson heirs for them to purchase the land on which they had built houses. He did

so and paid to Mrs. Rachel Massaquoi and Herbert Brewer, who were Johnson heirs, $937.00; that they were not aware of any action between the parties either in a previous ejectment case or the specific performance case now pending before this Court, until after the final decree ordering Mrs. Geneva Johnson-Duff to sign a deed to Joe Yarkpawolo which encompasses the land on which their houses are built. That if that decree is upheld they will be deprived of both their houses and the money paid by them for the land. With this application the intervenors proferted a copy of a letter from counsellor Emmett Harmon to Mrs. Rachel Massaquoi, dated August 19, 1970, confirming payment of $937.00, for the purposes stated above and the persons previously named. Appellee's counsel opposed the application to intervene, primarily arguing failure of timely intervention. During argument before this Court counsel for both sides were asked what they considered timely intervention. They agreed that the term means within a reasonable time. It is true that it would have been more proper to intervene in the trial court, but should the rights of parties litigant be made to suffer because of the carelessness and negligence of their counsel? An appeal is a matter of right, and when one is taken the matter cannot be considered concluded until the Supreme Court has finally disposed of it. In other jurisdictions where an appeal is not a matter of right, the decision of the trial court may be considered the final determination, but not here. Therefore, the contention that the decree of the trial court concluded the matter, thus obviating the right to intervene in this Court, is not sound. Besides, we have not been able to find any law which denies a party the right to apply for intervention in the Supreme Court. As to appellee's contention that the application to intervene violates the statute applying thereto, we find ourselves in disagreement with it.

"1. In general. Upon timely application, any person shall be allowed to intervene
in an action : "(a) When a statute of the Republic of Liberia confers an unconditional right to intervene; or "(b) When the representation
of the applicant's interests by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the
action ; or " (c) When the applicant is so situated as to be adversely affected by a distribution or other disposition of property
in the custody or subject to the control or disposition of the court or an officer thereof." Civil Procedure Law, L. 1963-64, Ch. III, § 516. Paragraph (b) of the foregoing section clearly states that the applicant has a right to intervene when the representation of his interests
by existing parties is or may be inadequate and he may be bound by a judgment in the action. As heretofore shown, the intervenors
are possessed of certain rights, which was known by all concerned. The question then is, would it be fair to adjudicate this matter
to the prejudice of the intervenors without giving them their day in court, especially since the statute provides for intervention
as a matter of right? We think not. As for prior knowledge of the intervenors, the record before us reveals that one of the applicants,
James K. Williams, did so testify during the trial, but there is no proof that any of the others did and we, therefore, feel that
their interests should not suffer as a consequence. The acquisition, possession, and protection of property, is a right guaranteed
by the Constitution. - "All men are born equally free and independent, and have certain natural, inherent and inalienable rights
; among which, are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of
pursuing and obtaining safety
and happiness." Article I, Section 1st.

"No person shall be deprived of
life, liberty, property or privilege, but by judgment of his peers, or the law of the land." Article I, Section 8th. Here are persons
who possess interests in a parcel of property that is a subject of litigation. They alleged that they will suffer great injury if
they are not permitted to assert their rights. We feel that it is only fair to give them an opportunity to do so, especially in view
of the constitutional guarantees cited. For the reasons stated herein, this case is hereby remanded for a new trial, and the Clerk
of this Court is hereby ordered to send a mandate to the court below to conduct a new trial of this case, granting the applicants
the right to intervene in the court below if they so desire. Costs to await final determination. Application to intervene granted,
case remanded.

Duncan et al v Richards [1972] LRSC 4; 21 LLR 28 (1972) (21 April 1972)

RICHARD DUNCAN, K. A. BDAIR, H. FAWAZ BROS., and M. A. TOMEH, Appellants, v. DOLORES RICHARDS, by and through her husband A. VAN RICHARDS, DORIS THOMPSON, by and through her husband, JOHN THOMPSON, ELLEN ROGERS, by and through her husband, JAMES M. ROGERS, and HUBORN EDWARDS, the surviving heirs of SOLOMON T. EDWARDS, Appellees. APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 21, 1972. Decided April 21, 1972. 1. When the facts in a case on appeal are clouded by uncertainties as here, where the one parcel of land disputed may be actually two separate parcels, the Supreme Court will accommodate the joint request of counsel for remand to the lower court, holding in abeyance all other legal complexities the case presents.

Plaintiffs sued in ejectment, and defendants alleged right of possession under a lease from another, who subsequently sought to intervene in the action as an interested party. His claims to the property were denied by the lower court and, at the trial following, the jury returned a verdict for plaintiffs. An appeal was taken from the judgment. During the course of argument it became apparent that confusion existed as to the property at issue, with uncertainty that the lot claimed by both sides was actually one and the same. Both sides requested remand and the Court, though recognizing the many unanswered legal contentions, felt compelled, for the sake of clarification, to grant such request and reversed judgment and remanded to accomplish the necessary appointment of a board of surveyors to determine and report to the lower court.
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Stephen Dunbar for appellants. J. Dossen Richards and P. J. L. Brumskine for appellees. MR. Court.
JUSTICE AZANGO

delivered the opinion of the

According to the record certified to us, plaintiffs instituted proceedings on May 31, 1966, in the Sixth Judicial Circuit Court, Montserrado County, in which they claimed that defendants were illegally occupying **land legally acquired by Solomon T. Edwards by public land** sale deed dated September 15, 1964, and duly probated, through whom they claim ownership as his only survivors. After service of process on defendants they appeared and filed an answer, to which were attached three lease agreements concluded between defendants and Richard Duncan of Kakata, duly probated and registered on June 22, 1966, claiming that they were tenants by leasehold right, with their rights derived from Richard Duncan, the landlord

and lessor, who should have been made a party to the proceedings, as no adverse judgment rendered against them in this action would be binding on their landlord, the owner of the property. They also raised several other interesting legal issues to be considered by the Court in the determination of the case. The record also reveals that on July 29, 1966, Richard Duncan moved the court below to allow him to intervene in the ejectment proceedings on the ground that he was the owner of Lot No. 7, Half Way Farm, situated at the corner of Benson and Johnson Streets, in the City of Monrovia, and he simultaneously filed a six-count intervenor's answer, also attaching thereto certified copies of an aborigine's land grant from the Republic of Liberia to Moses King, alias Varnie, for Lot No. 7, Half Way Farm, Monrovia, signed, sealed, and delivered to Moses King by President Edwin Barclay on March 15, 1931, probated and registered on December 6, 1937. Along

with this he submitted a warranty deed from Moses King, alias Varnie, to Henry B. Duncan, for Lot No. 7, Half Way Farm, Monrovia, signed, sealed, and delivered by Moses King on May 18, 1934, probated on April 18, 1939, with metes and bounds inscribed therein apparently conforming to the Aborigine Land Grant deed from the Republic of Liberia to Moses King, alias Varnie, in 1931. Attached to his answer also was the last will and testament of Henry B. Duncan, in which, according to clause two, subsection (a), he bequeathed to his son, Richard J. B. Duncan the parcel at issue. Pleadings progressed as far as the defendants' rebutter, raising several interesting legal issues, which were finally disposed of by a ruling from Hon. Joseph P. H. Findley, on the issues of law, which abated and overruled defendants' reply and sustained the subsequent pleadings alleging intervenor's claims to title were unfounded. The case was ruled to trial by jury. Having disposed of the issues of law, trial was held during the December Term, resulting in a verdict in favor of plaintiffs. Exceptions were noted to rulings made during the trial, the verdict, denial of the motion for a new trial, and to the final judgment of the court below. An appeal to this Court was announced and perfected. Many contentions were raised and argued but, however interesting they may be, they were rendered academic by one salient feature of the case. When appellants' counsel was asked whether or not, from an inspection of these various deeds, he could say that the property at issue was or could not be one and the same, he failed to give a satisfactory answer. At this time J. Dossen Richards, one of the counsel for appellees, spoke for the record on the point: "Counsel for appellees, without waiving his position, would suggest that in view of present developments, he is requesting this Court to remand the case with such appropriate instructions as would determine the

existence of two separate and distinct pieces of property claimed by the parties
hereto, or whether the property claimed by appellee and the appellant is one and the same piece of property." To this request counsel
for appellants submitted his position : "Counsel for appellants says that since counsel for appellees requests that the court remand
the case because the dimensions spelled out in the two deeds are different, we have no objections to the announcement made by them."
Just at this juncture, we wish to observe, as was done in In re Ricks[1934] LRSC 7; , 4 LLR 58, 59 (1934) "This act on the part of Counsellor Arthur Barclay the Court highly appreciates, and strongly recommends to the emulation
of the entire bar, because the Court realizes the fact that it is just such fair-minded and conscientious cooperation between the
bench and bar of this Honorable Supreme Court of Liberia that will regain for it the high reputation which it undeniably enjoyed
in the days of our fathers, and thereby renew the confidence of parties litigant in its administration of justice, whether such litigants
be citizens of Liberia or foreigners." We, too, being of the same feeling as our predecessors, would like to extend our commendation
to counsellors J. Dossen Richards, Phillip J. L. Brumskine, and Stephen Dunbar for the position taken and maintained by them in the
spirit of cooperation shown toward the fair determination of this case.
Ordinarily, we would have determined the many legal issues
raised and disposed of the appeal on such basis, but for reasons which we feel to be in the best interest of justice and by the joint
request of counsel to have the case remanded to the court below with appropriate instruction to determine whether the suit involves
properly one parcel of land, or not, we are reserving to ourselves

any further comments and opinion in
the premises, to be handed down at some subsequent time, regardless of everything that has transpired in the case as outlined in
the briefs. This case is, therefore, remanded to the court below with instructions that a board of arbitration consisting of competent
and legally qualified surveyors from the Department of Lands and Mines be appointed and qualified in keeping with law; that they
will proceed to the premises in question, together with the parties and with all documentation relating to the property in dispute,
for a proper survey of the land as aforesaid, and thereafter submit a true and comprehensive report to the Sixth Ju. dicial Circuit
Court, Montserrado County, in order that it may form part of the trial proceedings toward the final determination of this case, giving
either party the right to offer objections to the report, if needs be. Costs to await pending the final determination before the
Supreme Court.
Reversed and remanded for survey and report.

Wayne et al v Cooper [1972] LRSC 7; 21 LLR 50 (1972) (21 April 1972)

MARTHA WAYNE, MARY E. BROWN, JAMES BROOKS, MARY BROOKS, and M. J. BROWN, heirs of MARY E. BROOKS, Grantors, and DANIEL GEORGE and NANCY SAYWON, Grantees, Appellants, v. FRANK G. COOPER, SR.. Appellee. APPEAL FROM THE PROBATE COURT, SINOE COUNTY.

Argued March 28, 1972. Decided April 21, 1972. 1. An estate in realty given to a person for life is not an estate of inheritance, and terminates upon the death of such person, whose heirs have no power to convey any interest in the property thereafter. 2. Instruments conveying real property are to be interpreted literally according to the text of the conveying instrument. 3. A remainder in realty vests upon the determination of a prior estate and is the final disposition of the realty, barring the claim of title or interest therein by any person other than the named remainderman. 4. Unduly belated claims to realty will not be allowed to upset long-established titles, especially where the silence can be construed as acquiescence by the claimant to the title he disputes and the rights of innocent persons would suffer thereby. 5. A conveyance of realty by a person not possessed of title at law or equity is a vacuity.

The appellee filed objections to the probate of a deed offered by appellants for registration, contending that he had acquired title to the lot at issue forty-nine years before the conveyance giving rise to his objections, and that he had been in continuous possession thereof, had effected improvements, and rented to tenants living thereon, all to the knowledge of respondent conveyors and without their objections. The respondents argued that they had conveyed the property by virtue of a deed to their ancestor, from whom they took upon her death before 1919. However, the language of the 1904 deed under which they claimed clearly indicated that the estate given to their ancestor was only for her life, the remainder to those

under whom the objector claimed title. The lower court denied probate and the respondents appealed. Judgment affirmed. C. 0. Tuning for appellants. appellee. T. E. Cess Pelham for

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. Based upon a caveat filed in the Probate Court in Greenville, Sinoe County, the appellee filed objections to the probation and registration of a deed offered by appellants for Lot No. 424, on Sinoe Street in that county. The objections filed on March 9, 1968, alleged that by virtue of a warranty deed from Cynthia A. E. Greene, an heir of Nancy Gatlin, the objector-appellee in the above entitled proceeding acquired title to the lot which is the subject of the litigation,

on March 15, 1919, forty-nine years before the objections were filed. And that for these forty-nine years the objector had been in continuous and unchallenged possession of the said lot. He made profert of, and filed a copy of the aforesaid deed, marked exhibit "A," to form a part of the objections. He, therefore, prayed that the deed for the same piece of property, offered by the respondents-appellants be denied admission to probate. In the answer which the respondents-appellants filed in the court below, they have contended that they held title to said property by virtue of a deed executed on May 15, 1904, in favor of Mary E. Brooks, their forebear, from whom their title descended. And that since this deed is older than the deed executed in 1919 under which the objector claims, the older deed has priority. They prayed that the deed which had been offered for probate in favor of Daniel George and Nancy Saywon, and which they had prepared and signed as grantors, therefore be ad-

mitted to probate. They annexed the 1904 deed under which they claim as an exhibit to their answer. Objector filed a reply, and in count five of this pleading admitted that the 1904 deed executed in favor of Mary E. Brooks, under which respondents claim title, did indeed vest this piece of property in her, but only for her natural life. And he quoted, from the deed made profert with respondents' answer, the habendum clause : "To have and to hold the above granted premises with all and singular the buildings, and improvements and appurtenances thereof and thereunto belonging to the said Mary E. Brooks for the duration and period of her natural life, with the remainder in fee simple to R. A. Wright, his heirs, executors, administrators and assigns forever." These were the salient issues which went before Judge Roderick N. Lewis, and upon which he passed and denied probation of the respondents' deed. They took exceptions, announced an appeal, and have now brought the case before us for final review. The most important issue which seems to have been raised in this case is whether or not the deed, the habendum clause of which was quoted above, entitled the heirs or descendants of Mary E. Brooks to claim title to the property after her death. Did this clause of the deed vest fee simple title in Mary Brooks' heirs after her death, as was contended by appellants' counsel during argument? Of the several estates recognized under the old **land** tenures of England, the principles of which were incorporated in our laws by the Americans from whom we have adopted our procedure and practice, there are three with which we are concerned in this case, namely: estates for life, estates in fee simple, and those in remainder. According to the record in this case, Mary E. Brooks held an estate by purchase for life, with remainder interest in fee vested in R. A. Wright and his heirs forever. In effect, the deed created two estates, one to Mary Brooks which terminated at her death, and the other in fee to

R. A. Wright and his heirs as remaindermen, which commenced immediately and automatically upon the death of Mary E. Brooks, and continues as long as heirs of his body survive. The deed created an estate in possession in Mary E. Brooks, and another in remainder in R. A. Wright and his heirs forever, after the death of Mary E. Brooks. Mary E. Brooks had been dead for many years. A life estate, as distinguished from a fee simple estate, is one which expires upon the death of the tenant. It is a freehold estate not of inheritance, and is usually created by the express will of the grantor. BLACKSTONE has discussed it. "Conventional Estates for Life. Estates for life, expressly created by deed or grant (which alone are property conventional), and where a lease is made of lands or tenements to a man, to hold for the term of his own life, or for that of any other person, or for more lives than one : in any of which cases he is styled tenant for life; only, when he holds the estate by the life of another, he is usually called tenant for life of another. "These estates for life are, like inheritances, of a feudal nature; and were, for some time, the highest estates that any man could have in a feud, which was not in its original hereditary. "Estates for life created by general grant. Estates for life may be created, not only by expressed words before mentioned, but also by a general grant, without defining or limiting any specific estate. As, if one grants to A the manor of Dale, this makes him tenant for life. For though, as there are no words of inheritance, or heirs, mentioned in the grant, it cannot be construed to be a fee, it shall, however, be construed to be as large an estate as the words of the donation will bear, and therefore an estate for life. Also such a grant shall be construed to be an estate for the life of the grantee; in case the grantor had authority to

LIBERIAN LAW REPORTS make such a grant: for an estate for a man's own life is more beneficial and of a higher nature than for any other life; and the rule of law is, that all grants are to be taken more strongly against the grantor, unless in the case of the king." The AMERICAN LAW INSTITUTE in its RESTATEMENT OF THE LAW OF PROPERTY, has defined a life estate. "An estate for life is an estate which is not an estate of inheritance, and (a) is an estate which is specifically described as to duration in terms of the life or lives of one or more human beings, and is not terminable at any fixed or computable period of time; or (b) though not so specifically described as is required under the rule stated in clause (a) , is an estate which cannot last longer than the life or lives of one or more human beings, and is not terminable at any fixed or computable period of time or at the will of the transferor." The deed in question, therefore, created a life estate in Mary E. Brooks, which estate expired or was terminated at her death. It could not, therefore, descend to her heirs, the respondents in the court below. Let us now consider a fee simple estate, and see if, and in what way, it compared with, or resembles, an estate for life. BLACKSTONE has denominated both of these classes of estates as freehold estates. But, whereas a life estate is contingent and uncertain, a fee simple estate is absolute and definite.

Fee simple estates are considered the highest class of conveyance and cannot be confused with life estates. BLACKSTONE has defined fee simple estates. "Tenant in fee simple (or, as he is frequently styled, tenant in fee) is he that hath lands, tenements, or hereditaments, to hold to him and his heirs forever; generally, and simply; without mentioning what heirs, but referring that to his own pleasure, or to the disposition of the law. The true meaning of the word `fee' is the same with that of feud or fief. This is property in its highest degree; and the owner thereof

hath the absolute and direct ownership, and therefore is said to be seized thereof absolutely in his own demesne." BOUVIER'S LAW DICTIONARY defines fee simple. "An estate of inheritance. The word simple adds no meaning to the word fee standing by itself. But it excludes all qualification or restriction as to the persons who may inherit it as heirs, thus distinguishing it from a fee-tail, as well as from an estate which, though inheritable, is subject to conditions of collateral determination. It is the largest possible estate which a man can have, being an absolute estate. It is where lands are given to a man and to his heirs absolutely, without any end or limitation put to the estate. "Where the granting clause of a deed conveys an estate in fee simple, a consequent proviso that the grantee shall not convey without the consent of the grantor is void as a restriction on alienation, generally as to time and person, and therefore repugnant to the estate created." The AMERICAN LAW INSTITUTE has commented on the fee simple estate. "An estate in fee simple is an estate which (a) has duration (i) potentially infinite; or (ii) terminable upon an event which is certain to occur but is not certain to occur within a fixed or computable period of time or within the duration of any specific life or lives ; or (iii) terminable upon an event which is certain to occur, provided such estate is one left in the conveyor, subject to defeat upon the occurrence of the stated event in favor of a person other than the conveyor; and (b) if limited in favor of a natural person, would be inheritable by his collateral as well as his lineal heirs." There is still another marked and important difference between these two classes of estates. While estates in fee simple are estates of inheritance, those for life are estates

not of inheritance. Therefore, contention of the appellants' counsel during argument, to the effect that the phraseology of the 1904 deed also created a fee simple vested interest for the heirs of Mary E. Brooks, cannot be well taken. Let us look at the specific words of relevant portions of the deed under which they seek to take a fee simple estate. The deed reads : "to have and to hold . . . to said Mary E. Brooks for and during the period

of her natural life, with the remainder in fee after her death to R. A. Wright, his heirs, executors, administrators or assigns forever. And we the said parties of the
First Part, for ourselves and for our heirs, convenant with the said Mary E. Brooks and with the remainder[man], his heirs, executors,
administrators or assigns that at and until the unsealing hereof, we, the said Parties of the First Part had good right and lawful
authority to convey the aforesaid premises in fee simple. And the said Parties of the First Part will forever warrant and defend
the said Party of the Second Part, and Remainderman, his heirs, executors, administrators or assigns against any person or persons
claiming any part of the above premises." We cannot agree that when the habendum clause in the deed created the life estate in Mary
Brooks, with fee simple interest forever to R. A. Wright and his heirs, the same deed could later by implication also vest fees simple
title in Mary Brooks' heirs. Certainly the text of the deed has not said so. Had the grantor intended that Mary Brooks' heirs should
benefit after her death, the instrument would have been worded differently. But even if the deed had been so worded, that is to say,
if it had given Mary Brooks' heirs title after vesting a fee simple estate in R. A. Wright and his heirs forever, it would have been
an anomaly unknown to the principles of the law of real property, as defined by BLACKSTONE : "The office of the habendum is probably
to determine what estate or interest is granted by the deed : though

this may be performed, and sometimes
is performed, in the premises. In which case the habendum may lessen, enlarge, explain, or qualify, but not totally contradict or
be repugnant to, the estate granted in the premises." Having vested a fee simple estate in Wright and his heirs forever, how could
the same instrument create another fee simple estate in anyone else? As we have said earlier, the deed has not so stated, and instruments
of conveyance must be interpreted literally according to the wording of the text of the instrument. The estate which the deed vested
in Mary Brooks did not include her heirs, but terminated upon her death. And now we come to consider the third group of estates of
interest to us in this case, estates in remainder. These are the estates which parties take finally, after other interests in the
particular estates have been terminated. They are, in fact, what the name implies, the remainder or last portion of an estate, as
defined in BOUVIER'S LAW
DICTIONARY.

"The remnant of an estate in land, depending upon a particular prior estate created at the
same time and by the same instrument and limited to arise immediately on the determination of that estate and not in abridgement
of it. "A vested remainder is one by which a present interest passes to the party, though perhaps to be enjoyed in future, and by
which the estate is invariably fixed to remain to a determinate person after the particular estate has been spent." It seems clear,
therefore, that when the deed made Wright and his heirs remaindermen, it could not later vest the same title in anyone else. And

since it did not give Wright and his heirs a joint interest with Mary Brooks' heirs in the remainder, there is no way in which the appellants can presume themselves to have been also vested with a fee simple title, as their counsel has contended.

As to the length of time prior to assertion of appellants' alleged rights, this Court has held in Cooper-King v. Cooper-Scott, is LLR 390 (1963), that there would be untold disturbance to society if unduly belated claims were allowed to defeat long-established vested titles to real property; especially where the silence of claimants for long periods of time could be presumed as acquiescence in previous dispositions of the property, and where the status quo, having been long-established, could not be disturbed without hurt to rights of innocent parties. As has been seen from the record, R. A. Wright's heirs had been in possession for a period of time before the forty-nine years that have passed since they parted with title to the appellee. For more than two generations Mary Brooks' heirs stood by and saw the property sold by the heirs of R. A. Wright to the objector, saw the transfer instrument passed through the Probate Court in Sinoe where they reside with the objector, saw him occupy the property for all these years, and made no move to assert what they now regard as their rights in fee simple. The statute requiring all deeds, mortgages, and other conveyances of real estate to be probated and registered is intended to give notice of the same as to allow objections if any there are. Howard v. Roberts, z LLR 217 (1916). In count nine of the respondents' answer, they have claimed that their title to Lot No. 424, the subject of these proceedings, is superior to that of the objector because their's was the prior deed. It would seem that the object of respondents in trying to execute a deed or Lot No. 424, was to assert their rights to the property, or perhaps to question objector's right to continue in possession. It should not be forgotten that objector had enjoyed undisturbed occupancy of the lot of **land for forty-nine years. Having occupied the land** for so long a period of years, he had perfect right to defend against anyone whomsoever by objecting to the execution

of another deed. Besides, the respondents failed to show any legal right which they could have had to the property, as descendants of Mary E. Brooks. Let us grant, for argument's sake, that prior to the filing of the objections respondents might not have known that objector Frank G. Cooper, Sr., had held title to and was in possession of the lot since March 1919, and that he had held the **land** under a chain of title which showed continuous and consistent links going back to Cynthia A. E. Greene, the heir of Nancy Gatlin. As soon as the deed was offered for probate, objections were filed to which were annexed: ( ) public **land** grant

deed of October 1862, from President Stephen A. Benson to A. L. McWayne and his heirs ; (z) administrator's deed from the administrators of the estate of Alexander Lee, dated May 24, 1886, executed in favor of Nancy Gatlin; (3) the deed of 1904 from the heirs of Nancy Gatlin to Mary Brooks for life and then to R. A. Wright and his heirs forever; and (4) the deed of March 1919, from the heirs of R. A. Wright to Frank G. Cooper, Sr., the objector. To any reasonable mind, the filing of objections with these exhibits annexed, should have been sufficient notice of the strength of appellant's right to object to the execution of another deed for property to which he held title by a good chain. And if respondents intended, in face of these instruments, to contest the legitimacy of the objector's title to the property, and to question his continued possession and occupancy thereof, then they should have resorted to the proper legal action, which would have afforded them the remedy sought. It is interesting to note that the only deed upon which the respondents have relied as the basis of their authority to sell Lot No. 424 to their co-respondents, David George and Nancy Saywon, is the 1904 deed which vested a life estate in Mary Brooks, their forebear, from whom they claim title. There is no indication that Mary Brooks left a will in which she might have devised the property

to her heirs ; nor is there any indication that the Probate Court issued an administrator's deed to them, if Mary Brooks died intestate. Thus, with the termination of Mary Brooks' life estate at her death, nothing was left upon which the grantors to David George and Nancy Saywon could lay a scintilla of right to pass title to this lot of land. Yet in the deed by which they sought to pass title to David George and Nancy Saywon, they have declared : "And we the said Martha Wayne, Mary R. Brown, James Brooks and M. S. Brown, for ourselves and our heirs, executors, administrators and assigns, do convenant with the said David George and Nancy Saywon as aforesaid, their heirs and assigns, that at and until the ensealing of these presents, we were lawfully seized in fee simple of the aforesaid granted premises; that they are free from all incumbrances ; that we have good right to sell and convey the same to David George and Nancy Saywon." When this deed was prepared and signed on February 18, 1968, objector had for forty-nine years before that time been in possession and occupancy of the property. The property is improved, with tenants of the objector living thereon, yet respondents' deed to David George and Nancy Saywon has declared that the property is free from incumbrance. The language in Wallace v. Green, 13 LLR 269, 277 (1958), seems to apply to the situation in this case. " 'There should be some title of interest, in law or in equity, in the grantor to enable him to convey, and a deed from a person not in possession, or not shown to be the owner, establishes no title.' 26 C.J.S. 6o1, Deeds, § 14.." What a sorry state of affairs would have been created had the trial court ordered probation of the deed to corespondents David George and Nancy Saywon, in face of the fact that objector Frank Cooper had enjoyed un-

disturbed
occupancy for forty-nine years, upon a valid deed duly probated by the same court forty-nine years before. It is our considered opinion
that the trial judge did not err in denying admission of respondents' deed to probate. In keeping with the foregoing, there was nothing
else the judge could have done, and, therefore, we affirm the judgment of the court below, with costs against the appellants. It
is so ordered.
Affirmed.

Francis v Anderson [1956] LRSC 5; 12 LLR 269 1956 (29 June 1956)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

MARCH TERM, 1956.

LEROY E. FRANCIS, Appellant, v. BENJAMIN J.
K. ANDERSON, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 7, 1956. Decided
June 29, 1956. 1. An injunction will not lie where there is an adequate remedy at law for the injury complained of. 2. Injunctive
relief should not be granted absent proof that the petitioner's legal rights are about to be invaded by the acts sought to be enjoined,
that these acts would cause irreparable injury to the petitioner, and that no other adequate remedy is available.

Appellee, as lessor
of real property, cancelled a lease on the ground that appellant, as lessee, had breached the lease agreement. Appellant sued in
the court below for damages by reason of appellee's termination of the lease, and at the same time applied to the court below for
an injunction restraining appellee from interfering with appellant's possession of the demised premises. The court below issued a
temporary injunction which was subsequently dissolved. On appeal to this Court from the decree dissolving the injunction, the order
of the court below was aftirmed.

MR. JUSTICE HARRIS delivered the opinion of the Court.

This is an appeal from an order entered against Leroy Francis in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. For a clear understanding of the case it is necessary to give a statement of the surrounding facts and circumstances. Leroy Francis, the appellant in this case, entered into a lease agreement with Benjamin J. K. Anderson, the appellee, for a portion of Lot Number 69, situated on Carey Street in the City of Monrovia, stipulating to pay rents as therein stated for the use of the property. Count "4" of the lease agreement reads as follows : "It is further agreed and understood by and between the parties hereto that the party of the second part shall erect a permanent building upon the herein demised premises within fifteen years from the date of the signing of this agreement by both parties hereto, and further that this agreement can be cancelled only upon failure by lessee, or of the said party of the second part, to pay the lease money as hereinbefore stipulated and/or failure to construct a permanent building within the time hereinbefore stipulated, and only after the notice of one calendar year shall have been given by the party of the first part or the party of the second part in writing." Count "7" of the agreement reads as follows : "It is hereby also mutually agreed and understood between the parties hereto that either party to this agreement hereby reserves to himself the right of entering an action of damages against the other party for the violation by either party of any and all of the terms of this agreement in an amount not to exceed the sum of fifteen thousand dollars ($15,000), but nevertheless, in case of any alleged violation on the part of either party, at least three months' notice of such alleged violation shall be served upon him by the other party, and in case said violation be not amended and/or corrected, then the said party making such vio-

lation may be sued by the other party for recovery against him in damages." Appellant having failed to pay the rent for the leased premises when it became due, appellee, through his counsel, in view of Counts "4" and "7" of the agreement as quoted above, addressed the following letter to appellants : "THE 'EXCELSIOR' LAW FIRM

"September 0, 1954 "MR. LEROY FRANCIS "ASHMUN STREET, MONROVIA. "DEAR MR. FRANCIS:
"In consequence of your continued violation of the agreement of lease entered into by and between you and our client, Mr. B. J. K. Anderson for one-eighth %) part of his premises situated lying and being on Carey Street, Monrovia, we have been requested to serve on you due and timely notice as in keeping with the terms of the agreement of lease, Count `7,' on notice. Please, therefore, take notice that it is the intention of Mr. Anderson to cancel the

agreement. "Meanwhile, we are to request that you remit through this office the sum of $283.35 in payment for the time you have occupied the said premises, on or before the 3oth instant. "It is a decided question with .us that no rehabilitation of the agreement can be considered since you have flagrantly forfeited and failed on two consecutive occasions to make good your side of the contract. "Faithfully yours, [Sgd.] PETER AMOS GEORGE Attorney at Law "Certified copy of the copy filed. [Sgd.] ROBERT B. ANTHONY Acting Clerk of Civil Law Court." Following the above letter, and in keeping with Count "7" of the above quoted agreement, the appellant insti(

tuted this action of injunction against the appellee who appeared and filed his answer as well as a motion for dissolution of the injunction. Trial of the law issues raised in the pleadings was held, and the injunction was ordered dissolved. From this order of the trial court the appellant, after exceptions noted, has appealed to this Court upon a bill of exceptions containing two counts. The first count contains exceptions to the order dissolving the injunction. The second count excepts to the issuance of the order dissolving the injunction at a time when the main action had been instituted. When the case was called for trial before this Court, the appellant neither appeared nor filed any brief. The appellee argued his side of the case and submitted. Since the holding of the court below was grounded wholly upon points of law, let us see if the dissolution of the injunction is in keeping with applicable principles of law. The appellant, as plaintiff below, filed a complaint containing seven counts with a prayer, which we quote hereunder: That on April 14, 1955, plaintiff and defendant entered into a lease agreement for a portion of Lot Number 69 Carey Street, Monrovia, for the erection of a theatre, a copy of which agreement is herewith made profert, marked Exhibit 'A,' and made a part of this complaint. "2. And the said plaintiff complains and further shows that he entered into the lease agreement with the defendant in good faith, but the defendant did not, in that defendant surveyed and set the points of said leased premises on both private and public lands not belonging to him. "3. And the said plaintiff further complains and most respectfully shows that, notwithstanding the several requests made by plaintiff to defendant for the settlement of the disputes between the owners of

the land he fraudulently leased to plaintiff, also the government, defendant sat down as though nothing whatsoever happened, and willfully neglected to take the necessary steps to rectify same. "4. And the said plaintiff further complains, and most respectfully shows, that plaintiff called defendant's attention to the damages he was sustaining as a result of his fraudulent actions, and that growing out of said actions, that is to say, the giving of lands not belonging to defendant, the owners of said **land threatened to enjoin your plaintiff except he break that portion of the building which was already constructed on land** defendant claimed to be his. The Department of Public Works and Utilities also wrote strong letters to your plaintiff commanding that operations be stopped and that ten feet of the front of the structure which is government's be broken down. Your plaintiff called the attention of defendant to the above mentioned facts and demanded that he be protected; but said request was in vain. Your plaintiff on another occasion, after the Department of Justice officially stopped the operations, called the attention of the defendant to said order and informed defendant that the irregularities should be clarified before any further money be expended on the structure or against lease payments, and to the further fact that your plaintiff had spent more than $20,000 towards said project. Defendant conceded the point, but requested that he be advanced $ioo against the last year's payment, for which your plaintiff willingly accepted and paid. "5. And the said plaintiff further complains and most respectfully shows that, notwithstanding the foregoing, as well as the further fact that a permanent structure was not supposed to be erected before fifteen years after the signing of the agreement,

and that the agreement could not be cancelled unless a notice of one calendar year in writing be given, and that only in the event said one year notice was given and plaintiff failed before steps can be taken, defendant received a cruel letter signed by Attorney P. Amos George, a disgruntled member of the Labor Congress of Liberia (which your plaintiff heads), which said letter states, among other things, that your plaintiff, and not defendant, had violated the lease agreement, and that it is a decided question with them that no rehabilitation of the agreement can be considered. Said letter in your plaintiff's opinion is designed to get blood money from plaintiff, especially so that your plaintiff is developing the property of defendant and already spent more than $20,000 on said project, and that he, defendant, has damaged and is still continuing to damage plaintiff because of the fradulent manner in which he commenced and is still continuing to do. A copy of said letter is herewith made profert, marked Exhibit '13' and made a part hereof. "6. And the said plaintiff

further complains and most respectfully shows that, after a request was made by him for a new survey of the parcel of land which defendant leased to your plaintiff, it was discovered that the land defendant leased to your plaintiff was less on the deed but more on the lease agreement. Plaintiff approached defendant requesting that he perform his part of the contract by giving him the land as specified in the lease agreement. Defendant appealed to your plaintiff to leave the matter alone since they were friends, and that he would make a compromise agreement with government for the said portion of land not specified on his original deed. "7. And the said plaintiff further complains and most

respectfully shows that the said defendant ought not to even attempt such a procedure in the face of the above-mentioned, but in truth and in fact, defendant should be made to, ordered and compelled to settle the disputes which his actions brought your plaintiff, and to be made to pay all damages your plaintiff sustained. Plaintiff still reserves the right to bring an action of damages against defendant for the losses he sustained and to ask the court to interpret the said agreement so that its life can be peaceful thereafter. "Wherefore plaintiff respectfully prays this Honorable Court to grant unto him, plaintiff, and to cause to issue and be served upon the above named defendant, a writ of injunction, enjoining, restraining and prohibiting said defendant or his agents and any or all persons whomsoever from doing any of the acts enumerated herein. on penalties prescribed by law until this Court shall have made further order in the premises, namely: "(a) Enjoining, restraining and prohibiting defendant to desist and refrain from molesting plaintiff, or from entering in and upon a certain piece and parcel of land or any portion thereof situated on Carey Street, City of Monrovia, County and Republic aforesaid, same being a portion of Lot Number 69, which the said defendant has leased to plaintiff in keeping with lease agreement dated April 14, 1953, or from doing or performing any act in connection with said agreement. "(b) Restraining him, or any other person or persons acting directly or indirectly under him, from doing the above mentioned, until this Court shall have made further orders in the premises ; and that Your Honor will be further pleased to have named in said writ of

summons a day and time suitable unto Your Honor when said defendant may appear at court, sitting in equity to show cause why (if indeed they can) said writ of injunction should not be perpetuated. And that Your Honor will be pleased to further grant unto plaintiff such other and further relief in the premises as to justice, equity and right doth appertain. All of which your humble plaintiff as in duty bound will ever pray and stand ready to prove." Appellee appeared as aforesaid and filed an answer containing seven counts, the second and third of which we regard as pertinent to the determination

of this case, since they present points of law upon which the injunction was ordered dissolved. Count "2" reads as follows : "2. And also defendant further submits that an action of injunction is an ancillary suit and therefore cannot stand by itself. Defendant contends that it is an elementary principle of law that injunction does not or will not lie generally to restrain and prohibit the institution of an action or suit where there is an adequate remedy at law for the party sued to appear and defend himself. Defendant avers that, even where it was defendant's intention to bring plaintiff to court to compel him to perform his portion of the lease agreement entered into between them, or even to offer to cancel it, plaintiff still has sufficient remedy at law to appear and defend himself. "3. And also defendant submits that plaintiff has chosen the wrong form of action; for, if defendant had injured plaintiff in the face of a lease agreement entered by and between them, his action should have sounded in damages for breach of contract, or specific performance to compel defendant to perform his side of the contract. De-

fendant avers that, in keeping with equity, same does not lend aid to fraud." Now let us see if the appellant, plaintiff below, was entitled to injunctive relief upon the allegations contained in his complaint. The applicable statutory provision reads as follows : "An action of injunction is an action in which the plaintiff seeks to compel the defendant, to permit matters to remain in the present state, either in pursuance of a contract, or because of a right growing out of the general principles of law. It is classed with actions founded on contract as a matter of convenience, although it is capable of being applied in cases, where the wrong is not, precisely, a breach of any contract." 1841 Digest, pt. II, tit. II, ch. I, sec. 8; 2 Hub. 1525· In our opinion, none of the allegations contained in the above complaint entitled the appellant to injunctive relief, either in pursuance of the contract entered into between him and the appellee, or by reason of any right under general principles of law; but on the other hand, these allegations if true, show that plaintiff has an adequate remedy at law. We are therefore of the opinion that Count "3" of the answer is well taken, and it is therefore sustained. "If the allegations of the petition do not show plaintiff to be entitled to equitable relief, as where it is apparent that he has an adequate remedy at law, the bill will be dismissed." 22 CYC. 948 Injunctions. Again : "As bearing on the effect of an adequate remedy at law as a bar to relief by injunction, the distinction between legal actions and the remedy afforded by a court of chancery should be borne in mind. The former are designed to afford redress for injuries already inflicted and rights of persons or property actually invaded. Equitable relief, however, by way of injunction is preventive in character. But equity is chary

of its powers, and ordinarily employs them only when the impotent or tardy process of the law does not afford that complete and perfect remedy or protection which the individual may be justly entitled to. Where there is a choice between the ordinary processes of law and the extraordinary remedy by injunction, and the legal remedy is sufficient, an injunction will not be granted." 1.4. R.C.L. 340-42 Injunctions § 44. The act of appellee in giving notice of appellant's breach of the contract entered into between them, and of appellee's intention to cancel the said agreement, is not sufficient ground for the granting of an injunction, especially since appellant had ample time to correct any default in keeping with the terms of the agreement, or to defend himself. The appellant did not appear when the case was called for trial, nor did he file any brief, which non-appearance we may rightly regard as an abandonment of his case. Even had he appeared, his failure to file a brief is tantamount to waiving the points raised in his bill of exceptions; yet we have considered it wise to make the above comment for the sake of clarification. We are therefore of the opinion that the order of the lower court should be, and it is hereby affirmed with costs against the appellant. Order affirmed.

Williams v Karnga [1931] LRSC 2; 3 LLR234 (1931) (15 May 1931)

HENRIETTA M. WILLIAMS, LYDIA DESHIELD, JAMES DESHIELD, W. 0. DESHIELD, heirs of the late JOHN SHAVERS, Plaintiffs-in-Error, v. A. KARNGA, and his Honor AARON J. GEORGE, Judge of the First Judicial Circuit Court, Defendantsin-Error.
WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided May 15, 1931. 1. In action of ejectment parties should recover upon the strength of their own title and not upon the weakness of their adversaries'. 2. As a general rule written instruments cannot be proved by copies ; they are merely secondary evidence, and are inadmissible, and can only be accepted after proper foundation has been made showing the impossibility of producing the original. 3. In an appeal it is essential and indispensable that the records should contain the evidence submitted in the court below.

In an action of ejectment, judgment was given for defendants in the Circuit Court. On writ of error, this Court dismissed. A. B. Ricks for plaintiffs-in-error. A. Karnga for defendant-in-error.
MR. JUSTICE GRIGSBY delivered the opinion of the

Court. This action was brought by the plaintiffs-in-error who were plaintiffs in the court
below to recover the possession of farm lot No. 23, Monrovia, of the following description : Commencing at the South angle of a marked corner by a plum tree on the left side going to the Barracks, running north 38 degrees east, 16 half chains, thence running south 3o degrees west 16 half chains; then running north 52 degrees west zo half chains, thence run-

ping
north 38 degrees east 16 half chains to the place of commencement and containing 8 (eight) acres of land and no more, by virtue of the substituted deed, the original to which has been misplaced whilst in the custody of President C. D. B. King, and the records of its registration have been accidentally mutilated and destroyed in the Department of State of Liberia, said deed having been issued and registered in the Colonial days of Liberia, but a copy of which is filed in the records of this litigation as emanating from Charles D. B. King, President of Liberia to the plaintiffs-in-error, heirs of John Shavers, the title of John Shavers having come to them by descent. From the records of this case a trial was had at the November term of the Circuit Court for the First Judicial Circuit, Montserrado County, 1930. At said trial, the defendant below obtained a judgment against plaintiffs from which they excepted and bring the same before this Court by a writ of error. The defendant, answering, said that the original owners of the parcel of **land Nos. 22 and 23 in the records of the Colony were Robert White and John Gibson and in the year 1843, the said two blocks of land** were sold to Hall Anderson who together with his wife in the year 185i before their death, willed both of said parcels of land to Amos Anderson, their grandson who died intestate in January, 1866; both tracts of land were sold by order of the Probate Court, Montserrado County, at public auction to one John F. Dennis of Monrovia, the highest bidder, and that the said John F. Dennis in the same year, 1866, sold said land to Ann Louise Worrell, the wife. of Moore T. Worrell of Monrovia, and that he, the defendant, is the lawful owner of the said tract of **land Nos. 22 and 23 situated in halfway farm land near the city of Monrovia, having purchased said land** from Augustas B. Pardmore and her husband J. R. D. Pardmore of this City in the year 1914 and that. Robert White, John Gibson, Hall Anderson, Cherry Anderson, Amos Anderson,

John F. Dennis, and Ann Worrell are the ancestors and the privies of the defendant; and that said deed granted to the plaintiff in this case by C. D. B. King, President of Liberia, is illegal and void in that the President of Liberia has no power under the Constitution to grant a deed for private land, as such an act would

constitute a usurpation of power and would be oppression and tyranny and deprivation of property without due process of law. The cause or right of action which is set forth in the foregoing allegation by the plaintiffs-in-error and strongly contested by defendants-in-error, brings this Court to consider the weight and strength of the evidence upon which the plaintiffs have founded their complaint. Following the dictum of this Judicature, parties shall recover upon the strength of their own title and not upon the weakness of their adversaries' ; this suit is predicated upon a copy of a substituted deed granted the heirs of John Shavers, plaintiffs-in-error. At the call of the case but before this Court was permitted to go into the merits, the plaintiffs-in-error informed the Court that the original deed, which was reported lost, had been found and they presented same for the benefit of the Court. This led the Court to view the deed in the records as secondary evidence, and to state that no evidence is accepted which supposes the existence of better evidence. It was greatly stressed in the court below that the original deed was misplaced by President King, and that no traces of it could be made in the archives of the Republic and that the plaintiffs felt themselves justified to secure their interest by a substitute deed as appears in the records, yet, to the mind of the Court this crumbles and falls particularly so when there appears a material variance between the substitute and the original as appears in the discovery of the lost deed. It is hardly necessary to cite authorities to the proposition that as a rule, written instruments cannot be proved by copies ; they are mere secondary evidence and are inadmissible under the general rule, and can only

be accepted after proper foundation has been made by showing the impossibility of producing the original. The statute law in support of this doctrine plainly states that the best evidence which the case admits of must always be produced. That no evidence is sufficient which supposes the existence of better evidence. A copy is not evidence unless the original is proven to be lost or to be in the possession of the opposite party who has received notice to produce it, unless it be a copy of some record or other public document. Lib. Statutes (Old Blue Book), 52, ch. X, §§ 8, 9. The Court feels itself unwarranted under the circumstances and in fairness to the parties litigant to accept and consider any evidence not submitted to the court below and transmitted in the records of the case to this Court. It is indispensable that the records in an appeal contain the evidence submitted in the court below. Johnson, Turpin and Dunbar v. Roberts, i L.L.R. 8 0860 . Therefore this Court dismisses this case leaving the right if any to any of the aggrieved parties to a renewal of their action in the court if so desired, and it is so ordered.
Dismissed.

MR. JUSTICE KARNGA, being a party litigant, took no part in the consideration or decision of the case by the Court.

Baaklini et al v Karel Logging Corp. [1993] LRSC 18; 37 LLR 247 (1993) (23 July 1993)

TANIOS BAAKLINI and **TALINCO GENERAL CONSTRUCTION & TRADING ENTERPRISES, INC.**, by & thru its General Manager, TANIOS BAAKLINI, Appellants, v. **KAREL LOGGING CORPORATION**, by & thru its President, VICTOR G. HAIKAL, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 18, 1993. Decided: July 23, 1993.

1. The Supreme Court will not consider any ruling made by the trial judge that has not been excepted to on the trial records.

2. Jurisdiction over the subject matter may be raised at any time before final judgment.

3. A court must, of its own motion, determine the question of its jurisdiction over any subject brought before it even if not raised by the parties since it is bound to take notice of its own authority. In the absence of jurisdiction, a court cannot proceed at all, but announce the fact and dismiss the case.

4. The test of jurisdiction is whether or not the tribunal has power to enter upon the inquiry, not whether its conclusion is right or wrong.

5. An action by a lessor against a lessee for rent, being founded on privity of contract, is transitory, and therefore the venue need not be laid in the county where the **land** is situated

6. The transitory nature of a cause of action based on contract is not affected by the fact that real property is involved. Hence the action to recover rent is transitory and not local, although the subject of the lease is real property.

7. The rule that action involving realty or affecting title to realty must be brought in the county in which the **land** is situated is inapplicable to actions to recover damages for breach of contract of a real estate sales contract because the latter is merely one to recover money damages, and although the question of title may be accidentally involved, it is not an action affecting title to realty or to recover real property.

8. Section 4.2 of the Civil Procedure Law, Rev. Code 1, governs action which seeks to enforce judgment that will affect realty and not the person.

Appellants instituted an action of damages for breach of an assignment of lease agreement, and an addendum thereto, alleging that defendant has failed to perform its obligations under the terms of the assignment of lease. Appellee/defendant filed an answer and subsequently filed a motion to dismiss the complaint for lack of jurisdiction contending that since the subject matter of the action involves real property in Bopolu Chiefdom, Lower Lofa County, and the action was brought in Montserrado County, the judge lacked territorial jurisdiction. The trial court accordingly dismissed the action. On appeal, the Supreme Court reversed the ruling holding that since enforcement of judgment will not affect the property, but rather the person, it is deemed an action in personam and, therefore, was properly brought in the Sixth Judicial Circuit Court for Montserrado County, even though the subject property is located in Lofa County. *Judgment reversed.*

Frank W. Smith and *Frederick Cherue* appeared for the appellants. *Farmere S. Stubblefield,* in association with *Clarence L. Simpson, Jr.*, appeared for the appellee.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

This matter is before this Court on appeal from the final ruling made by His Honour J. Henric Pearson, who at the time was the presiding judge of the Sixth Judicial Circuit in Montserrado County, dismissing an action of damages for breach of contract-filed by appellants. The judge dismissed the said action on the grounds that the court lacked jurisdiction to try the said action

because the subject matter of the contract, the breach of which damages was being sought is realty located in Bopolu Chiefdom, Lower Lofa County. The following are the facts as they evolved in the court below:

On November 30, 1989, appellants filed an action of damages for breach of an assignment of lease agreement and addendum thereto, against appellee in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The complaint alleged, inter alia, that defendant had failed to perform its obligation under said agreement and had consequently incurred damages in an amount of not less than $3,000,000.00 for mental anguish, losses and damages sustained as a result of appellee's breach. Appellee answered denying any breach of its obligation under said assignment of lease agreement, claiming further that the amount of damages which appellants prayed for is speculative. On January 2, 1990, Judge Pearson ruled the damage suit to trial on the facts. However, the judge set up a board of arbitration to locate the total acreage assigned by the subject agreement, because the defendant contended in its answer that up to the time of the filing of the damage suit, it had only been able to locate 36, 000 of the 254, 545 acres assigned under the assignment of lease. Appellee/defendant was also ordered by the court to desist operating on the assigned forest **land** pending the report of the board of arbitrators set up by the court to locate the entire 254,545. Neither appellants nor appellee excepted to the ruling.

On January 30, 1990, appellants filed information to the circuit court that appellee was operating on the assigned premises in disobedience to the judge's ruling. Appellants therefore prayed for a preliminary injunction against the defendant. Appellee/defendant filed an answer and denied disobeying the court's order, claiming that it was operating on a different locality obtained from the chiefs of Bopolu Chiefdom.

On February 9, 1990, the chiefs and elders of Bopolu Chiefdom moved the court to intervene in the action of damages and at the same time filed an answer to appellants' complaint and a motion to dismiss the damages action. On this same dated February 9, 1990, the court granted a temporary stay order on the injunction. None of the parties excepted to the court's ruling.

On February 19, 1990, appellants filed a resistance to the chiefs and elders' motion to intervene in the matter. Appellants also filed their reply to intervenor's answer. On February 22, 1990, the court heard argument on the motion to intervene and reserved its ruling.

Subsequently, on February 21, 1990, appellee filed a motion to dismiss plaintiffs' action of damages for lack of jurisdiction. On February 27, 1990, the court dismissed plaintiffs' action

alleging that the court lacks territorial jurisdiction to hear said action. The parties to this action are two companies engaged in the business of logging in Bopolu Chiefdom, Lower Lofa County. Both of these companies have their head offices in the City of Monrovia, Montserrado County; the assignment of lease and addendum were executed between the parties in Monrovia, Montserrado County; and both parties have their head offices and residence in the city of Monrovia, Montserrado County.

Under said agreement of assignment of lease and addendum, the appellee was granted certain logging rights and, in consideration therefor, agreed to perform certain obligations among which were, to register acres of **land** assigned with the Forestry Development Authority (FDA). According to appellants, the appellee's failure to perform this particular obligation resulted in the repossessing of this parcel of **land** by the FDA and assigning it to another logging company. The appellee agreed to compensate appellants in the amount of L$1,000.00 per month should appellee fail to operate the leased forest for any period during the harvest season (the period of July to December each year). The appellee also agreed to pay appellants $2.50 for logs falling below the selling price of US$100.00 etc. These are the obligations which appellants claimed the appellee failed to perform and for such breach appellants demanded at least $3,000,000.00 in damages.

Appellee, by motion, challenged the power of the Sixth Judicial Circuit Court of Montserrado County to try this damage suit for breach of contract on the grounds that the action brought before it is to establish rights growing out of an interest in real property situated in Lofa County. Hence the court lacks territorial jurisdiction.

The trial judge dismissed the action relying on the Civil Procedure Law, Rev. Code 1:4.2, which law was also cited by appellee in support of his motion filed to dismiss said action. In his ruling dismissing the action the judge ruled that Montserrado County is not the proper place to try this suit. We are now called upon to review the trial judge's ruling but in so doing, we must also carefully examine the facts of this action now under review to ascertain whether these facts which form the basis for bringing this suit fall within any of the perimeters of real property actions as defined under section 4.2 of our Civil Procedure Code, Rev. Code 1.

It is our opinion that from the briefs filed by both appellants and appellee as well as from their arguments before us, the issue which is clearly presented here for the determination of this matter may best be stated in the following words:

"Whether or not an action of damages for breach of assignment of lease contract for the failure to satisfy the consideration for the assignment of the leasehold is a real property action and therefore must be tried in the county where the realty assigned is located?"

Other issues raised by appellee in brief filed in this matter are whether or not this Court may entertain issues raised in appellant's bill of exceptions not excepted to in the court below? and, whether a motion to dismiss an action for lack of jurisdiction over the subject matter can be made before the court at any time before final judgment? These issues have been passed upon by this Court in many previous opinions and their answers are well known to all lawyers. We agree with appellee that as a general rule, this Court may not consider any ruling made by the trial judge that is not excepted to on the trial records. By such failure to take exceptions, counsel waives his right to have this court pass upon said ruling. We also agree with the appellee that jurisdiction over the subject matter may be raised at any time before final judgment. Civil Procedure Law, Rev. Code 1:11.2(b); *Liberty et al. v. Republic[1947] LRSC 24*; , 9 LLR 437 (1947).

We believe that the issue which we have culled from the brief filed by appellants and appellee, the arguments before us and the records in this appeal case as stated above will, when answered, adequately determine this matter, and will also decide the issue raised by appellants, whether or not this action is one in rem or in personam.

But before deciding this issue, we deem it necessary to quote in this opinion the relevant law, which is found in chapter 4 of the Civil Procedure Law, entitled *Venue and Removal of Causes,* section 4.2. of which relates to Real Property Actions.

"Every action to recover or procure a judgment establishing, determining, defining, forfeiting, annulling, or otherwise affecting an estate, right, title, lien, or other interest in real property shall be tried in the county in which all or part of the subject of the action is situated. If such an action is before the court of a stipendiary magistrate or justice of the peace, the action shall be brought before the magisterial or justice of the peace of the magisterial area, town, or city in which all or part of the subject of the action is situated."

Every court of general jurisdiction has power to determine whether the conditions essential to its exercise exists. In fact, it must of its own motion always consider the question of its jurisdiction over any matter brought before it even if not raised by the parties, since it is bound to take notice

of its authority. In the absence of jurisdiction, the court cannot proceed at all but must announce the fact and dismiss the cause.

"The test of jurisdiction is whether or not the tribunal has power to enter upon the enquiry, not whether its conclusion is right or wrong". 14 AM. JUR., *Courts, §* 168.

We are of the opinion that the statute quoted above con-cerns the venue of real property actions, the territory where the suit should be heard and decided.

In their brief, appellants contend that an action for damages for breach of contract is an action in personam and not an action in rem; that this action is not a possessory action and was not brought to dispossess defendant corporation of the real property in Lofa County; it is an action for recovery of money judgment for the defendant's failure to perform its obligations under an agreement of assignment of lease. This being so, according to appellants, the action is properly brought in any county where either plaintiff or defendant has its regular place of business or resides. Appellants contend further that Montserrado County is where both defendant and plaintiffs have their regular place of business and where the contract of the sub-lease agreement was executed.

Appellee made the following contentions which are so clearly stated, and were so forcefully argued, that we deem it expedient to quote same, herein below verbatim:

"While appellee submits that the action of damages for breach of contract filed in Montserrado County by appellants seeks to recover money judgment and not the repossession of the timber forest in Lofa County, appellants' apparent right to seek money damages grows out of their interest in real property situated in Lofa County, and the purpose of appellants' action is to establish their rights and interest in real property under the control of appellee situated in Lofa County, that they envisioned entitled them to money judgment. ".

Appellee further goes on to say in his argument and brief, and we quote:

"It is clear that appellants' action seeks to recover money damages basically alleging that appellee failed to satisfy the money consideration that cause the appellants to assign their acquired leasehold to the appellee. In other words, appellants are basically seeking rent from appellee growing out a leasehold arrangement situated in Lofa County".

The Civil Procedure Law, Rev. Code 1:4.2 pertains to actions "to recover or to procure a judgment establishing, determining, forfeiting, annulling, or otherwise affecting an estate, right, title, lien or other interest in real property". This action is one claiming money damages against the logging corporation for breach of its obligation payment of the consideration for an assignment of lease for realty. The action is not one that seeks to determine who has right to the realty, or to annul any right of ownership of said realty. This action does not affect the estate, nor the right or title to the forest **land** in Lofa County. As a matter of fact none of these rights appear to be in dispute between the parties to the action. The agreement, the breach for which appellants seek damages, has to do with logs which are to be extracted from the forest **land** in Lofa County. These logs, even though part of the realty, are removable and, when removed, become personal property. Further, the consideration which is to be paid by appellee to appellants, to all intents and purposes, must be considered as rent for appellee's use of the forest area assigned to appellee for the purpose to carry on its business of logging. The appellee in its brief admitted that "appellants are basically seeking to recover rent from appellee growing out of a leasehold arrangement situated in Lofa County".

According to law writers, leasehold estates ordinarily do not constitute real property, or an interest in real property within the meaning of venue statutes, and a controversy pertaining only to the interpretation of a leasehold does not, for venue purposes, involve the recovery of an interest in real property. It is the generally accepted rule that an action by a lessor against a lessee for rent, being founded on privity of contract, is a transitory action, and therefore the venue need not be laid in the county where the **land** is situated." 77 AM JUR. 2d, § 14, pages 851-852.

The transitory nature of a cause of action based on contract is not affected by the fact that real property is incidentally involved. Thus, an action to recover rent is transitory and not local, although the subject of the lease is real property. 20 AM. JUR 2d. § 127, page 480.

A statutory provision to the effect that action to recover realty or actions affecting title to realty must be brought in the county where the **land** is situated has been held inapplicable to actions to recover damages for breach of contract of a real estate sales contract, on the grounds that such an action is merely one to recover money damages; and although the question of title may be incidentally involved, it is not an action affecting title to real property, or to recover real property within the meaning of such a statute.

The Civil Procedure Law, Rev. Code 1: 4.2 governs actions which seek judgment that will act upon the realty. Enforcement of the judgment sought must directly affect the property rather than the person. In this case, enforcement of the judgment sought in this action of damages for breach of contract will have an impact upon the defendant, even though the action does grow out of a leasehold arrangement concerning real property. The realty located in Lofa County will not be affected at all should appellants obtain a judgment in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, for breach of the contract of assignment. For consideration, the agreement gave the assignee the right to extract logs from real property in Lofa County. This action is therefore in personam.

We are not persuaded by counsel's argument that the facts of this suit fall within the realm of real property actions or within any of the perimeters of real property actions as are defined by section 4.2 of our Civil Procedure Law. This is not an action brought to determine or establish any right or interest to the real property situated in Lofa County as appellee contends. There is no question whatsoever in respect to appellants' right or interest in said realty. Appellants, by instituting this action in the Sixth Judicial Circuit in Montserrado County are merely seeking money damages for breach of an assignment of lease contract for realty situated in Lofa County.

In view of the foregoing facts and the law cited, it is the holding of this Court that the action, which is now under review, was properly brought in the Sixth Judicial Circuit Court. That the judge's interpretation of Section 4.2 of the Civil Procedure Law is erroneous, therefore the ruling dismissing appellants' action for lack of territorial jurisdiction is hereby reversed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding to resume jurisdiction and hear the case as the same has been ruled to trial on the issues of law. Costs to abide final determination of this case. And it is hereby so ordered.

Judgment reversed.

Tolbert et al v Gibson-Sonpon [1993] LRSC 2; 37 LLR 113 (1993) (26 February 1993)

THE ESTATE OF THE LATE FRANK E. TOLBERT, by and thru the administrators, ROLAND TOLBERT, C. MONROE TOLBERT and ALEXANDER TOLBERT, Appellant, v. **ANGELINE GIBSON-SONPON**, by and thru her Husband, DR. THEOPHILUS N. SONPON, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 4, 1992. February: 26, 1993.

1. The Supreme Court shall be the final arbiter of all constitutional issues and shall exercise final appellate jurisdiction in all cases both as to law or fact except cases involving ambassadors, ministers or cases in which a county is a party.

2. No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in the constitution, and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases arising in courts not of record, under court-martial and upon impeachment, the parties shall have the right to trial by jury.

3. The right of an appeal from a judgment, *decree*, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedure for easy, expeditious and inexpensive filing and hearing of an appeal.

4. The provision of Article 97(a) of the Constitution prohibiting the courts or other tribunal to make any order or grant any relief in respect of any act by the People's Redemption Council (PRC) by any person, whether military or civilian, in the name of the council, is in direct contravention to the fundamental rights contained in Article 20 of the Constitution.

5. The Constitution must be construed reasonably to carry out the intention of the framers. It should not be construed to defeat the obvious intent of the drafters. The intent should be gathered from both the letter and spirit of the document, and its provisions must be interpreted in the same spirit in which it is produced. In interpreting the Constitution, the Court should put itself in the position of the framers.

6. Every provision in the Constitution must be interpreted in the light of the entire document rather than a sequestered pronouncement because every provision is of equal importance. None of the provisions must be interpreted so as to nullify or substantially impair the other, and if there is an apparent discrepancy between different provisions, the Court should harmonize them if possible.

7. Article 97(a) is not applicable in the determination of property rights between private citizens and that these rights can only be determined by a court of competent jurisdiction consistent with the provisions laid down in the Constitution in accordance with due process.

8. Title to real property is vested in persons by title deed issued by the Republic of Liberia under the signature of the President, for public lands, or a warranty deed executed by one person called the grantor, in favor of another person called the grantee, for private lands.

9. Only a court or tribunal of competent jurisdiction has the authority to adjudicate dispute regarding the ownership or right of possession of any realty, and the procedure must be consistent with the provisions laid down in the Constitution.

10. The Bureau of Reacquisition created by the People's Redemption Council Government was never vested with the powers to decide issues arising out of title to real property.

11. Article 97(a) of the Constitution was specifically intended to grant amnesty to the seventeen non-commissioned officers and enlisted men of the Armed Forces of Liberia (AFL) and their agents for crime and other unlawful acts committed by them during the military coup d'etat which overthrew the constitutional government of Liberia, up to and including the date of the adoption and coming into effect of the 1986 Constitution of the Republic of Liberia.

On October 27, 1982, plaintiffs, as administrators of the estate of the late Frank E. Tolbert, instituted an action of ejectment against appellee for the recovery of a parcel of **land** which they alleged belongs to the estate of the late Frank E. Tolbert, claiming both general and special damages for the loss of the use of said property and for rental income illegally received by appellee. The appellee interposed an answer, denying appellants' claim to the property and contending that title to the said property had earlier been decided in her favor by the Bureau of Reacquisition of the PRC government on September 9, 1982. The appellee also filed a motion to dismiss, contending that the civil law court had no jurisdiction to determine the action because Article 97(a) of the Constitution prohibits a court or tribunal from making any order or granting relief in respect of any action taken by the PRC government pursuant to its decrees. The trial judge granted the motion and dismissed the entire action on grounds that Article 97(a) is binding on the courts. Appellants appealed therefrom to the Supreme Court.
On appeal, the appellee reiterated its claims that title to the subject property had already been

determined by the Bureau of Reacquisition, and that the trial court is barred from resurrecting same by virtue of Article 97(a) of the Constitution, and that any attempt to do otherwise constitutes a violation of the Constitution. The appellants, on the other hand, contended that Article 97(a) does not have precedence over Article 20, and that only the courts can determine title to real property. The appellants also argued that Article 97(a) is only applicable to actions brought against former PRC government officials and their agents, and that said provision cannot be used in the determination of property rights between private citizens. Further, the appellants contended that the late Frank E. Tolbert was not a party to the investigation conducted by the Bureau of Reacquisition concerning the subject property, and as said property was not confiscated, they could not be bound by such order.

Following arguments, the Supreme Court held that Article 97(a) of the Constitution was intended to be an amnesty provision which was to prevent administrative or judicial inquiries into crimes, atrocities and other illegal acts committed against citizens by the PRC government and its officials during the military regime. Hence the Article was not intended to affect the adjudication of property rights between citizens. The Court also held that any contrary interpretation of this provision would be a violation of the constitution. The Court further opined that the prohibition existing under Article 97(a) restraining the courts or other tribunals from granting any relief in respect of acts committed by the PRC government officials and their agents against any person, whether military or civilian, is a contravention of the safeguard of the fundamental rights contained in Article 20. The Court also opined that the provisions of the Constitution must be construed reasonably to carry out the intention of the framers, and that the intent should be gathered from both the letter and the spirit; and that it should not be interpreted to defeat the intention of the drafters.

The Court stated further that the document issued by the Bureau of Reacquisition, upon which appellee relies as vesting in her title to the property in dispute, cannot be considered as having any legal validity because title to real property is vested in persons by title deed issued by the Republic of Liberia under the signature of the President for public lands, or a warranty deed executed by one person called the grantor in favor of another called the grantee, for private lands. In the event of a dispute regarding the ownership or right of possession of any realty, only the court or a tribunal of competent jurisdiction may properly adjudicate such dispute, and the adjudication of such dispute must be carried out in the manner consistent with the provisions laid down in the Constitution in accordance with due process. Continuing, the Court held that the Bureau of Reacquisition Commission was never vested with the power to decide title to real property. Consequently, the proceeding held by it which resulted in the decision awarding appellee title to the subject property was completely void of any semblance of due process.

Moreover, the Court stated that the Bureau exceeded its authority by adjudicating property rights when it was only authorized to manage, supervise and control. The Court concluded that the trial

judge committed reversible error when he held that Article 97(a) of the Constitution barred the court from hearing the appellants' claims. The judgment of the trial court was accordingly *reversed* and *remanded* for new trial.

J. Edward Koenig appeared for appellant and *Roger K. Martin* appeared for appellee.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

On October 27, 1982, the administrators and heirs of the late Frank E. Tolbert, plaintiffs, filed an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit in Monrovia, Montserrado County, against Angeline Gibson-Sonpon, by and through her husband, Dr. Theophilus N. Sonpon, defendant, seeking to recover a parcel of **land** located at the corner of Lynch and Benson Streets in the City of Monrovia. The plaintiffs alleged that they had discovered a deed for said parcel of **land** in the name of the late Frank E. Tolbert but that the parcel of **land** is being occupied and possessed by the defendant, Angeline Gibson-Sonpon. Plaintiffs prayed that defendant Angeline Gibson-Sonpon be evicted from the subject property and that they be awarded special damages in the sum of L$18,000.00, representing rental income illegally received by the defendant, Angeline Gibson-Sonpon, and also general damages for the loss of use of said property.

Defendant filed an answer denying that the property sued for is owned by plaintiffs. Defendant claims that she is entitled to said property because her title had been determined by a finding made in her favor by the Bureau of Reacquisition of the Government of the People's Redemption Council, Republic of Liberia, (PRC) in a document dated September 9, 1982. Defendant further contended that the civil law court had no jurisdiction over the subject property by virtue of a constitutional bar which prohibits any court or tribunal from making any order or granting any remedy or relief in respect of any act taken by the People's Redemption Council (PRC) pursuant to any of its decrees. Defendant then filed a motion to dismiss plaintiffs' ejectment suit based on the aforementioned provision found in Article 97(a) of the Constitution.

The trial court, in deciding the issues raised in defendant's motion ruled that the prohibition contained in Article 97(a) of the Constitution is binding on the courts. The court therefore refused jurisdiction over the subject matter of the ejectment suit and dismissed plaintiffs' suit. Hence this appeal.

As mentioned earlier, Defendant Angeline Gibson-Sonpon defended her title to said property by asserting that her title had been determined by the Bureau of Reacquisition Commission of the People's Redemption Council (PRC) Government and exhibited, in the trial court, a document issued in her favor by the said Bureau of Reacquisition. We shall quote hereunder the text of said document as follows:

"Republic of Liberia
Bureau of Reacquisition
Monrovia, Liberia
09 September 1982
BB/D/0108/' 82
Office of the Director

To Whom It May Concern
Based upon a careful and thorough background investigation and scrutiny of documents presented, we herewith confirm that the property in the City of Monrovia, Montserrado County, purchased, registered and probated on July 20, 1956, is the sole property of Mrs. Angeline Gibson. In view of the above, we are pleased to inform the general public that this is the sole property of Mrs. Angeline Gibson and therefore it does not fall within the category of confiscated properties.

We therefore unconditionally declare the said property on which the building is constructed, the bonafide property of Mrs. Angeline Gibson, over which the Bureau of Reacquisition relinquishes further claims and legal authority. This document certifies her legal ownership over such property and can be considered a letter of clearance from the above captioned Bureau. The general public is advised to adhere to this letter of clearance and deal directly with Mrs. Gibson.

In the cause of the people, the struggle continues! Sgd. J. Yanqui Zaza Director

Angeline Gibson-Sonpon also defended her right of title to said property by claiming that in view of the action taken by the Bureau of Reacquisition, as evidenced by the document just quoted, the trial court wherein the action of ejectment was instituted was barred under Article 97(a) of the Constitution of Liberia from making any inquiry into the action taken by the Bureau of Reacquisition in respect of the subject property. We shall also quote for the purpose of this opinion Article 97(a) as follows:

"No executive, legislative, judicial or administrative action by the People's Redemption Council or by any person whether military or civilian in the name of that Council pursuant to any of its decrees shall be questioned in any proceedings whatsoever; and accordingly, it shall not be lawful for any court or other tribunal to make any order or grant any remedy or relief in respect of any such act."

These are the two defenses which appellee relied upon to withhold from the plaintiff the property which it sought to recover.

The briefs of appellant and appellee counsels and their arguments before this Court centered around two principal issues:

a. Was the trial judge correct in his interpretation and application of Article 97(a) which resulted in his dismissal of plaintiff's action?

b. What effect, if any, does Article 97(a) of the Constitution has on Article 20 of the Constitution?

Appellant argued that Article 97(a) should not have precedence over Article 20 of the 1986 Constitution. That only the courts of Liberia can determine title to real property or divest anyone of its property. Appellant's counsel further argued that Article 97(a) is applicable only where action was taken against former officials of the People's Redemption Council (PRC) Government. Further, counsel contended that the heirs of the late Frank E. Tolbert were not party to the investigation conducted by the Bureau of Reacquisition Commission concerning the subject property, and finally, that the Bureau of Reacquisition Commission in its document dated September 9, 1982 stated that the subject property was not confiscated property.

Appellee's counsel on the other hand argued that the trial judge correctly interpreted Article 97(a) dismissing the ejectment action. Appellee's counsel contended that the trial court could not delve into the competency of the Bureau of Reacquisition Commission to make the determination

which it did in respect to the realty in question, for to do so would be a violation of the Constitution of Liberia.

In order to address these issues, we deem it necessary to state briefly the historical facts which gave rise to its inclusion in the 1986 Constitution of Article 97(a).

Following the military coup d'etat of April 12, 1980, the seventeen non-commissioned officers and enlisted men of the Armed Forces of Liberia (AFL), who staged the coup d'etat constituted themselves into a government called the People's Redemption Council (PRC) Government of the Armed Forces of Liberia. It was this government of military men who ordered the execution of thirteen government officials for the alleged commission of any one of the acts which was defined as high treason under Decree No. 1 promulgated by the People's Redemption Council Government.

The late Frank E. Tolbert was among the thirteen officials of government who were executed by firing squad after being summarily convicted by a military tribunal for the crime of high treason, a crime defined by a decree promulgated by the Military Government as: (a) mal-administration; (b) contravention of the democratic process; (c) rampant corruption and flagrantly managing the affairs of the state. PRC Decree Number One. Those who were executed forfeited their real and personal properties which were confiscated by the People's Redemption Council Government and placed under the control of the Bureau of Reacquisition Commission; a bureau set up by the People's Redemption Council Government to manage all confiscated properties. The property located at the corner of Lynch/Benson Streets, which is the subject of the ejectment action now on appeal before this Court, was confiscated as the property of the late Frank E. Tolbert and turned over to the Bureau of Reacquisition Commission for management and control.

We shall now proceed to examine and analyze the issues raised and decided by the trial court in this case now on review, with particular reference to the trial judge's interpretation of Articles 97(a) and 20 of the Constitution, and also the document issued to defendant by the Bureau of Reacquisition Commission of the People's Redemption Council Government which confirmed that defendant was the legal owner of the subject property.

From the brief historical facts recited above, it is clear that the government that emerged out of the 1980 coup d'etat was a military government. One of the first acts of this government was to suspend the existing constitution which obligated any Government of Liberia to protect the rights of citizens and residents. With the suspension of the Constitution, military government was free

to act as it pleased, ignoring any and every basic right of the citizens of our great country. This is exactly what the government did. Citizens of every class, clan, tribe and gender were subjected to military trials and actions since there was no Constitution which prohibits such trials and wrongful acts. Those tried could not enjoy the right to due process of law; and private properties were confiscated and disposed of as the warlords wished. Again, there was no means to prevent illegal and arbitrary actions by those who governed us.

Then suddenly the military government decided to surrender our country back to civilian rule. In this regard the military head of state commissioned a committee to draft a new constitution to replace the one previously suspended. No doubt those who drafted the new constitution or, more correctly, those who initiated its drafting entertained great fears that unless some safeguards were included in this document, those individuals who were responsible for depriving citizens and residents of their rights during the suspension of the Constitution, might be called upon to give account by citizens and residents who may elect to invoke their rights against such provisions even under the new Constitution, which guarantees protection of their fundamental rights.

We observed during the argument of this matter before us, that the counsel for appellants, in person of Counsellor Edward. Koenig, was a member of the constitutional advisory assembly, the body of Liberian citizens that was entrusted with the responsibility for the final draft of the 1986 Constitution, which the people of Liberia adopted. This Court asked Counsellor Koenig about the inclusion of Article 97(a) in the Constitution. He replied that the People's Redemption Council (PRC) decree that created the Reacquisition Bureau gave no right to that bureau to determine title to property. He also stated that Article 20 of the Constitution of Liberia guarantees the right to party litigants to have their rights to property adjudicated in the courts of Liberia and no intent can be gathered from Article 97(a) of the Constitution to the effect that it would give any institution other than the courts of Liberia, the right to decide title to property.

The Constitution states in Article 66 that the Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases ... "both as to law and fact except cases involving ambassadors, ministers or cases in which a county is a party". LIB. CONST., Art. 66 (1986).

This case contains some facts and issues, the resolution of which depend upon our interpretation of Article 97(a) and Article 20 of the Constitution of Liberia. We are duty bound to exercise our constitutional rights, and interpret these two articles as they relate to this matter and all other cases which present facts similar to the one now on review.

We are of the opinion that Article 97(a) was included in the final draft of the Constitution as an amnesty provision which was drafted and included in the Constitution to prevent judicial and administrative inquiry of crimes, atrocities and other illegal acts committed against citizens by the military government and their agents under the disguise of prosecuting the overthrown government and its officials for acts which the People's Redemption Council Government defined in its Decree No. 1 as a crime of "high treason". Article 97(a), was not intended to affect the adjudication of private rights between citizens nor does it in fact affect such right. Any interpretation of Article 97(a) to the contrary would be a flagrant violation of the basic objectives of our constitutional guarantees.

For example, Article 20 of the Constitution, as found in chapter II, entitled Fundamental Rights, reads thus:

Article 20:

a. "No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases arising in courts not of record, under court martial and upon impeachment, the parties shall have the right to trial by jury.

b. The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for easy, expeditious and inexpensive filing and hearing of an appeal.

The prohibition existing under Article 97(a) of the Constitution restraining the courts or other tribunal from making any order or granting any relief in respect of any act by the People's Redemption Council against any person whether military or civilian, in the name of that Council pursuant to its decree, is in direct contravention to the fundamental rights contained in Article 20 quoted above.

The various provisions of the Constitution must be construed reasonably to carry out the intention of the framers. It should not be construed to defeat the obvious intent of the framers.

The intent should be gathered from both the letter and spirit of the document. The rule being that the written Constitution should be interpreted in the same spirit in which it was produced. The Court should put itself in the position of the men and women who drafted this instrument. 16 AM JUR. 2d., *Constitutional Law, §* 64, pages 239-240.

This Court must therefore put itself not only in the place of those individuals who drafted Article 97(a) of the Constitution but also in the place of even those persons who requested its drafting. Human beings consists of men and women with conscience; therefore as human beings we have the capacity to reassess our doings and, in doing so, we can appreciate the gravity of our acts and the possible repercussion our actions may have upon us. We can imagine this was the position in which those who has anything to do with the inclusion of Article 97(a) in the Constitution found themselves and decided to do something about it.

In interpreting the Constitution, it is the duty of this Court to have recourse to the instrument to ascertain the true meaning of every particular provision. Every statement in the Constitution must be interpreted in the light of the entire document rather than a sequestered pronouncement. This is so because fundamental constitutional provisions are of equal importance and dignity. None of those provisions must be enforced so as to nullify or substantially impair the other. If there is an apparent discrepancy between different provisions, the court should harmonize them if possible. 16 AM JUR 2d., *Constitutional Law, §* 66, page 242.

In our opinion there is an apparent inconsistency between Article 20 and Article 97(a) of the Constitution. We therefore hold that Article 97(a) is not applicable in the determination of property rights between private citizens and that these rights can only be determined by a competent court in this Republic consistent with the provisions laid down in the Constitution in accordance with due process of law.

The document issued by the Bureau of Reacquisition Commission upon which defendant Angeline Gibson-Sonpon relies as vesting in her title to the property, in dispute, cannot be considered as having any legal validity whatsoever. In this Republic, title to real property is vested in persons by title deed issued by the Republic of Liberia under the signature of the Executive head of this Republic, for public lands, or a warranty deed executed by one person called the grantor, in favor of another person called the grantee, for private lands.

In the event of a dispute regarding the ownership or right of possession of any realty, only a court or tribunal of competent jurisdiction can properly adjudicate such dispute. Such

adjudication to settle title or ownership to realty under the laws of this Republic must be carried out in a manner consistent with the provisions laid down in the Constitution in accordance with due process of law. The Bureau of Reacquisition created by the People's Redemption Council Government was never vested with such powers to decide title to real property. The proceedings held by that Bureau which resulted in its decision awarding appellee title to the subject property was completely void of any semblance of due process of law. More than this, the Reacquisition Bureau Commission far exceeded its authority by attempting to adjudicate title to property which by decree it was only obliged to manage, supervise and control.

In view of the foregoing facts and laws, it is the unanimous opinion of this Court that Article 97(a) of the Constitution of Liberia cannot deprive any of the citizens and residents of this Republic from exercising any fundamental rights guarantee to them under the Constitution of Liberia.

Article 97(a) of the Constitution is a provision specifically intended to grant amnesty to the seventeen non-commissioned officers and enlisted men of the Armed Forces of Liberia (AFL) and their agents for crimes and other unlawful acts committed by these persons from April 12, 1980, the date of the military coup d'etat which overthrew the constitutional government of Liberia, up to and including the date of the adoption and coming into effect of the 1986 Constitution of the Republic of Liberia.

It is our opinion that the judge's interpretation of Article 97(a) of the Constitution to the effect that said Article bars the court from hearing the plaintiffs case, is erroneous and the ruling dismissing plaintiff's action is hereby reversed. This case is hereby remanded to the trial court with instructions that the court disposes of the issues of law presented in the pleadings of the parties consistent with this opinion, and that the said ejectment suit be ruled to trial on the facts. The Clerk of this Court is ordered to send a mandate to the trial court in accordance with this opinion. Costs against appellee. And it is hereby so ordered.

Judgment reversed; case remanded

Page et al v Harland et al [1906] LRSC 1; 1 LLR 463 (1906) (1 January 1906)

HENRY A. PAGE and **A. L. PAGE**, Appellants, vs. **JACOB HARLAND** and **ABBIE ABIGAIL KING**, Appellees.

[January Term, A. D. 1906.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.
Ejectment—Statute of Limitations.

It is error for a trial court to rule that pleading the Statute of Limitations raises a mixed question of law and fact triable by a jury.

In an action of ejectment, where the declaration sets up a claim to a specific parcel of **land** and distinctly describes it, a deed, wherein appears none of the boundaries and descriptions mentioned in the declaration, is not admissible as *prima facie* evidence of title.

A widow, who had but a life interest in one third of her deceased husband's estate, in 1863, conveyed the whole of the estate to T, with all the formalities required by law. In 1876, T. conveyed the property to S, in due form, S improved the property and afterwards it was acquired by P, defendant in ejectment, in 1905. *Held,* that the right of action to recover accrued at the time of the original transaction and that simultaneously therewith the Statute of Limitations began to run, and further, no objections having been made to any of the transactions, by claimants or their privies, and it not appearing that they were legally disabled from so doing, that P acquired an absolute fee to the whole estate.

This case was heard and determined at the September term of the Court of Quarter Sessions and Common Pleas for Grand Bassa County, A. D. 1905. From the pleadings filed in the suit we find that the action was brought by appellees, plaintiffs in the court below, to recover possession of a certain parcel of **land**, the right and title to which they averred had descended to them by descent, and which they alleged was wrongfully withheld from their possession and enjoyment, by the appellants, defendants in the lower court. To this declaration appellants, defendants below, in their answer pleaded, *inter alias,* the Statute of Limitations in bar of the action, and in subsequent pleadings demurred to the replication of appellees, upon the ground that it did not distinctly reply to their special plea set up in their answer. At the trial of the cause the court below overruled the demurrer and held that the plea of limitation raised by appellants in bar of the suit was a mixed question, triable by a jury. The appellants excepted to this ruling of the lower court, and in their bill of exceptions addressed to the consideration of this tribunal have laid this point as their first exception. The nature and quality of a plea in bar, pleading the Statute of Limitations, is so distinctly understood in law, and the rules have been so uniformly and clearly laid down by this judicature, that it is difficult to understand how the court below could have mistaken the law controling same. In the case of Thomas Cassel against Matilda Richardson, determined by this court in 1876, it was held that "a plea specially pleading the

Statute of Limitations in bar to a suit is a question *purely of law*, and under the statutes of this Republic could only be tried and determined by the court." We do not hesitate to uphold this opinion. It was manifest error in the court below to submit a plea of this nature to a jury.

The second exception is taken as follows: "Because on the 3oth day of September, A. D. 19o5, the attorney for the plaintiffs (now appellees) offered as evidence an instrument purporting to be a deed from the Republic of Liberia to Asbury Harland ; the said instrument being objected to by the defendants' attorneys on the ground that the said instrument was irrelevant to the issue, as it did not bear on its face any description of the one third of an acre of **land** which the plaintiffs were seeking to recover, as laid in their complaint," etc. It is a fixed principle of law that all evidence must be relevant to the issue ; that is, it must be pertinent to the facts it professes to support. It is also a settled rule that the evidence must agree with the essential allegations averred in the declaration, when offered by the plaintiff, and if there appears a material variance between the facts pleaded in the declaration and the evidence offered in support thereof, such variance is held by the leading law authorities to be fatal. It is not difficult to perceive the vast amount of inconvenience and injustice which a defendant would be subjected to if the rule was less inflexible.

Here, in the case under our consideration, the plaintiffs, now appellees, set up a claim to a specific lot or parcel of **land**, distinctly set forth and described in the declaration. In the deed offered as *prima facie* evidence of said claim, there appear none of the boundaries and descriptions mentioned in the declaration, which, in our opinion, was absolutely necessary in order to prove that the property claimed in the declaration is identical with that mentioned in the deed offered as evidence, as having been granted unto their ancestors, under whom they claim, by the rule of descent. A disagreement in these very essential points rendered the deed irrelevant to the issue and at variance with the facts laid and pleaded in the declaration.

The seventh, eighth and ninth exceptions, which we deem worthy of consideration, are taken to the court below rejecting as evidence offered on the part of the defendants, now appellants, the *transfer* titles for the property in question, first from Moriah Hatland to Samuel Toliver, and from Samuel and Jane Toliver to Lucinda Scotland, and from E. and John Allen Scotland, heirs of Lucinda Scotland, to appellants.

Beyond a doubt the lower court committed a gross error in rejecting as evidence the above mentioned conveyances, beginning with Moriah Harland to Samuel Toliver, and by a long line of transfers down to appellants, by virtue of which succession of titles made from time to time and openly held and enjoyed by the privies of appellants for more than forty years, which appellants sought to establish as their special plea in bar of the appellees' claim. It was imperative for the

appellants in support of their plea, to prove that the property in dispute had been openly held and enjoyed either by themselves or their privies, under a color of right and adverse to the title of appellees, for a period of time not under twenty years, agreeable with the Statute of Limitations of this Republic ; and having inspected the deeds ruled out by the learned judge below, we do not hesitate to pronounce them as evidence of the highest grade in this relation, and we are unable to find the authority, either in law or equity, upon which the court below predicated its ruling on this point.

Having considered specifically those exceptions in the bill, which we regard important to pass upon separately, we proceed to take up the last two points, involving the verdict and the final judgment pronounced thereupon. We would just here remark, that this court has spared itself no pains in diving deeply into the intricacies, and to some extent, perplexities of law surrounding this case. Not only does the law bearing on it afford the means for interesting study and research, but the vital issues which it raises are so very important to the peace, happiness and security of society that we have approached the case with all the legal skill and scrutiny at our command.

From the record we find that in 1851, the original grant for the property in question was made to Asbury Harland, the ancestor of the appellees, by President Roberts, by virtue of an act passed December 30th, 1850. There is also evidence to show that he had actual possession of it. Subsequently, Harland died, and in 1863, Moriah Harland, widow of Asbury Harland, not as widow or representative of Asbury Harland, but under a color of right in and to said property, conveyed it unto Samuel Toliver, with all the formalities required by law; thereby giving notice to all mankind that she had set up adverse title to said **land**. To this act of Moriah Harland it does not appear from the record that appellees, or their privies, objected, nor does it appear that they were legally disabled from doing so.

The property was again transferred in 1876, by Toliver and wife to Scotland, and the transfer probated and registered, and as far as can be inferred from the evidence, the appellees stood by and permitted these titles to be probated and registered, and thereby perfected, without raising their voice against it. Scotland, it was given in evidence, built a house upon the premises, which was an overt act of adverse possession. It was intimated by the learned counsel for the appellees in their arguments that at this juncture appellees sued out an action of ejectment against Scotland which was afterwards abandoned, but nowhere in the record is this statement verified. But suppose we admit its accuracy; if the suit was voluntarily abandoned, it would not supply an excuse for appellees, but, rather, it might be construed with considerable degree of legal weight that the voluntary abandonment of the suit was a tacit acknowledgment of the weakness of the appellees' title. The appellees' right of action accrued the moment the original transaction took place between Moriah Harland and Samuel Toliver in 1863, and it is the opinion of this court that simultaneously with this transaction the Statute of Limitations began to run.

But Moriah Harland, who never had a seizing in fee in said estate, but only a life interest in one third thereof, as widow of Asbury Harland,—let us see what legal effect her act of adverse title carried with it, and whether or not a title deducible from this original and unwarranted act of hers is upheld by sound principles and doctrines of the law of real estate. We propose, in this connection, to consider the following doctrines, which, we are of opinion, expound the law governing this case on this point of adverse title and possession; to wit: (1) The doctrine of adverse possession and enjoyment; (2) The doctrine of seizin and disseizin, and (3) The doctrine of limitations.

And firstly, as to the doctrine of adverse possession and enjoyment.

"It has been held," says Mr. Tyler in his treatise on Ejectment, "that the claimant in an action of ejectment must have not only a legal right to the **land** in dispute, but he must also have a right of entry or a right to the possession of the premises in controversy." "Title to **land** by adverse enjoyment owes its origin to and is predicated upon the Statute of Limitations, and although the statute does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant, who proves that he has actually occupied the premises under a color of right, peaceably and quietly for the period prescribed by law." "The. Statute of Limitations, therefore, may properly be referred to as a source of title, and is really and truly as valid and effectual as a grant from the sovereign power of the State." (Tyler on Ejectment and Adverse Enjoyment, PP. 87, 88.)

We would here observe that the subject of adverse enjoyment of real estate has always been one of considerable interest. In large countries possessing vast territories and great commercial and manufacturing interests, as, for instance, the United States of America, the subject has been one of very great importance, and one which has elicited much legal discussion and judicial decision. But we feel absolutely safe to affirm as a general rule, that quiet and peaceable possession of real property is *prima facie* evidence of the highest estate in the property, that is to say, a seizin in fee; and if such possession is continued without interruption for the whole period prescribed by the Statute of Limitations, which in Liberia is twenty years, the title becomes positive and conclusive, if the possession be adverse, as in the case under our consideration.

Let us take up next the doctrine of disseizin. As to what will amount in law to a disseizin, and when and in what manner it may be held to apply, and as to the title which the Act of Disseizin is presumed in law to convey to the wrongdoer, when this title is allowed to ripen by the lapse of years, the opinions of the most eminent English and American law writers are unanimous. Let us

quote the rule *verbatim et literatim* as laid down by Mr. Washburn in his law on real property: "Disseizin," says this eminent writer, "is the privation of seizin. It is the commencement of a *new title,* producting that change by which the estate is taken from the *rightful* owner and placed in the wrongdoer. It is the ouster of the rightful owner of the seizin. To constitute an actual disseizin, there must not only be an unlawful entry upon lands, or in technical words, an entry not congeable, but it must be made with an intention to dispossess the owner, as the act otherwise would be a mere trespass." (3 Wash. on Real Property, p. 131, sec. 486; i Bouv. Law Dict.: "Disseizin.") But to render a title founded upon the doctrine of adverse enjoyment and disseizin conclusive and absolute, it must appear that the parties and their privies who claim by this right have not only had open and notorious possession of the property claimed, but that this possession has continued uninterruptedly for the space of time which, from the *lex loci,* is required before the rule can apply; and this brings us to consider the doctrine of limitation.

We would remark that the doctrine of title by limitation is of ancient origin. It is analogous in some respects to the doctrine of prescription found in the Roman civil law. The Statute of Limitations was first introduced into English law during the reign of James I. Since that time, by numerous statutory enactments, it has become law in the United States. States have by their own statutes attached such definitions and laid down such principles with respect thereto, as the requirements of the country and wisdom of its Legislature have dictated. In this country the Statute of Limitations dates from the very commencement of our laws, and it is worthy of note that while, in the process of time, statutes have been repealed, amended and modified, the Statute of Limitations has been sustained by the united concurrence and approbation of all succeeding legislators and jurists to the present time. No one who has reflected upon the subject, and whose observation and experience qualify him to judge, will but sanction and applaud the wisdom and policy of a statute the object and obvious tendency of which is to promote the peace and good order of society by quieting possessions and estates and avoiding litigation. But for the intervention of the statute there would be no end to the renewal of dormant and antiquated titles, and many an honest citizen who now, by its beneficent operation, enjoys in security the estate his industry and thrift have acquired, and which has been improved by his labor and enriched by the sweat of his brow, would be driven from his home by an enemy more insidious and more destructive to the peace of the community than an invading army.

Let us imagine the property of some of the thrifty, industrious citizens of this community, upon which palatial homes have been built and valuable farms reared, and which have been quietly held by them and their privies for a space of time sufficiently long for them to reasonably suppose that they held an unassailable title therein, suddenly claimed by one who had all the while stood by and allowed the person in actual possession to spend his means and time to improve what he deemed to be his conclusively, without asserting his better rights or giving legal notice that he is the heir. Is it difficult to perceive the unsettled state in which property would be held, and the contingencies that might at any moment eject the honest landholder from his possession? But such distressing possibilities are, happily, arrested by the genius and wisdom of the Statute of Limitations, which, taking its grounds upon natural law, presumes that no man will

permit a stranger to take and hold adverse possession of property which he knows to be his, for twenty consecutive years (which is the limit in Liberia), without asserting his rights thereto, and ejecting the wrongdoer.

Nothing can be more ignoble and contemptible in posterity, than the wanton disregard and indifference in defending and protecting at the proper time, the estate which by the honest industry of the ancestor was acquired and left to be enjoyed by those who should represent and come after him. And when an heir stands by and from sheer neglect and carelessness permits a stranger to enter upon and take adverse possession of property which he knows was his ancestor's and to continue such adverse possession uninterruptedly for twenty consecutive years (without being under any legal disability to bring action), the law will look with disfavor upon his attempts thereafter to assert his rights and will bar forever his action and right of recovery, both in law and equity.

After a careful analysis of the facts surrounding this case and the law applicable, this court is of opinion that the appellees, Abbie Abigail King and Jacob Harland, are forever estopped from raising, either in law or equity, any title to the premises in litigation. And we further hold that the appellants, Henry A. Page and A. L. Joanna Page, claiming under their privies, by force of the doctrines of law governing this case, have acquired and do hold a seizin in fee in and to said estate, which is as valid, absolute and conclusive as a grant froth the sovereign ruler of a State.

The judgment of the court below is hereby reversed and made null and void, and appellees ruled to pay costs. The clerk of this court is authorized to issue a mandate to the judge of the lower court, informing him of this decision.

Walker v Morris [1963] LRSC 42; 15 LLR 424 (1963) (10 May 1963)

WILLIE WALKER, Appellant, v. GEORGE D. N. MORRIS, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 28, 1963. Decided May 10, 1963. 1. When both parties in an ejectment action allege that their titles are derived
from the Republic of Liberia, some proof of such claims to title must be annexed to the pleadings in order to provide adequate notice.
2 In an ejectment action the parties must necessarily rely upon title; and the best title is that given by the Republic, with preference

according to date of issuance, the older being preferred. 3. All documentary evidence which is material to issues of fact raised in the pleadings, and which is received and marked by the court, should be presented to the jury. 4. When a pleading refers to a written instrument, a copy of the instrument may be annexed to, and made a part of the pleading.

On appeal, a judgment upon a jury verdict in an ejectment action was reversed and remanded for new trial, and the parties were ordered to replead from the answer.
Lawrence A. Morgan Cooper for appellee.

for appellant.

Momolu S.

MR. JUSTICE PIERRE delivered the opinion of the Court. In this case of ejectment, the present appellant, as plaintiff below, alleged that the present appellee, defendant below, unlawfully and wrongfully withheld from him a lot of land in Monrovia. The appellant made profert with his complaint three deeds forming a chain of title to him from the Republic of Liberia. Appellee filed an answer denying appellant's right to recovery, alleging that the deed from the Republic of Liberia, filed with the complaint, was ineffective because, prior to the time when said deed was executed, the Republic of Liberia had sold

the property in question to another grantee. But the only deed made profert with the answer beside the deed passing title to appellee was a warranty deed from one T. G. Fuller and his wife, executed in favor of one Robert Fuller in 1909. The first important contention advanced by the appellee was that the Republic of Liberia no longer held title to the land when it was sold to appellant's privy, and that the conveyance by the Republic was therefore, ineffective because the Republic could not sell what she no longer owned. Such a definite and certain allegation in an answer seeking to show the invalidity of the appellant's document of title from the Republic should have been supported by some proof beyond the naked assumption that because Fuller issued a warranty deed in 1909, he necessarily had acquired title from the Republic. This is especially so in view of the fact that the appellant annexed to his complaint a valid deed issued to him by the Republic in 1937. Count 5 of the answer, which raises this issue, averred that proof would be brought forward at the trial ; but no proof was made profert with any of the several pleadings of the appellee to show that Fuller had acquired title from the Republic at the time when he sold the property in 1909. This count of the appellee's answer was attacked in Count 1 of the appellant's reply; and appellee, in countering, has contended that all he needed to show, under the law of ejectment, was that he was in possession of the land upon the strength of some valid and lawful title. For reasons which will be seen later, we prefer not to discuss this point at this time. When both parties in an

ejectment action allege that their titles are derived from the Republic of Liberia, some proof of said claims to title must be annexed to the pleadings in order to provide adequate notice. The next contention advanced by the appellee in his answer concerns the alleged invalidity of the deed issued

by the State to appellant's privy in 1937, after a former President allegedly sold the lot prior to 1909. Apart from the absence of proof of this, in order to rely upon such a defense the appellee should have taken the necessary steps to have the Republic of Liberia defend his peaceful possession and ownership of the lot, in keeping with the terms of the warranty clause contained in every public land grant deed, since he claims one was indeed issued. In Davies v. Republic, [1960] LRSC 67; 14 L.L.R. 249, 258 (1960), wherein the Republic moved to cancel a deed for property previously sold to one Yancy, this Court said: "So if the President, acting upon misrepresentation, misinformation, fraud, or concealment of facts, executes a deed to transfer property which is no longer within the public domain, none of his successors can legally uphold such an act of his; and since each of them is under oath to enforce the laws, it would be within their legal duty to right any wrong in this respect, done against the interest of a citizen by their predecessor in office." But such a step can be taken only where a valid deed from the Republic, older than that seeking to pass the same title, is made profert. In the absence of any showing that the appellee has possession of the lot upon paper title which could be considered as strong as that of the appellant--that is to say, title which could be traced back to the original source, the Republic of Liberia--there would be no alternative but to rule in favor of the appellant's title which was issued by President Barclay in 1937. "Contractually, the grantor is bound by perpetual obligation to defend the grantee's ownership of property transferred by deed; and the fact that the Republic of Liberia. is one of the parties does not lessen the binding effect of the terms of the contract." Davies v. Republic, supra, Syllabus 2. If the Republic of Liberia actually issued a deed for the lot in question previous to the deed issued by President

Barclay in 1937, then the second deed for the same lot is a proper subject for reconsideration. But mere assumption that such a second deed was, in fact, issued is no proof of its existence. In an ejectment action, the parties must necessarily rely upon title ; and the best title is that given by the Republic, with preference according to date of issuance, the older being preferred. Now, let us look at appellant's chain of title and see whether it is either continuous or goes back far enough to establish superior strength. The property in question was regarded as farm land in 1937, as is evidenced

by the wording of the public land grant deed, the reddendum clause of which reads as follows: "The duties of citizenship which the grantee has covenanted with the grantor to perform are: that he will cultivate the land hereby granted by the planting thereon, from time to time, such agricultural products as may be prescribed by Government regulations; that one-fourth of the land hereby granted shall be maintained as forest reservation ; and that the grantee shall, at all times, conform to the sanitary regulations prescribed by law. Failing the performance of these obligations, this grant shall become null and void ; otherwise it shall remain in full force and virtue." This deed was executed on February 23, 1937, and signed by President Edwin Barclay. There is no record to show that the land was occupied by anyone at the time. The deed passed title from the Republic of Liberia to Gartor W. Brown; it was probated on July 19, 1939, and is registered in the records of Monrovia. On February 1, 1957, Gartor W. Brown and his wife sold the lot to one Madeh Flama who, 19 days later, that is to say, on February 20, 1957, sold it to the present appellant. It is upon the strength of this chain of title that the appellant brought his ejectment action to evict the appellee. Now let us look at the chain on the other side. The first deed made profert with appellee's answer is

a warranty deed issued by T. G. Fuller and his wife, E. E. Fuller, in favor of one Robert Fuller, issued on December 4, 1909, and describing the property as a "farm lot." This deed was probated on December 6, 1909, and is also registered in the records of Monrovia. There is nothing in the record certified to us from the court below, which passes title from Robert Fuller; but on July 3, 1935, James Auzzel Gittens, acting as legal guardian for James A. Gittens, Jr., and William L. S. Gittens, sold the property to appellee. This is the chain of paper title which should have been tested against that of appellant. Appellee must have recognized the weakness of his chain, for on the witness stand at the trial, he testified to the existence of two deeds in his possession, which took the origin of his title back to the Republic of Liberia. Said deeds were not pleaded, and do not appear in the record. Here is the relevant portion of appellee's testimony on this point : "In 1950, when I was in prison, Willie Walker and Anna Gibson, alias Annie Davies, started to build a thatch house on my property, the one in question. My daughter and other relatives informed me. Immediately, I wrote to my lawyers, Counsellor Brownell, Attorney Stephen Togbe and Attorney Jacob Nah, telling them to desist. Immediately, they wrote to them, and I myself wrote to them. Copies of said letters I now have to present to the court. (Letters handed to the court by the witness.) In order to support my claim, I have deeds now with me hailing from the late President Daniel B. Warner, signed February 2nd, 1873, to Thomas A. Johnson, June 3rd, 1871, and to Solomon G. Fuller and heirs, including his wife, probated and signed by John F. Dennis, Judge. For the cost of debts, the high sheriff of the court had a writ of execution and sold to Thomas C. Fuller, as appears on the deed which is now presented to the court."

The two deeds referred to in appellee's testimony were exhibited at the trial ; but because they had not been made profert with the pleadings, the judge ruled that they could not be admitted into evidence, although they had been received and marked by the court. Perhaps if these two documents could have been admitted into evidence along with the other two deeds in the defendant's chain of title, a clearer picture might have been presented. All documentary evidence which is material to issues of fact raised in the pleadings, and which is received and marked by the court, should be presented to the jury. As it is, the record of the trial informs us of the existence of two deeds which are alleged to constitute the foundation of appellee's paper title. For reasons which do not appear in the record, these two deeds were not pleaded, but were presented at the trial, and were marked by the court; yet no consideration was given to them by the jury. In our opinion, these documents should be allowed to be introduced into evidence in this case. There is abundant common-law authority in support of this view; and this Court has upheld . it in Cess-Pelham v. Pelham, [1934] LRSC 6; 4 L.L.R. 54 (1934), and ildjavos v. Frey & Zusli, [1934] LRSC 33; 4 L.L.R. 226 (1934). In both those decisions, the Supreme Court remanded the case and ordered the parties to replead, so that documents necessary to clarify the issues might be introduced into evidence, and a clearer picture of the issues presented to the jury. "It is a rule of modern practice that when a pleading is founded on a written instrument a copy thereof may be annexed and made a part of the pleading by reference as an exhibit, and by statute or rule of court, it is sometime made obligatory on the pleader in such a case to annex a copy of the instrument to the pleading." 21 R.C.L. 476 Pleading § 39. We have therefore decided that the judgment of the court below should be reversed, and that the case should be remanded to the trial court with instructions that the

parties be ordered to replead from the defendant's answer, with a view to affording opportunity for all documents necessary to the proper determination of the case to be with the pleadings. Costs of these proceedings shall await final determination of the case.
Reversed and remanded.

Benson v Johnson [1974] LRSC 55; 23 LLR 290 (1974) (13 December 1974)

C. A. BENSON, surviving executor of the estate of James Nathaniel Ferguson, Appellant, v. DAILY JOHNSON, Appellee.
APPEAL FROM THE
CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 18, 20, 1974. Decided December 13, 1974. 1. When an answer in a proceeding both denies and avoids, the defendant will be ruled to a general denial of the allegations contained in the complaint.
2. Granting of a motion for judgment during trial is not a matter of right, but rests in the sound discretion of the judge. 3. A
will duly admitted to probate by a court having jurisdiction to do so is admissible against everyone except in a proceeding to set
aside the will or the probate thereof. 4. Deeds and other writings are admissible against all parties to them and are also evidence
against everyone of the transfer of all titles or rights transferred by them.
5. A document may be used on cross-examination when
it has been introduced by the opposing counsel, without resorting to a subpoena duces tecum for its production. 6. A defendant is
barred from introducing matter when his answer has been dismissed and he has been ruled by the court to a bare denial of the facts
alleged by plaintiff. 7. Issues not raised during the trial will not be heard on appeal. 8. A bill of exceptions should include only
errors attributable to the trial judge. 9. The purpose of a suit for discovery is to compel an adverse party to disclose facts and
documents within his knowledge or control. 10. A bill for discovery constitutes an equitable claim. 11. Neither ejectment or any
other action at law can undo what a probate court has done in respect to the probate of wills or deeds to real property. 12. Only
a court of equity, where a bill has been timely filed, can review or cancel conveyances after title has passed. 13. A proceeding
in equity may be instituted although other equitable relief is also available. 14. Title to realty must be legally vested in a plaintiff
before he may institute an action in ejectment 15. A court of equity upon obtaining jurisdiction of an action will retain it and
can administer full relief, both legal and equitable, so far as it pertains to the same transaction or the same subject matter, including
a matter of dispute over which courts of law and courts of equity have concurrent jurisdiction. 290

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A suit for discovery was initiated by appellee against the surviving executor of the estate of his mother's husband. In the suit
he asked that the executor disclose to him the location of the property and turn it over to him. The respondent appealed from the
decree of the lower court issued against him. The Supreme Court ruled primarily that the suit for discovery was proper in the circumstances
and that the lower court's decree was validly pronounced. The judgment was affirmed.
Macdonald M. Perry for appellant. ell for appellee.

Nete-Sie Brown-

MR. JUSTICE HENRIES delivered the opinion of the Court. The late James Nathaniel Ferguson of. Oldest Congo Town, Montserrado County, died leaving a last will and testament, which was probated on June 7, 1957, and in which he devised five acres of land situated in Oldest Congo Town to his wife, Enty Hannah Ferguson, mother of appellee Daily Johnson, her only surviving heir. The relevant portion of the will is set forth. "1st. I will and bequest to Mrs. Enty Hannah Johnson my dear wife of the Settlement aforesaid five (5) acres of land in said Settlement between the Baptist Church and Mr. Anthony Benson's present residence, in fee simple to use at will and for her personal benefit." Appellant witnessed, and was also named as one of the executors in the will. It should be mentioned that the five-acre tract was purchased by James Nathaniel Ferguson from Mary Morris on August 17, 1898. Appellee's mother died, while he was a minor, in Maryland County. Several years thereafter he allegedly met the appellant who informed him that his mother was the

late Enty Hannah Ferguson. Subsequently, appellee met Mrs. Jestina Ferguson, daughter of the testator, who showed him the will and it was then that he discovered that appellant Benson was an executor and a witness to the will. The other executor, Mr. A. B. Mars, had long since died. The appellee appealed to appellant to show and deliver to him the five acres of land devised to his mother who, it is alleged, had made no disposition of the land prior to her death. Upon appellant's failure to turn over the property, appellee brought an action in equity in the Civil Law Court for the Sixth Judicial Circuit, praying that the appellant, the sole surviving executor, disclose his mother's property and turn it over to him. Pleadings were filed, the trial judge, ruling on the issues of law, dismissed appellant's answer and ruled him to a bare denial. The trial was held, and the court pronounced its decree. "Daily Johnson, petitioner, is entitled to regain custody, control, ownership and possession of the said five acres of land described in the title deed from the late Mary Morris to the late James Nathaniel Ferguson, henceforth and forever to hold said premises in fee simple against any other person claiming or holding title subsequent to the death of the late Mrs. Enty Hannah Ferguson, unless such person or persons can show a valid title or other disposition of said property from the late Enty Hannah Ferguson." Appellant excepted to the decree and appealed to this Court. He thereupon filed a bill of exceptions containing five counts. i. That, Your Honor erred when you dismissed appellant's answer and ruled him to a bare denial, to which the appellant then and there excepted. 2. And also because appellant says that Your Honor denied appellant's motion for judgment in his favor, to which he excepted. "3. And also because appellant says that Your "

Honor overruled the objections posed by appellant against the admission of the purported will into evidence. "4.. And also because Your Honor overruled the (objections to the) irregular manner of petitioner's counsel receiving the purported will already admitted into evidence to cross-examine appellant thereon. "5. And also because Your Honor decreed granting the petition of the appellee and ordering the eviction of persons allegedly occupying the purported five acres of land, although no person other than the appellant was made a party to the present suit." We shall traverse these issues in the order in which they appear. With respect to count one of the bill of exceptions, recourse to appellant's answer shows his contention. "r. That the court should refuse jurisdiction over his person as sole surviving executor because even though he does not dispute the execution of the will which carries his signature, yet he never associated himself with the estate as an executor; and the purported transfer deed from Mary Morris to James N. Ferguson was not genuine as admitted by Mary Morris herself, and therefore appellee could not recover ; "2. that the late Enty Hannah Ferguson admitted the deed was not genuine; "3. that in a conference between petitioner's mother, the late A. B. Mars and respondent himself, he declined his- appointment as co-executor of the will; and, therefore, it was incorrect and misleading to refer to him as the sole surviving executor." It can be observed that even though he denied associating with the estate, yet, in the same count, he contends that the deed from Mary Morris was not genuine and, therefore, the testator could not devise the property. This answer is clearly evasive, contradictory, inconsistent and presents no triable issue with respect to disclosure

and recovery of the property. The answer tends to deny and avoid which, according to several opinions of this Court, is a bad plea. Where an answer both denies and avoids, the defendant will be ruled to a general denial of the allegations contained in the complaint. Shaheen v. C.F.11.O., 13 LLR 278 (1958) ; Butchers' Association of Monrovia v. Turay, 13 LLR 365 (1959). Therefore, the trial judge did not err in dismissing the answer and count one of the bill of exceptions is not sustained.

Count two deals with the denial of appellant's motion for judgment. The applicable statute on motion for judgment during trial is found in our Civil Procedure Law. "After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the

court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence. In such a case if the court renders judgment on the merits, the court shall make findings as provided in section 23.3 (2)." Rev. Code I :26.2. It is clear from the section just quoted that the granting of the motion is not a matter of right, but rather it is to be left to the sound discretion of the judge who, in an action tried by the court without a jury, may render a

judgment immediately if the motion is granted, or may decline to render a judgment until the close of all the evidence, as in this case. This motion is analogous to a motion for a directed verdict, and should not be granted if the plaintiff has made out a prima facie case which is not controverted, or if there is competent or substantial evidence tending to support or prove the plaintiff's case. 53 AM. JUR., Trial, § 403. From the evidence presented by the petitioner, and the section just cited, the judge did not err in denying the motion, and, therefore, count two of the bill of exceptions is not sustained. With respect to the admissibility of the will which is dealt with in count three of the bill of exceptions, the grounds offered by the appellant against admission are fraud and that the instrument does not conform to the statute on wills in that it fails to state that the subscribing witnesses signed in the presence of each other or that the will was declared by the testator in the presence of attesting witnesses. These are good objections if the instrument was being offered for probate. Cole v. Sharpe, [1960] LRSC 65; 14 LLR 232 (196o). But in the instant case no objections were raised against probate of the will and, hence, it was probated and registered; and, except for the five acres which form the subject matter of this action, all of the property devised in the will was distributed in accordance with the will. Furthermore, the validity of the will was not in issue and was introduced into evidence only to prove its existence, since the appellee's contention of being entitled to the property was based on a devise contained in the will. According to the Civil Procedure Law : "A will regularly admitted to probate by a court having jurisdiction to do so is admissible against all mankind except in a proceeding to set aside such will or the probate thereof." Rev. Code i :25.14. "Deeds and other writing shall be admissible against all parties to them and shall also be evidence against all mankind of

the transfer of all titles or rights transferred by them." Rev. Code i :25.16. Aside from this, the objections of illegality and fraud are affirmative defenses which should be specially pleaded and not raised in an oblique manner as is apparent in this case. This Court has consistently

held that a defendant is barred from introducing affirmative matter where his answer has been dismissed and he has been placed on a bare denial of the facts alleged by the plaintiff. Saleeby v. Haikal, 1q. LLR 537 (1961) ; Caulerick v. Lewis, decided April 26, 1973. Again we find no error committed by the judge and, therefore, count three is not sustained. Count four of the bill of exceptions was based on the occasion when the counsel for appellee, during crossexamination, asked the appellant a question: "Please look at this document marked by court PX/2 and say if it is the will that you said you signed and whether the signature, C. A. Benson, appearing on said will is your handwriting and signature?" The appellant objected: "That procedurally when a document has been duly admitted into evidence it becomes the property of the court and for a party to have same produced the procedure allowed by law is through subpoena duces tecum. . . . This not having been done, the same is a breach of practice and procedure." The trial judge in overruling this objection said: "To us, the objection is a novelty. It is true that when documents are admitted into evidence and have formed part of the records they become the property of the court, but we do not agree that while the trial in which the documents were admitted is still in progress a party is deprived [of the use of the document] on cross-examination, in examining a witness testifying . . . . "Where a case in which documents have been introduced into evidence has been finally determined and the records closed and turned over to the clerk

of court for custody, they may only be brought by way of a writ duces tecum. In the instant case, the trial is still in progress and the document in question is one to which the witness had testified and there is nothing amiss to have him identify the document which he referred to." The ruling is clear, concise, and correct and, therefore, this count is not sustained. The last count of the bill of exceptions alleges that the judge granted the appellee's petition and ordered the eviction of the present occupants of the premises, even though only the appellant was made a party to the action. It would seem that the appellant is alluding to the nonjoinder of the occupants as parties, or perhaps he is contending that there is an adequate remedy at law. Whichever it is, it should be pointed out that neither issue was raised in the lower court so as to give the trial judge an opportunity to pass upon them. It is settled that questions not raised during the trial cannot be heard on appeal. Bryant v. African Produce Co., [1940] LRSC 4; 7 LLR 93 (1940). And that a bill of exceptions should include only errors attributable to the trial judge. Benwein v. Whea, [1961] LRSC 25; 14 LLR 445 (1961). Moreover, the appellant did not mention the issue in his brief. All of this precludes us from reviewing this issue. However, since he did argue very briefly that there was an adequate remedy at law, we shall deal with this count of the bill. First, we shall review the evidence before determining whether the occupants of the land in question should have been joined as parties, keeping in mind the purpose of a suit for discovery. The evidence adduced at the trial showed that the appellant is the surviving executor

of the last will and testament of James N. Ferguson ; that the five acres of land are contiguous to the site on which his residence is located, lying between appellant's residence and the First Baptist Church in Oldest Congo Town; that the other executor, the late A. B. Mars, gave deeds

to the other legatees in the will for property devised to them but, since the heirs of Enty Hannah Ferguson resided outside of Montserrado County, he did not dispose of the five-acre tract devised to Enty Hannah Ferguson up to the time of his death; instead, this portion of the estate was left in the hands of the other executor, who is now the appellant and who knew personally the testator and appellee's mother. On the other hand, the appellant produced no evidence to show that he was removed as executor by the court or that he withdrew; and that Mary Morris did not own the property which she sold to James N. Ferguson, and which is now the subject of this action. According to 23 AM. JUR., 2d, Deposition and Discovery, § 141, the sole purpose of a suit for discovery is to compel "the defendant to answer its allegations and interrogatories, and thereby to disclose facts within his possession, custody, or control, and it is usually employed to enable a party to prosecute or defend an action." In view of the above facts and circumstances, it is difficult to conceive how anyone other than the appellant could have been made a party to an action for discovery. Insofar as the availability of a remedy at law is concerned, it should be pointed out that the power to enforce discovery is one of the original and inherent powers of a court of equity. In equity a bill of discovery can be filed for the discovery of facts in the knowledge of an adverse party, or of deeds, writings, or other things in his custody.
Having said that a bill of discovery presents an equitable claim, we must state further that while the existence of an adequate legal remedy precludes the granting of equitable relief, the rule is otherwise where a party asserts an equitable cause of action. The appellant, during his argument, contended that appellee should have brought an action of ejectment; but this Court has held that neither ejectment nor any other

action at law can undo what a probate court has done in respect to the probation of wills or deeds for real property; and only a court of equity, where a bill is timely filed, can review or cancel conveyances after title has passed. King v. Scott, is LLR 390 (1963). The essential issue in an ejectment action is title, not ties of blood.
A plaintiff in ejectment may recover property which descended to him, if the title has legally vested in him. In the instant case, although the appellee is entitled to the land devised to his mother, by virtue of his being her sole heir, yet he could not have brought ejectment because title was not legally vested in him. The decree of the lower court ordering the issuance of a writ of possession

facilitates the vesting of title in him. Having acquired title, the appellant is better able to bring an action of ejectment if he so desires and if it is necessary. It is then that the occupants of the **land**, if any, could be joined as parties. As to whether an equity court has the power to put the appellee in possession, it is well settled as a general rule that a court of equity upon obtaining jurisdiction of an action will retain it and administer full relief, both legal and equitable, so far as it pertains to the same transaction or the same subject matter. 27 Am. JuR. 2d., Equity, §§ 109, IIo. Furthermore according to 27 AM. JuR. 2d., Equity, § II I, "as a general principle, equity may retain jurisdiction and dispose of the litigation if the case has any feature which authorizes equitable interposition, whether such feature appertains to relief which only a court of equity may accord or to a matter of dispute over which courts of law and courts of equity have concurrent jurisdiction." In this section last cited we also find that "where it is shown to have been proper and necessary to go into a court of equity for the purpose of discovery, the court will proceed to decide the case without remitting

the parties to their remedy at law, notwithstanding that if discovery had not been necessary, relief could have been obtained by an action at law." Having determined that the suit for discovery was proper and necessary, that the joinder of the occupants of the property as parties was unnecessary, that there was no adequate legal remedy, and that where a court of equity takes jurisdiction for the purpose of discovery full relief in the case may be granted, we hold that the trial judge did not err and, therefore, this count too cannot be sustained. In view of the foregoing, the decree of the trial court irmed, with costs against appellant. And it is so is aff ordered. Affirmed.

Minor et al v Pearson [1912] LRSC 7; 2 LLR 82 (1912) (17 July 1912)

CHARLES A. MINOR et al., Appellants, v. **HENRY S. PEARSON et al.**, Appellees.

ARGUED JULY 10, 1912. DECIDED JULY 17, 1912.

Toliver, C. J., MoCants-Stewart and Johnson, JJ.

1. If no motion is made to set aside a verdict and for a new trial, an appeal can be taken from a final judgment, if exceptions are taken to the verdict and judgment.

2. A naked possession of **land** by an intruder can not prevail against a paper title.

3. A judgment founded upon a verdict contrary to instructions will be reversed; and where there are no disputed facts, this court will give judgment consistent with law and justice.

Mr. Justice McCants-Stewart delivered the opinion of the court:

Ejectment—Appeal from Judgment. This action was brought by appellants in the Court of Quarter Sessions and Common Pleas for Sinoe County to recover a lot of **land** in the City of Greenville, in said county, known as Lot No.1344. Judgment was rendered against appellants after a trial before a jury, and they come up to this court praying that said judgment be reversed.

Upon the trial counsel for both parties stipulated as to the evidence to be submitted to the jury, and the undisputed facts seem to be, that the original owner of the lot in question was W. E. Harris, late of said City. of Greenville, who died in the year 1899, leaving a last will and testament of which R. A. Wright, and J. Sanders Harris, were executors. This will was duly presented for probate, and was contested by Ritta A. Harris, the widow of W. E. Harris, she being dissatisfied with the provision made for her in the will of her deceased husband. A compromise was arranged, and Mrs. Harris took by deed in relinquishment of dower, Lot No. 344, which deed was duly probated and recorded without objection from any quarter.

Six years thereafter said Ritta A. Harris sold this lot to Z. B. Roberts, of said City of Greenville, and the deed given by her was also probated and recorded without objections, and he took possession of said lot. Z. B. Roberts died in February, 1910, in which month appellees, without any title, entered upon the lot, took possession of it and now hold it against the appellants in this cause, who are the legal representatives of the said Z. B. Roberts.

Appellants are here excepting to the judgment of the court below mainly on the ground that the verdict upon which it is based was contrary to the instructions of the court upon the law: The only points submitted by appellees requiring consideration are: (1) that the judgment should be

affirmed because no motion for a new trial was made; and (2) that appellants' paper title is not sufficient in law to prevail against appellees' possession.

A verdict contrary to instructions will be set aside. The statute relating to exceptions to verdicts and the motion for a new trial is not mandatory in the sense that a party can attack a judgment only by pursuing this course. It may be the better practice, and the need for a practice code is felt by both bench and bar. But, as our law now stands, error lies to the judgment and not to the decision of the motion, though that decision may be made a ground for the reversal of the judgment. An order of the court granting or overruling a motion to set aside the verdict of a jury and grant a new trial is not a final judgment or order for the reversal of which error can be prosecuted before the final disposition of the case. (Conord v. .Runnels, 23 Ohio St. 601.)

The bearing and effect of such a motion seem to have been discussed in the foregoing case and the principle there established followed in Young v. Shallenberger (53 Ohio St. 291). It was held, that if the motion to set aside the verdict and grant a new trial is allowed, it does not determine the action, but merely compels the parties to retry their case before the same tribunal ; and, if overruled, it simply permits the determination of the action already reached to remain undisturbed. It may be said that sustaining the motion has the effect of preventing a judgment in favor of the successful party at the trial, and affects a substantial right of his by subjecting him to the costs and uncertainties of another trial; and it undoubtedly does temporarily prevent final judgment, but not eventually, and the costs and uncertainties of another trial are the result of error which the court in the exercise of its discretion deems sufficient to warrant a new trial. And so, if the motion be overruled, the unsuccessful party must incur the expense of the proceeding in error, if he is dissatisfied with the result ; but neither the overruling or sustaining of the motion is such final decision or judgment as may itself be the foundation of an appeal, or of a proceeding in error. In failing to move to set aside the verdict and for a new trial, appellants, not appellees, may have suffered loss, in that appellants may have secured relief from the trial court, and had an early if not an immediate retrial of their case and a result satisfactory to themselves.

The appeal provided for by our statute must be from a final decision or judgment. (Lib. Stat., Blue Book, 61; Illinwc v. Crayton, I Lib. L. R. 73.) It cannot be disputed that the appellants could have come here under a writ of error. Therefore, they did not lose their day in court by failing to move to set aside the verdict and for a new trial. Now, if they could get here under some well settled form of procedure, such as a writ of error, it would be a denial of justice to give the appellees the benefit of a technicality, that is, to affirm this judgment because the appellants are not here in the best form. Of course, if appellees were taken by surprise, or if any right of theirs were prejudiced by allowing this appeal to be considered, this court would not entertain it, as this court will not grant relief to any party who should come here seeking it in any way prejudicial to the rights of his adversary. But it can not be understood too clearly that this

court will in no case allow any technicality to defeat justice. (Page v. Jackson, Lib. Ann., Series No. 2, p. 22.)

The records show that appellants excepted to the verdict of the jury as well as to the judgment entered thereupon. They, therefore, saved their rights and thus laid the basis for the exceptions, which they bring to this court.

Appellees further contend, that appellants should fail because of the weakness of their title; and appellees' counsel argued at great length showing great industry and research in favor of applying to this case the doctrine, that "the plaintiff must recover upon the strength of his own title and not upon the weakness of his adversary's."

Now there is not a scrap of evidence showing that appellees have any title to the property in dispute, or any color of title to it. It was admitted on the argument that appellees' claim rests upon naked possession. They took nothing with respect to the property in dispute from the mandate of this court in the case of Pearson et al. v. Turner, Judge Monthly and Probate Court for Sinoe County, et al. In that case, the appellees in this case sought an injunction to restrain said judge from interfering with their use and enjoyment of the estate of W. E. Harris, hereinbefore referred to, and judgment was rendered against the appellees in this case in the court below; but this court reversed such judgment making the injunction perpetual, holding this language : "Therefore, the court adjudges the judgment of the court below is reversed, the injunction perpetuated, and the appellees pay all legal costs in the action." (Pearson v. Turner, Lib. Ann., Series No. 1, p. 14.)

Now, when the clerk sent the mandate to the court below, he inserted these words, which are found in the judgment, namely : "And that immediately upon receipt of this mandate you shall have the appellants put in possession of the estate in dispute." As these words are in excess of the judgment of the court, they are a nullity and give appellees nothing whatever.

And, further, the trial judge correctly charged the jury, that this mandate could not be construed to cover Lot No. 344 in dispute, said lot having been sold about nine years prior to the issuance of said mandate.

The common law rule, that the plaintiff must recover upon the strength of his title and not upon the weakness of the defendant's title, has been modified so as to allow plaintiff to recover, if he has any right to the property, and if that right is paramount to any right possessed by the defendant, although some third person may have a better right to the property then the plaintiff.

For example, it has been held, that a tenant at will may maintain the action against a mere intruder, although his landlord has the better title. The intruder can not defeat the tenant at will by attempting to show that a better title exists outside of the tenant at will. For instance, the obligee in a bond to make title to **land**, who takes possession under agreement giving him permission to occupy the premises until the money becomes due, is but a tenant at will to the obligor, yet he may maintain an action of ejectment against an intruder. (Haythorn v. Margerem, 7 N. J. Eq. 324; Buntin v. Doe, I Blackf. [Ind.], 26.)

Unfortunately, we do not have the library facilities for looking up cases whose conclusions we accept. From the meager discussions of the cases accessible to us, we follow the conclusions reached in them, when they seem to our minds to result from a sound course of reasoning. We accept the principles set forth in the cases just cited, because we are convinced that they may be safely applied here, as it would be a dangerous doctrine to establish, that any person may choose any **land** which he may covet and take possession of it, and hold it against a party showing at least color of title, founded upon deeds duly probated and recorded without objection from any quarter. Such a rule might tend to disturb the peace and quiet of the community, and lead to endless confusion and burdensome litigation.

In Christy v. Scott, the plaintiff brought an action in ejectment in the District Court of the United States for the district of Texas. Defendant answered alleging, that plaintiff's paper title was not good, and that title was in a third party. Plaintiff demurred, contending that this was no defense. The trial court gave judgment for defendant, and an appeal by writ of error was taken to the Supreme Court of the United States, which reversed the judgment of the court below. Mr. Justice Curtis, delivering the opinion of the Supreme Court, held : "The plaintiff says he was seised in fee and the defendant ejected him from the possession. The defendant, not denying this, answers, that if the plaintiff had any paper title it was under a certain grant which was not valid. He shows no title whatever in himself. But a mere intruder can not enter on a person actually seised, and eject him, and then question his title, or set up an outstanding title in another. The maxim that the plaintiff must recover on the strength of his own title, and not on the weakness of the defendant's, is applicable to all actions for the recovery of property ; but if the plaintiff had actual prior possession of the **land**, this is strong enough to enable him to recover it from a mere trespasser who entered without any title." (14 How. 282.)

The judgment appealed from should be reversed, and as there are no disputed facts requiring the determination of a jury, this court, as provided by statute, should give judgment for the appellants, and remand this cause to the court below with directions to said court to record such judgment, and to take such further proceedings as may be necessary to put appellants in possession of the lot of **land** in dispute, with costs against appellees ; and it is so ordered.

Arthur Barclay and C. B. Dunbar, for appellants.

L. A. Grimes and T. W. Haynes, for appellees.

Fiske et al v Artis et al [1953] LRSC 4; 11 LLR 334 (1953) (29 May 1953)

KETURAH FISKE, RACHEL F. WILLIAMS, by her Husband, AARON D. WILLIAMS, SARAH E. LEWIS, by her Husband, CHARLES LEWIS, Surviving Heirs of the Late ELLA VICTORIA FISKE, and JULIU.S CAESAR, Appellants, v. SARAH ANN ARTIS, formerly UREY, J. T. H. ROSE, SAMUEL BROWN, and E. Y. NIMLEY, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued April 14, 15, 1953. Decided May 29, 1953. 1. Where the trial judge in an injunction action, wherein no issue of title was raised by the pleadings, ruled that determination of title to real property constituted the main issue, and dissolved the injunction, it was proper for appellants, plaintiffs below, to except to the ruling and appeal to the Supreme Court 2. An issue not raised by the pleadings may not properly be adjudicated. 3. The issue of title is foreign to an action of injunction. 4. The respective natures of an injunction action and an ejectment action are so distinct that the two forms of action cannot be combined or blended.

Appellants sought to enjoin appellees from leasing real property to which appellants claimed title pending the outcome of an ejectment action previously instituted in the circuit court. The lower court held that the injunction action involved title to real property, which could not be decided in such a proceeding, and therefore dissolved the injunction, although no issue of title had been raised by the pleadings. Appellants excepted to the ruling and appealed to the Supreme Court. On appeal, ruling reversed and injunction perpetuated.

L. Morgan for appellants.
appellees.

Richard A. Henries for

MR. JUSTICE REEVES delivered the opinion of the Court.

The appellants
instituted an injunction proceeding against the appellees, alleging that the
appellants owned a tract of **land**, therein described,
situated in the township of Owensgrove, Grand Bassa County, with dwelling
houses thereon, and that Sarah Ann Artis, formerly Urey,
one of the appellees, intended to lease the said property to J. T. Rose and
the other appellees, and to receive from them a yearly
lease of three hundred dollars which the said appellees ought not to do since
the property aforesaid belonged to the appellants.
They therefore prayed that the aforesaid appellees be enjoined therefrom
pending determination of an action of ejectment previously
instituted in the Circuit Court of the Second Judicial Circuit. In an amended
answer the appellees set forth three defenses as follows
: i. The complaint was defective for non-joinder of parties-appellees, since
one of the appellees, Albert D. Peabody, who held title
to three-quarters of an acre of **land within the said tract of land** was
not named as one of the parties-appellees. 2. The complaint
did not refer to a piece of **land** formerly owned by Sarah Ann Artis, an
appellee under whom the other appellees held title. 3. The
appellants not having held title to **land described by appellees, and the
same not being the land** claimed by appellants, they cannot
enjoin and legally restrain the said appellees in the use of this **land**.
The appellants filed a reply to the amended answer, raising
the following issues : i. The appellees improperly filed an amended answer
without withdrawing their first answer, since the document
filed, entitled : "Former Withdrawal," was addressed to the August term of
Court which had then terminated. 2. Albert D. Peabody
was not a necessary party to the injunction action, as he had not
participated in the

acts which the
injunction was aimed to prevent. 3. The **land** set out in the answer was
the same referred to in the complaint. 4. Although the said
Albert Peabody's deed referred to **land** in Grand Bassa, it was probated in
Marshall for the sole purpose of withholding such notice
to the public as the probation of deeds is meant to provide, and the
appellees should not be permitted to benefit from this attempted
deception. The issues raised by the pleadings were tried before Judge J.
Dossen Richards, assigned to the Circuit Court of the Second Judicial
Circuit, who deemed
it necessary to consider only the following two issues : i. The issue of non-
joinder of parties raised by the appellees in their

answer. This issue was decided in favor of the appellants. 2. Whether the main issue in the case was one involving real property.
In deciding this issue in favor of the appellees, the learned circuit judge wrote : "The main point in the case being an issue involving title to real property, we are of the opinion that the plaintiffs must first have their right or title settled and established at law in order to justify the interposition of a court of equity. There are a few other points raised in the pleadings, but we do not consider them of sufficient legal importance or merit to dilate on here. In view of the foregoing we are of the opinion that the injunction should be dissolved with costs against plaintiffs." From the above-quoted ruling the appellants properly excepted and prayed an appeal to this Court. That the judge of the lower court flagrantly erred in making this ruling is beyond dispute. Since actions involving title to property are possessory actions, and actions of injunction are prohibitive actions, they are distinct in character. The issue of title is foreign to the instant action. More-

over, it is settled law that the courts will decide only such issues as are joined between the parties and set forth in the pleadings. For the purpose of clarifying the issues herein we quote from American Jurisprudence as to the definition and purpose of ejectment: "In a general way, it may be said that ejectment is a form of action in which the right of possession to corporeal hereditaments may be tried and the possession obtained. In some states it is defined by Statute as 'an action to recover the immediate possession of real property.' At common law ejectment is a purely possessory action; and even as modified by statute, and though based upon title, it is essentially of that nature. The action may doubtless involve both the right of possession and the right of property, and in at least one jurisdiction it has been said to be the proper, if not the only, mode of trying a title to lands. But the true purpose of the remedy is to obtain the actual physical possession of specific real property, . . ." i8 Am. Jur. 7-8, Ejectment, § 2. From Corpus Juris we quote the following definition of a preliminary injunction, such as the injunction in the present case : "An interlocutory or preliminary injunction is a provisional remedy granted before a hearing on the merits, and its sole object is to preserve the subject in controversy in its then existing condition, and without determining any question of right, merely to prevent a further perpetration of wrong or the doing of any act whereby the fights in controversy may be materially injured or endangered, until a full and deliberate investigation of the case is afforded to the party." 32 C. J. 20, Injunctions, § 32. It follows that the nature of an injunction action is distinct from the nature of an ejectment action. The two actions cannot be combined or blended; and the court be-

Donzoe v Thorpe [1978] LRSC 32; 27 LLR 166 (1978) (29 June 1978)

SAMUKA DONZOE, Informant, v. NAPOLEON B. THORPE, Circuit Judge, Eighth Judicial Circuit, Nimba County, et al., Respondents.

INFORMATION PROCEEDINGS.

Argued June 13, 1978. Decided June 29, 1978.

1. A litigant who, as the successful party to a suit, accepts payment of costs indicates submission to and compliance with the judgment and thereby terminates the action with respect to the issues involved.
2. A court has no authority to enter a judgment or decree against anyone over whom it has no jurisdiction either by service of process or by his voluntary appearance and submission to the court's jurisdiction.
3. Where the trial court's certified record shows an act to have been done, the appellate court will always be governed by the record regardless of any allegations to the contrary, no matter how positive or by whom made.
4. The Supreme Court will give due credit to the return of a ministerial officer of court in the execution of a writ of possession.

The plaintiff in an action of ejectment was awarded judgment by the trial court, which was affirmed on appeal. On enforcement of the mandate of the Supreme Court, the return of the sheriff who served the writ of possession on the defendant stated that he had turned over the properties in dispute to the plaintiff. A bill of information brought by the plaintiff contended that this was untrue and that he had not in fact received possession of the property. The informant questioned the integrity of the sheriff and pointed out that the record contained promissory notes executed by the three persons against whom the sheriff had served the writ of possession, each note promising to vacate the property at a future time if other litigation then pending to cancel plaintiff's deed for fraud should not be determined in defendants' favor.

The Supreme Court held that in accordance with its custom it would give full credit to the return of a ministerial officer of the court. The *information* was *dismissed.*

M. T. Kandakai for informant. *Raymond Hoggard* for respondents.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.
Growing out of ejectment proceedings brought by Samuka Donzoe against Ansumana, Lansana, and Mamadee Keita, all of Ganta in Nimba County, the Supreme Court affirmed judgment of the trial court in favor of the plaintiff, and said as follows:

"Judgment of the trial court awarding possession of the **land** in dispute to the Appellee who was plaintiff in the court below was sound, since the defendants/ appellants could not benefit in ejectment without a title deed. The building of four huts on the **land** while the matter was under investigation by an administrative officer in the Executive Branch of government, did not give the defendants any right to ownership in face of the plaintiff's title deed regularly executed. An unsigned public **land** sale deed cannot convey title from the State to a prospective purchaser of the **land; and a Land** Commissioner's certificate is not a deed and cannot affect **land** passed by title deed signed by the President. The judgment of the trial court is there affirmed with costs against the appellants." *Keita v.* Donzon, [1977] LRSC 62; 26 LLR 483 (1 977).The enforcement of this judgment by the judge presiding over the November 1977 Term of the Eighth Judicial Circuit Court in Sanniquellie has given cause for information filed by Samuka Donzoe who was plaintiff in the action of ejectment, and in whose favor judgment had been rendered. From what the record shows, in 1975 the State had filed suit for cancellation of the Donzoe deed, alleging that the said deed had been
obtained through fraud, and that case was pending when the ejectment suit was heard and determined as aforesaid. It appears that the defendants in the ejectment suit had applied for issuance of a deed for the property in dispute, but that deed had not been signed by the President at the time the Court's mandate was sent down for enforcement of the judgment referred to above.
Judge Napoleon Thorpe presided over the reading of the Supreme Court's mandate on December 6, 1977. According to the trial court's minutes made proferred with the bill of information, Judge Thorpe at that time made the following record in court in Sanniquellie :

"The Court : The mandate ordered read . . . and the clerk is ordered to read the judgment of this court from which appeal was taken.

"In view of the mandate of the Supreme Court and the judgment just read the clerk of court is hereby ordered to put the plaintiff in possession of his property herein named by issuing a writ of possession and passing same over to the sheriff, who in performance of this duty will place the plaintiff in possession of his property, the basis of these proceedings. The clerk of court is hereby ordered to prepare a bill of costs on the defendants which will be taxed by their counsel and counsel for plaintiff for our approval to be placed in the hands of the sheriff for collection. And it is so ordered."
This record is made on page two of the minutes for December 6, 1977. The writ of possession was issued on the same date, was served by the sheriff, and was made profert with the return filed to the bill of information. The sheriff's return to the writ reads as follows:

"On the 6th day of December, 1977, I served the writ of possession on the defendants and furnished them copy thereof. The described properties were turned over to the within named plaintiff, and same were accepted and received as in keeping with law. Seven

days were given to the occupants to remove their

properties.

"I now make this as my official

return this 7th day of December 1977.

"[Sgd.] JOSEPH TUAZAMA,

Sheriff, Nimba County."
Found in the record is the copy of the approved bill of costs paid by the defendants in ejectment upon the strength of the judgment of the Supreme Court. Informant has not said that he did not receive his successful party's costs growing out of the ejectment case which had now been finally determined in his favor; and according to the position taken by this Court in *Liberia Trading Corporation v. Abi-Jaoudi*, [1960] LRSC 38; 14 LLR 43, 56 (1960) "payment of costs is a positive indication of submission to and compliance with the judgment appealed from, and •thereby finalizes the said judgment in respect to the issue which it concluded." The informant, by accepting his successful party's costs, had thereby contributed to effectively and conclusively closing the ejectment suit, in which he had been put in possession of the **land** in dispute.
Also found in the record and made profert with the bill of information are three promissory notes executed by three persons against whom the sheriff had served the writ of possession ; and in each note promise had been made to vacate the property subject of the litigation within a number of days. Each of these three notes was dated for the 6th of December, the day on which the Supreme Court's mandate was read and the writ of possession was issued and served. There is nothing in either note to indicate whether it was issued before service of the writ of possession or after service; in other words, there is nothing to show whether arrangement to stay on the premises for a number of days beyond the service date of the writ was made with the sheriff, or with the successful plaintiff himself.
We assume that this arrangement must have been made with the sheriff, since the successful plaintiff in ejectment had made these promissory notes the subject of his bill of information. In one of the notes the party promised to vacate the premises by the 11th of December, five days after service of the writ of possession; and in the other two notes the parties promised to vacate on the 13th of December, seven days later. But to be able to fairly determine the issue raised in the bill of information, it is very necessary to know whether the arrangement to stay on the premises was made with the sheriff or with the informant himself, as we shall see later.
The bill of information alleges in two of its counts the following:

2. That in keeping with Your Honors' said mandate, the clerk of the Supreme Court sent the mandate down to the respondent Circuit Court Judge, His Honor Napoleon B. Thorpe, for the enforcement of your judgment. Your informant submits that prior to the reading of the mandate, Counsellor Raymond Hoggard, one of the respondents in these proceedings, had abruptly left Monrovia and gone to Judge Thorpe to resurrect the case of cancellation proceedings against your informant for the selfsame property of your judgment, for the mere purpose of thwarting and defeating Your Honors' mandate.

"4. That the respondent judge paid more heed to the trial of the cancellation proceedings than putting into effect Your Honors' mandate, to the extent that the reading of the said mandate to the defendants/appellants, now respondents, Ansumana, Lansana and Mamadee Keita, did not indicate the immediacy of its execution as contemplated by Your Honors ; instead, the sheriff by some reason or the other condescended to extract from respondents Ansumana, Mamadee and Lansana Keita who are in possession of the property, promissory notes as to

when it would be convenient for them to vacate the

premises, and they in their promissory notes indicated

a time long enough to enable them to put through

their cancellation proceedings against your informant.
The informant's counsel argued before us that there had been connivance between the sheriff and the respondents named herein, and that as a result of this connivance the sheriff had prepared and filed a false return to the writ of possession, thereby making it appear that the successful plaintiff in ejectment had been placed in possession of the **land**, when indeed and in truth this had not been done. He argued that the object of the false return was to defeat enforcement of the Supreme Court's mandate.
If this is true, that is, if the sheriff actually made a false return to the writ of possession, then his act was reprehensible, and he should have been made to answer therefor. But unfortunately the sheriff has not been made a party to these information proceedings, and as such he is not under the jurisdiction of the Court.
In *Tubman v. Murdoch*, [1934] LRSC 26; 4 LLR 179 (1934), this Court held that a court has no authority to enter a judgment or decree against anyone over whom it has no jurisdiction either by service of process or by his voluntary appearance and submission to the court's jurisdiction, and in order that he might have been made a party in the case, he must have been served with notice to appear to answer whatever charge had been made against him. Since the sheriff was not made a party to these contempt proceedings, we could not make any ruling or decision which would conclude him; and if what the bill of information alleges is correct, then he should have been named as the principal perpetrator of the alleged act to defeat the Court's orders, according to informant.
We have studied the record in this case, and have not been able to determine in what way enforcement of the
mandate of the Supreme Court has been defeated. There might be strong indications of connivance between the sheriff and the respondents in these proceedings, intended to affect the cancellation case; but the Court cannot lend itself to deciding issues on assumptions. The Supreme Court takes cognizance of matters appearing in the record made in the lower court and certified by the clerk. *Hulsmann* V. *Johnson,* 2 **LLR** 20, 21 (1909). There is a long line of cases in which this Court has restated this position; unless the record in the trial court shows by the certificate of the clerk that a certain act has been done, the Supreme Court cannot in review of the case recognize the said act to have been done. On the other hand, where the trial court's certified record shows the act to have been done, the Court will always and in every such case be governed by the record, regardless of any allegations or statements to the contrary, no matter how positive or by whom made.
Moreover, this Court has over the years, and since its establishment, given due credit to the returns of the ministerial officers of court in the execution of writs of possession; and the return of the sheriff whose duty it is to execute such writs has always been given full credit and effect.

"The party who recovers in an action of ejectment or

replevin when the **land** or goods are in the possession

of the other party . . . may obtain a writ of possession

directing the sheriff to deliver such **land** or goods to

him. It shall be the duty of the sheriff to execute such

writ." 1956 Code 6:980.
Where the sheriff in the execution of the writ of possession commits any acts which are illegal, fraudulent, or which in any manner adversely affect the rights of a party, such acts upon timely representation to court shall be investigated, and where necessary the affected party shall have redress. But in every such case the offending sheriff must be made a party, in order to give the court jurisdiction over him in the investigation of the charge.
The cancellation proceedings to which reference was made in the bill of information were not a part of the ejectment case, the subject of the Supreme Court's judgment rendered on November 25, 1977, which judgment informant claims had been defeated by acts of the respondents herein. Any rights or redress to which the parties in cancellation feel they were entitled should have been demanded in that case, since the cancellation case is a separate matter, in no way a part of the ejectment suit finally determined by our judgment referred to hereinabove. The bill of information is therefore dismissed.

Information dismissed.

Andrews et al v Cornomia [1999] LRSC 42; 39 LLR 761 (1999) (16 December 1999)

HIS HONOUR JOSEPH ANDREWS, Assigned Judge, Sixth Judicial Circuit, Montserrado County, **ELOUISE C. DUNCAN et al.**, Appellants, v. **JOSEPH N. CORNOMIA**, Appellee.

APPEAL FROM RULING OF THE CHAMBERS JUSTICE GRANTING A PETITION FOR A WRIT OF CERTIORARI.

Heard: October 27, 1999. Decided: December 17, 1999.

1. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to property as well as the right to possession thereof is disputed.

2. Ejectment involves mixed issues of law and facts and determines the title and possession of real property where parties in litigation both claim title to the property in question and the right to possession thereof.

3. An ejectment action is triable by a jury under the direction of a judge in our jurisdiction, and the title and possession of the realty can be determined by the trial jury only.

4. The relief sought in an action of ejectment is the eviction of a party wrongful withholding the realty, and the delivery of possession of the disputed property cannot be awarded to the plaintiff by the trial judge without the determination of the title to said real property

5. The sole purpose of ejectment suit is to test the strength of the titles of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery.

6. An answer to the complaint in the main suit and an indemnity bond are prerequisites to vacating or modifying a preliminary junction in our jurisdiction.

7. As a condition to granting an order vacating or, modifying preliminary injunction or temporary restraining order, a court may require the defendant to give a bond in an amount to be fixed by the court that the defendant will pay to the plaintiff any loss sustained by reason of the vacating or modifying order.

8. If, when defendant moves to vacate or modify a preliminary injunction or a temporary restraining order, the answer in the action has not yet been filed, it shall be filed at the time of making of the motion

9. Where the right and title of a party, to whom the trial judge granted a permanent restraining order in an action of ejectment, has been disputed by the adversary, as shown by the adversary's title deed to the same property, the trial judge has abused his judicial discretion in granting the permanent restraining order.

10. An action of injunction is ancillary and the one who applies for an injunction in connection with realty must stand on the strength of his title in a suit separate from the ancillary injunction action.

11. A trial judge cannot grant a permanent restraining order during the pendency of an ejectment action, ousting one party from possession of a property and placing another party in possession thereof where title is in dispute.

12. An injunction may not issue when title to **land** forming the basis of the action has not been finally determined.

13. An injunction does not lie except when there is a trespass and trespassing does not lie unless bonafide title is established in one who claims ownership to the **land**.

14. As a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where the legal title is in dispute and the party in possession asserts ownership in himself or others.

Co-appellant Elouise Duncan, based on a deed for the property, filed an action of ejectment against Joseph Cornomia, appellee; and ancillary to that, co-appellant also filed a motion for preliminary injunction, supported by an injunction bond. In response, appellee filed an answer claiming title to the same property based on a deed obtained from a different grantor. In addition to the answer, appellee filed a resistance to the motion for preliminary injunction and also filed an indemnity bond, approved by Judge C.A. Reeves, the assigned judge at the Civil Law Court for the Sixth Judicial Circuit.

After this first group of pleadings had rested, co-appellant filed a bill of information complaining that appellee had violated the dictates of the injunction. Appellee filed returns to the bill of information; but in addition thereto, he also moved the trial court to vacate the preliminary injunction.

When the matter was called for hearing, Judge Reeves had been succeeded by Judge Joseph Andrews, as the presiding judge at the Civil Law Court for the Sixth Judicial Circuit. Judge Andrews ordered the motion for preliminary injunction, the motion to vacate injunction and the bill of information consolidated and heard together. At the end of the hearing, Judge Andrews entered a ruling, which made the injunction permanent and ordered that all persons on the property under the authority of appellee and all items brought to the property by appellee or his agents be removed.

Appellee excepted to this ruling and applied to the Chambers Justice for the writ of certiorari; which was granted.

After a hearing, the Chambers Justice reversed the ruling of the trial judge and appellants appealed for review of the ruling of the Chambers Justice by the Full Bench.

The Supreme Court found that both co-appellant Duncan and appellee had relied on title deed to support the claim of ownership to the subject property. In the absence of the disposition of the ejectment suit, it was an abuse of discretion and also a deprivation of real property without a trial by his peers as provided by the Constitution, when the trial judge entered a ruling dispossessing appellee and placing coappellant Duncan in possession of the disputed property.

The Supreme Court also found that appellee had posted an indemnity bond and filed a motion to vacate the injunction, in addition to filing his answer to the main ejectment suit. The Supreme Court concluded that appellee had performed all the prerequisite for the lifting of the preliminary injunction and so the trial court erred in making said preliminary injunction permanent.

Therefore the ruling of the Chambers Justice was *affirmed Farmere G. Stubblefield* appeared for Appellants. *Ishmael P. Campbell* appeared for Appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

During the March 1999 Term of this Honourable Court, our distinguished Colleague, Mr. Justice Elwood L. Jangaba, presiding in Chambers of this Court, granted a petition for the writ of certiorari, growing out of a preliminary injunction proceeding in an ejectment suit. Co-appellant Elouise Duncan excepted to the ruling of the Chambers Justice and announced an appeal to this Court *en banc* for our appellate review.

This case has its genesis from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, where coappellant Elouise C. Duncan, by and through her attorney-infact, Chawlci Bsaibes, instituted an action of ejectment on May 11, 1998, along with a motion of preliminary injunction against Joseph N. Cornomia, appellee. The precepts were issued, served and returned served. Co-appellant Elouise Duncan claimed ownership of the premises and prayed the court below to eject, oust and evict appellee from the property and to restrain him from further occupancy and possession thereof.

On the 29th day of May A. D. 1998, the appellee filed an answer to the ejectment suit and a resistance to the motion for preliminary injunction, along with an indemnity bond. Her Honour C. Aimesa Reeves, Assigned Circuit Judge presiding over the Civil Law Court, approved appellee's indemnity bond for the amount of L$50,000.00 (Fifty Thousand Liberian Dollars).

Appellee in his answer to the complaint also claimed ownership of the subject property in dispute by means of title deed executed to him on January 19, 1998 by Robert Sartee and Peter Sartee, administrators of the intestate estate of the late Jebo Sartee, Sr. This deed was probated and registered according to law. It is also shown that the property was sold to appellee by the administrators upon the authority of the Probate Court for Montserrado County. The records also indicate that on April 15, 1865, the late Jebo Sartee acquired from the Republic of Liberia ten (10) acres of **land**, lying and located in Mamba Point in Monrovia, by a Public **Land** Grand Deed signed by the late President Daniel B. Warner.

Also in the resistance to the motion for preliminary injunction filed by co-appellant Elouise Duncan, appellee claimed a lawful ownership of the premises and denied constructing a fence on co-appellant Elouise Duncan's property. Hence, appellee prayed the trial court to deny and dismiss the complaint and the motion for preliminary injunction.

Later, a bill of information was filed by co-appellant Elouise Duncan, alleging violation of the injunction order by appellee. The bill of information was duly served and returned served; and appellee not only resisted the information but also filed a motion to vacate the injunction.

At the trial court, the bill of information, motion for preliminary injunction and the motion to vacate the injunction, were consolidated and heard by the trial court presided over by His Honour Joseph Andrews. On April 8, 1999, Judge Andrews ruled denying the motion to vacate injunction and granting both the motion for preliminary injunction and the information. The trial judge substantially ruled, as follows:

"Wherefore, and in view of the foregoing, the writ of injunction issued against the respondent/defendant is to continue in full force until the determination of the ejectment action, from which the motion for preliminary injunction grew; and any violation of this injunction will subject the violator(s) to contempt proceeding. The clerk of this court is authorized to notify the sheriff of this court and to direct that the sheriff have removed all materials, equipment, persons and other implements placed on the subject premises during the enforcement of the preliminary injunction, which is now made permanent, in order to preserve undisturbed the status quo of the property by all parties. The clerk is further authorized to order the sheriff to have the fence removed. The bill of information is hereby granted, and the motion to vacate preliminary injunction denied with costs against the respondent/defendant."

It is to this ruling that appellee excepted and fled to this Court upon a petition for a writ of certiorari. The alternative writ was issued upon orders of the Chambers Justice, served and returned served. Appellants, in obedience to the alternative writ, filed their returns. On the 23' day of June, A. D. 1999, Mr. Justice Jangaba granted appellee's petition and ruled as follows:

"Wherefore, and in view of the foregoing, it is the holding of this Court that the petition for certiorari is granted and the peremptory writ ordered issued. The ruling of the trial judge granting the injunction, permanently restraining petitioner, is hereby reversed. The permanent restraining order is vacated and the petitioner ordered placed in possession of the subject property until the determination of the ejectment action. Costs to abide final determination of the ejectment suit" Appellants, being dissatisfied with this ruling of the Chambers Justice, excepted thereto and appealed to this Court for our appellate review.

The first issue raised in appellants' brief and argued before this Court is that the trial judge's ruling granting the motion for preliminary injunction and denying the motion to vacate preliminary injunction was not an abuse of his judicial discretion to justify reversal of his ruling. In support of this submission, appellants further submitted that the granting or denial and the vacation of a preliminary injunction rests in the sound judicial discretion of trial judge, which

discretion Judge Andrew exercised, owing to the facts that appellee failed to file an answer and an indemnity bond, which are pre-requisites to vacating or modifying a preliminary injunction.

We are in agreement with the contention of appellants that the filing of an answer and an indemnity bond are prerequisites to vacating or modifying a preliminary junction in our jurisdiction. Civil Procedure Law, Rev. Code 1:7.65(3). It is provided by this law that:

"As a condition to granting an order vacating, or modifying preliminary injunction, or temporary restraining order, a court may require the defendant to give a bond in an amount to be fixed by the court that the defendant will pay to the plaintiff any loss sustained by reason of the vacating or modifying order. If, when defendant moves to vacate or modify a preliminary injunction or a temporary restraining order, the answer in the action has not yet been filed, it shall be filed at the time of making of the motion."

We, however, observe from the certified records before us that appellee did file an answer and an indemnity bond, which are statutory requirements or prerequisite for vacating a preliminary injunction. Her Honour C. Aimesa Reeves, on May 29, 1998, approved appellee's indemnity bond for the value of L$50,000.00 (Fifty Thousand Liberian Dollars) for the purpose of indemnifying the co-appellant Elouise Duncan for any loss that she might sustain from vacating the preliminary injunction. Appellee therefore met the statutory prerequisites for vacating a preliminary injunction. We are therefore in disagreement with appellants' contention that the trial judge exercised his judicial discretion in granting the preliminary injunction.

The second issue of importance raised and argued by appellants is that Judge Andrews' ruling, which ordered that all materials, equipment, persons and other implements placed on the subject premises, including the removal of the fence, was not erroneous, but that said order was to preserve the status quo of the property pending the ejectment action. Appellant relied on the case *Togba et al. v. Smith et al.[1976] LRSC 4;* , 24 LLR 458, 460 (1976), wherein this Court held that the sole object of a preliminary injunction is to preserve the *status quo* of the parties until the merits of the case are heard.

In the *Togba, et al.* case, the appellants filed a motion for preliminary injunction to restrain the appellees therein from evicting them from certain premises occupied by them. Appellees in that case filed a motion to vacate the preliminary injunction issued against them and prayed the trial court to deny a final injunction. Judge Frank W. Smith, the trial judge in the case, granted the motion vacating the preliminary injunction without a hearing upon the facts. The appellants

appealed to this Court contending that the trial judge erred when he dismissed or dissolved the injunction without first hearing evidence. This Court, relying on the case *Raynes-Frederick v. George et al.[1961] LRSC 41; ,* 14 LLR 593 (1961), held that "dissolution of an injunction on the initiative of the court without a hearing is an abuse of discretion."

In the case at bar, the trial judge had a hearing of the facts of the preliminary injunction and granted a final injunction permanently restraining appellee from further construction pending the determination of the ejectment suit on the theory of preserving the status quo of the property, notwithstanding the fact that both parties in this litigation claim legal title and possessory rights of the disputed premises in their pleadings. The trial judge further ordered the removal of all materials, persons, equipment and other implements placed on the subject premises, including the fence, in order to preserve the status quo of the property.

The ruling was indeed prejudicial to appellee's rights and interests. The right and title of appellant, to whom the trial judge granted a permanent restraining order in this action of ejectment, has been disputed by appellee, as shown by his title deed of 1998 and his grantor's deed of 1865 as against the coappellant Elouise Duncan's deed of 1958. The trial judge indeed abused his judicial discretion.

In the case *Jackson et. al v. Irons et al.[1972] LRSC 46; ,* 21 LLR 328, 333 (1972), this Court held that "an action of injunction is ancillary and that one who applies for an injunction in connection with realty must stand on the strength of his title in a suit separate from the ancillary injunction action..." The trial judge cannot therefore grant a final injunction permanently restraining appellee where co-appellant Elouise Duncan's right or title to the subject property is substantially disputed by appellee, by virtue of the latter's title deed as well as his grantor's deed, the validity of which can only be determined by a jury under the control and supervision of the trial court. The facts and circumstances in the *Togba et al.* case and the instant case are not analogous, in that Judge Smith, in the *Togba et al.* case, granted a preliminary injunction without a notice to the respondents for hearing; while in this case, Judge Andrews had a hearing and erroneously and prejudicially granted the motion for preliminary injunction permanently restraining appellee from further construction until the determination of the ejectment suit.

The last issue raised and argued by appellants is that the ruling of Judge Andrews did not usurp the office of the action of ejectment, but that the said ruling was an enforcement of the injunction, which had been violated by appellee and the ruling was rendered in order to preserve the status quo of the premises pending the outcome of the ejectment action. It is contended by appellant that those persons or violators, be it family members of appellee, who were removed from the property, could not have possibly been dwelling on the property which has been in the

actual possession and control of co-appellant Elouise Duncan for more than forty (40) years, as opposed to appellee, who had recently in 1998 been trying to dispossess co-appellant Elouise Duncan. We shall decide this issue later in this opinion.

In submitting its case to this Court, appellant prayed this Court to reverse the ruling of Mr. Justice Jangaba and sustain the ruling of Judge Andrews in order to preserve the status quo of the subject property until the ejectment suit is determined.

The sole issue raised and argued by appellee's counsel is that the ruling and order of the trial judge ordering the sheriff to remove all materials, persons, fence, etc. from the subject premises prior to the final determination of the ejectment suit is manifestly prejudicial to appellee's rights and interests. Appellee also contended that the aforesaid ruling of the trial judge clearly shows that co-appellant Elouise Duncan is the rightful owner of the subject property in dispute to the effect of ordering the sheriff to remove the fence, equipment and other persons from said property in spite of the pendency of the ejectment suit filed by co-appellant Elouise Duncan.

It is further contended by appellee that an ejectment suit is a form of action involving both the right of possession and the right of property or a mode of trying title to **land**. Appellee maintained that an ejectment suit is purely a possessory action or remedy to obtain the actual physical possession of real property, whereas, an injunction is a restraining or prohibitive proceeding, which is an equitable remedy. As such, appellee submitted, equity will not take jurisdiction as a substitute for the ejectment suit, which is an action at law.

Appellee argued that the ruling and order of the trial judge ordering the sheriff to remove the fence, equipment, persons, etc. is not only erroneous and prejudicial, but it is in violation of appellee's constitutional rights; in that, Article 20 (a), of the 1986 Constitution guarantees the right to property to the effect that no person shall be deprived of his property unless as a result of the outcome of a hearing judgment of his peers consistent with the due process of law.

Based on these contentions and submission, appellee prayed that the ruling of the Chambers Justice should be affirmed, the permanent restraining order vacated, and the ejectment suit ordered proceeded with.

From the foregoing arguments, contentions and submissions, we have noted one decisive issue for the determination of this case, and it is, can a trial judge grant a permanent restraining order during the pendency of an ejectment action, ousting one party from possession of a property and placing another party in possession thereof where title is in dispute?

The answer to this question is in the negative. The records in this case reveal that co-appellant Elouise Duncan instituted an action of ejectment along with a motion for preliminary injunction praying the trial court to evict and eject appellee from the disputed property and to restrain appellee from further occupancy and possession thereof. Co-appellant Elouise Duncan claimed lawful ownership of the property by virtue of a 1958 deed. Appellee claimed lawful ownership of said property by virtue of a deed executed by the administrators of the intestate estate of the late Jebo Sartee, Sr., who, as also shown by the records, acquired ten (10) acres of **land** from the Republic of Liberia on April 15,1865, under the signature of the late President Daniel Warner. It is also evident that appellee filed an answer and an indemnity bond to reimburse Co-appellant Elouise Duncan for any injury or loss should the motion to vacate the preliminary injunction be granted. The indemnity bond was approved by Her Honour C. Aimesa Reeves on May 29, 1998 for an amount of L$50,000.00 (Fifty Thousand Liberian Dollars). The trial judge however granted the injunction, permanently restraining appellee until the determination of the ejectment action, and also ordered the removal of all materials, equipment, persons and other implements placed on the disputed property to preserve the *status quo* of the property.

Our statute provides that "any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to property as well as the right to possession thereof is disputed. Civil Procedure Law, Rev. Code § 1:62.1.

An action of ejectment pursuant to the language of the above quoted statutory provision is the proper remedy where title to real property and the right to possession thereof is in dispute. It also involves mixed issues of law and facts and determines the title and possession of a real property where parties in litigation both claim title to the property in question and the right to possession thereof. An ejectment action is therefore triable by a jury under the direction of a judge in our jurisdiction, and the title and possession of the realty can be determined by the trial jury only. The jury is the trier of facts which determine the validity of the titles or deeds presented into evidence by both parties and the jury subsequently award the disputed property to the rightful party, who has shown evidence of a stronger title and better right of possession thereof as against his adversary. The relief sought in an action of ejectment is the eviction of a party wrongful withholding the realty, and, therefore, the delivery of possession of the disputed property cannot be awarded to the plaintiff, co-appellant Elouise Duncan, by the trial judge without the determination of the title to said real property.

As stated earlier in this opinion, the party litigants claimed title and possession to the property in dispute. We are therefore in agreement with Mr. Justice Jangaba when he ruled that the sole purpose of ejectment suit is to test the strength of the titles of the parties, and to award possession of such property in litigation to a party whose claim of title is so strong as to effectively negate his adversary's right of recovery.

In the case, *Donzo v. Tate*, [1998] LRSC 23; 39 LLR 72 (1998), this Court, speaking through Mr. Justice Morris, held that courts of justice are therefore established to prevent insecurity of property, personal or real, in a society, and as such, a person cannot be deprived of his property unless by a judgment of his peers." We uphold our decision in the *Donzo* case that the appellee cannot be deprived of his property without a judgment of his peers, as guaranteed by Article 20(a) of our Constitution.

In the case *Glapoh v. Bolado Sawmilling Co.*, [1970] LRSC 13; 19 LLR 451, 456 (1970), this Court held that an injunction may not issue when title to **land** forming the basis of the action has not been finally determined. This Court also held in that same case that an injunction does not lie except when there is a trespass and trespass does not lie unless bonafide title is established in one who claims ownership to the **land**. This is not the situation in this case, since the ejectment suit still remains undermined. In this case, the bonafide title of the disputed property claimed by both parties by their deeds has not been established due to the pendency of the ejectment suit.

In *Young et al. v. Embree[1936] LRSC 21;* , 5 LLR 242, 247 (1936), this Court held that injunction does not lie where title to real property is an issue involved, more especially, where the party sought to be enjoined sets up adverse possession to said **land**. This Court further held in the *Young et al.* case that indeed it would not only be unjust, but an absurd paradox for any court of justice to enjoin a party, at the suit of another, from occupying or exercising other acts of dominion over lands of which he is the owner in fee simple.

Thus, the ruling of the trial judge ordering the removal of all materials, equipment, persons, including the fence, and other implements placed on the disputed premises is surely an absurd paradox; for a court of justice to restrain appellee at the suit of appellant from occupying or exercising other acts of dominion over the property of which appellee claims ownership in fee simple is plain error. The trial court ought not to have granted a final injunction permanently restraining appellee and removing his materials, equipment, persons and other implements placed on the premises, where title to the real property is an issue still undetermined. In our

jurisdiction, it is a court of law, and not one of equity, that has jurisdiction over cases involving title to real property. *Johnson v. Cassell,* 1 LLR 161 (1883).

It is provided that "as a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where the legal title is in dispute and the party in possession asserts ownership in himself or others. The rule apparently applies to both real and personal property". 42 AM JUR 2d, *Injunctions, §* 79. This indeed is a proper remedy of ejectment action, but not injunction which is a prohibitive or preventive relief. It therefore follows that the ruling of the trial judge clearly usurped the function of the jury in the ejectment suit which was still pending before the trial court undetermined; and this conclusion is based on the fact that appellee was ousted from the subject property without a judgment of his peers.

As to the alleged damage done to appellee's property, this Court holds that appellee has a remedy at law, because an injunction proceeding is not intended neither is its office to recover money for damages done to one's property. *Johnson v. Powell and Russell,* [1934] LRSC 32; 4 LLR 221, 223 (1934).

Wherefore, and in view of the foregoing, it is the candid opinion of this Court that the ruling of the Chambers Justice granting certiorari should be, and the same is hereby affirmed. The ruling of the trial judge granting preliminary injunction and permanently restraining appellee is hereby reversed; the permanent restraining order is vacated; and appellee is ordered placed in possession of the subject property and that the materials, equipment and other implement removed from the premises be returned to appellee, pending the final determination of the ejectment action. The Clerk of this Court is hereby ordered to send a mandate to the Sixth Judicial Circuit Court, Montserrado County, Republic of Liberia, instructing the judge presiding therein to resume jurisdiction over this case and give effect to this judgment consistent with this opinion. Costs to abide the final determination of the ejectment action. And it is hereby so ordered.

Petition granted.

Ducan et al. v Cornomia [2004] LRSC 26; 42 LLR 309 (2004) (17 August 2004)

ELOUISE C. DUNCAN, by and thru her Attorney-In-Fact, AARON MILTON and CHAWKI BESAIBES, Informant, *v.* **JOSEPH N. CORNOMIA,** Respondent.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY AND INFORMATION PROCEEDINGS.

Heard; April 21, 2004. Decided: August 17, 2004.

1. The moment an entire action of ejectment is withdrawn together with the writ of summons, there is no complaint left before the trial court to be amended; and when the plaintiff refiles the complaint, it becomes a new action.
2. Where an entire action is withdrawn, together with the writ os summons, a new complaint filed by the plaintiff must be accompanied by a new writ of summons and served on the defendant; otherwise the defendant is not brought under the jurisdiction of the court.
3. When a complaint is filed with the clerk of court, a written direction must be attached to the complaint and the clerk must issue a writ of summons based on the written directions, which must be delivered to the sheriff for service on the defendant.
4. A writ of summons is the instrument used to commence a civil action or special proceedings and is a means of acquiring jurisdiction over a party.
5. Where no writ of summons is served on a party, the court does not acquire jurisdiction over that party.
6. The withdrawal of plaintiff's entire action deprives the court of jurisdiction over the case as the previous writ of summons and the entire action are no longer before the trial court to be amended.
7. A bill of information will lie to prevent a judge or any judicial officer who attempts to execute the mandate of the Supreme Court in an improper manner from doing so.
8. A bill of information will also lie to prevent anyone whomsoever from interfering with the judgment and/or mandate of the Supreme Court.
9. In order for a bill of information to be granted, it must be shown that the respondents have disobeyed or obstructed the enforcement of the Supreme Court's mandate.
10. A bill of information which seeks to withdraw a case pending before the Supreme Court is totally out of place and cannot be granted.
11. Any counsellor who files information before the Supreme Court assigning reasons therefor other than the reasons expressly prescribed by the Rules of the Supreme Court shall be penalized by the imposition of a fine, suspension or disbarment.
12. Whenever the appellant and appellee or their counsels sign and file a written agreement of withdrawal with the clerk of the Supreme Court, specifying the terms thereof and paying the requisite fees, it shall be the duty of the clerk to enter the case withdrawn upon approval of the Chief Justice or any Justice of the Court and give to the parties a certificate of withdrawal.
13. Ejectment involves contest over title to real property, where the plaintiff claims right to a real property and the defendant also asserts ownership to the very same property.
14. In ejectment the court examines the respective titles of the parties and the party with the superior title wins.

15. The chain in a claim of title must be firmly linked and anchored to the grantor's title to make the grantee's title superior.
16. Where an important link in the chain of title is broken, as where the grantor's title is cancelled by court, the grantee is in effect rendered without title.
17. Where only one party has presented title, and the title presented by the other party has been nullified by court, ejectment will not lie.
18. A case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.
19. Generally courts render decisions to adjudge real controversies between parties and not to discuss abstract positions.
20. Moot cases give rise to advisory opinions and the Supreme Court does not give advisory opinions in the Liberian jurisdiction.
21. Where a question presented has become moot, a judgment or order may be affirmed without consideration of the merits of the case.
22. Courts have the authority, and often duty, to dismiss a moot case on their own initiative, without any application from a party.

The appellant filed an action of ejectment against the appellee to evict and eject him from a parcel of **land** to which she asserted ownership. Thereafter, following the filing of a answer by the appellee, the appellant filed a notice of withdrawal of her complaint with reservation to refile. On the same day the appellant filed an amended complaint, which was followed by the appellee's filing of an amended answer and a motion to dismiss. In the motion to dismiss the appellee contended that the trial court lacked jurisdiction over his person in that the appellant having withdrawn her action with reservation to refile, she should have prayed the court for a writ of summons to be issued and served on him, the appellee, to bring him under the jurisdiction of the court. This, the appellee said, was never done, and hence he had not been brought under the jurisdiction of the court.

The trial court granted the motion and dismissed the appellant's action. From this dismissal, an appeal was taken to the Supreme Court. While the appeal was pending, the Ministry of Foreign Affairs filed a petition to cancel the deed relied upon by the appellee for claiming ownership to the parcel of **land** sued for by the appellant. This latter case was heard by the Supreme Court and the three deeds upon which the appellee was relying in the ejectment suit were cancelled. Additionally, while the appeal in the ejectment suit was still pending before the Supreme Court undetermined, the appellant filed a bill of information seeking to withdraw the appeal. The bill of information stated that as the appellee's deeds had been cancelled by the State, there was no contest regarding title to the property.
The Supreme Court affirmed the judge's dismissal of the appellant's action of ejectment, reasoning that once the entire action, along with the writ of summons, was withdrawn by the appellant, there was no complaint left before the trial court to be amended. Therefore, the Court said, when the appellant refiled her complaint, it became a new action and the appellant should have filed written directions praying for the issuance of a writ of summons to be issued and served on the appellee. The appellee, the Court held, was therefore not brought under the jurisdiction of the trial court.
On the issues of the bill of information, the Court denied the same. The Court noted that a bill of information can only be granted on a showing that the enforcement of its mandate has been disobeyed, obstructed or interfered with. A bill of information could not be used to effect a

withdrawal of an appeal. Hence, the Court held that the bill of information be denied. Notwithstanding, the above holdings, the Court determined that the appellee could not contest the appellant's ownership to the **land** in question in view of the cancellation of the appellee's deeds by the State, the grantor, in the cancellation proceedings. The Court noted that where the title deed relied upon by the defendant is nullified by the court, ejectment will not lie and cannot be entertained by the courts, the suit having become moot by the nullification.

Jerome J. Verdier of Stubblefield & Associates appeared for the plaintiff/appellant. *Snonsio E. Nigba* and *James N. Gilayeneh* of Legal Aid Inc. and Legal Services, Inc. respectively appeared for defendant/appellee.

MR. JUSTICE KORKPOR, SR., delivered the opinion of the Court

This case is before us for the second time. The first time it was here, this Court, in its opinion of December 17, 1997, reversed the ruling of the trial judge granting preliminary injunction and permanently restraining the defendant/appellee in the action of ejectment and evicting him from the disputed property. This Court, at that time, ordered that the defendant/ appellee be placed in possession of the subject property pending the outcome of the ejectment action. The trial court was also mandated to resume jurisdiction over the ejectment suit and proceed with a hearing on its merits.

We find the case again before us on appeal from the ruling on the motion to dismiss the action of ejectment filed by defendant/appellee, which motion to dismiss was granted by the trial judge, thereby necessitating this appeal.

The facts in the action of ejectment are that: Elouise C. Duncan, acting by and through her attorneys-in-fact, Aaron Milton and Chawki Bassaibes, of the City of Monrovia, Republic of Liberia filed an action of ejectment against defendant/appellee, Joseph N. Cornomia, in the Sixth Judicial Circuit, Montserrado County, on May 11, 1998. The writ of summons and the complaint were served on defendant/ appellee and returned served.

The plaintiff/appellant, Elouise C. Duncan, alleged in her complaint that she is the owner of the parcel of **land** on which the Mamba Point Hotel is situated; that she also owns the portion of **land** in front of the Mamba Point Hotel, across the street from the hotel and that the defendant/appellee was wrongfully occupying the said parcel of **land**. Plaintiff/ appellant attached to her complaint copy of a warranty deed dated August 15, 1958 from William E. Dennis to Elouise C. Duncan.

The defendant/appellee filed an answer denying that he was wrongfully occupying the plaintiff/appellant's **land**. The defendant/appellee stated that the **land** covered by plaintiff/ appellant's deed attached to the complaint does not extend to the beach through the street opposite the Mamba Point Hotel to include the defendant/appellee's property. The defendant/ appellee claimed title to the subject property through an administrator's deed from the

Intestate Estate of the late Jarboe Sartee, represented by and thru its administrators, Robert Sartee and Peter Sartee. The administrator deed is dated January 19, 1998. Copy of the said administrator deed was attached to the Answer. A certified copy of a public **land** sale deed dated April 15, 1865 from the Republic of Liberia for ten acres of **land** signed by President Daniel B. Warner and issued to the late Jarboe Sartee was also attached to the answer. Pleadings rested in the case with the filing of the plaintiff/appellant's reply.

On the 3rd day of March, A. D. 2000, the plaintiff/ appellant, through her counsels, filed a notice of withdrawal with the clerk of the trial court, withdrawing the action of ejectment with reservation to refile. On the same day the plaintiff/appellant filed an "amended complaint", this time, by and thru Aaron Milton and Chawki Basaibes, as attorneys-in-fact.

The defendant/appellee filed an "amended answer" along with a motion to dismiss the "amended complaint" contending among other things that the Court lacked jurisdiction over the person of the defendant/appellee because the plaintiff/ appellant, having withdrawn her action of ejectment with reservation to refile, plaintiff/appellant should have prayed for a writ of summons to be issued and served on the defendant/ appellee when she refiled the action.

The motion to dismiss was resisted, argued and granted by the trial court, dismissing the entire action of ejectment. The plaintiff/appellant announced an appeal from the ruling dismissing the action of ejectment and all jurisdictional requirements were met in perfecting the appeal.

While the appeal was still pending undetermined, the Ministry of Foreign Affairs, by and through the Ministry of Justice, filed a petition for the cancellation of three certified copies of title deeds issued to the late Jarboe Sartee from which the defendant/appellee derived his title to the property in dispute. The case traveled to the Supreme Court and this Court, on December 13, 2002, cancelled the three certified copies of deeds issued to the late Jarboe Sartee for reason of fraud.

Also, while the appeal was still pending undetermined from the ruling of Judge Kontoe dismissing the action of ejectment, a bill of information was filed by plaintiff/appellant seeking the withdrawal of the appeal. At the call of the case, the bill of information, the returns thereto, as well as the appeal from the ruling dismissing the action of ejectment were consolidated.

The plaintiff/appellant argued in the bill of information that there is no need to further litigate the matter of the ejectment in view of the Supreme Court's decision cancelling the three certified copies of title deeds on which the defendant in the action of ejectment derived his title to the disputed property; and that there was no more contest of title between the parties, hence, there is no need to continue the action of ejectment. The plaintiff/appellant also contended in the bill of information that "granting the bill of information and rendering judgment without opinion ... will in effect be sustaining the dismissal of the action of ejectment filed in the court below without examining the merits of the case." In essence, the bill of information prayed that the appeal announced from the ruling of Judge J. Boima Kontoe dismissing the action of ejectment be withdrawn and the action of ejectment be dismissed.

The counsels representing the defendant/appellee, contended that a bill of information can not be used to withdraw a matter before the Supreme Court and therefore prayed that the bill of information, together with the appeal be dismissed. Count 8 of the returns to the bill of information states in part: "As to count 7 of the information, respondent prays Your Honours and this Honorable Court to render an opinion by dismissing both the informant's baseless and frivolous bill of information, and appellant's appeal..."

The defendant/appellee further argued that the trial court lacked jurisdiction over the person of the defendant/ appellee because plaintiff/appellant withdrew her entire action of ejectment with reservation to refile, but when the complaint was refiled, Plaintiff/appellant did not pray for a writ of summons to be issued and served on the defendant/appellee so as to bring the defendant/appellee under the jurisdiction of the trial court. For this reason, the defendant/appellee prayed this Court to dismiss the bill of information. The defendant/ appellee also prayed this Court to deny and dismiss the appeal taken from the ruling of Judge J. Boima Kontoe.
From the facts and circumstances of this case, the issues presented for our consideration are:

1. Whether or not the ruling of the trial judge dismissing the action of ejectment based on the motion to dismiss filed by the defendant/appellee is proper?
2. Whether or not a bill of information can be used to withdraw a case pending before the Supreme Court?
3. Whether or not there is need for the continuation of the ejectment suit before our Courts?

We will discuss the issues in the order as presented. The first issue raises the question whether or not the ruling of the trial judge dismissing the action of ejectment is proper. The records in the case show that the plaintiff/appellant withdrew her action of ejectment and filed an "amended complaint" and served same on the defendant/appellant without a writ of summons. We hold that the moment the entire action of ejectment was withdrawn together with the writ of summons, there was no complaint left before the trial court to be amended. This was not a situation where the complaint in an action was withdrawn leaving the writ of summons which had been previously served and returned served. In the case before us as seen from the records, the entire action filed was withdrawn along with the writ of summons. Hence, when the plaintiff/appellant refiled her complaint, it became a new action, in the contemplation of the law. Therefore, she should have filed a written directions with the clerk of court based on which a writ of summons would have been issued to be served on the defendant/appellee. To the contrary, the plaintiff/ appellant only filed what she termed as an amended complaint and served same on the defendant/appellee. There being no writ of summons subsequently served on the defendant/ appellee, we agree with the defendant/appellee that he was not brought under the jurisdiction of the trial court.
The practice in our jurisdiction is that when a complaint is filed with the clerk of court, a written directions is attached to the said complaint and the clerk issues a writ of summons based on the written directions and delivers it for service to the sheriff or to the person specifically appointed to serve same on the party defendant. Thus, a writ of summons is the instrument used to commence a civil action or special proceedings and is a means of acquiring jurisdiction over a party. It follows therefore, that where no writ of summons is served on a party, the court does not acquire jurisdiction over that party.
The Supreme Court has held that "the withdrawal of plaintiff/s entire action deprives the court of jurisdiction over the case where the previous writ of summons and the entire action are no longer pending before the trial court to be amended." *Baaklini and Metropolitan Bank s.a.l. v. Henries, Younis et al.[1999] LRSC 2;* , 39 LLR 303 (1999). We therefore hold that the plaintiff/appellant not having served a writ of summons on the defendant/appellee when the action of ejectment was subsequently refiled, the defendant/appellee was not brought under the jurisdiction of the court and he could not therefore, be legally held to answer to the action of ejectment. Hence, the ruling

of the trial court presided over by His Honor J. Boima Kontoe dismissing the action of ejectment on the strength of the motion to dismiss filed by the defendant/ appellee, being grounded in law, should not be disturbed.

Concerning the second issue, i.e. whether or not a bill of information can be used to withdraw a case pending before the Supreme Court, we say no. Under our law "A bill of information will lie to prevent a judge or any judicial officer who attempts to execute the mandate of the Supreme Court in an improper manner from doing so. A bill of information will also lie to prevent any one whomsoever, from interfering with the judgment and/or mandate of the Supreme Court." (See *Revised Rules of the Supreme Court, Rules For Procedure In The Courts*.
Consistent with the above cited provision of the Rules of the Supreme Court governing bill of information, this Court has held that in order for a bill of information to be granted, it must be shown that the respondents have disobeyed or obstructed the enforcement of the Supreme Court's mandate. *Intrusco Corporation v. Firetex Incorporated*, [1984] LRSC 11; 32 LLR 36 (1984), Syl. 2; *Nimley, Seke et al. v. Yancy et al.*[1982] LRSC 72; , 30 LLR 403 (1982), Syl. 1. In the case before us, there is no showing that there was obstruction to, or interference with the execution of a mandate of this Court. To the contrary, the bill of information seeks to withdraw a matter pending before this Court. Given the restrictive confines of a bill of information as clearly seen from the Rules of the Supreme Court and in the many cases decided by this Court, we hold that the bill of information before us which seeks to withdraw a case pending before this Court is totally out of place, and therefore cannot be granted.
Under the Rules of the Supreme Court, it is provided that "Any Counsellor who files information before this Court assigning reasons therefor other than the reasons expressly prescribed by these rules shall be penalized by the imposition of a fine, suspension or disbarment." However, this Court will not impose any penalty on the counsel for the plaintiff/ appellant at this time. We only warn him to pay heed in the future!
The Supreme Court has a set procedure through which parties or either party in a pending case before it can discontinue or withdraw a case.
The Revised Rules of the Supreme Court provides with respect to continuance and withdrawal as follows:

"Whenever the appellant and appellee, or the petitioner and respondent shall in vacation by themselves, or either counsel, sign and file with the clerk an agreement in writing directing the cause to be withdrawn and specifying the terms on which it is to be withdrawn as to costs, shall pay to the clerk any fees that may be due to him and the ministerial officers, it shall be the duty of the clerk to enter the case withdrawn upon the approval of the Chief Justice or any Justice of the Court, and to give to either party requesting it a certificate of withdrawal."
The foregoing procedure is what the counsellor for the plaintiff/appellant ought to have followed to withdraw the appeal before this Court, instead of filing a bill of information. Because a bill of information can not be used to withdraw a case before this Court, the bill of information filed by plaintiff/appellant is hereby denied and dismissed.
This brings us to the third and last issue, i.e. whether or not the matter of the ejectment action should continue before our courts. To this question, our answer is no. As stated in the summary of facts, while the action of ejectment was still pending on appeal before this Court, the Ministry of Foreign Affairs, by and through the Ministry of Justice filed a petition for the cancellation of the three certified copies of title deeds issued to the late Jarboe Sartee. Those were the title deeds

on which the defendant in the action of ejectment derived his title to the disputed property. This Court says that ejectment involves contest over title to real property, where the plaintiff claims right to a real property and the defendant also asserts ownership to the very same property. In ejectment, the court examines the respective titles of parties and the party with superior title wins. The chain in a claim of title must be firmly linked and anchored to the grantor's title to make the grantee's title superior. It follows, therefore, that where an important link in the chain of title is broken as in the instant case, where the title of the defendant/appellee's grantor is cancelled by Court, the defendant/appellee is in effect rendered without title. And where only one party has presented title, and the title presented by the other party has been nullified by Court, ejectment will not lie.

What then is the usefulness of delving into the positions and contentions of the parties in an action of ejectment in the face of the cancellation of the title deeds out of which one of the parties to the action of ejectment derived his title. To our mind, there is no practical effect of deciding the action of ejectment on its merits, since by the cancellation of the title deeds issued to the late Jarboe Sartee from which defendant/ appellee derived his title, there now exists no controversy of title to be resolved on the appeal. We therefore hold that the matter of the ejectment suit has become moot. A case is moot when a determination is sought on a matter which, when rendered cannot have any practical effect on the existing controversy. BLACK'S LAW DICTIONARY 909 (5th ed).
Generally, courts render decisions to adjudge real controversies between parties and not to discuss abstract positions. Moot cases give rise to advisory opinions, and in this jurisdiction, our Supreme Court does not give advisory opinion. Where a question presented has become moot, a judgment or order may be affirmed without consideration of the merits of the case. 5 AM JUR 2d., *Appeal and Error*, §932. Courts have the authority, and often duty, to dismiss a moot case on their own initiative, without any application from a party. 20 AM JUR 2d, *Courts*, § 81.
We hold therefore that the title deeds from the grantor of the defendant/appellee in the ejectment action relied on having been cancelled, the question of title between the parties cannot be entertained further in our courts.

Wherefore and in view of the foregoing, it is our opinion that the defendant/appellee was not brought under the jurisdiction of the trial court, hence he could not be held to answer in an action of ejectment. The action of ejectment brought against the defendant/appellee is therefore dismissed. Further, we hold that the ejectment action having been rendered moot by the petition of cancellation filed by the Ministry of Foreign Affairs by and through the Ministry of Justice and this Court having confirmed and affirmed the cancellation of the certified copies of three title deeds issued to the late Jarboe Sartee, defendant/appellee's grantor, this ejectment action can no longer be entertained in our courts. On this basis, the ejectment action is also dismissed. The Clerk of this Court is hereby ordered to send a mandate to the court below to give effect to this judgment. Costs are ruled against the plaintiff/appellant. And it is hereby so ordered.

Judgment affirmed; action dismissed.

Cooper et al v C.F.A.O [1972] LRSC 68; 20 LLR 554 (1972) (18 February 1972)

AUGUSTUS W. COOPER and MARY P. COOPER, for the heirs of Jesse R. Cooper, Deceased, and EDWARD COOPER, Appellants, v. C.F.A.O., Appellee
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued February 7, 8, 9, 1972. Decided February 18, 1972.
1. Though an agreement, including a lease contrary to the statutes of the Republic, be illegal, a party, or one in privity with him, will be estopped from denying its validity when he is the maker of the instrument involved or has accepted benefits thereunder for a considerable time. 2. An estoppel is raised against the assertion of a right unreasonably slept on by a party when in such lapse of time another has unalterably changed his position in good faith. 3. When the agreed upon rent has been paid by lessee to lessor, profits derived by lessee as a result of the operation of the leased premises are irrelevant should lessor allege failure of consideration on the ground of inequity. 4. The devise by will of leased premises gives possession to the lessee and a right of future enjoyment thereof to the devisee upon termination of the lease. 5. Explicit lease agreements will not be reinterpreted because of ambiguous language in a will executed thirty years later, especially when the lease and will were drawn by the same person. 6. An inferior tribunal may not entertain a suit in equity or at law when the subject matter thereof is involved in an appeal arising from another proceeding, pending before the Supreme Court. 7. An action by or against an estate must be by or against the executor or administrator in his representative capacity, who is a necessary party to any action affecting the property rights of the estate.

In 1916, the testator leased real property to C.F.A.O., a French company, for twenty years with three options to the company to thereafter renew for the same number of years and for the same consideration. Until his death in 1949, the lessor received the agreed-upon rental.
Under the terms of his will, testator's wife was to serve as trustee of the proceeds derived from the various leases on his property, including the ones at issue herein. In 1968, nineteen years after their testator's death,

during which time the appellants, beneficiaries under the trust, continued to receive the rentals agreed upon under the leases, an action was instituted by the appellants in their individual capacities for cancellation of the leases, on the ground that they were illegal, since realty had been leased to a foreign concern for a length of time in excess of the legal limits permitted under the laws of the Republic applicable at the time the leases were executed. When the action for cancellation was begun in the circuit court, an

application for certiorari was pending before the Supreme Court involving the estate and arising out of an order issued by a probate court to hold in escrow rents received under the leases herein. The cancellation action was dismissed in the lower court and an appeal was taken therefrom. The Supreme Court applied the doctrine of estoppel, for various reasons, though it recognized the illegality of the leases and, on procedural grounds as well, affirmed the judgment.

Joseph Findley for appellants. for appellee.

R. F. D.
Smallwood

MR. JUSTICE HENRIES delivered the opinion of the Court.

On October 31, 1916, the late Honorable James F. Cooper concluded lease agreements with C.F.A.O., in which he leased to the Company certain parcels of land for twenty years, "with the privilege of three renewals for periods of twenty years each upon the same terms and conditions," thus making a total of eighty years. On August 14, 1946, James F. Cooper executed his will, of which clause 4, is set forth. "It is my desire, and I hereby direct that the Agreements of Lease entered into between the Compagnie Francaises de L'Afrique Occidentals (C.F.A.O.) Monrovia, and myself, Messrs. 4. Woermann, and

myself, and the Cavalla River Company and myself with reference to certain properties situated on Water Street in the City of Monrovia, shall continue in force for the full term therein agreed upon, if possible and that the rents accruing therefrom, namely 250.0.0 pounds from the C.F.A.O., 250.0.0 pounds from A. Woermann, 250.0.0 pounds from C.R.C. be controlled and managed solely by my wife, Ellen in trust and as such special trustee, it is my wish, and I hereby so direct that from rents she shall make the following annual payments to the persons hereunder named, and or their lawful heirs by marriage. On the failure of issue by legatee hereunder, his share shall be divided pro rata by the others. Upon the termination of the lease above mentioned, and any renewals made if possible, the trust shall cease with respect thereto, and the fee simple title shall then vest in my sons, Jesse R. Cooper, Augustus Washington Cooper and Edward Cooper, and their lawful heirs by marriage. In case the above rents are reduced or increased the legatees shall get proportionally in accordance with such reduction or increase. "In the event of the death of my said wife, Ellen, my trustee herein or should she leave the country permanently, or become incapacitated, then said trust shall be held, controlled and operated by Jesse R. Cooper, my son, Martha-Sherman, my daughter, and Emma Cooper, my ward, and in the event of the death of either of them, the other two shall nominate a third from the legatees hereunder. Ellen G. Cooper, too.o.o pounds ; Augustus Cooper, 90.0.0 pounds ; Jesse R. Cooper, 90.0.0 pounds; Martha-Sherman, 90.0.0 pounds; Armena Cooper, 48.o.o pounds ; Cecelia Cooper, 48.0.0 pounds ; Edward Cooper,

48.0.0 pounds ; Elsie Cooper, 5o.o.o pounds ; Francis L. Cooper, so.o.o pounds; William Cooper, 48.0.0

pounds ; Emma Cooper, 50.0.0 pounds ; Mary B. Hamilton, 48.o.o pounds." The testator died in 1949, having received and enjoyed the proceeds from the leases for thirty-three years. In 1968, appellants, who are heirs of the late James F. Cooper, instituted equity proceedings in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to cancel the lease agreements of 1916 on the ground that the leases are immoral and illegal because they violated the statutes of Liberia, which prohibited the leasing of realty to aliens by private citizens for a period of more than twenty-one years on the same terms and conditions and for the same consideration. Pleadings in the lower court went as far as the filing of a reply. Subsequently, appellees, then defendants, filed a motion to dismiss the complaint, which was granted by the trial judge. Appellants excepted to the ruling and appealed to this Court. Article V, Section 12th, of the Constitution provides that: "No person shall be entitled to hold real estate in this Republic, unless he be a citizen of the same. Nevertheless this article shall not be construed to apply to colonization, missionary, educational, or other benevolent institutions, so long as the property or estate is applied to its legitimate purposes." However, the constitutional prohibition against the holding of real estate by aliens has been limited to ownership of land in fee simple and leaseholds for excessively long terms. In order to support their contention that the leases are illegal, appellants cited the Property Law, 1956 Code, 29 :20:

"Leases to foreigners. A Liberian citizen shall not lease real estate to any foreign person or foreign concern for a term longer than twenty-one years ; provided, however, that the provisions of this section shall not prevent a citizen from granting to a foreigner or foreign concern a lease of real estate for two op-

tional periods of twenty-one years each in addition to the twenty-one year period of a term certain, but for each additional term there shall be an increase of the rentals fixed for the term certain of not less than ten percent. "A lease agreement between a citizen and a foreigner contrary to the provisions of this section shall be voidable, and the lessee shall lose all benefits of such agreement and the lessor shall forfeit to the Government his rights and title to such estate." Counsel for appellants neglected to cite the law extant when the leases were made. Under the 1898 statute Liberian citizens could lease their land to foreigners for twenty years plus an option to renew for another twentyyear period. The leases in the instant case provided for an eightyyear duration; the lessor had enjoyed the proceeds from the leases for thirty-three years before his death,

and appellants, under the testamentary trust created in clause 4 of the will, had also enjoyed benefits from these leases for nineteen years prior to the institution of these proceedings. In other words, the leases had run for fiftytwo years before the charge of their illegality was raised. Can the appellants, privy to the lessor, in view of the number of years that have elapsed and the benefits received during these years, now raise the issue of illegality of the leases? We hold that they are estopped from doing so for the following reasons : ( ) Appellants, as heirs of the lessor, are in privity with the lessor. A party complaining of an instrument made by himself is estopped from denying the validity of his own act. West v. Dunbar, 1 LLR 313 (1897). The same rule applies when he is in privity with the maker. Van Ee v. Gabbidon, i 1 LLR i59 (1952). In Van Ee, Mr. Justice Shannon, speaking for the Court, said at page 161: "It is true that this Court has always looked with disfavor upon lease agreements which

have been executed to cover periods of longer than twenty years, and has declared them to be against the organic law of the land. Bingham v. Oliver, i LLR 47 (187o) ; Couwenhoven v. Green, 2 LLR 301 (1918) ; 2 LLR 350 (1919). However, this has not been true where parties who were in pari delicto have attempted to take advantage of their own wrong." As a general rule, in cases in which the parties are in pari delicto, the court will refuse to enforce rights arising out of an executory illegal agreement, and even where the agreement has been executed in whole or in part by one of the parties the court will refuse to give relief. 17 AM. JUR. 2d., Contracts, §§ 221,223. Appellants argued that their sole aim is to cancel the agreements because they were illegal, but this is not quite correct, since their prayer for relief shows that they also are requesting "due compensation." Indeed, the effect of their objective would be to defeat the trust created for not only them but other beneficiaries, some of whom are heirs of the testator. Equity will not, as a rule, aid either party to an illegal transaction if they are in pari delicto, but will leave them where it finds them to settle their disputes without the aid of the court. The principle will be invoked not only against a party to the illegal or inequitable transaction, but also against the heir of a party or anyone claiming under or through a party. 19 AM. JUR., Equity, § 478. Appellants urged that the controlling cases cited above be overruled, but gave no reason to justify the demand. These cases being similar to and having settled the point which was raised in the case at bar, we are constrained to reaffirm this Court's holdings in these cases under the doctrine of stare decisis. (2) The appellants waited for nineteen years after the death of their father before raising the issue of illegality of the lease agreements. There is no indication that it was raised when the will was offered for probate, or that

appellants were suffering from any disability which would have made them incompetent
to attack the agreements before 1968, or that they had no knowledge of the facts or had not the means at hand of knowing all the
facts. Instead, they have contended that statutes of limitation do not apply in equity. While it is true that a court of equity is
not bound by a statute of limitations, it will give effect thereto in situations where the court finds laches. Equity follows the
law. When one knowing his rights takes no step to enforce them until the condition of the other party has, in good faith, become
so changed that he cannot be restored to his former state, the delay becomes inequitable were the right to be enforced, and so the
law raises an estoppel against the assertion of the right. Smith v. Faulkner, [1946] LRSC 5; 9 LLR 161 (1946). The lease agreements having run for a total of fifty-two years before being challenged, during which time the appellee, by
appellants' own admission, had undergone great expenses and considerably improved the property, appellants are estopped from raising
this contention. A court of equity has always refused its aid to stale demands where the party slept upon his rights and acquiesced
for a great length of time. Reasonable diligence is essential to call into action the powers of a court of equity. 19 AM.
jUR.,

Equity, § 490.

(3) As to the question of benefits received from these leases, appellants contend that they have received no benefits,
yet, in counts 3 and 4 of their complaint they state otherwise. "3. That by virtue of defendant's illegal and wrongful possession
it has erected and constructed a number of storerooms from which plaintiffs understand defendant earns an annual income of about
$55,000.00 per annum, as compared with the incompatible and meagre sum of two hundred fifty pounds or six hundred five dollars, by
present exchange standards, annual rental consideration for lease "B," a

profit of something like $54,395·oo,
less a total of $9,075.00, totaling $815,925.00 for 15 years, less a total of $9,o75.00, which represents 15 years rent at $6o5 per
annum. This leaves a profit balance of $806,850, which defendant has fraudulently deprived plaintiffs of when one considers the vast
and glaring disparity between the consideration of Exhibit "B" and the stated sublease profits in this count. "4. Plaintiffs further
submit and showeth unto this court that from the time they came into possession of said property in 1949 by virtue of Exhibit "A,"
(the will) they, as devisees, have not enjoyed any benefit from this property in terms of the excessive consideration complained
of herein from said leases or what accrues from them to defendants, who have thereby defrauded and cheated them out of $8o6,85o.00,

in keeping with count three of his complaint." A careful reading of these two paragraphs has left us with the impression that out
of the total amount of $815,925.00, the appellants have not received anything from the net balance of $8o6,85o.00, which they regard
as excessive consideration. Appellants' attempts to show that they had received no benefits at all, in the face of their admissions
in counts 3 and 4 above, failed to change our impression that they had benefited by the $9,075.00 paid under the leases. It would
have been convincing had appellants stated that they had received nothing from the full amount of $815,925.00 derived by appellee
from the property operated by it. Under the circumstances, a beneficiary of a will who has accepted benefits under the will is estopped
to contest the will. Williams v. Finch, lo LLR 249 (1949). Even if appellants had not enjoyed benefits from the leases, they have
neither alleged that this was due to appellee's failure to pay rent, nor shown any legal authority holding that a lack of benefits
not attributable to the lessee is sufficient to cancel a lease agreement.

Appellants have contended
that according to the will of their father, they became immediately seized of and had the right of possession to the leased premises
without the intervention of any party whomsoever. It is our opinion that the language of clause 4 cited before, created a vested
remainder. Robert v. Howard, 2 LLR 226, 229 (1916). "Where an otherwise effective conveyance of either **land or a thing other than land** creates one or more prior interests,
the maximum of which is measured by lives or by years or by a combination of lives and years, and then provides, in substance, that
upon the expiration of such prior limited interests, the ownership in fee simple absolute of the **land**, or the corresponding interest
in the thing other than **land**, shall belong to a person who is presently identifiable such person has an indefeasibly vested remainder."
Restatement of Property Law, § 157 (1926) .

Accordingly, appellants are remaindermen to whom title will pass only upon the termination
of the leases. There is a difference between possession and seizin. A lessee for years, as in the instant case, has possession, but
seizen is in the remainderman. Thus, it is clear that all that appellants have is a right of future enjoyment of the leased premises.
Roberts v. Howard, supra. Much stress was placed by appellants on the words "if possible" found in clause 4 of the will. They argued
that these words show that the testator intended the leases to continue "only if possible," and he himself was dubious of their being
continued. The record certified to this Court does not show that this issue was passed upon by the court below since, in fact, the
complaint was dismissed. Moreover, the judge did not approve count 2 of the bill of exceptions which deals with the issue. This Court
has always held that the bill of exceptions must conform to the record in the trial, and that exceptions

must be supported by the record. Elliott v. Dent, 3 LLR III (1929) ; Richard v. Coleman, [1935] LRSC 32; 5 LLR 56 (1935). In passing, we must declare that it is difficult to imagine how appellants expected this Court to interpret a lease agreement
by words found in a will executed thirty years after the making of the lease, especially so since the words are not in the lease
agreements. Moreover, appellants did not state the reasons for testator's alleged doubt or what exactly is the contingency that the
testator was contemplating. The lease agreements contain no ambiguity, and the words "if possible" in the will cannot invalidate
the lease agreements. Even if the testator did have any doubts as to the lease agreements such doubt would not operate in his favor
since it appears that the same persons prepared both the leases and the will. "A written agreement should, in case of doubt, be interpreted
most strongly against the party who has drawn it. Sometimes the rule is stated to be that where doubt exists as to the interpretation
of an instrument prepared by one party thereto, upon the faith of which the other has incurred an obligation, that interpretation
will be adopted which will be . favorable to the latter." Rached v. Knowlden, 13 LLR 68, 74 (1 957)· In counts 3 and 7 of the bill of exceptions, appellants contend that the trial judge erred in sustaining count 4. of the motion to dismiss, which stated that the lower court was barred from hearing this suit because there was already an action involving
the same estate pending before the Supreme Court. Appellants, in their brief, admit that there is an application for certiorari pending
before the Supreme Court involving this estate and growing out of an order of the Probate Court to keep in escrow rents accruing
from the property leased to C.F.A.O., but contend that the relief sought is different. While it may be true that the relief sought
is different, it is also true that

both suits involve the same leased premises and the rents accruing therefrom. In Weeks v. Johns, 13 LLR 498 (196o), the Magistrate attempted to dispose of the case of summary ejectment instituted by plaintiff despite the pendency of an appeal
in the Supreme Court involving the same property. Mr. Justice Wardsworth, speaking for the Court said, at page 501 : "It is manifestly
illegal, if not arbitrary and contemptuous, for an inferior tribunal to entertain a suit in equity or an action at law when, as in
the instant case, the subject matter thereof is involved in an appeal pending before this Court for final determination." Under the
circumstances the trial judge did not err in sustaining count 4 of the motion to dismiss. Closely related to this issue is the contention
of the appellee that the estate, not having been closed, is still under administration and, therefore, only the executrix has the
capacity to institute any suit at law. In actions by heirs, next of kin, legatees or creditors, it is customary to aver that an application
has been made to the personal representative to sue and that he has refused to do so, but it seems that it is not necessary to show

a technical refusal. Moreover, such actions cannot be maintained without alleging and proving that there are no debts owing from the estate, and that no administration has been granted or, if granted, has been closed. 31 Am. JUR. 2d., Executors and 41dministrators,§ 791. It is further stated an estate cannot sue or be sued as such. An action for or against it must be by or against the executor or administrator in his representative capacity. 31 AM. JuR. 2d, Executors and rldministrators, § 713. It is obvious that this action is not for, but subtly against, the estate which is still being administered. Since the action is not on behalf of the estate, and since appellants are estopped from denying the validity of their own act, they have no standing to sue, and the judge did not err in sustaining appellee's contention on this issue.

Appellee also went further by asserting that the executrix, Ellen G. Cooper, widow of the testator, is a necessary party and, therefore, should have been joined as a party. We agree with this assertion, since she is not only the sole executrix but the special trustee as well, under clause 4 of the will. It is the duty of an executrix to defend all suits that may be brought against the estate and to protect the estate from doubtful or invalid claims and obligations. Sharpe v. Urey, I I LLR 251 (1952). The legal representative of a decendent's estate, ordinarily the executor or administrator, is a proper and necessary party to any action affecting the property rights of the estate. 34 C.J.S., Executors and Administrators, § 751. The Civil Procedure Law, L. 1963-64, ch. III, § 551 ( ) provides for necessary joinder of parties. "When joinder required. "1. Parties who should be joined. Persons " (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitably affected by a judgment in such action . . . shall be made plaintiffs or defendants therein." It is our opinion that the estate might be inequitably affected by a judgment in this action. Appellants contend that nonjoinder of a party is not necessarily a ground for dismissal of a complaint. We agree with this contention, but hasten to point out that their complaint was not dismissed on this ground. In view of the foregoing, we must hold : that appellants lacked standing to sue, since the estate is not yet closed and is being administered by the executrix; that the pendency of a matter involving the same premises before the Supreme Court bars bringing another matter involving the same subject matter before an inferior tribunal. According to our Civil Procedure Law, L. 196364, ch. III, § I IO2 (d,e) :
"

"At the time of service of his responsive pleading, a party may move for judgment dismissing

one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds : That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia; That the party asserting the claim has not legal capacity to sue." Moreover, although the leases are illegal, yet since appellants are in privity with the lessor, and have received benefits from the leases for nineteen years, they are estopped from taking advantage of their own wrong. To hold otherwise and allow one party to escape his obligation would serve to bring insecurity and instability to land transactions in Liberia. In conclusion, we quote Mr. Justice Shannon in Van Ee v. Gabbidon, I1 LLR 159, 162 (1952) : "This Court always has been hesitant and cautious in decreeing the cancellation of lease agreements which have been entered into in good faith by parties, many of whom have been foreigners who have invested capital in our country. In so acting this Court feels itself serving the public good and subserving public policy which, in this connection, is to encourage investments that would conserve and maintain our economic stability." It is probable that our conclusions would have been different had these proceedings been instituted by an interested party other than those in privity with the lessor. The ruling of the lower court is, therefore, affirmed with costs against appellants. Affirmed.

Neal v Kandakai [1966] LRSC 72; 17 LLR 590 (1966) (16 December 1966)

DAVID F. NEAL, Appellant, v. VICTORIA KANDAKAI, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 7, 1966. Decided December 16, 1966. 1. In an ejectment action, the plaintiff has the burden of proving his title to the property. 2. A deed cannot be varied by oral testimony. 3. Witnesses must be duly summoned. 4. Courts will not do for parties that which they should do for themselves.

An appeal in an ejectment action was dismissed. Richard A. Diggs for appellant.
Perry, for appellee. MacDonald M.

MR. JUSTICE ROBERTS delivered the opinion of the

Court. This case has traveled up before us on appeal from the final judgment of His Honor Joseph P. Findley, Assigned Judge over the March 1965 term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County. Plaintiff filed an action of ejectment against appellee on December 7, 1964, and pleadings progressed and rested at the reply. The issues of law were passed upon on June 25, 1965. The case was called for ruling on the facts and the trial commenced during the September 1965 term. After a few days of trial, on October 14, 1965, the petty jury returned a

verdict to the effect that defendant was entitled to the land in question. To this verdict the several rulings and the final judgment, plaintiff, now appellant, took exceptions and has appealed to this Court. We gather from the complaint that plaintiff alleges that he is the bona fide owner of the piece of property num590

bered 0.4.226 which he purchased from Christian D. Maxwell in the year 1963, which piece of property has been referred to as part of Lot No. B I situated on Bushrod Island, City of Monrovia, Montserrado County, Republic of Liberia. Plaintiff also attached a copy of a warranty deed marked Exhibit A to form part of his complaint. He further complained that, without any color of right, the appellee encroached upon, trespassed, and occupied part of said premises and that, despite repeated warnings, appellee continued to occupy said land illegally. Appellee's answer contained three counts which we quote as follows. t. Because defendant says that she is presently occupying the piece of property in question by virtue of a lawful purchase thereof from S. Newton H. Speare, who acquired same from Kof a Barbor or Tetee Borbor, the lawful owner thereof by purchase from William H. Bryant who acquired same by purchase from the late A. D. and Julia Stubblefield who acquired same by right of descent in lawful possession and ownership thereof from their late great grandfather David White who acquired same from the then American Colonization Society, at the time represented by the then Governor Thomas Buchanan as will more fully appear from the attached documents (title deeds) marked Exhibits A, B, C, D, and E to form part of this answer. "2. And also because defendant submits that her privies have occupied and been in lawful possession and ownership of the said piece of property since the 18th day of July, 1889--over too years ago. "3. And also because defendant says that there is a fatal weakness in the purported title made profert by the plaintiff in this case ; that is to say, according to law controlling ejectments, to warrant a recovery by the plaintiff, he must recover upon the strength of his
,,

own title and not upon the weakness of his adversary. Defendant submits that to warrant a legal judgment in favor of the plaintiff in these proceedings, he must trace his title, link by link, to the sovereign. This not having been done, defendant submits that it is fatal against the said plaintiff where there is no showing that his privy Mr. Maxwell had ever acquired legal title to the said piece of property, the subject of these proceedings." Both plaintiff and defendant took the stand for themselves and produced witnesses to prove their case. It is needless to recite the questions and answers ; however we here quote the judge's charge to the jury word for word : "Plaintiff's counsel, Counsellor John B. Gibson, has elected not to be here for the argument. I will nevertheless and do now put the case before you. This is a case of ejectment in which the plaintiff

has sued the defendant to evict her, that is to remove her, from a piece of property the Lot No. Bi on Bushrod Island. The defendant in her answer says that she is occupying a lot in Block No. 6 situated on the same Island. Here are the facts. 1. The plaintiff brought two witnesses here, one Mr. Maxwell and David Neal himself, and they only showed you one warranty deed from the Maxwell to the Neal; and you heard what they had to say. "2. The defendant also brought two witnesses : herself and one Mr. Speares who sold her this land, and she went so far as to back her title with deeds dating back as far as our colonial days, from Governor Thomas Buchanan. "These are the facts; and now the law. There is one point of law only in this case : that plaintiff must recover upon the strength of his title ; and if these people, that is, the plaintiff and defendant, are fighting over this piece of property and the defendant can show a better title by tracking her possession from the

colonial days up to now, the law presumes that she has better title. That is the law. "Now, ladies and gentlemen of the jury, as judges of the facts you will now retire to your room of deliberation and return a verdict to this effect : if you find that plaintiff has not proven his case, say that he is not entitled to recover from defendant; if you find otherwise, say so. And it is hereby so ordered." From the charge, several rulings, and final judgment, plaintiff tendered the following bill of exceptions which it is essential to quote; and it reads thus : "David F. Neal, plaintiff in the above-entitled cause of action, is dissatisfied with Your Honor's several rulings during the trial of this case, the verdict of the petty jury, Your Honor's ruling denying plaintiff's motion for new trial, and Your Honor's final judgment as rendered on the 21st day of October, 1965, to the effect that the defendant is entitled to her place and that plaintiff be and he is hereby denied the right to recover his land as sued for from the said defendant, with 'this special pronouncement that the plaintiff be not permitted to further harrass and disturb defendant's peaceful possession of said property.' And plaintiff having excepted thereto and announced an appeal to the Honorable Supreme Court of Liberia at its March 1966 term, most respectfully prays Your Honor to approve this, his bill of exceptions in order that he may have the opportunity of having the Honorable Supreme Court of Liberia review Your Honor's said rulings, the verdict and final judgment of the petty jury, as follows, to wit: "I. Because plaintiff submits that on the 4th day of October, 1965, same being the loth day's session, defendant's counsel propounded a question on the crossexamination to witness C. C. Maxwell, which reads : `Mr. Witness, in your testimony in chief you revealed that this particular piece of property was sold and/or

transferred to you by Thelma Reeves and others through to you. How

were you satisfied that they had any legal title to the said property when even in the pleadings in this case you made no reference to any other document?' To which counsel for plaintiff objected and Your Honor overruled the said objection and then and there plaintiff excepted thereto. 2. And also because plaintiff submits that on the 13th day of October, 1965, at the 17th day's session of court, plaintiff's counsel asked .defendant's witness in the person of S. N. A. Speares, on the cross, he being both a surveyor and also a grantor of the defendant as to whether 'as a surveyor and also a grantor of the defendant, you scrutinized the original deed from the State, that is to say from Governor Buchanan, then Governor of the Colony of Liberia? Please state the actual location in keeping with the original deed and tell this court where the parcel of land, subject matter of these proceedings, is situated.' To this question counsel for defendant raised objection, to which plaintiff excepted. "3. And also because plaintiff further submits that on Monday the II th day of October, 1965, during the 15th day's session, plaintiff applied for and subpoenaed his witness, in the person of Lawrence Gbuie, the surveyor who surveyed the parcel of land for plaintiff, to appear in court to testify as to the metes and bounds of the said parcel of land, but that the trial judge did not and could not exercise patience for the said witness to appear, he being at the time engaged at Mount Coffee on a government project and was not available. The trial judge, therefore, being out of patience, ruled that the case should be proceeded with, as the result of which plaintiff was deprived of his vital and material witness. To which plaintiff excepted.

"4. And also because plaintiff submits further that after both sides suspended for argument on the following day, that is to say, on the i4th day of October, 1965, Your Honor, without exercising patience and without allowing plaintiff sufficient time to appear and argue his side of the case before the petty jury, proceeded to charge the said petty jury after defendant had argued his side of the case in the absence of plaintiff. As a result, when plaintiff did appear in court at the hours of io o'clock, that morning, to his greatest surprise, the said petty jury had returned with a verdict against plaintiff, to which plaintiff excepted and gave notice that he would take advantage of the statutes in such cases made and provided and that he would file a motion for a new trial. "5. And also because plaintiff further submits that accordingly on the 16th day of October, 1965, he tendered his motion for new trial, which said motion for new trial was disposed of by Your Honor on the 21st day of October, 1965, and was denied. To which

plaintiff excepted. "6. And also because on the said 21st day of October, 1965, being the 22nd day's session Your Honor rendered final judgment immediately after denial of the said motion for new trial by Your Honor to the effect that the verdict of the petty

jury is confirmed and plaintiff is denied the right to recover his land as sued for from the defendant with this special pronouncement that plaintiff be not permitted to harrass and disturb defendant's peaceful possession of this property. To which final judgment of Your Honor plaintiff excepted and prayed an appeal to the Honorable Supreme Court of Liberia at its March 1966 term." We shall dwell on this bill of exceptions, count by count, from Count i to Count 4, each of which we shall

comment on. In Count i of the bill of exceptions, we do not see where the judge erred in overruling the objection. It is incumbent on the plaintiff to prove legal ownership beyond all reasonable doubt. In ejectment the plaintiff must show a strong and legal title to the property in dispute. For the plaintiff to object to a question that could show strong title as against the defendant shows weakness of plaintiff's own title. Count 2 submits that witness Speares was required to state what the deed itself should contain. This Court has often pronounced that oral testimony does not explain a written instrument. A deed, besides its various averments, specifically gives location, metes, and bounds of a piece of property; and when said deed has been made part of the evidence it should not be set aside to permit oral testimony to explain otherwise. Count 3 of the bill of exceptions charges the judge with reversible error in that witness Gbuie was not brought to testify. It is obvious that to get the witness to court at that stage would mean a suspension of the case. This Court has stressed that witnesses for either side must be duly summoned. We have carefully scrutinized the records and in vain we have tried to find when the plaintiff complied with his provision of law. In respect to Count 4, a very important issue, it is necessary to quote the minutes of the i8th day's session, October i4th, which read thus : "This court met this morning .. . to argue and submits." In appellant's brief and oral argument, emphasis was directed to establish the fact that when the judge recessed the case for a few minutes, more or less, it was not again resumed and a time set for the argument on the following day and counsel for appellant failed to appear in keeping with said assigned hour. This brings out a very important issue. It is felt that to prove to us the incorrectness of the records certified to this Court, appellant should have moved this Court for a diminution of records ; however, it does show that an as-

signment was made when, in his own bill of exceptions, he alleged that the judge did not exercise patience. This is another clear example of lawyers trifling with their clients' interest and expecting us to do what they should have done for themselves. This Court is in sympathy with litigants who suffer from their lawyers' folly; nevertheless courts should

not and do not, do for parties that which they should do for themselves. We are quite in harmony with the ruling and final judgment
of the trial court and consider same to be regular and not to be disturbed. The appeal is dismissed with costs against appellant.
And the clerk of this Court is therefore ordered to send a mandate to the lower court informing it to resume jurisdiction and enforce
its judgment.
Appeal dismissed.

RL V Harmon [1976] LRSC 72; 25 LLR 348 (1976) (19 November 1976)

REPUBLIC OF LIBERIA, Informant, v. DAWODA HARMON, Respondent.
CONTEMPT PROCEEDINGS.

Argued October 27, 1976. Decided November 19,
1976.* 1. A person who prevents enforcement of a court mandate by instituting proceedings in another branch of Government is guilty
of contempt.

A decree of the Supreme Court issued at a previous term cancelled a public **land** sale deed to the respondent. To obstruct
enforcement of the mandate, respondent sent a telegram to the President of Liberia claiming that the Court had wrongfully deprived
him of his title. Enforcement of the judgment was stayed while the Ministry of Justice, on instructions of the President, investigated
the matter. The President, on recommendation of the Ministry following the investigation, approved the decision of the Court, but
respondent still refused to surrender the deed or vacate the premises. This was a proceeding in contempt charging respondent with
interference with enforcement of the mandate of the Court.
M. Fahnbulleh Jones for informant. bar for respondent.
MR. JUSTICE HENRIES

Stephen B. Dun-

delivered the opinion of the

Court. Having decided this case during the March 1975 Term of this Court by affirming
the decree of the lower court which cancelled and made null and void a public **land** sale deed issued in favor of the respondent by
the late
· Mr. Chief Justice Pierre did not participate in this decision.

President W. V. S. Tubman

for fifteen acres of land located in Fanima Town, Bushrod Island, Monrovia, it was quite a surprise to discover that the matter had come before us again, and that our mandate had not been enforced. At the hearing of this matter, the informant alleged that in an attempt to obstruct the enforcement of the mandate of this Court, the respondent sent a telegram to the President of Liberia stating that this Court, contrary to law, had deprived him of his legitimate right and title to land purchased from the Government of Liberia; that the President instructed the Ministry of Justice to investigate the truthfulness of this information; that the Minister of Justice wrote the President informing him of the correctness of this Court's decision; that a memorandum to the President from Honorable Richard A. Diggs, Assistant Minister of State for Presidential Affairs, "recommended that Mr. Harmon be informed that the Supreme Court having decided this matter, there is nothing that you can do about it, and that he abide by the decision of the Court" ; and that notwithstanding that this suggestion was communicated to the respondent, he has refused to surrender his deed and vacate the premises, thus defying the power and authority of this Court. The respondent in his returns does not deny that he sent a telegram to the President on this matter, but contends that the informant is relying on hearsay information or he should have proferted the telegram. He also contends that he has not vacated the premises because he is occupying the premises not on the strength of his own title, but because he is a relative of the residents of Fanima Town, and was invited to reside there since he is of the lineage of the founder of the town. He denied any intent of disrespect to this Court, and alleged that his deed to the fifteen acres is in the lower court where it was admitted into evidence during the trial. Because of the denials made by the respondent in his

returns, we quote hereunder the memorandum referred to above, which was proferted by the informant. "The Executive Mansion "Ministry of State for Presidential Affairs, "Monrovia, Liberia. "Meinorandum "TO : The President of Liberia "FROM: Assistant Minister Diggs "Subj : Case of Dawoda Harmon of Fanima "DATE : September is, 1976 "From the records in our office, it is observed that by letter dated April to, 1973, based on an investigation conducted by Former Attorney General James A. A. Pierre, you ordered that Mr. Harmon's deed be cancelled. This instruction was carried out and Mr. Harmon appealed the case to the Supreme Court, and the judgment was affirmed by said Court during its March 1975 Term, cancelling said deed. It was from the enforcement of this judgment that Mr. Harmon sent you a telegram dated April to, 1975, and you instructed the Minister of Justice by letter of May to, 1975, to look into this matter. This also stopped the enforcement of the Supreme Court's mandate, and the matter has remained so up to the present. "On August 2, 1976, the Minister of Justice in his letter opined that the decision of the Honorable Supreme Court is proper and correct in keeping with the laws of the Republic. "It is respectfully recommended that Mr. Harmon be informed that the Supreme Court having decided this matter, there

is nothing that you can do about it, and that he abide by the decision of the Court. "Approved: W.R.T." It is clear that the respondent has not told the whole truth about the telegram, and this leads us to wonder whether the rest of his returns can be accepted as true, and whether

the maxim falsus in uno, falsus in omnibus is not applicable here. In any event it has been established that the respondent instituted proceedings in another branch of Government which had the effect of stopping this Court's mandate, thus delaying and impeding the administration of justice. In Richard v. Republic, [1954] LRSC 32; 12 LLR 161 (1 954), we held that such an act is contemptuous. "Any act which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice is contemptuous." In re Cassell[1948] LRSC 5; , 10 LLR 17, 28 (1948). The reason given by respondent for his remaining on the premises is unacceptable. It is our belief that he has not vacated the premises because he had hoped that these extrajudicial proceedings might have some effect on our decision. In view of the foregoing, the respondent is hereby adjudged guilty of contempt of this Court and he is hereby fined the sum of $soo to be paid within forty-eight hours and a flag receipt indicating payment exhibited to the Marshal of the Supreme Court. Upon failure to pay the fine within the time allowed, respondent shall be incarcerated in the Central Prison until the fine is paid. Costs against respondent. And it is hereby so ordered. Respondent adjudged guilty of contempt.

Harris v Locket [1875] LRSC 1; 1 LLR 79 (1875) (1 January 1875)

W. B. HARRIS, Appellant, vs. **WILFRED LOCKET**, Appellee.

[January Term, A. D. 1875.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Ejectment.

1. Deeds for grants of lands by the government are valid only when issued and made during the incumbency of the president whose signature they bear; the authority of a president in this relation is that of an agent. It follows, therefore, that a deed, which is a contract, cannot be valid when issued after the expiration of the agency or presidential tenure.

2. In ejectment questions of a mixed character are involved and under statute must be tried by a jury under the direction of the court.

In this action appellant introduced in the court below the original deed from the government, which upon inspection is found bearing the signature of President D. B. Warner, of which deed a question was raised in the court below, as to the legality; and upon examination of the same, the court below says: "Deeds deposited in the registrar's department under statute laws, bearing the signature of the president of the Republic, may be legally issued, but only during the time said president is actually in office."

This court says the opinion of the court below is correct as to the non-effect of a blank deed bearing the signature of a president and filled up by the registrar after that president's term of office had expired. For it would be a gross violation of the law of agency and a strong inducement for fraud for a court of justice to encourage a doctrine so annoying in its tendency, and absurd in its principles, as urged by appellant's counsel.

This court maintains that the official signature of a president to a blank deed deposited in the registrar's office, agreeable to the direction of the statute and filled up by the registrar with a description of a certain lot or parcel of **land** and the name of the grantee, as being the deed of **land** granted by virtue and authority of the office of the president whose signature is thereunto affixed, while at the same time the said president's term of office had expired, is void and of no effect. Because to give legal effect to a deed, both parties must be competent to contract at the time the contract was entered into, otherwise the contract is illegal.

The president is the agent of the government to sign deeds granted according to law. His signature to a deed executed and made perfect during the legal existence of his official term of office, is binding and of effect in law, and in all cases when there is not collusion, double conveyance or fraud. Emigrants of African descent under the Constitution of Liberia have a right to claim and hold lands in accordance with such regulations made by the Legislature of this Republic.

Ejectment, being an action involving a mixture of questions of law and fact, must be tried by a jury. And as it does not appear to this court by the record for which judgment ought to be given

in this case, it is hereby remanded to the Court of Quarter Sessions in which it was originally tried, to be tried over again, all costs to follow the case.